

United States Senate

WASHINGTON, DC 20510

September 29, 2023

Martin Oberman
Chairman
Surface Transportation Board
395 E St SW
Washington, DC 20423

Dear Chairman Oberman:

I write to request information regarding the Surface Transportation Board's operations in the event of a lapse in federal appropriations.

According to Office of Personnel Management (OPM) guidance, federal employees are typically designated as either "exempt", "excepted", a "Presidential appointee not subject to furlough," or "non-exempt" during a lapse in federal funding. OPM has defined each of these terms. An "exempt" employee is an employee whose pay is not funded by annual appropriations.¹ An "excepted" employee is an employee who shall continue to work in the absence of an appropriation.² A "Presidential appointee not subject to appropriations" are a limited class of political appointees whose salary is not held subject to the appropriations.³ Finally, a "non-exempt" employee is any other employee who does not fit in one of the three previous categories and who shall not work during a lapse in appropriations.⁴

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate and Senate Resolution 59 of the 118th Congress to investigate matters that aid the Committee in "studying the efficiency, economy, and effectiveness of all agencies and departments of the Government."⁵

To better understand the Surface Transportation Board's operations during a lapse in federal appropriations, please provide my office with the following information no later than October 13, 2023:

1. The total number of employees as of the date of this letter, broken down by component, office, and/or sub-agency.

¹OFFICE OF PERSONNEL MANAGEMENT, GUIDANCE FOR SHUTDOWN FURLONGHS 2 (2021), <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf> ("Who are 'exempt' employees?").

² *Id.* at 1 ("Who are 'excepted' employees?").

³ *Id.* at 3-4 ("Why are leave-exempt Presidential appointees not subject to furlough?").

⁴ *Id.* at 3 ("What about employees whose work is neither 'excepted' nor 'exempt'?").

⁵ S. Rule XXV(k)(2)(B); S. Res. 59, Sec. 12(e)(1)(A).

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2. The total number of employees designated as “exempt” and will continue to perform their job duties, broken down by component, office, and/or sub-agency.
3. The total number of employees designated as “excepted” and will continue to perform their job duties, broken down by component, office, and/or sub-agency.
4. The total number of employees designated as “non-exempt” and will be furloughed, broken down by component, office, and/or sub-agency.
5. The total number of employees designated as Presidential appointees not subject to furlough, broken down by component, office, and/or sub-agency.
6. A comprehensive list of all Surface Transportation Board’s activities and/or functions considered to be “exempt” or “excepted” and are authorized to continue during the lapse of appropriations, broken down by component, office, and/or sub-agency and specific program.
7. A comprehensive list of all Surface Transportation Board’s “non-exempt” activities/functions that will not be carried out during the lapse of appropriations, broken down by component, office, and/or sub-agency and specific program.
8. A copy of the Surface Transportation Board’s lapse in appropriations policy and/or guidance.

Sincerely,

A handwritten signature in blue ink that reads "Rand Paul". The signature is written in a cursive, flowing style.

Rand Paul, M.D.
United States Senator