

**Railroad Retirement Board (July 2023)**

**Contingency Plan for Agency Operations during a Lapse in Appropriations**

| <b>Lapse Plan Summary Overview</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                 |
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| Estimated time (to nearest half day) required to complete shutdown activities:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <i>0.5 days</i> |
| Total number of agency employees expected to be on board before implementation of the plan:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>727 FTEs</i> |
| Total number of agency employees expected to be furloughed under the plan (unduplicated count):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <i>221 FTEs</i> |
| <b>Total number of employees to be retained under the plan for each of the following categories:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |
| Compensation is financed by a resource other than annual appropriations:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <i>143 FTEs</i> |
| Necessary to perform activities expressly authorized by law:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <i>0 FTEs</i>   |
| Necessary to perform activities necessarily implied by law:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <i>363 FTEs</i> |
| Necessary to the discharge of the President's constitutional duties and powers:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <i>3 FTEs</i>   |
| Necessary to protect life and property:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>0 FTEs</i>   |
| <b>Brief summary of significant agency activities that will continue during a lapse:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                 |
| <p>All activities related to the administration of the Railroad Unemployment Insurance Act (RUIA) would continue without change because these are funded by a permanent appropriation in section 11(c) of the RUIA (45 U.S.C. § 361(c)). These include processing applications and claims for unemployment and sickness insurance benefits, as well as providing information and assistance to the public concerning these benefits. Benefits payable under the Railroad Retirement Act (RRA) are also funded by permanent appropriations in sections 15(a) and 15A(b) of the RRA (45 U.S.C. §§ 231n(a), 231n-1(b)); therefore, activities needed to ensure accurate and timely payment of these benefits would be continued because authority to pay the funded benefits is considered necessarily implied. These include processing initial awards for retirement, survivor, disability and Social Security benefits. Also included is the payment, adjustment, and reinstatement of monthly retirement and survivor benefits under the RRA, the processing of Medicare premium payments, and the processing of status changes, such as notice of death, change of address or direct deposit.</p> |                 |
| <b>Brief summary of significant agency activities that will cease during a lapse:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                 |

Any Legal, Financial, Administrative, and Information Technology (IT) activities that are not related to the payment of benefits under the RRA or administration of the RUIA would cease during a lapse. The agency would keep its 53 Field Offices open to provide assistance to the public for continuing operations.

This document sets forth the contingency plan of the Railroad Retirement Board (RRB) to continue activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations. The plan has been developed in accordance with guidelines contained in OMB Circular No. A-11 Section 124 and the clarifying memorandum from the Office of Management and Budget, M1322, dated September 17, 2013. The plan provides for actions to be taken by the Railroad Retirement Board (RRB) when Congress does not enact regular appropriations, a continuing resolution, or needed supplements, and an interruption of fund availability occurs. This 2023 contingency plan supersedes all prior plans RRB submitted to the Office of Management and Budget (OMB).

Administrative expenses under the Railroad Retirement Act (RRA) are appropriated by Congress annually. In the absence of appropriations, the Antideficiency Act (31 U.S.C. § 1341) prohibits RRB officials from incurring obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. During a lapse in appropriations, the agency must cease all activities for which annual funding has expired, unless an exception to the Antideficiency Act applies. See January 16, 1981 Opinion from Attorney General Civiletti (“1981 Opinion”) and August 16, 1995 Memorandum for the Director of OMB from the Office of Legal Counsel of the Department of Justice (“1995 Memorandum”). Two exceptions apply to the RRB’s work administering the RRA: the “wind-down” exception and the “necessary implication” exception. The “wind-down” exception applies to the minimal obligations necessary to close the agency during a lapse in appropriations. See April 25, 1980 Opinion of Attorney General. The “necessary implication” exception allows a limited number of government functions funded through annual appropriations to continue despite a lapse in appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well. See 1981 Opinion and 1995 Memorandum.

Under the foregoing guidance, RRB may incur obligations as necessary for orderly termination of an agency’s functions but is prohibited from making any payment of the obligation until funds are made available. Therefore, with some exceptions, RRB employees must be furloughed during a temporary lapse in appropriations to prevent incurring salary obligations. Moreover, in the event that a lapse in appropriation persists beyond thirty days, benefits paid within annual appropriations, such as Vested Dual Benefits, may be diminished.

RRB positions allocated to the administration of the Railroad Unemployment Insurance Act (RUIA) are exempt from furlough during a funding lapse because they are financed by other than annual appropriations. Specifically, section 11(c) of the RUIA provides all moneys credited to the Railroad Unemployment Insurance Administration Fund are permanently appropriated and continuously available to the RRB for administration of the RUIA without further appropriation and notwithstanding

any other provision of law. 45 U.S.C. § 361(c). Therefore, personnel performing functions in administering the RUIA are not affected by a lapse in appropriations. Section 11(c) of the RUIA further provides that determinations of the RRB as to whether a particular activity is chargeable to administration of the RUIA or to the RRA shall be binding and conclusive for all purposes and upon all persons and shall not be subject to review in any manner. The fund-split percentages for a particular bureau or office, as set forth in the agency's budget, will be used as a general guide in establishing the number of positions in that bureau or office that are involved in administering the RUIA.

As noted above, employees engaged in administration of the RRA are not exempt because their positions are funded by annual appropriation. RRA benefits are funded through a trust fund and permanent appropriation, not by an annual appropriation, and thus are "authorized by law" to be paid even during a period of a lapse in appropriations. See 1981 Opinion and 1995 Memorandum. Even though administrative costs of paying RRA benefits are paid through an annual appropriation, the lawful payment of RRB benefits necessarily implies that the functions performed in order to issue those payments also continue during a lapse in appropriation. This conclusion is consistent with the 1981 Opinion and the 1995 Memorandum, which found that the "necessary implication" exception allows the Social Security Administration (SSA) to continue the functions related to making accurate social security payments to the extent of the remaining benefit funding. It is noteworthy in this context that many of the categories of beneficiaries paid under the RRA are the same categories of beneficiaries paid social security benefits. Consequently, certain employees engaged in functions which fall within an exception are "excepted" from furlough.

In instances where a particular function within an organization is performed by more employees than the number excepted from furlough, the employees who will be retained will be selected on the basis of seniority. The Executive Committee (EC) will be responsible for updating this list as necessary.

When a lapse in appropriations occurs, the following actions will be taken:

1. The Director of Administration's<sup>1</sup> office will notify the Council of AFGE Locals in the Board of the lapse in appropriations and the anticipated timetable for furloughs. This transition is not expected to take more than one-half day.
2. The Director of Administration will advise employees of the situation surrounding the lapse in appropriations and any other information that is available such as the possible duration of the lapse.
3. Notices will be prepared and distributed to employees not exempt from furlough. Per the Government Employee Fair Treatment Act of 2019 (Pub. L. 116-1), the salaries of these employees shall be paid for the furlough period at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates. 31 U.S.C. § 1341(c)(2).

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<sup>1</sup> In the absence of the Director of Administration, actions delegated to the Director of Administration in this plan would be the responsibility of the Director of Operations or another designee as determined by the Board.

4. Notices will be prepared and distributed to employees exempt from furlough and involved in administering the RUIA. The salaries of these employees will continue to be funded.
5. Notices will be prepared and distributed to employees “excepted” from furlough and involved in activities in support of ongoing permanently funded entitlement payments such as RRA beneficiary roll maintenance. Per the Government Employee Fair Treatment Act of 2019 (Pub. L. 116-1), the salaries of these employees shall be paid for the excepted work at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates. 31 U.S.C. § 1341(c)(2).
6. The various organizational units will prepare SF-52’s (Request for Personnel Action) or mass action lists for their furloughed employees.
7. Necessary documents such as SF-50’s (Notification of Personnel Actions), Merit Systems Protection Board appeals information and Unemployment Insurance information will be mailed or emailed to furloughed employees as soon as practicable.

#### Leave

Per the Government Employee Fair Treatment Act of 2019 (Pub. L. 116-1), all employees required to perform work (both those exempt from furlough because they are in positions financed by a resource other than annual appropriations such as the RUIA and those excepted from furlough but whose salaries are financed by annual appropriations) are allowed to schedule and use annual and sick leave according to the normal procedures and regulations. In the case of excepted employees, compensation for paid leave taken during the lapse in appropriations shall be paid at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates. 31 U.S.C. § 1341(c)(3).

Employees excepted from furlough who do not use approved leave and who refuse to report for work after being ordered to do so, will be considered absent without leave (AWOL) and may be subject to disciplinary action.

Employees not excepted from furlough who have requested and been granted paid leave for a day subsequently designated as a furlough day will have that leave automatically cancelled because the necessity to furlough supersedes leave rights.

#### Travel

In the event of a government shutdown, RRB travel is expected to be severely limited. RRB officials will immediately review the status of all employees in travel status. Unless the travel is determined

to be necessary, employees in travel status will be recalled. Funding should already be obligated to cover the return travel costs.

RRB officials will be responsible for communicating expected actions to travelers. The travel management contractor will not be asked to convey agency instructions.

The RRB will also identify employees scheduled to travel during the expected shutdown duration. RRB officials will review the travel scheduled and determine which should be approved or cancelled.

The RRB does not expect new travel reservations to be made during the shut-down. Unless approved by a senior official, travelers will be advised to complete travel planning once normal operations resume.

#### Work-At-Home

In general, because of the limited staff available to report for duty during a furlough period, all work at home will typically be suspended, although each bureau/office head can extend the work at home privilege on a limited case by case basis if it is determined to be in the agency's best interest.

#### Variable Work Week

Because of limited staff resources, the regular business work day will be adjusted in the following manner: 1) the normal business work day is limited to 8 hours, 2) the use or accumulation of compensatory time or credit hours will not be permitted. Flextime starting and ending hours will continue to be permitted.

#### Government Provided Equipment

All furloughed employees assigned government owned equipment (e.g. computers, laptops, cell phones, etc.) will receive instructions regarding the use of this equipment during a furlough period.

#### Volunteer work

The Antideficiency Act prohibits volunteer work by furloughed employees. 31 U.S.C. § 1342. Supervisors and managers who are not furloughed should monitor their organizational units to make sure that no furloughed employees are working.

#### Media Inquiries

Any inquiries from the news media regarding furloughs or the lapse of appropriations should be referred to Public Affairs, with any response coordinated thru Media@OMB.EOP.Gov

#### Contractors

The Director of Administration will determine if funding for any of the contractors working on continuing projects for the Board is affected by the lapse of appropriations. He/she will then inform

any affected contractors of the funding lapse. The contractor can then make an informed decision as to whether to allow its employees to continue working.

### Time and Attendance Records

The Chief Financial Officer will be responsible for issuing instructions for showing furloughs on time and attendance reports.

When appropriations are made available, the following actions will be taken:

1. The Director of Administration will notify the Council of AFGE Locals in the Board of the passage of appropriations and provide the Union with information regarding plans to recall furloughed employees.
2. If the full appropriation is passed, all employees will be recalled to work. Recall of furloughed employees will be handled using the Employee Notification System (ENS) or other appropriate means of contact.
3. If the appropriation is passed at a reduced level, a decision based on available funding will be made by the EC as to which positions will be retained and the Union will be notified. Any reduction-in-force necessary because of reduced appropriations will be conducted according to government-wide, as well as the RRB's, reduction-in-force procedures.
4. Per the Government Employee Fair Treatment Act of 2019 (Pub. L. 116-1), the salaries of furloughed and excepted employees shall be paid for the period of lapse in appropriations at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates. 31 U.S.C. § 1341(c)(2).

### Summary of Impacted Operations

In the event of a shutdown, the RRB would continue to provide services that do not require enactment of an annual appropriations bill, or operations for which authority is considered "necessarily implied." During this time, the agency would keep its field offices open to provide assistance to the public for continuing operations.

#### Operations which would continue without change:

- All activities related to the administration of the Railroad Unemployment Insurance Act (RUIA) would continue without change because these are funded by a permanent appropriation in section 11(c) of the RUIA (45 U.S.C. § 361(c)). These include:
  - Processing applications and claims for unemployment benefits,
  - Processing applications and claims for sickness insurance benefits, and

- Providing information and assistance to the public concerning these benefits.
- Benefits payable under the Railroad Retirement Act (RRA) are funded by permanent appropriations in sections 15(a) and 15A(b) of the RRA (45 U.S.C. §§ 231n(a), 231n-1(b)); therefore, activities needed to ensure accurate and timely payment of these benefits would be continued because authority to pay the funded benefits is considered necessarily implied. These include:
  - Processing initial awards for retirement, survivor, disability and Social Security benefits.
  - Paying monthly retirement and survivor benefits under the RRA,
  - Adjusting benefit amounts, as needed,
  - Reinstating benefits which have been previously suspended,
  - Processing Medicare premium payments, and
  - Processing status changes, such as notice of death, change of address or direct deposit.

Operations which would continue within limited capacity

- Activities which would be continued within limited capacity include:
  - Processing partial-to-final awards,
  - Processing spouse-to-widow adjustments,
  - Processing one-payment-only awards,
  - Processing new supplemental annuity awards, and
  - Providing pre-retirement counseling and preparing annuity estimates.