



**NATIONAL MEDIATION BOARD**  
WASHINGTON, D.C. 20572

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**National Mediation Board**  
**Contingency Plan for Shutdown of Operations**  
**October 1, 2025 – September 30, 2026**

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>.5 days</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>36</i>
Total number of agency employees expected to be furloughed under the plan	<i>28</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>0</i>
Necessary to perform activities expressly authorized by law:	<i>3</i>
Necessary to perform activities necessarily implied by law:	<i>1</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0</i>
Necessary to protect life and property:	<i>4</i>
<b>Brief summary of significant agency activities that will continue during a lapse:</b>	
<p>A. The President established an Emergency Board (PEB) on September 16, 2025, to investigate disputes between the Long Island Rail Road Company and certain of its employees represented by certain labor organizations.<sup>1</sup> Creation of an initial PEB for a commuter railroad dispute delays a strike, lockout or other form of self-help, for 60 days. Under the Railway Labor Act, the PEB has 30 days to issue its report to the President. The Presidential Emergency Board(s) process will continue in the event of a lapse in appropriations should the parties not reach an agreement. A total of Seven NMB FTE will be excepted for work related to the PEB: the Three Senate-confirmed NMB Board members, Two NMB staff will be required for liaising with Emergency Board members,</p>	

<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/2025/09/establishing-an-emergency-board-to-investigate-disputes-between-the-long-island-rail-road-company-and-certain-of-its-employees-represented-by-certain-labor-organizations/>

<p>one NMB staff will be required for financial payments associated with the PEB, and one NMB staff will be required for onsite technical assistance during the PEB scheduled October 5-8. The NMB Board will liaise with Congress during this time.</p> <p>B. Should a funding lapse extend beyond one week, an excepted National Mediation Board (NMB) employee may secure ballots.</p>
<p><b>Brief summary of significant agency activities that will cease during a lapse:</b></p>
<p>A. Conducting mediation sessions between parties will be suspended.</p>

## 1. Purpose

This directive provides contingency planning in the event of a funding lapse caused by the absence of appropriations for the National Mediation Board. This applies to all NMB Staff headquartered in the Washington, D.C., and Chicago, IL, offices, including remote work staff.

## 2. Reference

The United States Constitution provides, “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law[.]” U.S. Const. art 1, § 9, cl. 7. The Antideficiency Act (the Act) prohibits officers and employees of the Federal government from incurring obligations in advance of appropriations except where such obligations are authorized by law. 31 U.S.C. § 1341 (a)(1)(B). The Act further prohibits officers and employees of the Federal government from employing personnel services exceeding those authorized by law except for emergencies involving the safety of human life or the protection of property. Such emergencies do not include ongoing regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property. 31 U.S.C. § 1342.

The Attorney General has determined that the exception for emergencies under the Antideficiency Act is narrow and must be applied only where there is: 1) a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property; and 2) some reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by delay in the performance of the function in question. Accordingly, “the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to the [sic] near at hand and demanding of immediate response.” Memorandum for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995.

The Attorney General has also opined that agencies are by necessary implication authorized to incur those minimal obligations necessary for the orderly termination of functions that may not continue during a period of lapsed appropriations. See “Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations,” 4A Op. O.L.C. 16 (1980);

“Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations,” 5 Op. (1981). The Attorney General has further noted that, with respect to any short lapse in appropriations, it is appropriate for an agency to assume in its analysis of emergencies that the private economy will continue operating during the lapse.

### **3. Policy**

NMB policy states in the event of a funding lapse, the agency will proceed with the orderly shutdown of operations, beginning on the first workday of the lapse, and will limit all work activity to actions necessary for such a shutdown, or those activities deemed excepted under applicable law and regulation.

It is estimated that such actions will require not more than one-half workday. Since it is assumed that such a lapse would be temporary and of a short duration, no action will be taken to impede the orderly commencement of operations once funds are available. The Chief Financial Officer (CFO), in consultation with the Board, will notify senior staff (General Counsel, Directors, Office of Mediation Services, Office of Arbitration, and Office Information Services) regarding which activities and personnel are designated as excepted on the first workday of the shutdown.

All NMB staff employed at the time of the funding lapse will be furloughed, unless individuals have been identified as excepted. The CFO and General Counsel, in consultation with the Board, will identify employees who will be excepted at various times during the furlough period to perform functions authorized by law to continue during a lapse in appropriations. The three Presidentially Appointed Senate confirmed Board Members are not subject to furlough because they are statutorily entitled to their pay by virtue of their status as an officer. Therefore, they will continue to work during a lapse. Staff who are necessary to support the work of a Presidential Emergency Board (PEB) will also be excepted. The President established a PEB on September 16, 2025, to investigate disputes between the Long Island Rail Road Company and certain of its employees represented by certain labor organizations. A total of Seven NMB FTE will be excepted for work related to the PEB: the Three Senate-confirmed NMB Board members, Two NMB staff will be required for liaising with Emergency Board members, one NMB staff will be required for financial payments associated with the PEB, and one NMB staff will be required for onsite technical assistance during the PEB scheduled October 5-8. The NMB Board will liaise with Congress during this time.

All NMB contractors will be inactive during the funding lapse. The NMB website will not be updated during this time, and a banner announcing the NMB is closed due to a lapse in funding will be displayed. NMB e-mail will continue to operate during a shutdown for use by essential employees.

### **4. Definition**

A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. For most employees, there are two

basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 CFR Part 752, Adverse Action Procedures. A furlough of more than 30 calendar days is covered under 5 CFR Part 351, Reduction in Force Procedures. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.

## **5. Excepted Activities**

Excepted activities established by the Office of Management and Budget (OMB) are those that protect life and property, and those necessary to begin an orderly shutdown of agency activities. The NMB has no multi-year or no-year funds, therefore any expenses incurred during the performance of excepted activities will not be paid until such time as an appropriation is enacted.

## **6. NMB Implementation Plan**

- A. In accordance with Office of Personnel Management (OPM) and OMB guidance, the CFO will communicate with NMB employees regarding the implementation plan if it becomes necessary to affect an orderly shutdown of agency operations.
- B. The Agency Board will determine what specific services and personnel are essential and therefore excepted from suspension and, where applicable, the duration of each exception. The Chairman will notify affected senior managers of the final determination.
- C. The Office of Administration will take necessary personnel actions to notify employees of the suspension of agency operations and to release employees in accordance with law and OPM regulations, including the preparation of furlough notices and processing of personnel and pay records in connection with the furlough.
- D. The Office of Administration will notify all employees of the impact of the furlough on all employee benefits, including unemployment compensation, health insurance, leave accrual, retirement, and life insurance.
- E. The CFO will limit obligations incurred to those needed to maintain the minimum level of essential activities necessary to protect life and property; to process necessary personnel actions; and to process the personnel payroll for all periods prior to fund interruption.
- F. On the first workday of the shutdown, all employees will report to work according to their work schedule for the first workday following a lapse in appropriations (office, telework station, remote work station). Supervisors will inform employees of the status of funding and instruct them to limit their work activities to those functions necessary for the orderly shutdown of operations (no more than 4 hours). All scheduled leave is cancelled during a lapse in appropriation.
- G. The Director of each office will be responsible for notifying the Office of Administration of any absent employees as soon as possible.
- H. Termination of Shutdown: OMB will notify Agencies when the lapse of appropriations has ended. The CFO will inform the NMB staff that the lapse is over, however, employees should listen to open source media, view the OPM

website, or the NMB website, to learn when an appropriation has been approved. Employees are required to return to work on their next regular duty day.