



UNITED STATES GOVERNMENT

MEMORANDUM

FORM G-115f (1-92)
RAILROAD RETIREMENT BOARD

L-2024-03
July 8, 2024

TO: Stephanie Swilley
Chief of Payment Analysis and Systems

FROM: Ana M. Kocur
General Counsel

SUBJECT: Request for Formal Legal Opinion - Field Office Requests for Information from Third Parties (RL-108 and RL-109)

This is in reference to your memorandum dated May 3, 2024, asking whether the standard and the legal language in proposed forms RL-108 and RL-109 are acceptable. RL-108 and RL-109 are proposed form letters for Railroad Retirement Board (RRB) Field Offices to request information from third parties regarding Railroad Retirement Act (RRA) beneficiaries. On May 15, 2024, in response to a request to clarify the question, you asked if the RRB has authority to request the information sought in the letters.

It is my opinion that under the RRA the agency does have authority to request information from any person who might have information related to the determination of benefits under the RRA. 45 U.S.C. § 231 *et seq.* Therefore, the Field Offices may use the RL-108 and the RL-109 forms to make third-party information requests. However, for the following reasons, the language on the forms must be modified to accurately reflect which statutory provision applies when making a third-party information request.

Turning to the individual forms:

FORM RL-108

RL-108 is the initial third-party information request letter that would be sent to obtain relevant information to assist the agency with making an RRA benefits determination. It is a form letter with dropdown options so that the appropriate third-party entity may be selected, along with the type of information the third party should provide in its response. Those options include:

- Employer/Railroad Employer (Union)
- School
- Vital Records/Keeper of the records
- Custodian/Nursing Home/Residential Facility

- School Registrar
- State/Government Agency
- Financial Institution
- Postmaster
- Counselor/Provider
- Correctional Facility

Currently, the RL-108's authority paragraph states:

The Railroad Retirement Board's (RRB) authority for requesting this information is contained in Section 7(b)(6) of the Railroad Retirement Act [45 U.S.C. § 231f(b)(6)]. Your cooperation in promptly responding will be appreciated. Failure or refusal to do so may result in nonpayment of benefits to the annuitant.

Under section 7(b)(6) of the RRA, the RRB is only permitted to "require all *employers* and *employees* and any *officer, board, commission, or other agency of the United States* to furnish such information and records as shall be necessary for the administration of this Act." 45 U.S.C. § 231f(b)(6) (emphasis added). The RL-108 dropdown options suggest that the form may be used to request information from entities/individuals that do not fall within the scope of section 7(b)(6) of the RRA. Therefore, the statutory authority paragraph must be revised.

Section 7(b)(6) of the RRA is not the only mechanism the agency may use for information requests when administering the RRA. The power to make the RL-108 information requests also flows from the agency's subpoena power granted in section 12(a) of the Railroad Unemployment Insurance Act (RUIA). It states as follows:

For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this Act, the Board shall have the power to issue subpoenas [*sic*] requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof.

45 U.S.C. § 362(a). RRA section 7(b)(3) incorporates the RUIA section 12(a) subpoena power by stating in part:

...the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act as are not inconsistent with the express provisions of this Act.

45 U.S.C. § 231f(b)(3).

This type of subpoena power is broadly interpreted to include document and information requests as part of a federal agency's investigative and enforcement powers granted in its enabling statute, in this case the RRA and the RUIA. *See* U.S. Dept. of Justice, Office of Legal Policy, Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities 3 ("Administrative subpoena authorities allow executive branch agencies to issue a compulsory request for documents or testimony without prior approval from a grand jury, court, or other judicial entity."); *id.* at 4 ("The Supreme Court has construed administrative subpoena authorities broadly . . . in recognition of the principle that overbearing limitation of these authorities would leave administrative entities unable to execute their respective statutory responsibilities.")

Therefore, requests sent to individuals or entities other than employers, employees, or officers, boards, commissions, or federal agencies should reflect that the information is being requested pursuant to the RRB's subpoena authority.

FORM RL-109

RL-109 is a subsequent letter that would be sent to third parties that failed to respond to the RL-108. RL-109 states in pertinent part:

[I]f you fail or refuse to furnish the requested information, we have the authority as a Federal agency to issue a subpoena to collect the information.

Moreover, RL-109's authority paragraph states:

The Railroad Retirement Board's (RRB) authority for requesting this information is Section 7(b)(6) of the Railroad Retirement Act (RRA) [45 U.S.C. § 231f(b)(6)]. Your cooperation in promptly completing and returning this form will be appreciated. Failure to do so may result in nonpayment of RRB benefits to the beneficiary.

Section 12(a) of the Railroad Unemployment Insurance Act [45 U.S.C. § 362(a)], which is incorporated into the RRA by section 7(b)(3) of the RRA [45 U.S.C. § 231f(b)(3)], provides in relevant part that:

For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this Act, the Board shall have the power to issue subpoenas [*sic*] requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof.

Again, similar to the conclusion regarding RL-108, the authority paragraph in RL-109 must be revised to accurately reflect the agency's authority to request information from

third parties who are not *employers, employees, or any officer, board, commission, or other agency of the United States.*

In summary, it is my opinion that because the RRA and the RUIA give the agency authority to require information from any person who might have information related to the determination of benefits, the RRB has authority to seek such information. However, the language of the letters should reflect the proper statutory section depending on the entity type providing the requested information. This conclusion is also consistent with prior advice from this office regarding information requests. *See L-1990-42.*