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THE POSTAL REFORM ACT: A PLAN FOR AN AFFORDABLE, SUSTAINABLE POSTAL SERVICE

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> "Now there is nothing mortal that accomplishes a course more swiftly than do these messengers. . . [they] are stopped neither by snow nor rain nor heat nor darkness from accomplishing their appointed course with all speed."[1]
> - Herodotus, The Histories 8.98

Writing in the 5th Century B.C., Herodotus was describing the angareion, the postal service of ancient Persia. This service was invaluable to the Persians, allowing vital information to move quickly through the vast empire to ensure proper governance and respond to external threats. In a real sense, it helped bind the Persian state together. More than 2,000 years later, the quotation above and, more importantly, the meaning behind it serve as an animating principle of the United States Postal Service. While the Postal Service lacks an official motto, most Americans have heard the inscription on the front of the James Farley Post Office in New York City: "Neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds."[2]

Early postal services, like those of the Persian and Roman empires, were limited largely to official governmental use only. The passage of private communication was a much more informal and haphazard system that relied heavily on the good faith of travelers and merchantmen for delivery. In more recent centuries though, the right to use postal services was liberalized as governments began to see posts as both engines of economic expansion and as a source for profit. This liberalization opened up a new world to the average citizen in many countries. Before then, it was essentially impossible to keep in contact with friends and loved ones over long distance. Prior to the letter, immigrants departing home often knew their image fading into the distance would be the last their family ever saw or heard from them. The letter changed that and enabled families to stay in regular contact over vast distances. Newspapers and magazines were also sent through the mail. Thus mail came to hold a tremendous importance to many as the almost singular

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1. HERODOTUS OF HALICARNASSUS, THE HISTORIES 494 (A.D. Godley trans., Pax Liborum 2010) (1920), *available at* http://www.paxlibrorum.com/res/downloads/histories_5by8.pdf.

2. *Frequently Asked Questions*, SMITHSONIAN NATIONAL POSTAL MUSEUM, http://www.postalmuseum.si.edu/ museum/1e_faqs.html (last visited Mar. 15, 2012).

link to the world wider than the nearby city or town.

In recent years, though, the importance and reliance on mail has begun to decline across the world as electronic communication continues to become cheaper and more widespread. In the last few years, few places have witnessed as dramatic a decline in mail volume as has the United States. Since peaking in 2006 at 213 billion pieces, mail volume has declined by nearly twenty-five percent and further sharp declines are expected for the foreseeable future as electronic diversion siphons communication into the digital realm.[3] This unprecedented decline has left the Postal Service unable to cope and the proud institution has lost billions of dollars over the last five years. The Postal Service is nearing the end of its $15 billion credit line with the federal government and—by its own admission—will likely not be able to make payroll or payments to its contractors by this fall without congressional action.[4] It is now clear that in order to survive, fundamental change must come to the Postal Service through workforce modernization, infrastructure streamlining to correspond with diminished demand, and the streamlining of postal regulation. These and other necessary transformations, which I have included in the Postal Reform Act of 2011,[5] will enable the Postal Service to return to profitability and protect access to essential postal services for all Americans, especially those without access to high-speed communication technologies.

HOW DID WE GET HERE?

The American postal service is one of our nation's iconic institutions. Today's Postal Service traces its founding back to the Second Continental Congress in 1775.[6] It was established by federal statute in 1789[7] in exercise of the congressional power under the new Constitution to "establish Post Offices and post Roads"[8] and given an indefinite authorization by Congress in 1794.[9] The mission of this institution has continued virtually unchanged since then.[10] It is currently enshrined in section 101 of title 39 of the United States Code: "The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business

3. *Pieces of Mail Handled, Number of Post Offices, Income, and Expenses Since 1789*, U.S. POSTAL SERV., http://about.usps.com/ who-we-are/postal-history/pieces-of-mail-since-1789.pdf (last visited Mar. 15, 2012) [hereinafter *Pieces of Mail Handled*].

4. *U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown: Hearing Before S. Comm. on Homeland Security and Governmental Affairs*, 112th Cong. (2011) (statement of Patrick Donahoe, Postmaster General, USPS), *available at* http://www.hsgac.senate.gov/hearings/us-postal-service-in-crisis-proposals-to-prevent-a-postal-shutdown.

5. Postal Reform Act of 2011, H.R. 2309, 112th Cong. (2011).

6. U.S. POSTAL SERV., THE UNITED STATES POSTAL SERVICE: AN AMERICAN HISTORY 1775-2006, 3 (2007), *available at* http://about.usps.com/publications/pub100.pdf. [hereinafter AN AMERICAN HISTORY]

7. 1 Stat. 70 (1789).

8. U.S. Const. art. I, § 8, cl. 7.

9. 1 Stat. 354 (1794).

10. U.S. POSTAL SERV., REPORT ON UNIVERSAL POSTAL SERVICE AND THE POSTAL MONOPOLY 5-6 (2008), *available at* http://about.usps.com/universal-postal-service/usps-uso-report.pdf [hereinafter REPORT ON UNIVERSAL POSTAL SERVICE].

correspondence of the people."[11] From its inception, the Postal Service has continually evolved to meet the changing needs of Americans—primarily through the extension of new services and the reduction of unnecessary services.

To many today, the postal system of the 19th and early 20th centuries would have been virtually unrecognizable. One major step toward our modern postal service came in 1863, when free home delivery first began in urban areas, almost always involving letter carriers personally handing mail to customers.[12] Prior to that date, Americans were required to venture to a post office in order to collect their mail. While it took several more decades, free home delivery was subsequently extended to smaller cities[13] and then to rural areas in 1902.[14] Ultimately, the extension of delivery services peaked at a level far above what the nation receives today: in the early decades of the 20th Century, many residential addresses received mail delivery twice a day, and businesses received mail up to four times per day.[15]

Early home delivery was also far different from the service we know today. Only in 1923 did the Post Office Department (POD), as it was then known, require a mail slot or box for delivery.[16] This simple change enabled enormous productivity gains for the POD as letter carriers would no longer be forced to wait up to an hour each day for patrons to answer the door.[17] Similarly, with our population booming and spreading out into sprawling suburban towns the Postal Service began to phase out multi-delivery days. As delivery destinations increased, delivery frequency was cut back. The second residential delivery disappeared by 1950 and the multiple deliveries to businesses disappeared soon after. Importantly, these changes enabled the POD to become more efficient, keep prices down, equalize service between rural and urban areas, and better serve all of its customers.

Similarly, the number of post offices declined greatly as home delivery and mailboxes reduced the need for most Americans to visit a post office every day to retrieve their mail. The number of post offices peaked at about 77,000 at the start of the 20th century, and declined to about 32,000 in 1970 as the spread of rural home delivery was coupled with improved roads and transportation, reducing the necessity of a post office in every neighborhood.[18]

Unfortunately, despite the best efforts of many involved, the postal system by

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11. 39 U.S.C. § 101(a) (2012). This language was enacted as the Postal Reorganization Act of 1970 that reorganized the U.S. Post Office Department into the U.S. Postal Service. Pub. L. No. 91-375, 84 Stat. 719 (1970); *see* REPORT ON UNIVERSAL POSTAL SERVICE, *supra* note 10, at 6.

12. *See generally* 12 Stat. 704 (1863). This law also based postage for a letter on its weight and eliminated all differences based on distance, thus providing universal postal service to customers no matter where they lived in the country. *See* AN AMERICAN HISTORY, *supra* note 6, at 11, 20.

13. JAMES I. CAMPBELL, JR., STUDY ON UNIVERSAL SERVICE AND THE POSTAL MONOPOLY 52-53 (2008), *available at* http://www.prc.gov/PRC-DOCS/library/USO%20Appendices/Appendix%20B.pdf. This report was prepared under contract to the Postal Regulatory Commission.

14. AN AMERICAN HISTORY, *supra* note 6, at 24. Free delivery in rural areas was tested in 1896 under a congressional authorization and made permanent in 1902.

15. *Id.* at 21.

16. *Id.*.

17. *Id.*

18. *See Pieces of Mail Handled*, *supra* note 3.

1970 was edging toward disarray.[19] Conditions deteriorated to such a degree that in March 1970 wildcat postal worker strikes broke out around the nation, eventually involving more than 150,000 postal employees. The workers were protesting low wages and unsafe working conditions, but it was clear to all observers that the POD needed fundamental reform in order to properly address both the valid concerns of the workers and the crumbling postal infrastructure. In response to these problems, Congress enacted the most significant reform of the postal system in the Nation's history. This law, known as the Postal Reorganization Act,[20] fundamentally transformed the institution from a taxpayer subsidized cabinet-level agency to a self-supporting, independent entity within the Executive Branch.

On July 1, 1971, the United States Postal Service replaced the Post Office Department as the Nation's mail provider. While much of the customer-facing infrastructure remained unchanged, the institution was now essentially chartered to act in a business-like fashion. Prior to the 1970 reform, the law stated that the Post Office Department "should be operated in an efficient manner," but "it clearly is not a business enterprise conducted for profit or for raising general funds."[21] The 1970 law revised this paradigm and, in the words of the House report on the legislation, provided the new Postal Service "authority to conduct the affairs of the Postal Establishment on a business-like basis."[22] As a result, business principles largely replaced political influence in the decision-making of the postal establishment. After the 1970 reforms, postmasters were no longer appointed by the President, Congress no longer determined postage rate increases, and the taxpayer subsidy of postal operations was phased out.[23] Under the new regime, postmasters were selected on merit rather than by political patronage;[24] the Postal Rate Commission was created to properly adjudicate rate increases;[25] and the break-even standard came into force, requiring postage rates to cover the operating expenses of the Postal Service.[26] Finally, postal workers were granted significant raises and the right to collectively bargain over wages and benefits, a privilege that few federal employees enjoy even today.

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19. In June 1968, the President's Commission on Postal Organization, commonly known as the "Kappel Commission" filed its official report. In the cover letter to the report, Chairman Kappel stated, "Our basic finding is that the procedures for administering the ordinary executive departments of Government are inappropriate for the Post Office. . . . It has become evident, however, that the postal service cannot keep pace with demands of our society unless it is given a basic change in direction." THE PRESIDENT'S COMMISSION ON POSTAL ORGANIZATION, TOWARDS POSTAL EXCELLENCE (1968), *available at* http://hdl.handle.net/2027/mdp.39015078700625.

20. Pub. L. No. 91-375, 84 Stat. 719 (1970).

21. 39 U.S.C. § 2301 (1960).

22. H.R. REP. NO. 1104, at 3654 (1970).

23. Although USPS is authorized by law to receive appropriations for reimbursement of public service costs incurred by it in providing a maximum degree of effective and regular postal service nationwide, in communities where post offices may not be deemed self-sustaining, USPS has neither requested nor received such appropriations since 1982. 39 U.S.C. § 2401(b)(1) (2012). USPS receives only minimal appropriations for reimbursement for providing free mail for the blind and overseas voting. *See* 39 U.S.C. § 2401(c) (2012). For fiscal year 2012, Congress appropriated $78 million for these purposes. Pub. L. No. 112-74, 125 Stat. 786 (2011).

24. 39 U.S.C. §§ 1001-1002 (1970).

25. *Id.* §§ 3601, 3622-24.

26. *Id.* § 3621.

The 1970 reform was, in many respects, a "grand bargain" to modernize the postal system and encourage good business practices – but without privatization. To the greatest extent practicable, it divorced the day-to-day operations of the Postal Service from all political control by giving the Postal Service billions of dollars of taxpayer assets. This exchange, however, was intended to work both ways as the Postal Service was intended to operate self-sufficiently and protect the taxpayer from the operating costs of the agency. On the first day of fiscal year 1971, the Postal Service received—free of charge—all the assets of its predecessor, the Post Office Department. This virtually unprecedented transfer of assets included more than 32,000 post offices, a continent-spanning mail processing network, tens of thousands of vehicles, a trained workforce of 700,000, and continued monopolies on both the use of the mailbox and the delivery of letter mail, including First-Class Mail.[27] Once invested with these assets, the Postal Service was expected to maintain universal access to postal services, maintain a break-even revenue standard, pay the pension and retiree health care benefits accrued by all postal workers during time employed by the Service, and operate without taxpayer subsidy.

Overall, the 1970 reform was an unquestionable success. Labor issues were fairly addressed and the postal infrastructure was modernized, mechanized, and automated. The break-even standard, however, had the unfortunate effect of discouraging the Postal Service from making difficult decisions as mail usage began to change. The Postal Service could break even by simply choosing to raise rates rather than cut costs – the latter being a painful option that necessarily entailed confronting specific and vocal interests. At a time when the postal monopoly had great value, raising rates was an economically viable strategy: even if postage rates increased, individuals and businesses often had little choice but to continue to use mail. By the late 1990's, however, the power of the postal monopoly became increasingly diluted by the emergence of more alternatives to mail, many of which provided faster, secure communications at rapidly decreasing costs.

The volume of profitable First-Class Mail peaked in 2001 as customers increasingly substituted electronic alternatives for hard-copy letters, placing the Postal Service under growing financial pressure.[28] Meanwhile, it also faced mounting unfunded obligations for retiree health benefits for its aging workforce, primarily because those benefits were financed on a "pay-as-you-go" basis, unlike pension benefits.[29] Further, a growing consensus began to conclude that the lengthy rate-setting process under the 1970 law was preventing the Postal Service from responding quickly to an increasingly competitive marketplace. In short, the

27. For over 200 years, the Postal Service and its predecessors have operated with a statutory monopoly imposed by the Private Express Statutes, which restrict the private delivery of most letter mail. The basic restrictions are in 18 U.S.C. §§ 1693-99 (2012), as well as 39 U.S.C. §§ 601-06 (2012). The mailbox monopoly was enacted in 1934. *See* 18 U.S.C. § 1725 (2012).

28. USPS, 2003 ANNUAL REPORT 56 (2003), *available at* http://about.usps.com/who-we-are/financials/annual-reports/fy2003.pdf.

29. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-455, U.S. POSTAL SERVICE: STRATEGIES AND OPTIONS TO FACILITATE PROGRESS TOWARD FINANCIAL VIABILITY 19 (2010), *available at* http://www.gao.gov/new.items/ d10455.pdf [hereinafter GAO-10-455].

Postal Service's world was changing and it was becoming clear the Service and the laws governing it would have to change with it.

In 2006, after more than a decade of debate, Congress passed the Postal Accountability and Enhancement Act (PAEA),[30] a law specifically designed to prepare the Postal Service for the likelihood of continued declines in profitable mail volume due to increased market competition from electronic communication. The 2006 law built on the 1970 reform by enabling the Postal Service to operate even more like a business. This was done through the creation of an effective profit motive for the Postal Service. The break-even mandate was eliminated[31] and replaced with a price cap that limited future postage rate increases to the rate of inflation.[32] The cap prevented unchecked rate increases, but it also allowed the Postal Service to turn a profit by increasing efficiency and cutting costs.[33] The cap was designed to make the Postal Service begin to look inward to address budget shortfalls in the exact same way as it would respond if the value of the monopoly declined and inflation-based rate increases were to fail to generate sufficient revenue. Further, the 2006 law gave the Postal Service greater flexibility to set and change postage rates, especially for competitive products such as Express Mail and Priority Mail.[34] The greater price flexibility was balanced with protections to ensure fair competition, transparency, and accountability.[35]

With liabilities for retiree expenses continuing to accrue, the law also required the Postal Service to shift to a "normal cost" method of funding retiree health care.[36] This shift was to begin with a ten-year period when benefits would continue to be paid under the pay-as-you-go method, but with additional funds set aside as "catch-up" payments to pay down a large portion of the unfunded liability.[37] After the ten-year period, the Postal Service would convert to a normal cost system where funds were to be set aside for retiree health care during the employees' career, in the same manner as the employees' pensions. Once that conversion occurs, the Postal Service's remaining unfunded liability for retiree health care would be amortized over a forty-year period.[38]

Taken as a whole, the reforms packaged in the 2006 law were designed to prepare the Postal Service for a future where profitable First-Class Mail would be increasingly supplanted by electronic alternatives and the postal monopoly could no longer be counted on to provide additional revenue with every increase in postage rates. Unfortunately, what legislators could not have known at the time was that the very challenge for which they were preparing the Postal Service was much nearer at

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30. Pub. L. No. 109-435, 120 Stat. 3198 (2006).

31. *Id.* § 201.

32. *Id.* (codified at 39 U.S.C. § 3622(d) (2012)).

33. *See id.* § 201;U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-684T, U.S. POSTAL SERVICE: POSTAL REFORM LAW PROVIDES OPPORTUNITIES TO ADDRESS POSTAL CHALLENGES 17-19 (2007), *available at* http://www.gao.gov/assets/ 120/116185.pdf [hereinafter GAO-07-684T].

34. Postal Accountability and Enhancement Act of 2006, Pub. L. No 109-435, §§ 201-02.

35. *Id.* §§ 202-205, 301-302, 401-405, 602. *See* GAO-07-684T, *supra* note 33, at 29-30.

36. *See* 5 U.S.C. § 8909a(d)(3)(B) (2012).

37. *Id.* § 8909a(d)(3)(A).

38. *Id.* § 8909a(d)(2)(B).

hand than anyone had anticipated.

During the first decade of the new century, the Internet had come into its own as technology rapidly evolved and the average consumer quickly grew to rely on and trust electronic communication. As a result, electronic bill payment has boomed since 2001. Thus, after steadily increasing for more than 200 years, mail volume began to fall during the mid-2000s. In fiscal year 2006, total mail volume peaked at 213 billion pieces; now, just five years later, mail volume has fallen more than twenty percent and is continuing to decline.[39] This decline has left the Postal Service at a crossroads: what business model should the Postal Service turn to ensure the mail will continue to be accessible and affordable for those who still rely on it?

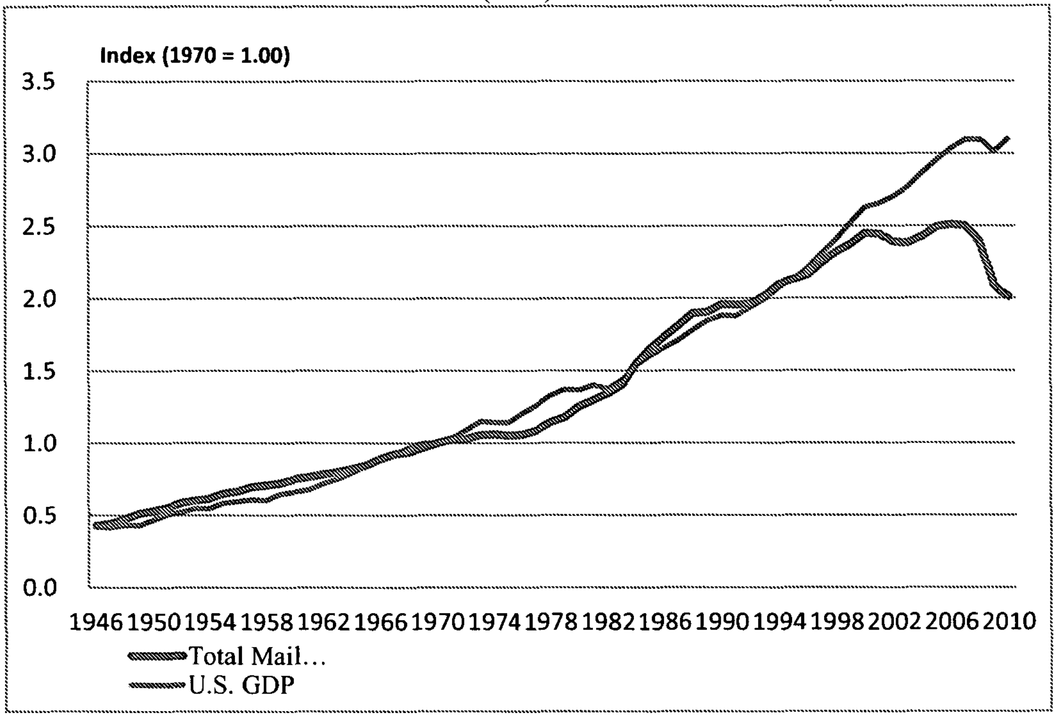
THE DECLINING USE OF MAIL

A long-cited maxim in the mailing industry is that mail volume tracks closely with Gross Domestic Product (GDP). The historical correlation between the growth rate of GDP and annual mail volume is remarkable.[40] Chart 1 compares these two figures since 1946, with fiscal year 1970 indexed to the value of one for both. A cursory examination of the data shows a clear linkage from 1946 until about the year 2000. In fact, the r^2 value of the years 1946-2000 is .983. On the other hand, there is a clear gulf between the trend lines from 2001-2010 and the r^2 value is only .075 for those years. This divergence is absolutely unprecedented for as far back as reliable data exists on both mail volume and GDP. Even during periods of economic recession, such as 1973-1975 and 1981-1982, there were no significant or prolonged declines in mail volume. That has all changed in recent years.

39. Mackenzie Weinger, *Postal Service Mired in More Red Ink*, POLITICO (Nov. 15, 2011), http://www.politico.com/ news/stories/1111/68438.html.

40. For more exacting budgeting purposes, the Postal Service uses separate analyses to predict the volume of various types of mail. These analyses use different economic and mail diversion variables, depending on their explanatory power to explain variations of different types of mail.

Chart 1: U.S. Gross Domestic Product (GDP) and Total Mail Volume, 1946-2010



Note: Data are indexed with 1970 = 1.00.
Source: Bureau of Economic Analysis (historic GDP data)[41] and USPS (total mail volume).[42]

The decline in mail volume has hit most segments of the Postal Service[43] and has cut deeply into its revenues. In the four years since 2007, the Postal Service saw its revenue decline by over $9 billion (12%).[44] While Standard Mail volume is now down seventeen percent from its peak, the steepest long-term declines are attributable to First-Class Mail (FCM). FCM has long been the Postal Service's primary revenue generator, and until FY 2011 it had accounted for more than half of all Postal Service revenue every year since the Service's creation in 1971.[45]

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41. U.S. DEPARTMENT OF COMMERCE BUREAU OF ECONOMIC ANALYSIS, ALL NATIONAL INCOME AND PRODUCT ACCOUNTS (NIPA) TABLES, *available at* http://www.bea.gov/national/nipaweb/selecttable.asp?selected=N (last visited Mar. 16, 2012).

42. *Pieces of Mail Handled*, *supra* note 3.

43. Although the volume of some types of mail has increased, notably Priority Mail and bulk mailings of parcel post (called Parcel Select), the revenue has been insufficient to offset much larger declines in other types of mail. U.S. Postal Serv., Postal Service Ends Fiscal Year 2011 with $5.1 Billion Loss , POSTAL NEWS, 2011, *available at* http://about.usps.com/news/national-releases/2011/pr11_124.pdf.

44. U.S. POSTAL SERV. 10-K REP. 85 (2011), *available at* http://about.usps.com/who-we-are/financials/10k-reports/fy2011.pdf.

45. Today, FCM essentially consists of two types of mail: single-piece and bulk. Bulk FCM was first introduced in 1977 and largely consists of official communications sent by businesses, such as bills and account statements. Each mailing of bulk FCM must consist of at least 500 pieces and typically is barcoded, presorted, and prepared in a way that significantly reduces the Postal Service's processing costs. Single-piece FCM includes all other FCM from non-mass mailing business communications and consumer bill payments to

FCM volume peaked in FY 2001 at 103.7 billion pieces and then declined to 73.2 billion pieces by FY 2011, a more than 25% drop.[46] Over that same period, single-piece FCM has declined from 53.6 billion pieces to 27.9 billion, a 48% decline.[47] That decline dwarfs the drop-off in bulk FCM, which lost only 5 billion pieces in that ten-year span, a decline of ten percent. The specificity of this decline to single-piece indicates that much of the decline is keyed to lower mail use by consumers who generate the bulk of single-piece FCM.

Arguably, a better measure of mail usage by individuals is stamped, single-piece FCM. As the name implies, this category of mail is the subset of single-piece FCM that uses a physical stamp as opposed to printed metering of postage or postage paid through a permit. This narrow category of mail is generally consumer-generated, as businesses and organizations typically use metering and permits as more cost efficient postage payment methods. As Table 1 indicates, this category has been declining since 2004 at an accelerating rate. The forty-six percent decline since 2004 is virtually identical to the overall decline in single-piece FCM and is a clear sign that consumers are undeniably shifting away from their use of FCM. While this portion of stamped mail only constituted 8.4% of total mail volume in FY 2011, more than any other subset of the mail, this trend is financially devastating to the Postal Service. If, as an example, the volume of stamped single-piece FCM mail in 2011 had been the same as in 2004, this mail would have generated an additional $5.35 billion in revenue.[48]

Table 1. Volume of Stamped Single-Piece First-Class Mail (FCM).

Fiscal Year	Volume (billions of pieces)	Annual Change in Volume (percent)
2004	26.35	
2005	25.46	-3.4
2006	24.27	-4.7
2007	22.93	-5.5
2008	20.76	-9.5
2009	18.53	-10.7
2010	16.64	-10.2
2011	14.18	-14.8

Source: USPS Quarterly Statistics Reports. Data on stamped single-piece FCM

stamped letters. Significantly, stand alone advertising mail is generally not sent as FCM, rather it is sent as Standard Mail at rates below FCM.

46. U.S. POSTAL SERV., REVENUE, PIECE AND WEIGHT (RPW) REPORT FY2011 SUMMARY (2011), *available at* http://about.usps.com/who-we-are/financials/revenue-pieces-weight-reports/fy2011.pdf; U.S. POSTAL SERV., REVENUE, PIECES AND WEIGHT (RPW) REPORT FY2001 SUMMARY (2001), *available at* http://about.usps.com/who-we-are/financials/revenue-pieces-weight-reports/fy2001.pdf.

47. *Id.*

48. Based on additional revenue of nearly 12.17 billion pieces at forty-four cents for the first ounce. For purposes of this example, the additional mail is assumed to not exceed one ounce, so no extra ounce revenue would be generated.

included in these publicly-available reports dates back to FY 2004.[49]

The changing use of the mail has fundamental implications for the Postal Service and the Nation. As described in section 101 of title 39, a core purpose of the Postal Service is to help bind the nation together.[50] In the past, this imperative pushed the postal service to grow with the nation. As our nation grew westward, post offices marched west with them—a necessity because until home mail delivery began, people had to come to the post office to pick up and send mail. In the century following the adoption of the Constitution, tens of thousands of post offices sprung up across the nation and countless towns and villages began to generate intense pride in their local post office and the connection to the outside world it brought. Now, though, the data indicates a long-term downward trend in the use of mail, especially among individuals. This trend has undeniably caught the Postal Service flat-footed and led to enormous deficits over the last five years as it desperately tries to cope with an unprecedented decline in mail volume that has left the institution teetering on the brink of insolvency.

CHANGES IN COMMUNICATION

The decline in mail volume has not occurred in a vacuum. While paper communication has declined, Americans undoubtedly communicate more broadly and more frequently today than at any point in our nation's history. This growth in communication has been fostered by the advent of new, faster, and cheaper communication tools, the most significant of which is the Internet. These tools have also moved into direct competition with mail and the Postal Service has been able to track the impact of electronic diversion since 1988. While the trend toward electronic diversion was relatively mild for more than a decade,[51] it increased rapidly starting in 1998. The Postal Service estimated that 3% of mail was lost to electronic diversion by 2000, increasing to 4.5% by 2009.[52] Until 2006, however, the growing impact of electronic diversion was masked by a growing economy where new mail volume was able to fully compensate for the volume lost to electronic diversion, but it was still enough to begin to bend the mail volume curve from its connection to GDP growth as can be seen in Chart 1 above.

Since 1987, the Postal Service has commissioned an annual Household Diary Study to measure Americans changing use of the mail.[53] One of the most important

49. *See generally* U.S. POSTAL SERV., FINANCIALS, http://about.usps.com/who-we-are/financials/welcome.htm (last visited Mar. 1, 2012).

50. 39 U.S.C. § 101(a).

51. *Are Postal Workforce Costs Sustainable? Hearing Before the Committee on Oversight and Government Reform*, 112th Cong. 115 (2010) (Postmaster General Patrick Donahoe's answers to questions for the record), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68048/pdf/CHRG-112hhrg68048.pdf.

52. *Id.*

53. The Household Diary Study, conducted by a USPS contractor, surveys a representative sample of U.S. households each year and gathers information on the mail they send and receive, as well as related information such as household use of electronic alternatives to pay bills. *See* U.S. POSTAL SERV., HOUSEHOLD DIARY, http://about.usps.com/current-initiatives/studying-americans-mail-use.htm (last visited March 16,

findings of the FY 2010 survey was that for the first time ever, more bills were paid electronically than via the mail.[54] By comparison, the FY 2000 survey indicated only two percent of all bills were paid online and more than eighty percent of all bills were paid through the mail.[55] The FY 2010 data broken down by age group indicates that the percentage of electronic bill payments will increase dramatically over time, as respondents thirty-five and under pay only thirty percent of their bills through the mail, compared to sixty percent for those fifty-five and older.[56]

Contemporaneous with the shift to electronic bill payment has been a shift away from consumer to consumer communication through the mail. In 1987, the average household received 1.55 pieces of personal First-Class Mail per week, which included greeting cards, invitations, announcements, and personal letters.[57] By 2000, this number had declined to 1.34 pieces and by 2010 it had declined by nearly fifty percent from 1987 levels to just 0.8 pieces per week.[58] The decline has been even more drastic in the personal letter category. In 1987 the average household received 0.46 letters per week, in 2000 it had declined to 0.33 per week, and by 2010 it was just 0.1 letters per week.[59] Personal mail was eighteen percent of household First-Class Mail in 1987, and by 2010 was barely ten percent; this type of communication, however, long formed the backbone of the so-called "mail moment," in which consumers anxiously anticipate getting the mail.[60] The decline in personal mail and the concomitant dilution of the mail moment may also be impacting business to consumer mail volume, if mailers believe that citizens are visiting their mail boxes less frequently.

One possible factor in the long-term decline of personal letters is the increasing affordability of long-distance and international calling. The diversification of the domestic long-distance market beginning in the 1970's saw AT&T's market share decline from 75% of households in 1995 to 26.1% in 2008 while still retaining the largest share.[61] Growing competition and innovations in technology created downward price pressure that led to cheaper domestic telephone rates over this period. However, the changes to the international calling market have been even more drastic during the same period,[62] leading to a boom in the volume of

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2012).

54. John Mazzone & John Pickett, *The Household Diary Study: Mail Use & Attitudes in FY 2010*, 2011 USPS 33, *available at* http://www.prc.gov/Docs/73/73501/USPS_HDS_FY10_FINAL_.pdf.

55. Dr. Malcome Harris et al., *The Household Diary Study: Mail Use & Attitudes in PFY 2000*, 2001 USPS 55, *available at* http://www.prc.gov/Docs/28/28021/HDS-FY-2000.pdf.

56. Mazzone & Pickett, *supra* note 54, at 35.

57. Harris et al., *supra* note 55, at 15.

58. *Id.* at 15, 21.

59. *Id.* at 15, 24.

60. *Id.* at app. A2, tbl. A2-1.

61. *See* U.S. FED. COMMC'NS COMM'N, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION WIRELINE COMPETITION BUREAU, TRENDS IN TELEPHONE SERVICE 9-10 (2010), *available at* http://hraunfoss.fcc.gov/edocs_public/ attachmatch/DOC-301823A1.pdf.

62. In 1980, an international call was billed at an average of $1.34 per minute. *See id.*, Table 6.1 at 6-3. This average declined to $0.49/minute by 2000 and to $0.10/minute by 2008. In absolute terms, this amounted to a ninety-three percent decline since 1980 and an eighty percent decline since 2000 and even greater amounts for both if the numbers were adjusted for inflation.

international calls.[63] Overall, the rapid declines in price for long-distance telephone calls will have enabled friends and family members to stay in touch with one another at speeds much faster than that of a letter and the relative change in usage indicates many Americans prefer phone calls to letter writing.

Still, for most communication that occurs through the Postal Service, a phone call is a poor substitute. Not only is it an often tedious and time consuming process to pay bills via the phone, but it is wholly impractical to deliver the vast majority of paper based advertising through the phone, and the little advertising that is done through the phone is almost universally detested by the average American.[64] It is not surprising then that cheaper telephone rates likely had a relatively minimal impact on overall mail volume.

On the other hand, the Internet has become a medium ideally suited to successfully compete against the Postal Service's core products. In the last two decades, the Internet has fundamentally altered the way Americans communicate, with the flourishing of personal e-mail, on-line bill pay, Internet-based periodicals, and on-line advertising. The rates of growth of dial-up Internet service and high-speed broadband service have been astounding. As recently as FY 2000, only 47% of households had access to the Internet and only 58% of households even had a computer in the home.[65] Still, even then the Postal Service was concerned about the potential impact of electronic diversion: "Historically, U.S. households relied extensively on USPS to handle personal and business communications. . . . [h]owever as technology becomes more affordable, more households look to the Internet for services. As a result, it is in the interest of USPS to monitor household . . . access to the Internet."[66] By the FY 2010 report, the impact of the Internet was clear. According to the diary study, 70% of households had broadband Internet access, another 10% had dial-up, and the percentage of bills paid through the mail had declined from more than 75% in 2000[67] to less than 50% in 2010.[68] The Postal Service summed up the competitive challenge that broadband posed by stating: "The Internet's fast, always-on connection makes it a stronger alternative medium for the delivery of entertainment, information, and communication. As more households begin using broadband, the more that not only bill payments, but also bill and statement presentment, periodicals, and even advertising mail, will

63. In 1980, 1.6 billion minutes of international calls were recorded, by 1995 that number had increased ten-fold and it increased five-fold from 1995-2008. As a result, between 1980-2008 international calling increased by an astounding 4675.9%, a level of growth orders of magnitude higher than the United States' population growth of 32% over the same period. *See id.*

64. For example, a 2001 AARP survey in Minnesota found ninety percent of respondents negatively disposed to telemarketing, with eighty-two percent of all respondents viewing the calls as an invasion of privacy. This result was echoed in a 2002 AARP survey in New Jersey which found nearly identical results. *See* AARP, MINNESOTA TELEMARKETING FRAUD AND "DO NOT CALL" LIST: AN AARP STUDY (2001), http://assets.aarp.org/rgcenter/consume/mn_telemarketing.pdf; AARP, NEW JERSEY TELEMARKETING AND "DO NOT CALL" LIST SURVEY (2002), http://assets.aarp.org/rgcenter/consume/mn_telemarketing.pdfhttp://assets.aarp.org/rgcenter/consume/mn_telemarketing.pdfhttp://assets.aarp.org/rgcenter/consume/nj_telemarketing.pdf.

65. . Harris et al., *supra* note 55, at 52-53.

66. *Id.* at 51.

67. *Id.*

68. *Id.*; Mazzone & Pickett, *supra* note 54, at 17.

continue to be affected."[69]

In the coming years, broadband penetration and data usage are also likely to dramatically increase through emerging technologies that are severing the traditional link to a desktop computer-based broadband interface. Internet-capable cellular phones, commonly called smartphones, have been one of the first of these technologies to emerge. While initially limited in their capabilities to only the crudest form of Internet browsing, today smartphones have in many ways bypassed desktop computers in their ability to make use of broadband and wireless data communication. With a smartphone, a consumer can deposit a check by taking a picture of it, pay for purchases wirelessly at checkout counters, receive automatically-updating directions, and use paperless boarding passes for air travel. Coming along more recently, e-readers and tablet computers have begun to fill in a gap between smartphones and desktop computers. These devices offer essentially the capabilities of a desktop computer in a mobile fashion, allowing users to pay bills, read, write emails, and conduct other activities from a significantly more mobile platform. Both e-readers and tablets have seen rapid growth and public adoption. Smartphone penetration alone has more than doubled since December 2009, from 12.7%[70] to 29.5% in November of 2011.[71] E-reader and tablet adoption has been even more dramatic. According to Pew Internet, tablet ownership was at zero percent among adults as recently as September 2009, while three percent of adults had e-readers.[72] Penetration for both grew to ten percent by mid-December 2011 and nearly doubled for both between mid-December 2011 and January 2012 to nineteen percent, thanks to the Christmas season.[73]

Merely charting the increase in Internet use by Americans understates the challenge that electronic diversion poses to the Postal Service. More disturbing from the perspective of mail volume is the economic profile of these individuals. There has consistently been a strong, positive correlation between income/education and mail usage. According to the FY 2010 diary, households that received at least forty-five pieces of mail per week had a median income of $103,498 and sixty-six percent of the heads of these households had a least a college degree.[74] This contrasts with households receiving less than twelve pieces of mail per week, which had an average income of just $25,568, with only twenty-one percent of the heads

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69. Mazzone & Pickett, *supra* note 54, at 17.

70. .*comScore Reports December 2009 U.S. Mobile Subscriber Market Share*, COMSCORE. (Feb. 8, 2010), http://www.comscore.com/Press_Events/Press_Releases/2010/2/comScore_Reports_December_2009_U.S._Mobile_Subscriber_Market_Share.

71. .*comScore Reports October 2011 U.S. Mobile Subscriber Market Share*, COMSCORE. (Dec. 2, 2011) http://www.comscore.com/Press_Events/Press_Releases/2011/12/comScore_Reports_October_2011_U.S._Mobile_Subscriber_Market_Share.

72. Lee Rainie, *Tablet and E-book reader Ownership Nearly Double Over the Holiday Gift-Giving Period*, PEW INTERNET & AMERICAN LIFE PROJECT (Jan. 23, 2012) http://www.pewInternet.org/Reports/2012/E-readers-and-tablets/Findings.aspx.

73. *Id.*

74. Mazzone & Pickett, *supra* note 54, at 15. In the study, the Postal Service reported the average amount of mail received into seven categories. Forty-five or more pieces per week was the top category and included 4.6 million households.

of household holding a college degree.[75] At the same time, broadband Internet use is also highly correlated to income and education. According to the same study, ninety percent of households with incomes above $100,000 annually had access to broadband Internet service, compared to just thirty-eight percent for households with incomes below $35,000 annually.[76] This has led to a situation where households who generate the most mail volume—either directly through bills and payments or indirectly as a target of advertising and catalogs—have the most opportunity and ability to divert their communication into an electronic stream.

The Internet has a number of advantages over the mail, both for the consumer and for businesses. For the consumer, broadband can increase the ease of making bill payments and even allow the consumer to specify the exact time money is withdrawn from a bank account, allowing for greater control over one's finances and virtual certainty a bill has been paid on time. Additionally, given that there are essentially no incremental costs to increased broadband usage, many activities are often less expensive to consumers who move mailed payments online: each bill paid online or email sent in place of a letter saves the price of a stamp. The Internet, and broadband communication in general, also have allowed consumers to significantly speed up communication. Why write a letter to a friend in another state that will take three days to deliver each way when an email will reach the destination in seconds? Similarly, many of these same advantages exist for businesses. On-line bill payment offers significant potential savings to businesses by allowing them to achieve significant savings on the processing of physical payments. Moreover, eliminating paper bill presentment and other mail will allow businesses to eliminate significant paper and postage costs.[77] Postage is often a major business expense, such as for companies that rely on advertising mail and magazines that are predominantly mailed to subscribers.[78] In this regard, the cost of postage can comprise a substantial share of the cost of producing the mail piece and delivering it to addressees.[79]

While the Internet and broadband communication in general has many clear advantages, however, a wide swath of consumers and businesses are not yet using broadband. One major segment includes older Americans wealthy enough to afford broadband, but who choose not to use it for personal reasons. Another group

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75. *Id.* The category for less than twelve pieces was the bottom category.

76. *Id.* at 18.

77. *Where Have All the Letters Gone? The Mailing Industry and Its Future; Hearing before the Subcomm. on Federal Workforce, U.S. Postal Service and Labor Policy of the H. Comm. on Oversight and Government Reform*, 112th Cong., 1st Sess. (2011) (statement of Todd Haycock, Director, Postal Service, 3i Infotech North America at 33-36; Statement of Jim Sampey on behalf of Cox Target Media, Inc. and Valpak Direct Marketing Systems, Inc. at 87), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70526/pdf/CHRG-112hhrg70526.pdf.

78. *Id.* at 9-10, 13, 18, 23.

79. *Pushing the Envelope: The Looming Crisis at USPS; Hearing before the Subcomm. on Federal Workforce, U.S. Postal Service and Labor Policy of the House Comm. On Oversight and Government Reform*, 112th Cong., 1st Sess. (2011) (statement of Arthur B. Sackler on behalf of the Coalition for a 21st Century Postal Service at 116), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67366/pdf/CHRG-112hhrg67366.pdf; *see also U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown: Hearing before the S. Comm. on Homeland Security and Governmental Affairs*, 112th Cong. 1-4 (statement of Ellen Levine, Editorial Director, Hearst Magazines, Hearst Corporation).

includes rural Americans who lack access to broadband as high-speed networks have yet to reach them. A third group is composed of the organizations whose business model has yet to make a successful transition to the digital world including periodicals, non-profit organizations and other fundraisers. A fourth group, perhaps the largest, includes those Americans who are unable to afford broadband access. Together, these groups will continue to rely heavily on the maintenance of affordable and efficient postal services, which will in turn require a fundamental restructuring of the Postal Service. As relatively affluent consumers continue to transition to electronic communication, the average mail consumer will likely be increasingly low-income, sensitive to price increases, and a relatively infrequent sender of mail.

Additionally, advertisers have had a rapidly growing online presence as more sophisticated electronic advertising techniques and enhanced pricing structures have turned the Internet into a profitable medium with a good return on investment. According to data compiled by PricewaterhouseCoopers, $7.2 billion was spent on Internet advertising in the U.S. in 2001. That number tripled (even after inflation) to $26 billion by 2010.[80] Together these factors put downward pressure on mail volume from both sides: both consumers and businesses realize significant financial and efficiency gains as a result of electronic diversion. Since nearly half of bill payments and the vast majority of bill presentment still goes through the mail, it is also certain that continued electronic diversion, particularly in First-Class Mail, will continue for the foreseeable future. As electronic diversion proceeds, it will naturally mean less business for the Postal Service, but it is a good thing for the economy. Americans have always worked hard to find ways to do things better, faster, and more efficiently and like the telephone and car before it, broadband communication is the next step forward. In order for our nation to compete successfully in the global market, we must be willing to take full advantage of these technologies.

POSTAL MONOPOLIES AND UNIVERSAL SERVICE

As the Postal Service battles the rising challenge of electronic diversion, it also faces the challenge posed by its ever-growing mandate to provide universal service. Today, the Postal Service possesses two historically important monopolies: the carriage of private letter mail and the right to use the mailbox. The monopoly on letters was established for the Post Office Department in the 1880's as a result of a number of Private Express Statutes enacted by Congress, and the mailbox monopoly followed in 1929. With the foundation of the Postal Service in 1971, both of these monopolies passed into the hands of the new agency. At the time, both of these monopolies were valuable, representing an essentially guaranteed source of income to their owner. But the Postal Service was also charged with

80. *IAB Internet Advertising Revenue Report Conducted by PricewaterhouseCoopers*, INTERACTIVE ADVERTISING BUREAU (IAB), http://www.iab.net/insights_research/industry_data_and_landscape/adrevenuereport (last visited Mar. 16, 2012).

providing affordable, universal access to postal services to all Americans.[81] Providing universal service required the Postal Service to operate in areas that were less profitable, or unprofitable, particularly rural areas. The intended outcome was for the Postal Service to leverage the profit generated by the monopolies to subsidize the maintenance of universal service at an affordable rate.

While this basic formula worked well for a number of decades, the equation has failed to balance in recent years. To quantify this change, as part of the 2006 postal reform law, Congress required the Postal Regulatory Commission (PRC) to calculate the value to the Postal Service of the postal monopolies and the cost of universal service. Strikingly, according to the FY 2011 PRC annual report the value of the monopolies has declined by more than half just since FY 2007. The decline from $3.48 billion to just $1.55 billion in annual value is due primarily to mail volume reductions stemming from electronic diversion, and to increasing delivery costs.[82] Conversely, the cost of universal service rose from FY 2007 to FY 2010 from $4.414 billion to $5.370 billion.[83] This growth largely stems from the continued provision of six-day delivery and the fading cost-coverage for a number of Postal Service products. As a result of these changes, the value of the monopolies now represents less than one-third of the cost of providing universal service—a ratio likely to decline further.

THE INTERNAL CHALLENGE FACING THE POSTAL SERVICE

To combat the challenges posed by electronic diversion, the decline of the monopolies, and the increase in the cost of universal service, the Postal Service must be able to reinvent itself and its business model. Chief among these challenges is reorganizing its workforce. Today, 80% of the Postal Service's expenses are workforce-related, a far higher percentage than other large employers in the service industry. Astoundingly, this proportion has remained steady since the 1960's, despite vast changes that have seen the agency itself first mechanize, then automate and finally computerize.[84] In recent years, this proportion has remained elevated due to a long-standing, statutorily-mandated collective bargaining process tilted against Postal Service management that has historically hindered the ability of the agency to control workforce costs. This process has yielded contracts providing guaranteed wages increases, benefits exceeding those of other federal workers, and generous no-layoff protections that virtually no other federal employees enjoy. The most recent contract, ratified with the American Postal Workers Union (APWU) last spring, again provided guaranteed wages increases in addition to cost-of-living

81. 39 U.S.C. § 101 ("It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.").

82. *Annual Report to the President and Congress*, 2011 POSTAL REGULATORY COMM'N 15, *available at* http://www.prc.gov/Docs/78/78904/PRC_AR_2011_FINALVERSION_2350.pdf.

83. *Id.* at 42.

84. In the 1961-1965 period, the Post Office Department spent 78.5% of its budget on workforce costs. *Annual Report of the Postmaster-General*, 1966 U.S. POST OFFICE DEPT. 80. *See* John Haldi, *The Value of Output of the Post Office Department*, *in* THE ANALYSIS OF PUBLIC OUTPUT 339-87 (Julius Margolis ed., 1970).

adjustments, continued benefit superiority relative to other federal workers, and expanded no-layoff protections—all this even after the Postal Service repeatedly and publicly stated the necessity of downsizing the workforce.

With mail volume declining, the inability of the Postal Service to rightsize its workforce has left the agency in a situation where it must pay more and more workers to sit idle. In one embarrassing example, when the Postal Service consolidated the Sioux City, Iowa mail processing center to Sioux Falls, South Dakota in October 2011, the Postal Service was left with 40 workers who the agency could neither lay off nor require to relocate to an area with vacant mail processing positions; these workers had to voluntarily agree to take jobs covered by other postal unions, such as letter carrier positions.[85] Additionally, labor contracts highly restrict the Postal Service's workforce flexibility through byzantine work rules between various types of craft workers and through overall limitations on the amount of part-time workers that can be employed. It's no wonder that workforce expenses represent a higher percentage of costs at the Postal Service than they do at its competitors in the package industry, UPS and FedEx. Relative to the Postal Service, its competitors employ a far greater proportion of part-time workers,[86] while paying their senior delivery and processing employees about the same amount as their peers at the Postal Service receive.[87]

In addition to difficulties with workforce modernization, the Postal Service faces an increasing need to reorganize, rightsize, and replace much of its physical infrastructure. In the years before universal home delivery, millions of Americans were dependent on trips to the local post office to receive any mail at all, necessitating a vast network of post offices that totaled 76,945 in 1901.[88] Today's network of post offices is only 40% this size, even though there are four times as many Americans living today. As the delivery network was fully built out, the Post Office Department was able to rapidly reorganize postal infrastructure and the number of post offices had declined by more than 15,000 by 1910.[89] However, since the reform of 1970 that created the Postal Service, reorganization and rightsizing of postal assets have largely ground to a halt. Unfortunately, a major driver of this stagnation has been Congress, which has repeatedly discouraged the Postal Service from taking steps to modernize. This occurred in the 1970's when amendments were added to the 1970 law to constrain the Postal Service's ability to freely manage its retail network and this has continued to the present day: Eighteen U.S. Senators recently pressured the Postmaster General into putting a moratorium

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85. Michelle Linck, *Postal Service Could Pay Some Employees Not to Work*, SIOUX CITY J., Sept. 25, 2011, at A1, *available at* http://www.siouxcityjournal.com/news/local/a1/article_026f6013-f696-5dcf-b615-cce87ed71d8c.html#ixzz1ldkzwkZI.

86. According to a July 5, 2010 posting by the U.S. Postal Service Office of Inspector General (USPS OIG), UPS uses a fifty-three percent part-time workforce and FedEx uses a 40% part-time workforce, while the Postal Service only had thirteen percent of its employees working part-time. *Should the Postal Service be a competitive business, an enabling infrastructure, or something in-between?* USPS OIG BLOG (Jul. 05, 2010), http://blog.uspsoig.gov/index.php/2010/workforce-flexibility—would-it-work-for-the-postal-service/.

87. T.L. Righter, *USPS Letter Carriers' Pay Lags Behind UPS Drivers' Pay*, POSTALMAG.COM (Sept. 18, 2006), http://postalmag.com/editorial27.htm.

88. AN AMERICAN HISTORY, *supra* note 3, at 24-25.

89. *Id.* at 70.

on postal infrastructure righsizing even as the Postal Service neared insolvency. As a result, the Postal Service retains a massive infrastructure out of proportion to the diminished mail volume now flowing through it.

Today, there are nearly 32,000 post offices in America, more than the number of Wal-Mart,[90] Starbucks,[91] and McDonald's[92] domestic outlets combined.[93] Despite this vast number of outlets, foot traffic at post offices has been headed downward for a number of years as consumers purchase postal services elsewhere. According to USPS data, eighty percent of retail revenue was collected by post offices in FY 2006, but that number declined to approximately sixty-five percent by FY 2011, even as total retail revenue remained essentially constant.[94] As people use the post office less, alternative sources of postal services are, unsurprisingly, proving to be more cost-effective. Traditional Postal Service retail is the most costly channel of postal retail service, costing an estimated twenty-three cents per dollar of retail revenue. This is more than double the costs of Automated Postal Center kiosks (twelve cents), online sales (eight to twelve cents), and retail partners (two to seven cents).[95]

In addition to a partially outmoded retail network, the Postal Service also operates a mail processing network far in excess of the size it needs. As many in the mailing industry are quick to point out, over the last several decades the Postal Service has built a mail processing network intended to handle 300 billion pieces.[96] Unfortunately, volume peaked in FY 2006 at 213 billion pieces and has been declining since then, tallying less than 170 billion pieces in FY 2011. This has left the Postal Service with a system that is effectively at half-capacity—with more slack in the system with each passing day.

A third and much different problem is the aging nature of many postal assets and the growing backlog of necessary maintenance and needed replacements. A Government Accountability Office (GAO) report released in May 2011 found that the main delivery vehicle of the Postal Service, a custom built right-hand drive truck known as a Long Life Vehicle (LLV), has a designed operational lifetime of twenty-four years and that the Postal Service fleet of 141,000 of LLVs is between

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90. 3,804 retail units. *Building the Next Generation Walmart*, 2011 WAL-MART STORES, INC. ANN. REP. 1, *available at* http://walmartstores.com/sites/annualreport/2011/financials/Walmart_2011_Annual_Report.pdf.

91. 10,787 retail units as of October 2, 1011. *Fiscal 2011 Annual Report*, 2011 STARBUCKS CORP. 3, *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTI0MzYyfENoaWxkSUQ9LTF8VHlwZT0z&t=1.

92. 14,027 McDonalds nationwide in FY 2010. *Annual Report*, 2010 MCDONALD'S CORP. 20, *available at* http://www.aboutmcdonalds.com/content/dam/AboutMcDonalds/Investors/C-%5Cfakepath%5Cinvestors-2010-annual-report.pdf.

93. The number of post offices includes all Postal Service operated retail facilities including post offices, post office branches, and post office stations, which are essentially indistinguishable in terms of their customer facing services.

94. U.S. Postal Serv., Presentation to the House Oversight and Government Reform Committee: Briefing on Retail Discontinuance Policies and Management of Post Offices 9 (Apr. 21, 2011) (on file with author).

95. *Id.*

96. Joe Schick, *A Blueprint for Sustainability*, QUADGRAPHICS (Jan. 19, 2012) http://www.qg.com/joesblog.asp?NewMessageID=38742.

sixteen and twenty-three years old.[97] GAO went on to estimate that the full replacement cost of the vehicle fleet would total $5.8 billion and recommended that the Postal Service develop a replacement plan for these vehicles.[98] GAO noted, however, that the Postal Service cannot afford to replace or refurbish a large portion of its aging fleet for the foreseeable future.[99] In addition to the vehicle fleet, GAO has repeatedly commented on a growing facility maintenance backlog, with a number of post offices featuring long-neglected leaky roofs and damaged floors.[100] Unfortunately, due to the Postal Service financial crisis, it can ill-afford these expenses; there is currently no plan in place that can realistically address these issues.

HOW TO MOVE FORWARD

To successfully confront the challenges facing it, the Postal Service must be fundamentally reshaped into a modern institution. Unfortunately, in the coming years consumers and businesses will only become more sensitive to changes in the cost of mail as digital alternatives improve and as the institution faces the upward price pressure of incessantly expanding delivery networks, rising labor costs, and aging infrastructure. Given this reality, a proper path forward for the Postal Service is to implicitly rethink how universal access to postal services can best be achieved and allow the Postal Service to reorganize, rather than simply freeze an outmoded system in amber and simply hope for the best.

By the start of the 112th Congress in January of 2011 it was increasingly clear that major Postal Service reform would be needed in the coming years. The Postal Service had been operating annual deficits since FY 2006, Congress had been forced to defer the bulk of the Postal Service's FY 2009 retiree health care prefunding payment due to statutory annual restrictions on the amount of debt the Service could incur,[101] and it was unclear until the very last moment whether the Postal Service would be able to make its required FY 2010 retiree health care prefunding payment. Tasked with legislative jurisdiction over the Postal Service, the House Committee on Oversight and Government Reform has delved into the

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97. U.S. Gov't Accountability Office, GAO-11-386, UNITED STATES POSTAL SERVICE: STRATEGY NEEDED TO ADDRESS AGING DELIVERY FLEET 2 (2011), *available at* http://www.gao.gov/assets/320/318032.pdf.

98. *Id.* at 40, 42.

99. *Id.* at 45.

100. U.S. Gov't Accountability Office, GAO-08-41, U.S. POSTAL SERVICE FACILITIES: IMPROVEMENTS IN DATA WOULD STRENGTHEN MAINTENANCE AND ALIGNMENT OF ACCESS TO RETAIL SERVICES 24-26 (2007), *available at* http://www.gao.gov/assets/280/270119.pdf. *See* U.S. Gov't Accountability Office, GAO-09-674T, U.S. POSTAL SERVICE: NETWORK RIGHTSIZING NEEDED TO HELP KEEP USPS FINANCIALLY VIABLE 9 (2009), *available at* http://www.gao.gov/assets/130/122567.pdf; U.S. Gov't Accountability Office, GAO-09-937SP, HIGH-RISK SERIES: RESTRUCTURING THE U.S. POSTAL SERVICE TO ACHIEVE SUSTAINABLE FINANCIAL VIABILITY 2 (2009), *available at* http://www.gao.gov/assets/210/203772.pdf.

101. In FY 2009, the Postal Service increased its outstanding debt by the statutory maximum of $3 billion. 39 U.S.C. § 2005(a)(1) (2006). Despite this borrowing, legislation was necessary at the end of the fiscal year to maintain Postal Service liquidity. *See* GAO-10-455, *supra* note 29, at 1. Congress deferred $4 billion from the Postal Service's statutorily required payment to prefund retiree health benefits, reducing it from $5.4 billion to $1.4 billion. Act of Oct. 1, 2009, Pub. L. No. 111-68, § 164(a), 123 Stat. 2023, 2053 (2009).

issue. Prior to the introduction of the Committee's postal reform bill, four hearings were held at the full committee or subcommittee level[102] to familiarize members with the issue and to identify reform options. These hearings covered a broad range of topics including the overall financial condition of the Postal Service, the challenges of workforce modernization, the future of the mailing industry, and the proper level of postal infrastructure.

Using information drawn from hearings and outside research, Chairman Ross and I introduced H.R. 2309, the Postal Reform Act (PRA), on June 24, 2011.[103] The product of several months of drafting effort, the bill is designed to create a path to long-term solvency for the Postal Service and ensure the protection of affordable universal service. In large part, the PRA focuses on giving Postal Service management the tools necessary to fundamentally reorganize the Postal Service as a 21st century institution. With this lofty and difficult to achieve goal in mind, the PRA is the most comprehensive and far reaching proposed legislative reform of the Postal Service since its creation in 1970.

Hearing testimony made it clear that a number of difficult decisions must be made in any reform bill that had any hope of putting the Postal Service back on track. Therefore, prior to drafting the legislation, a clear set of objectives were identified. Any bill that did not meet these objectives was destined for failure. Drawn in part from the testimony received at the Committee's hearings on the issue, as well as findings and recommendations dating back to the 2003 Presidential Commission on the Postal Service,[104] the objectives included: (1) ensuring the Postal Service can continue to provide effective, affordable, universal service, particularly for rural and less fortunate Americans; (2) ensuring the Postal Service will be able to meet all of its obligations to its employees and retirees; (3) addressing the short-term liquidity crisis and providing the necessary capital for additional restructuring costs; (4) enabling the Postal Service to bring expenses into line with revenues to ensure medium- and long-term viability for the institution; (5) streamlining regulation and enabling the Postal Service to act in a more adaptable and business-like fashion; and (6) protecting the self-funding nature of the Postal Service and preventing a taxpayer funded bailout that would defer and complicate the process of instituting the necessary fundamental reforms. Our bill was designed

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102. *Pushing the Envelope: The Looming Crisis at USPS: Hearing Before the H. Subcomm. on Fed. Workforce, U.S. Postal Serv. and Labor Policy of the House Comm. on Oversight and Gov't Reform*, 112th Cong. (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67366/pdf/CHRG-112hhrg67366.pdf; *Are Postal Workforce Costs Sustainable: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg68048/pdf/CHRG-112hhrg68048.pdf; *Where Have All the Letters Gone? The Mailing Industry and Its Future: Hearing Before the Subcomm. on Fed. Workforce, U.S. Postal Service and Labor Policy of the House Comm. on Oversight and Gov't Reform*, 112th Cong. (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70526/pdf/CHRG-112hhrg70526.pdf; *Postal Infrastructure: How Much Can We Afford: Hearing Before the Subcomm. on Fed. Workforce, U.S. Postal Service and Labor Policy of the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2011), *available at* http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg71078/pdf/CHRG-112hhrg71078.pdf.

103. H.R. 2309, 112th Cong. (1st Sess. 2011).

104. *See generally* PRESIDENT'S COMM'N ON THE U.S. POSTAL SERV., EMBRACING THE FUTURE: MAKING THE TOUGH CHOICES TO PRESERVE UNIVERSAL MAIL SERVICE (2003), *available at* http://govinfo.library.unt.edu/usps/offices/ domestic-finance/usps/pdf/freport.pdf.

to meet these objectives using a balanced, multifaceted approach.

Given the severity of the Postal Service's financial situation, the Committee found it necessary to institute an array of reforms, including: rightsizing the postal infrastructure; increasing the rates for subsidized mail products and classes; granting flexibility for the Postal Service to shift to five-day delivery of mail; bankruptcy-like restructuring; modernization of collective bargaining; workers' compensation reform; regulatory streamlining; easing of Congressional mandates; and contracting reform. This multi-pronged approach resulted in a bill with five titles, which address in sequence: infrastructure and deregulation reforms; short-term solvency and restructuring; workforce flexibility; revenue enhancement and regulatory streamlining; and contracting reform.

The initial legislation was the subject of a business meeting on September 21, 2011 in Chairman Ross's Federal Workforce, Postal Service and Labor Policy Subcommittee. During the business meeting, Chairman Ross offered an amendment in the nature of a substitute to the bill that included a number of additional reforms that had not been in finished form when the legislation was initially introduced. Following consideration of a number of amendments, the Subcommittee voted eight-five to favorably report the Postal Reform Act to the Full Committee.[105]

A month later, on October 13, 2011, the Oversight and Government Reform Committee held a business meeting to consider the PRA. After significant debate, more than one dozen bipartisan amendments were accepted. Together, these amendments incorporated a number of positive ideas both Democratic and Republican Committee members had for the legislation. Following debate, the Postal Reform Act was ordered favorably reported to the House of Representatives by a vote of twenty-two to eighteen.[106]

THE POSTAL REFORM ACT

With the wide-ranging nature of the necessary reforms, the Committee drew on many sources to help craft the final text of the Postal Reform Act.

To facilitate rightsizing and to limit Congressional and stakeholder interference that has stymied past efforts, the PRA creates a Commission on Postal Reorganization (CPR).[107] The CPR is designed to be a final backstop that will ensure the Postal Service will make the necessary changes to its infrastructure. The CPR itself is modeled on the effective Base Realignment and Closure (BRAC) programs that were successfully used to reduce our military footprint after the end of the Cold War. The five member CPR has been formatted to exist without explicit partisan control by either party: one member will be selected by the leader of each party in the House of Representatives and the Senate, with the fifth member selected by the nonpartisan Comptroller General, the head of GAO.[108] The CPR

105. H.R. Rep. No. 112-363, pt. 1, at 58 (2012).

106. *Id.* at 58, 73-78.

107. H.R. 2309 §§ 101-08.

108. *Id.* § 103.

will function in a deliberately holistic fashion to help mitigate the dangers of piecemeal closings' impact on service quality and to ensure that all Americans continue to have proper access to postal services. In addition, to properly address all postal infrastructure, the CPR will address three distinct forms of infrastructure separately, with each assigned a targeted savings goal. The first responsibility of the CPR will be to address the Postal Service-operated retail network and to thereby achieve an annual savings of $1 billion relative to the last full fiscal year prior to enactment.[109] The $1 billion savings target was chosen to ensure the focus remained on achieving real savings and would represent a twenty to twenty five percent overall reduction on postal retail spending if achieved. Furthermore, the CPR would be restricted from including small rural post offices as more than ten percent of the total number recommended for closure.[110] Following consideration of the retail network, the CPR will concurrently examine the mail processing network and the network of administrative offices, with a target of $2 billion in annual savings from the mail processing network and a 30% reduction in the number of administrative field units.[111] Importantly, the bill does not pre-empt or discourage any action taken by the Postal Service to rightsize infrastructure on its own. Savings achieved by the Postal Service through facility rightsizing before the CPR acts will reduce, dollar-for-dollar, the savings the CPR is required to achieve.[112] Additionally, in recognition of its unique knowledge of its own network, the Postal Service will develop all of the initial plans for closures and consolidations under the CPR.[113] Once the CPR renders its final decisions they will be transmitted to Congress, which will have the opportunity to prevent the closures from proceeding only with the passage of a resolution of disapproval by both chambers.[114] Using this method, the CPR gives the Postal Service the greatest control possible over rightsizing while still ensuring that rightsizing will be implemented in a timely manner without undo dilatory interference from Congress.

Any entity that defaults on its obligations should face consequences. The Postal Service is on the verge of default. It would raise significant separation of powers concerns for the Postal Service, an executive branch entity, to undergo a traditional bankruptcy process. Judicial branch personnel should not have operational control over a part of the executive branch. As an alternative to traditional bankruptcy, the Committee drew on the example of the highly successful D.C. Control Board. The Control Board, formally known as the District of Columbia Financial Responsibility and Management Assistance Authority, was a receiver-like entity put in place during the 1990s[115] to restore D.C.'s solvency after

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109. *Id.* § 104.

110. *Id.* Small rural post offices, officially known as K or L Cost Ascertainment Group post offices, include the 10,000 smallest post offices, many, if not the majority, of which do not maintain at least forty hours of service per week. While representing one-third of the total number of post offices, they only represent less than five percent of the Postal Service's overall retail expenses.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* §§ 104-05.

115. *See* District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 116 (1995).

a period of financial mismanagement. Under the PRA, if the Postal Service defaults on an obligation to the federal government, as is expected in the case of a required $5.5 billion retiree health care prefunding payment due August 1, 2012, it would activate a Postal Service Financial Responsibility and Management Assistance Authority (the Authority) and start what the legislation terms a Control Period.[116] The Authority members will be selected in the same manner as the CPR,[117] as a way to help ensure it is a bipartisan and business-focused entity. During the first two years of the Control Period the Authority will operate exclusively in an advisory capacity without operational control.[118] Additionally, the Postal Service will be granted access to a temporary $10 billion increase to its line of credit to fund a reorganization and restructuring.[119] However, if two full fiscal years into a Control Period, or any year thereafter, the Postal Service loses more than $2 billion, including any defaults or missed payments, the Authority will take full control over the Postal Service.[120]

The Authority will not be a new management layer. Rather, the Authority will replace the Postal Service's existing Board of Governors as the chief management unit of the Postal Service and the Board of Governors will be stripped of all official duties and responsibilities.[121] The Authority will be guided by an aggressive series of mandated cost-cutting targets[122] and provided with the necessary tools to ensure adequate restructuring and financial improvement. For example, in addition to all the powers that the Postal Service will be given permanently under this legislation, the Authority will also be required to phase out door delivery at an annual savings of at least $3.5 billion,[123] and it will be empowered to direct the Postal Service to create its own workers' compensation program for postal employees independent of the existing federal workers' compensation program.[124] The Authority will be disbanded once the Postal Service returns to profitability and both the Office of Personnel Management and the Department of the Treasury attest that it will have sufficient funds to pay promised retirement benefits to its employees and that its supplementary line of credit will be paid in full.[125] Congress would then need to give its approval.[126] Once these conditions are satisfied, the Control Period will end, the Authority will become dormant, and the Board of Governors will resume

116. H.R. 2309 § 202.

117. *Id.* § 203.

118. *Id.* § 202.

119. *Id.* § 222.

120. *Id.* § 202.

121. *Id.*

122. *Id.* § 221.

123. *Id.* § 214.

124. Approximately twenty-six percent of delivery addresses received delivery to the door in FY 2010. A slightly larger portion received centralized delivery (common in large apartment buildings, including cluster boxes) and more than forty percent of all deliveries are made to curb-side boxes. *See* DEAN J. GRANHOLM, AUDIT REPORT – MODES OF DELIVERY 7-9 (2011), *available at* http://www.uspsoig.gov/foia_files/DR-AR-11-006.pdf. If the PRA phase out provision is fully implemented, it would require that ninety percent of door delivery addresses be converted to curbside or cluster box delivery for a savings in delivery costs of at least $3.5 billion annually. Postal Reform Act, H.R. 2309, 112th Cong. § 214(h) (2011).

125. *Id.* § 202(b)(4).

126. *Id.* § 231.

operational control of the Postal Service.[127]

To ensure the $10 billion in temporary borrowing is repaid, the Postal Service is required to repay 10% of any outstanding balance by the end of each fiscal year through the sale of Postal Service property, if necessary.[128] Additionally, the full $10 billion must be repaid no later than 10 years after the start of a Control Period.[129] A property-rich entity, the Postal Service owns more than $50 billion in real property according to an estimate of the Postal Service Office of Inspector General.[130]

In addressing workforce modernization, the Committee drew on three primary sources: its own hearings, the 2003 President's Commission on the United States Postal Service, and lessons from the broader federal workforce. At the Committee's April 5th hearing, the Postal Service's statutorily prescribed arbitration process was described by Postmaster General Donahoe as a "roll of the dice."[131] Many describe it as biased in favor of postal unions and a key historical factor influencing Postal Service management to enter into union contracts that have jeopardized the institution's financial condition and long-term viability.[132]

To modernize the collective bargaining process, which largely dates back to the 1970 Act, the Committee drew on the recommendations of the 2003 President's Commission[133] by changing the process to a mediation-arbitration process with a defined timeline and requiring the arbitrator to take into account long neglected pay comparability requirements.[134] This change will result in a last-best-final-offer

127. *Id.*

128. *Id.* § 222.

129. *Id.*

130. As of FY 2010, the Postal Service reported more than $25 billion in purchase price for property (buildings and lands). While the volume of property makes it difficult to calculate the exact market value of this property, the USPS OIG has reported that it is its opinion that the value would be in excess of $50 billion. *See* JOSEPH CORBETT & MARIE THERESE DOMINGUEZ, MANAGEMENT ADVISORY – LEVERAGING ASSETS TO ADDRESS FINANCIAL OBLIGATIONS 2 (2011), *available at* http://www.uspsoig.gov/foia_files/FF-MA-11-118.pdf.

131. *Are Postal Workforce Costs Sustainable: Hearing of U.S. H. Comm. on Oversight and Gov't Reform*, 112th Cong. 1 (2011) (statement of Patrick R. Donahoe, Postmaster General, USPS), *available at* http://oversight.house.gov/images/stories/Testimony/4-5-2011_Donahoe_Testimony-Bio_2.pdf.

132. In a supplemental opinion to the arbitration decision in the 2000 National Agreement between the Postal Service and the American Postal Workers Union (APWU), the neutral chair, Stephen Goldberg, commented: "In concluding that there exists a Postal Service wage premium, I join a long list of arbitrators in prior USPS interest arbitrations who have reached the same conclusion." Despite this conclusion, Chairman Goldberg still awarded annual across-the-board raises for APWU members for the entire contract period in addition to semiannual cost of living adjustments. USPS v. Am. Postal Workers Union, Interest Arb. 415 (2001) (Goldberg, Arb.) (Supplemental Opinion Dealing With Economic Issues), *available at* http://www.apwu.org/news/burrus/2007/update10-2007-032807-2000cbaexcerpt.pdf. The wage and cost of living adjustment changes for the 2000 National Agreement can be found in Arbitration Proceedings and Collective Bargaining Agreement Between American Postal Workers Union, AFL-CIO and U.S. Postal Service November 21, 2000 to November 20, 2003 at 17-19, *available at* http://www.irle.berkeley.edu/library/pdf/0136.pdf.

133. PRESIDENT'S COMM'N ON THE USPS, EMBRACING THE FUTURE: MAKING THE TOUGH CHOICES TO PRESERVE UNIVERSAL MAIL SERVICE 113-23, 138-49 (2003), *available at* http://govinfo.library.unt.edu/usps/offices/domestic-finance/usps/pdf/freport.pdf.

134. H.R. 2309 § 305.

result if arbitration is reached.[135] It will also eliminate situations where union employees could be left working under an expired contract,[136] as seen currently by the National Rural Letter Carriers Association, whose members, as of January 1, 2012, had been without a contract for more than a year. The PRA process also includes a requirement that arbitrators take into account the financial condition of the Postal Service in any decision.[137] The goal of this reform is to ensure that the Postal Service has the necessary flexibility to remain a self-sustaining entity under a fair collective bargaining process that benefits both postal workers and the Postal Service in both the short- and long-term.

Lessons from the non-postal federal workforce are also reflected in the Postal Reform Act. For instance, Section 304 of the PRA prohibits any provision in a collective bargaining agreement that would restrict the Postal Service's ability to use Title V reduction-in-force procedures.[138] Currently, career union postal employees largely enjoy iron-clad no-layoff clauses in their contracts and are among the only federal workers who enjoy such protections. This procedure is no longer tenable, as the Postal Service is now in a position where it is unable to achieve necessary workforce reductions through attrition alone. However, the legislation also specifically allows unions to negotiate alternate reduction-in-force methods to achieve needed rightsizing.[139] The Committee believes that the ideal way to rightsize the postal workforce is to convert retirement eligible employees to retirement, which is possible using the authorized alternative process, rather than a last-in, first-out process. According to Postal Service data, 150,000 postal employees are eligible for full retirement already[140] and an additional 100,000 will be eligible by 2015.[141] At the same time, the Postal Service has argued its career workforce must be reduced by approximately 200,000 over the next four years.[142] Thus, nearly all needed workforce reductions can be achieved via retirement. Further, the Postal Service is already authorized to re-employ annuitants on a limited part-time basis,[143] meaning retirees could work the minimal hours necessary

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* § 304.

139. *Id.*

140. . Sean Reilly, *USPS Reaffirms Plans to Cut 28,000 Jobs*, FEDERAL TIMES, Dec. 5, 2011, *available at* http://www.federaltimes.com/article/20111205/DEPARTMENTS02/112050302/; *see* United States Postal Serv., USPS Financial Future 38 (Aug, 17, 2011), (USPS presentation slides to congressional staff and selected agency officials) (on file with the University of Notre Dame Law School Journal of Legislation) [hereinafter *USPS Financial Future*]; Postal Service data provided to House Comm. on Gov't Oversight and Reform on October 3, 2011 (on the number of Postal Service employees eligible for regular retirement) (on file with University of Notre Dame Law School Journal of Legislation) [hereinafter *USPS retirement data*].

141. *See USPS Financial Future supra* note 140, at 38; *USPS retirement data supra* note 140.

142. *U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown: Hearing Before the U.S. Sen. Comm. on Homeland Sec. and Governmental Affairs*, 112th Cong. 11 (2011) (statement of Patrick R. Donahoe, Postmaster General, U.S. Postal Serv.), *available at* http://about.usps.com/news/speeches/2011/pr11_pmg0906.pdf.

143. The FY 2010 National Defense Authorization Act includes a provision that authorizes a number of agencies to temporarily re-employ annuitants without cessation or reduction of the employee's annuity. Most relevant to the Postal Service is the authorization that this authority may be used in order to "fulfill functions critical to the mission of the agency." The authorization allows for an employee to work for as many as 3,120

to keep their pre-retirement pay and potentially receive a severance payment equivalent in size to a buy-out. These reemployed annuitants would also be able to provide the Postal Service with a trained, flexible pool of available labor at an affordable cost. This method would allow the Postal Service to achieve necessary workforce reductions without sending any postal workers to the unemployment line.

The Postal Reform Act further requires that postal employees pay at least the same share of health and life insurance premiums as other federal employees.[144] Enjoying access to the federal health and life insurance programs—which are generally more generous than plans available in the private sector for comparable jobs—postal employees currently pay only about twenty-one percent of their health insurance premiums, as compared to twenty-eight percent for other federal employees, and they pay nothing toward their life insurance premiums, as compared to sixty-six percent for other federal employees.[145] Equalizing the premium contributions would save the Postal Service $700 million per year according to the Postal Service Inspector General.[146] This PRA provision takes effect only once the current negotiated collective bargaining agreements expire.[147] It thus allows sufficient lead time, takes effect contemporaneously for all postal employees, and avoids breaking any collective bargaining agreements.

The PRA also makes a concerted effort to unburden the Postal Service from unfunded mandates and over-burdensome regulations. Notably, it removes restrictions on the Postal Service's ability to manage its retail network,[148] streamlines the post office closure appeal process[149] and review of competitive Negotiated Service Agreements (NSAs),[150] and expedites the PRC's review of a number of Postal Service proposals.[151] These specific, targeted provisions of the PRA are designed to improve utility and quality for the consumer and to help keep rates affordable while also giving greater flexibility to the Postal Service.

For instance, the PRA incentivizes the shifting of brick-and-mortar post offices to more cost-effective and consumer-accessible Contract Postal Units (CPUs) by restricting appeal rights in a post office closure if a CPU is opened within two miles of the closing post office.[152] However, as an additional consumer protection, the Postal Regulatory Commission is given authority to require the re-opening of the

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hours after the start of their annuity, provided the employee works no more than 1,040 hours in any 12 month period. The 1,040 hour maximum is equivalent to 6 months of full employment. Agencies are authorized by this provision to re-employ a maximum number of employees equivalent to 2.5% of their full-time workforce. National Defense Authorization Act of 2012, Pub. L. No. 111-84, §1121, 123 Stat. 2505 (2009).

144. Postal Reform Act § 302.

145. U.S. Postal Serv. Office of Inspector Gen., *Management Advisory – Follow-Up Review of the Postal Service's Employee Benefit Programs*, Report No. HR-MA-10-001, at 2 (2010), *available at* http://www.uspsoig.gov/ FOIA_files/HR-MA-10-001.pdf

146. *Id.* at 1-2.

147. Postal Reform Act § 302.

148. *Id.* § 112.

149. *Id.*

150. *Id.* §§ 404-405.

151. *Id.* § 112.

152. *Id.*

closed post office if the CPU replacement stays open for less than two years after the closure of a post office.[153] CPUs can have roughly half the overhead cost of a post office.[154] Greater use of CPUs can also improve customer accessibility while reducing expenses. A local grocery store that also serves as a CPU is likely to keep much longer hours than a stand-alone post office and is likely to be a frequent destination point more convenient to visit than the local post office. Alternative access entities such as CPUs will not work everywhere, particularly in some rural areas where there is no alternative to a post office. But there is great promise of savings and consumer benefit in a prudent shift toward non-traditional forms of access. To that end, the PRA encourages a retail modernization effort, albeit one in which proper consumer protections for postal access remain.

The Postal Reform Act also streamlines the oversight of Negotiated Service Agreements (NSAs)[155] while instating clear cost-coverage requirements.[156] Currently, NSAs help the Postal Service compete in the package delivery market, but a complicated legal framework that involves both the Postal Service Board of Governors and the PRC[157] restricts the Postal Service's responsiveness and hurts its competitiveness. The PRA amends NSAs to allow review of substantially similar competitive NSAs to be considered expeditiously after the fact,[158] and allows profitability to be measured across all similar NSAs rather than on a one-by-one basis.[159] Additionally, the PRA eliminates an existing loophole that allows the continuation of NSAs that the Postal Service loses money on.[160] Together, these two NSA reforms will enable the Postal Service to react in a more agile fashion when competing for business while also strengthening transparency and cost coverage requirements that protect other ratepayers, competitors, and the taxpayer.

The legislation also enhances the Postal Service's ability to generate revenue from those non-postal endeavors that are appropriately pursued by a federal government entity.[161] A number of bills introduced by this Congress give the

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153. *Id.*

154. U.S. POSTAL SERV., ENSURING A VIABLE POSTAL SERVICE FOR AMERICA: AN ACTION PLAN FOR THE FUTURE 8 (2010), *available at* http://about.usps.com/future-postal-service/actionplanforthefuture-march2010.pdf.

155. Postal Reform Act § 404. Negotiated service agreements (NSAs) generally specify mutual agreements between USPS and mailers involving the preparation, presentation, acceptance, processing, transportation, and delivery of mailings under particular rate, classification, and service conditions, and restrictions that go beyond those required of other mailers. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-455, U.S. POSTAL SERVICE: STRATEGIES AND OPTIONS TO FACILITATE PROGRESS TOWARD FINANCIAL VIABILITY, 40 (2010). NSAs for competitive products (primarily Priority Mail, Express Mail, Parcel Select that is bulk Parcel Post, and bulk international mail) are generally volume-based and have provisions intended to lower Postal Service mail-handling costs. The Postal Regulatory Commission has reported that the NSAs it approved for competitive products in FY 2008-2009 were expected to improve USPS's net revenue. *See id.*

156. Postal Reform Act § 406.

157. 39 U.S.C. §§ 3622-3623 (2012).

158. Postal Reform Act § 404.

159. *See id.* § 406.

160. *Id.* The new requirement effectively eliminates the loophole created by 39 U.S.C. § 3653(c)(10)(A)(ii).

161. In enacting the Postal Accountability Enhancement Act, Congress restricted the USPS from engaging in new nonpostal activities. *See* Postal Accountability and Enhancement Act, Pub. L. No. 109-435 § 102, Stat. 3198, 3200 (2006). The PAEA also required the PRC to review the USPS' existing nonpostal services to

Postal Service a more or less free hand to offer non-postal products[162] whereas the PRA takes a noticeably more restrictive approach.[163] It allows the Postal Service to sell state services, provided they do not inhibit postal business; to sell advertising on vehicles and property; and it grandfathers in those specific products and services approved under the 2006 reform.[164] To manage non-postal products, the PRA creates a new, well-defined regulatory framework that clarifies which non-postal services are authorized and ensures that non-postal products remain profitable.[165]

The Committee's decision not to allow banking or Internet services recognizes the Postal Service's unique status as an establishment of the Federal Government.[166] As a federal agency, the Postal Service enjoys a number of benefits the private sector does not.[167] These benefits include exemptions from income tax[168] and property tax,[169] the ability to exercise eminent domain,[170]

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determine whether they should be continued or terminated. *See id.* The PRC recently found that the intent of this requirement was to concentrate USPS' focus on its core responsibilities and away from nonpostal services that are not justified by a public need that cannot be met by the private sector. *See* U.S. POSTAL REGULATORY COMM'N, Order No. 392, Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act 3 (2010), *available at* http://www.prc.gov/Docs/66/66451/Order_No_392.pdf.

162. *See* S. 1789, 112th Cong. § 209 (1st Sess. 2012) (text as reported Jan. 26, 2012, by the S. Comm. on Homeland Sec. and Governmental Affairs); S. 1853, 112th Cong. § 301 (1st Sess. 2012); S. 1010, 112th Cong. § 304 (1st Sess. 2012); H.R. 3916, 112th Cong. § 3 (2d Sess. 2012); H.R. 3591, 112th Cong. § 301 (1st Sess. 2012); H.R. 3047, 112th Cong. § 1 (1st Sess. 2012); H.R. 2967 (1st Sess. 2012), 112th Cong. § 101 (1st Sess. 2012).

163. Postal Reform Act § 407.

164. *See id.*

165. *See id.*

166. 39 U.S.C. § 201 (2006) ("There is established, as an independent establishment of the executive branch of the government of the United States, the United States Postal Service."). As the Postal Regulatory Commission has noted, PAEA limited the Postal Service's authority to provide nonpostal services, first, to those it offered as of January 1, 2006, and among those services, to those that PRC authorized to continue after a review, taking into account the public need for the service and the ability of the private sector to meet that public need. The PRC explained: "Congressional intent is clear. The Postal Service is barred from offering new nonpostal services, and the review under 39 U.S.C. § 404(e) is to be comprehensive. Under the PAEA, the Postal Service is not free to offer, under the guise of separate statutory authority, essentially the same commercial nonpostal services which Congress curtailed in 39 U.S.C. 404(e)." *See* U.S. POSTAL REGULATORY COMM'N, Order No. 154, REVIEW OF NONPOSTAL SERVICES UNDER THE POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT 1, 10 (2008), *available at* http://www.prc.gov/Docs/61/61647/Order_No_154.pdf.

167. *See generally* FED. TRADE COMM'N, ACCOUNTING FOR LAWS THAT APPLY DIFFERENTLY TO THE UNITED STATES POSTAL SERVICE AND ITS PRIVATE COMPETITORS 1 (2007), *available at* http://www.ftc.gov/os/2008/01/080116postal.pdf.

168. *See* 39 U.S.C. § 3634(b)(1)-(2) (2006). Although the Postal Service has not in the past been required to pay federal income tax, it has been required by law to make an internal payment, beginning with FY 2008, to: "(1) compute its assumed Federal income tax on competitive products income for such year; and (2) transfer from the Competitive Products Fund to the Postal Service Fund the amount of that assumed tax."; *see also* 39 U.S.C. § 3652(a) (2006); 39 U.S.C. § 102(10) (2006); FED. TRADE COMM'N, *supra* note 156 at 33–34.

169. State and local governments cannot assess *ad valorem* property taxes against property belonging to the United States. *See* West v. Oklahoma Tax Comm'n, 334 U.S. 717, 723 (1948); *accord* Mayo v. United States, 319 U.S. 447 n.11 (1943); United States v. Hawkins Cnty 859 F.2d 20, 23 (6th Cir. 1988); United States v. Metro Gov't, 808 F.2d at 1208 (6th Cir. 1987); United States v. Colorado, 627 F.2d 217, 219 (10th Cir. 1980). FEDERAL TRADE COMM'N, *supra* note 156, at 24.

170. 39 U.S.C. § 401(9) (2006); *accord* Dolan v. U.S. Postal Serv., 546 U.S. 481, 484 (2006); Flamingo Indus. (USA) Ltd. v. U.S. Postal Serv., 540 U.S. 736, 741 (2004). FEDERAL TRADE COMM'N, *supra* note 156 at 34–35.

preferential borrowing access,[171] and implicit taxpayer backing in the event of a default.[172] Serious fair competition issues arise if the Postal Service is permitted to leverage its property and assets—including property received for free from the Federal Government when the Postal Service was created in 1971—to compete in areas well-served by the private sector. The Postal Service possesses inherent unfair advantages over the private sector in many potential non-postal arenas. Moreover, the Postal Service has an unfortunate history of taking losses in its forays into new enterprises, such as e-commerce.[173] The PRA's non-postal provisions therefore contain strict, but achievable cost coverage requirements: 150% cost coverage for state services and 200% cost coverage for advertising.[174] Finally, it's worth pointing out that a recent Accenture study commissioned by the Postal Service found that major foreign posts deeply involved in non-postal activities only earn a rate of return of around 5.5%.[175] For the Postal Service to close a $10 billion deficit with this rate of return, it would take more than $180 billion in non-postal revenue—double the Postal Service's entire annual revenue in FY 2011.[176] It is simply not possible for the Postal Service to grow non-postal products fast enough, or sufficiently, to offset the losses brought on by declining mail volumes. While non-postal services may never produce a tremendous amount of new revenue for the Postal Service, the PRA maximizes whatever potential exists while avoiding unfair competition with the private sector.

The PRA also enables the Postal Service to increase revenue or avoid losses by altering the manner in which some postage rates are determined. This includes a requirement that all products within a class cover attributable costs—to the extent that is possible under the existing price caps that limit annual rate hikes to rises in the Consumer Price Index (CPI).[177] This change addresses an unfair status quo in

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171. The Postal Service has access to federal finding, with a total statutory debt limit of $15 billion. 39 U.S.C. § 2005 (2006); *see also* FEDERAL TRADE COMM'N, *supra* note 156 at 29–31, 58–61.

172. The Postal Service has an implicit guarantee of taxpayer backing for legal and practical reasons, including its previously-noted statutory monopoly over the delivery of letter mail, a massive infrastructure and workforce that enables it to provide affordable, timely mail delivery throughout the nation, and the need for uninterrupted delivery of mail that includes, among other things, payments of nearly half of all household bills, other time-sensitive correspondence, newspapers, magazines, and packages. Thus, as GAO has concluded: "Addressing USPS's financial viability is critical as USPS plays a vital role in the U.S. economy and in providing postal services to all communities." *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-09-937SP, RESTRUCTURING THE U.S. POSTAL SERVICE: SUSTAINABLE FINANCIAL VIABILITY 1 (2009).

173. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-455, U.S. POSTAL SERVICE, STRATEGIES AND OPTIONS TO FACILITATE PROGRESS TOWARD FINANCIAL VIABILITY 42–44 (2010).

174. *See* Postal Reform Act § 407.

175. *See* U.S. POSTAL SERV., ACCENTURE, IS DIVERSIFICATION THE ANSWER TO MAIL WOES? THE EXPERIENCE OF INTERNATIONAL POSTS: FINAL REPORT 23 (2010), *available at* http://about.usps.com/future-postal-service/accenture-presentation.pdf.

176. Postal Service revenue in FY 2011 was $65.7 billion. *See* U.S. POSTAL SERV., ANNUAL REPORT (FORM 10-K) 63 (2011), *available at* http://about.usps.com/who-we-are/financials/10k-reports/fy2011.pdf.

177. Postal Reform Act § 401 (amending the statutory price cap for market-dominant products at 39 U.S.C. § 3622(d)). Postal Service products offerings are broken down into either the competitive side or the market-dominant side. Competitive products are required, by law, to cover their costs and prices are adjusted as needed. On the market-dominant side, products are divided into classes, the largest three being: First-Class Mail, Standard Mail, and Periodicals. Each class may then be further subdivided into individual products, the CPI price cap, however, is applied at the class level, not the product level. This application allows for the creation of intra-class subsidies where price cap adjustments are applied to profitable products within a class

which businesses using mail products that cover costs are effectively forced to subsidize competitors who use products sold to them at below cost. For instance, the Standard Mail Flats product covered only 82% of its attributable costs in fiscal year 2010.[178] Another PRA reform requires entire mail classes that fail to cover attributable costs to eventually reach a minimum of 90% cost coverage—through a requirement that rates must be annually raised by 2% above the permitted CPI rate adjustment.[179] As part of an effort to ensure that attributable cost measures are accurate, the PRA permits a 2-year delay before these annual increases in excess of CPI are implemented.[180] Ultimately, this change will ensure that the Periodicals class moves toward greater cost coverage in a fair manner. In fiscal year 2010, this class cost the Postal Service more than $600 million and lost money for the 14th straight year.[181] A third significant pricing change in the PRA reduces the nonprofit advertising discount by 50% over a 13-year period, while leaving the discount for nonprofit editorial matter in place. Specifically, starting 3 years after the PRA's enactment, the nonprofit advertising discount will decrease by 2% annually until it is reduced from its current level of 40% to 20%.[182] Over the long-term, this should enable the Postal Service to recoup some of the more than $1 billion in revenue it foregoes each year due to the steep discounts nonprofits receive compared to normal postage rates. At the same time, the provision maintains a major rate preference for nonprofits and provides a long timeline for adaptation to a new pricing structure. One preference that is terminated immediately, however, is one allowing state and national political committees to use the nonprofit discount.[183]

Finally, the PRA will require the State of Alaska to reimburse the Postal Service for the additional costs it incurs to provide for bypass mail—a provision that is phased in over a 5-year period.[184] Bypass mail is a unique system in the State of Alaska that heavily subsidizes the shipment of large and commercial items to the rural areas of the state, including groceries and other typically non-mailable commodities.[185] According to PRC data, the program costs the Postal Service more than $81 million per year.[186] The Committee views this unfunded mandate on the

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while allowing unprofitable products within a class to sink farther below covering their costs.

178. U.S. POSTAL REFORM COMM'N, ANNUAL COMPLIANCE DETERMINATION REPORT: FISCAL YEAR 2010, 30 (2011), *available at* http://www.prc.gov/Docs/72/72487/PRC_ACD_2010_UPDATED_1774.pdf.

179. Postal Reform Act §401.

180. *Id.*

181. *See* U.S. POSTAL REFORM COMM'N, ANNUAL COMPLIANCE DETERMINATION REPORT, *supra* note 175. http://www.prc.gov/Docs/72/72487/PRC_ACD_2010_UPDATED_1774.pdf.

182. Postal Reform Act §403.

183. *Id.* §402.

184. *Id.* §408.

185. OFFICE OF INSPECTOR GEN., U.S. POSTAL SERV., RARC-WP-12-005, ALASKA BYPASS: BEYOND ITS ORIGINAL PURPOSE 5 (2011), *available at* http://www.uspsoig.gov/foia_files/RARC-WP-12-005.pdf

186. In FY 2010, USPS received $30 million to cover $111 million in costs of Alaska bypass mail shipments via Parcel Post, for a subsidy net of postage of $81 million. These data were compiled by PRC from USPS data. *See* U.S. POSTAL REFORM COMM'N, DOCKET ACR2010, WORKPAPERS IN 2010 ANNUAL COMPLIANCE DETERMINATION REPORT, file FY10.Apub, CS14 tab, cell E37 & file FY10.Bpub, CS14 tab, cell E37 (PRC compiled the revenues from proprietary USPS data from its Revenue, Pieces, and Weight system). *available at* http://www.prc.gov/Docs/72/72389/ACR-LR2.zip.

Postal Service as unfair. By asking the State itself to sponsor the program, the PRA protects delivery at no cost to the Postal Service and rural Alaskans. Altogether, the Committee estimates the changes made to the rate structures will improve the fiscal standing of the Postal Service by a minimum of $1 billion annually, once all provisions are fully phased in.[187]

Postal reform should increase the Postal Service's flexibility to operate in a more efficient, businesslike manner while providing appropriate accountability and oversight to ensure fair and transparent operations. When the Postal Service was created as an independent establishment of the Federal Government, it was authorized to operate more like a business and exempted from most federal laws and regulations applicable to purchasing.[188] Notably, the Postal Service is exempt from the Competition in Contracting Act,[189] the law that establishes the federal policy of "full and open competition" for most federal contracts.[190] The Postal Service is also not subject to the Federal Acquisition Regulation (FAR).[191] The FAR establishes acquisition policies and procedures for all executive branch agencies, including requirements related to promoting competition, conflicts of interest, and sole source contracting.[192] The Postal Service has repeatedly abused its contracting flexibility in recent years, however, with numerous postal officials implicated in conflicts of interest involving noncompetitive contract awards to their friends and former associates.[193] Other contracting problems include poor business

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187. H.R. 2309 requires market-dominant products to cover their costs within the inflationary price cap and market-dominant classes to cover at least 90 percent of costs. H.R. 2309, 112th Cong. § 401 (2011). These provisions would have improved USPS net income in FY2010 by eliminating $749 million in losses from Standard Mail products and $362 million in losses from Periodicals. *See* U.S. POSTAL REFORM COMM'N, ANNUAL COMPLIANCE DETERMINATION REPORT, *supra* note 175, at 29, 91, & 101. http://www.prc.gov/PRC-DOCS/UploadedDocuments/ACD%202010_1697.pdf. H.R. 2309 also reduces the non-profit advertising discount from 40 to 20 percent and ends it for national and state political committees. H.R. 2309, 112th Cong. §402-03 (2011). This discount cost USPS more than $1 billion in revenue forgone in FY2010. *See* U.S. POSTAL REFORM COMM'N, ANNUAL REPORT TO THE PRESIDENT AND CONGRESS: FISCAL YEAR 2011, 42 (2011), *available at* http://www.prc.gov/Docs/78/78904/PRC_AR_2011_FINALVERSION_2350.pdf.

188. 39 U.S.C. § 410(a) (2011). *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-190, U.S. POSTAL SERV.: PURCHASING CHANGES SEEM PROMISING, BUT OMBUDSMAN REVISIONS AND CONTINUED OVERSIGHT ARE NEEDED 2 (2005), *available at* http://www.gao.gov/new.items/d06190.pdf.

189. *See* Competition in Contracting Act, Pub. L. No. 98-369; 98 Stat. 1175 (1984) (codified in 41 U.S.C. §§ 3301-3(2012)); U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-10-005, AUDIT REPORT—U.S. POSTAL SERVICE PURCHASING POLICIES 1 (2010), *available at* http://uspsoig.gov/FOIA_files/CA-AR-10-005.pdf.

190. The Competition in Contracting Act required agencies to obtain full and open competition through the use of competitive procedures in their procurement activities unless otherwise authorized by law. 41 U.S.C. § 3301(a) (2011).

191. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-190, *supra* note 168, at 2; U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-10-005, *supra* note 169.http://www.uspsoig.gov/FOIA_files/CA-AR-10-005.pdf.

192. *See, e.g.,* Fed. Rules of Acquisition, 48 C.F.R. §§B, 6.3 (1986).

193. *See* U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., No. DA-AR-11-008, AUDIT REPORT – CONFLICTS OF INTEREST: FACILITY LEASES AND CONTRACT DELIVERY SERVICES 2-7, 12-17, *available at* http://www.uspsoig.gov/foia_files/DA-AR-11-008.pdf; *see also* U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-10-005, *supra* note 169, at 4, 18-19; Stephen Losey, *IG: Former Postal Marketing Exec Misused Staff, Contractors*, FEDERAL TIMES, June 29, 2010, *available at* http://www.federaltimes.com/article/20100629/PERSONNEL03/6290301/1001 (noting that in 2010, the

practices, inadequate transparency, lax internal oversight, lack of accountability, and misuse of delegations of contracting authority.[194]

Considering this history, the statutory reforms in this bill are necessary to improve Postal Service contracting practices, to reduce costs through contracting out and competition, and to prevent the recurrence of poor contracting practices, lax oversight, and improper ethical behavior. The PRA requires the Postal Service and the Postal Regulatory Commission to establish competition advocates to promote contracting out of functions that the private sector can perform equally well or better and at lower cost, to obtain best value, and to review procurement activities.[195] Other reforms require high ethical standards, transparency for noncompetitive contracts, policies for delegations of contracting authority, and accountability.[196]

As reported from the Committee, the PRA would stem the growing tide of red ink at the Postal Service, and restore its solvency. In fiscal year 2011, the Postal Service estimated its loss to be approximately $10 billion, including the statutorily required retiree health care prefunding payment. Once fully implemented, the PRA contains a minimum of $10.7 billion in annual cost reductions and revenue increases, and billions more in other reforms which cannot be readily quantified. Quantifiable savings include a minimum annual savings of $3.5 billion from delivery point modernization, $2.5 billion from allowing the Postal Service to shift to 5-day delivery of mail, $2 billion from the mail processing CPR, $1 billion from the postal retail CPR, $1 billion from changes in the rate structure, and $700 million from the change in the premium share for health and life insurance for postal employees.[197] Other provisions with considerable long-term savings potential include the enhanced control the Postal Service is granted over its retail network,[198] the modernization of the collective bargaining process,[199] and the streamlining of PRC regulatory oversight.[200] Taken together, the various savings measures in the

Postal Service's former top marketing executive resigned after committing contracting and staffing abuses); http://www.federaltimes.com/article/20100629/PERSONNEL03/6290301/1001http://www.federaltimes.com/article/20100629/PERSONNEL03/6290301/1001Stephen Losey, *Read the Postal OIG Report on Robert Bernstock*, FEDERAL TIMES, June 29, 2010, *available at* http://blogs.federaltimes.com/federal-times-blog/2010/06/29/read-the-postal-oig-report-on-robert-bernstock/; Stephen Losey, *Postal Governor Resigns Amid Real Estate Scandal*, FEDERAL TIMES, Aug. 5, 2011, *available at* http://www.federaltimes.com/article/20110805/DEPARTMENTS02/108050303/ (noting that in 2011, a member of the Postal Service Board of Governors resigned after inappropriate involvement in a planned property purchase).

194. *See* U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-11-002, AUDIT REPORT—CONTRACT MANAGEMENT DATA at 2–5, 11–18 (2011); U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-10-005, *supra* note 167 at 2–8, 15–25; U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-11-007, CONTRACT POSTAL UNITS CONTRACT OVERSIGHT: AUDIT REPORT 1–8, 13–14 (2010), *available at* http://www.uspsoig.gov/foia_files/CA-AR-11-007.pdf; U.S. POSTAL SERV. OFFICE OF INSPECTOR GEN., CA-AR-10-006, AUDIT REPORT – CERTIFICATION PROCESS FOR ELECTRONIC PAYMENTS 1–4, 8–15 (2010), *available at* http://www.uspsoig.gov/foia_files/CA-AR-10-006.pdf.

195. Postal Reform Act § 501.

196. *Id.*

197. H.R REP. NO. 112-363, at 57 (2012).

198. Postal Reform Act § 112.

199. *Id.* § 305.

200. *Id.* § 404.

PRA are designed to be more than enough to restore the Postal Service's financial viability.

CONCLUSION

The Postal Service is in need of a fundamental restructuring if it is to meet the needs of twenty-first century America. As a whole, Americans today are significantly less reliant on the mail than they were ten years ago. Mail volume is also likely to decline for the foreseeable future as the largest household recipients of mail are also the most apt for conversion to electronic communication. Until broadband communication reaches a 100% penetration rate, electronic diversion will leave a number of vulnerable groups particularly dependent on the mail, but at the same time these groups will send less mail than those that have left the mail stream and be more price sensitive to the cost of postage. Successful postal reform must ensure that even as mail volume declines, the Postal Service can still provide affordable, efficient universal service to all Americans. Furthermore, with 8 million American jobs still tied to the mail,[201] the Postal Service's continued financial viability is essential to the health of our economy.

In addition to the long-term need to restructure, the Postal Service faces an immediate solvency crisis. On its current financial trajectory, according to the Postal Service's projections it will be unable to make both payroll and contractor payments without a liquidity injection as early as late summer. If nothing is done, either mail delivery will grind to a halt, trapping billions in remittances in limbo, or Congress will be forced to reinstate a direct taxpayer subsidy to the Postal Service, ending a thirty-year long period in which the Postal Service has stood without taxpayer funds. The American people will not support either option. Inaction is thus unacceptable. The Committee crafted the Postal Reform Act to make the hard decisions necessary to bring the Postal Service back from the brink of fiscal ruin. By refusing to kick the can down the road, the PRA gives the Postal Service the tools it needs to right size its workforce and infrastructure and develop a business model that will return the institution to profitability, primarily by loosening Congressional control and enable the Postal Service to act more like a business. For the Postal Service to endure as it has for the last two hundred years, it must adapt quickly to the challenges brought on by the digital age. This adaptation must not, however, sacrifice its fundamental mission. Ironically, it is only through policy reforms that view the Postal Service as a living, evolving entity—not a fossil to be preserved in amber – that can keep this venerable American institution providing necessary and important service at an affordable cost to those who continue to depend on the mail.

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201. DIRECT COMMUNICATIONS GROUP, THE MAILING INDUSTRY JOB STUDY: A DYNAMIC CORE FOR THE UNITED STATES ECONOMY 3 (2011), *available at* http://www.emafoundation.org/file_depot/0-10000000/0-10000/2518/conman/2010+Jobs+Report.pdf. This study was sponsored by the Institute for Postal Studies of the Envelope Manufacturers Association Foundation.