The Postal Accountability and Enhancement Act: Overview and Issues for Congress

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Summary

President George W. Bush signed the Postal Accountability and Enhancement Act (PAEA; P.L. 109-435; 120 Stat. 3198) on December 20, 2006. The PAEA was the first broad revision of the 1970 statute that replaced the U.S. Post Office with the U.S. Postal Service (USPS), a self-supporting, independent agency of the executive branch.

This report describes Congress's pursuit of postal reform, and summarizes the major provisions of the new postal reform law. The report also suggests PAEA-related oversight issues for Congress.

Legislatively, the pursuit of reform of the U.S. Postal Service (USPS) began during the 104th Congress, in 1996. A number of factors encouraged the movement for postal reform. Perhaps foremost were the financial challenges of the USPS.

A decade later, Congress enacted the PAEA, which made over 150 changes to postal law. Some of the more significant alterations are defining the term "postal service"; restricting the USPS's authority to provide nonpostal services; altering the USPS's budget submission process; requiring the USPS to prefund its future retiree health benefits by establishing the Postal Service Retiree Health Benefits Fund; and replacing the USPS's regulator, the Postal Rate Commission, with the more powerful Postal Regulatory Commission.

The inherent complexity of lawmaking and the execution thereof invites disagreement and confusion over what a law means and how it should be implemented. In the three years since the enactment of the PAEA, some issues and questions concerning the law's provisions have arisen. These include, but are not limited to, possible executive branch concerns about the PAEA and the separation of powers; the cost of prefunding USPS future retiree health benefits; the role of the public in the closure of nonretail postal facilities; the USPS's authority to provide nonpostal products and services, and the viability of the USPS's business model.

This report will be updated should events warrant.

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Background: The Pursuit of Postal Reform

Legislatively, the pursuit of reform of the U.S. Postal Service (USPS) began during the 104th Congress. On June 25, 1996, Representative John McHugh introduced H.R. 3717, the Postal Reform Act of 1996. The reform movement culminated in the 109th Congress. On December 9, 2006, Congress enacted H.R. 6407, the Postal Accountability and Enhancement Act (PAEA). President George W. Bush signed it into law on December 20, 2006 (PAEA; P.L. 109-435; 120 Stat. 3198).

A number of factors encouraged the movement for postal reform. Perhaps foremost were the financial challenges of the USPS.[1] First class mail use was declining as customers substituted electronic alternatives, such as e-mail and online bill paying, for hard-copy letters.[2] Yet the USPS's costs—about 76% of which were labor-related—rose with the addition of 2 million new addresses each year and mounting obligations for USPS future retiree health benefits.[3]

Additionally, the USPS, its board of governors, the Government Accountability Office (GAO), mailers' organizations, postal labor unions, and most recently a presidential commission said that the Postal Reorganization Act of 1970 no longer provided a viable business model.[4] The rate-setting process was criticized for preventing the USPS from responding quickly to an increasingly competitive marketplace. Critics also argued that long-standing political and statutory restrictions impeded efforts to modernize the mail processing network and close unneeded facilities.

Finally, passage of the Postal Civil Service Retirement System Funding Reform Act of 2003 (PCSRSFRA; P.L. 108-18; 117 Stat. 624) helped sow the seeds for reform. The PCSRSFRA was enacted after it was discovered that the USPS was over-funding its retirees' pensions.[5] The act reduced the USPS's pension outlays. However, it shifted the costs of postal employees' military service-related pension costs from the U.S. Treasury to the USPS—a $27 billion obligation.[6] The PCSRSFRA also required much of the reduction from the previous pension outlay levels to be put toward lowering the USPS's debt and funding an escrow account. The law did not, however, dedicate the escrow fund to any particular use (e.g., postal worker benefits),

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[1] On the postal reform movement, see out-of-print CRS Report RL33618, *Postal Reform*, by Kevin R. Kosar, available from the author.

[2] See CRS Report R40626, *The U.S. Postal Service and Six-Day Delivery: Issues for Congress*, by Wendy R. Ginsberg.

[3] Michael Schuyler, "The Postal Wage Premium: No Wonder the Postal Service Loses Money," IRET Congressional Advisory no. 131, Institute for Research on the Economics of Taxation (Washington: July 24, 2002).

[4] U.S. General Accounting Office (now Government Accountability Office), *U.S. Postal Service: Financial Outlook and Transformation Challenges*, GAO Testimony 01-733T, May 15, 2001; U.S. Congress, House Committee on Government Reform, *The Postal Service's Uncertain Financial Outlook*, 107th Cong., 1st sess., Part I, April 4, 2001, Part II, May 16, 2001 (Washington: GPO, 2001); Senate Committee on Governmental Affairs, *Financial Outlook of the United States Postal Service*, 107th Cong., 1st sess., May 15, 2001 (Washington: GPO, 2002); and President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service: Report of the President's Commission on the United States Postal Service* (Washington: GPO, July 31, 2003). The recommendations of the President's Commission are discussed in out-of-print CRS Report RS21640, *The Legislative Recommendations of the President's Commission on the United States Postal Service: An Overview*, by Kevin R. Kosar, available from the author.

[5] U.S. Congress, Senate Committee on Governmental Affairs, *Postal Civil Service Retirement System Funding Reform Act of 2003*, S.Rept. 108-35, 108th Cong., 1st sess., April 8, 2003, pp. 2-3.

[6] Government Accountability Office, *Postal Pension Funding Reform: Review of Military Service Funding Proposals*, GAO-04-281 (Washington: GAO, November 2003).

meaning that the USPS had to make a large annual payment that neither provided operational benefits nor generated revenues.[7]

The Major Provisions of the PAEA

According to a CRS analysis using CQ.com's "Legislative Impact" tool, the PAEA makes more than 150 changes to current federal law.[8] The law's major changes include the following:

- **Definition of the term "Postal Service."** Section 101 of the law defines "postal service" to mean "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto." This provision is significant because previously the law did not define "postal service," an omission, critics have contended, that permitted the USPS to undertake nonpostal activities (e.g., the sale of prepaid phone cards) to the detriment of private-sector firms.[9]
- **Alteration of the USPS's budget submission process.** Section 603 altered the budget submission process for the USPS's Office of Inspector General (USPSOIG) and the Postal Rate Commission (PRC). In the past, the USPSOIG and the PRC submitted their budget requests to the USPS's Board of Governors. Accordingly, past presidential budgets did not include the USPSOIG's or PRC's funding requests or appropriations. Under the PAEA, both the USPSOIG and the PRC—which the PAEA renamed the Postal Regulatory Commission—must submit their budget requests to Congress and to the Office of Management and Budget, and they are to be paid from the Postal Service Fund. The law further requires USPSOIG's budget submission to be treated as part of USPS's total budget, while the PRC's budget, like the budgets of other independent regulators, is treated separately.[10]
- **Return of military obligations to the Treasury.** Section 802 of the law relieves the USPS of the $27 billion cost of paying postal worker pension benefits that are attributable to military service.
- **Repeal of the escrow account.** Section 804 of the law abolished the escrow account established by P.L. 108-18.
- **Establishment of the Postal Service Retiree Health Benefits Fund.** Sections 801 to 803 of PAEA change the USPS from funding its retirees' health care costs from an out-of-pocket or pay-as-you-go basis to prefunding these obligations.[11]

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[7] Government Accountability Office, *Postal Pension Funding Reform: Issues Related to the Postal Service's Proposed Use of Pension Savings*, GAO-04-238 (Washington: GAO, November 26, 2003).

[8] CQ.com's Legislative Impact Tool is accessible at http://www.cq.com/legimpact.do.

[9] Government Accountability Office, *Postal Service: Development and Inventory of New Products*, GAO/GGD99-15 (Washington: GAO, 1998).

[10] The Postal Service generates nearly all of its funding by charging users of the mail for the costs of the services it provides. However, Congress does provide an annual appropriation to compensate the USPS for revenue it forgoes in providing free mailing privileges to the blind and overseas voters. For further information on the USPS and appropriations, see CRS Report R40801, *Financial Services and General Government (FSGG): FY2010 Appropriations*, coordinated by Garrett Hatch.

[11] On the GAO's evolving views of the USPS's use of pay-as-you-go funding, see David M. Walker, Comptroller (continued...)

To this end, the PAEA requires the USPS to pay more than $5 billion annually from FY2007 and FY2016 to build up a retirement fund from which both USPS employees and USPS retirees will be paid come FY2017.[12] The funds previously deposited in the escrow account were used to seed this new fund.

- **A stronger regulator.** Title VI of the law replaces the Postal Rate Commission with the Postal Regulatory Commission (PRC). The new regulator has subpoena power and a broader scope for the regulation of the USPS and the examination of the USPS's activities. For example, the PAEA requires the PRC to curb the USPS's issuance of nonpostal products, and to annually determine the USPS's compliance with the PAEA's requirements.
- **Separation of USPS product types and rate-setting.** Title II of the law divides USPS products into "market-dominant" and "competitive" classes. Market-dominant products include those products and services that the USPS need not compete with the private sector to provide.[13] Market-dominant products include (1) first-class mail letters and sealed parcels, (2) first-class mail cards, (3) periodicals, (4) standard mail, (5) single-piece parcel post, (6) media mail, (7) bound printed matter, (8) library mail, (9) special services, and (10) single-piece international mail. Competitive products include those for which a competitive market exists.[14] They include (1) priority mail, (2) expedited mail, (3) bulk parcel post, (4) bulk international mail, and (5) mailgrams. This separation of products into two types is significant because critics have said that the USPS has used revenues from market-dominant products (e.g., first class mail) to cross-subsidize competitive products (e.g., overnight package delivery). This, they contend, is unfair competition. Under PAEA, the USPS may raise the rates (prices) of products in the market-dominant class by no more than the Consumer Price Index for All Urban Consumers (CPI-U).[15] Prices of products in the competitive class must be based on market-type factors, such as "costs attributable," which Section 202 of the statute defines as "the direct and indirect postal costs attributable to such products through reliably identified causal relationships."
- **An expedited rate-setting process.** Under the former rate-setting system, the USPS would submit a request to the Postal Rate Commission to raise postage prices that detailed the proposed increases and the justifications for them. This began a quasi-judicial process in which all interested parties, including citizens and business firms, would submit testimony to the commission concerning USPS's proposed postage rates. The Postal Rate Commission would hold a hearing, take testimony from witnesses, and issue a recommended decision, which the USPS's Board of Governors could accept or reject. Frequently, the entire process took more than six months, and the results were difficult to predict.

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General, Government Accountability Office, "U.S. Postal Service: Accounting for Postretirement Benefits," GAO-02-916-R, September 12, 2002.

[12] For further information, see CRS Report R40768, *The U.S. Postal Service's Finances and Financial Condition*, by Kevin R. Kosar.

[13] E.g., the USPS possesses a legal monopoly over the delivery of first-class mail (18 U.S.C. 1693-1999 and 39 U.S.C. 601).

[14] E.g., the USPS must compete with UPS and other private firms in the package delivery business.

[15] On the CPI-U, see CRS Report RL30074, *The Consumer Price Index: A Brief Overview*, by Brian W. Cashell.

The PAEA replaced this process with a less adversarial and more expeditious process that takes less than two months. Now, when the USPS wants to raise postage rates, it files a notice with the PRC, which takes public comments and verifies the proposed rates' compliance with the law.

- **Reform of international mail regulation.** Section 407 of the law clarifies the authority of the Secretary of State to set international postal policy and enter agreements, and requires him/her to apply customs laws equally to private shipments and "shipments of international mail that are competitive products."
- **New qualifications and lengths of terms in office for the USPS's governors.** Section 501 of the PAEA requires that members of the Board of Governors of the USPS "be chosen solely on the basis of their experience in the field of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size." Of the nine governors, at least four would have to "be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) that employ at least 50,000 employees." Governors' terms are reduced from nine to seven years.
- **Increased USPS transparency.** Section 204 requires the USPS to release more details on its finances and operations. In its financial reporting, the USPS must provide the same information that private firms provide under Section 4 of the Sarbanes-Oxley Act.[16]
- **GAO study on the USPS's business model.** Section 710 of the PAEA requires the GAO to assess the options for a future business model for the USPS. The GAO is required to deliver its report by January 20, 2011.

Possible PAEA Oversight Issues for Congress

The inherent complexity of lawmaking and the execution thereof invites disagreement and confusion over what a law means. Should agencies interpret a statute based upon the text of the statute alone? Should they consider Congress's intent or try to ascertain the "original understanding" of the statute?[17] Newly enacted statutes can be particularly susceptible to differing interpretations as political actors attempt to implement the statute.

As described earlier, the PAEA made numerous significant changes to U.S. postal law. Because of its length—more than 20,000 words—and complexity, it is not surprising that disagreements concerning implementation of the PAEA have arisen. As the words of the PAEA develop into governmental actions, Congress may mitigate some of the possible negative effects through active oversight of the USPS and the PRC.[18]

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[16] On Section 4 of the Sarbanes-Oxley Act, see CRS Report RS22482, *Section 404 of the Sarbanes-Oxley Act of 2002 (Management Assessment of Internal Controls): Current Regulation and Congressional Concerns*, by Michael V. Seitzinger.

[17] For just two of the many different views on statutory interpretation, see Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton, N.J.: Princeton University Press, 1997); and Paul Brest, "The Misconceived Quest for the Original Understanding," 60 *Boston University Law Review* (1980), pp. 204-238.

[18] For example, if the USPS takes an action that Congress believes is outside the scope of its authority and Congress (continued...)

Possible Executive Branch Concerns about the PAEA

To date, it is unclear if the administration of President Barack Obama has any concerns regarding the implementation of the PAEA.

However, his predecessor, President George W. Bush, did issue a signing statement that addressed a number of sections of PAEA, often in the context of the separation of powers. These include the following.[19]

- Section 205 permits “any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public)” to “lodge a complaint” with the PRC. The statement said the executive branch shall construe this portion of the statute “not to authorize an officer or agency within the executive branch to institute proceedings in Federal court against the Postal Regulatory Commission.”
- Section 404 establishes 39 U.S.C. 409(h), which limits the circumstances under which the Department of Justice may represent the Postal Service in legal cases. The signing statement declared that the executive branch “shall construe subsection 409(h) of title 39 ... which relates to legal representation for an element of the executive branch, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and to take care that the laws be faithfully executed.”
- Section 405 of the statute amends 39 U.S.C. 407 so that the “Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services,” and Section 405 places certain limitations on the Secretary’s powers to conclude treaties. Section 405 also places requirements upon the Secretary (e.g., the Secretary must “coordinate with other agencies as appropriate” in carrying out his or her responsibilities). The signing statement said that the executive branch shall construe this portion of the statute “in a manner consistent with the President’s constitutional authority to conduct the Nation’s foreign affairs, including the authority to determine which officers shall negotiate for the United States and toward what objectives, to make treaties by and with the advice and consent of the Senate, and to supervise the unitary executive branch.”
- Subsections 501(a) and 601(a) established 39 U.S.C. 202(a) and 502(a), which set the qualification requirements for members of the Board of Governors. The signing statement declared that this “purport[s] to limit the qualifications of the pool of persons from whom the President may select appointees.” The executive branch, it continued, shall interpret this portion of the statute “in a manner consistent with the Appointments Clause of the Constitution.”

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does not take issue with it, this action may later be viewed as a “precedent” that justifies future, similar actions.

19 George W. Bush, “President’s Statement on H.R. 6407, the ‘Postal Accountability and Enhancement Act,’” December 20, 2006, at http://georgewbush-whitehouse.archives.gov/news/releases/2006/12/20061220-6.html. On presidential signing statements, see CRS Report RL33667, *Presidential Signing Statements: Constitutional and Institutional Implications*, by T. J. Halstead.

- Subsection 605(c) requires the appointment of an inspector general within 180 days of the enactment of the statute. The signing statement said that the "executive branch shall also construe as advisory the purported deadline in subsection 605(c) ... as is consistent with the Appointments Clause."
- As enacted by Subsection 1010(e) of the act, 39 U.S.C. 404(c) requires the USPS to "maintain one or more classes of mail for the transmission of letters sealed against inspection." It prohibits the opening of such mail "except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee." The signing statement declared that the executive branch will interpret this prohibition "in a manner consistent ... with the need to conduct searches in exigent circumstances ... and the need for physical searches specifically authorized by law for foreign intelligence collection."[20]
- Subsection 504(d) and Section 2009 of Title 39, as amended by Section 603 of the act, and Sections 701(a)(2), 702(b), 703(b), 708(b), and 709(b)(2) of the statute, require the PRC to provide budget requests and assorted reports to Congress. The signing statement said that the executive branch shall construe the "provisions ... that call for executive branch officials to submit legislative recommendations to the Congress in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and to recommend for congressional consideration such measures as the President shall judge necessary and expedient."

Taken as a whole, then, the signing statement's individual contentions amount to a defense of executive branch authorities against perceived or possible legislative encroachments. Congress may wish to consider the merits of these executive branch claims and query the current administration to see if it shares these views.

The Role and Performance of the Postal Regulatory Commission

PAEA replaced the Postal Rate Commission with the Postal Regulatory Commission. This new regulatory agency has both greater powers and greater duties than its predecessor. To date, the PRC has completed numerous tasks that were integral to executing PAEA's objectives, such as:

- establishing "a modern system for regulating rates and classes for market-dominant products";
- "further defining" the term "workshare discount," which refers to postage discounts provided to mailers for the presorting, pre-barcoding, handling, or transportation of mail;
- promulgating "regulations to ... prohibit the subsidization of competitive products by market-dominant products"; and

[20] During the 110th Congress, S.Res. 22 was introduced in the Senate on January 10, 2007. It resolved that the act did "not grant Federal law enforcement officials any new authority to open domestic mail" and that the Senate reaffirmed "the constitutional and statutory protections accorded sealed domestic mail." S.Res. 22 was placed on the Senate legislative calendar but Congress took no further action on the resolution.

- prescribing "the content and form" of the annual reports USPS must issue.[21]

The PRC also has conducted annual determinations of the USPS's compliance with PAEA, and issued numerous opinions on USPS proposals to alter rates, products, and services.[22] Currently, the PRC is considering the USPS's proposed closure of more than 200 post office branches and stations.[23] The PRC also is encouraging a "national conversation on the future of mail and hardcopy communications in the United States,"[24] and its chairman, Ruth W. Goldway, has urged the Postal Service to adopt an electrical vehicle fleet.[25]

Congress has held at least a half dozen hearings on the USPS since enactment of the PAEA—one of which focused on implementation of PAEA and the role of the PRC.[26] However, in order to assess the PRC's development as an agency and to further understand the directions in which the PRC is developing, Congress may wish to examine the PRC's actions since the enactment of the PAEA, review its annual expenditures, and confer with its commissioners and employees.

The Funding of the Postal Service Retiree Health Benefits Fund

After generating modest profits from FY2004 through FY2006, the USPS lost $5.3 billion in FY2007, $2.8 billion in FY2008, and $3.8 billion in FY2009.[27] Were it not for congressional action to reduce a statutorily required retiree health benefits payment (see below), the USPS would have lost $7.8 billion in FY2009.

The USPS's financial losses resulted from declining operating revenues and significantly increased operating costs, the latter of which was largely the effect of the PAEA's requirement that the USPS prefund its future retirees' health benefits.[28] Section 803 of the act established a 10-

[21] These objectives are in Sections 201, 201, 202, and 204.

[22] For example, see Postal Regulatory Commission, *Postal Regulatory Commission: Annual Compliance Determination* (Washington: PRC, March 30, 2009), at http://www.prc.gov/Docs/62/62784/ACD%20Report_2008_FINAL.pdf. The PRC's opinions are available at http://www.prc.gov/prc-pages/library/opinions.aspx?view=opinions.

[23] See CRS Report R40719, *Post Office and Retail Postal Facility Closures: Overview and Issues for Congress*, by Kevin R. Kosar.

[24] Ruth W. Goldway, Chairman, Postal Regulatory Commission, letter [undated], at http://www.prc.gov/PRC-DOCS/UploadedDocuments/Conversation%20on%20the%20Future%20of%20the%20Mail.pdf; and Ruth W. Goldway, Chairman, Postal Regulatory Commission, statement, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and District of Columbia, *Adapting the Postal Service to a Changing World*, hearing, 111th Congress, 1st sess., November 5, 2009, p. 9, at http://www.prc.gov/prc-docs/home/whatsnew/House%20Testimony%20Chairman%20Goldway_310.pdf.

[25] Ruth W. Goldway, "Plugging in the Postal Service," *New York Times*, February 9, 2002, at http://www.nytimes.com/2009/02/10/opinion/10goldway.html.

[26] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *The Road Ahead: Implementing Postal Reform*, hearing, 110th Cong., 1st sess., S. Hrg. 110-340, April 19, 2007, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_senate_hearings&docid=f:35526.pdf.

[27] U.S. Postal Service, "Form 10-K," November 16, 2009, p. 12, at http://www.usps.com/financials/_pdf/FY_2009_10K_Report_Final.pdf.

[28] On the USPS's financial condition and possible options for improvement, see CRS Report R40768, *The U.S. Postal Service's Finances and Financial Condition*, by Kevin R. Kosar.

year payment schedule to greatly reduce the size of the USPS's future retiree health benefits obligation (**Table 1**).[29]

Table 1. Postal Service Retiree Health Benefits Fund Payments Under PAEA

Fiscal Year	Payment (billions)
2007	$5.4
2008	$5.6
2009	$5.4
2010	$5.5
2011	$5.5
2012	$5.6
2013	$5.6
2014	$5.7
2015	$5.7
2016	$5.8

Source: Postal Accountability and Enhancement Act (P.L. 109-435, Sec. 803; 120 Stat. 3251-3252).

Note: The table reflects the FY2009 payment due prior to congressional amendment (P.L. 111-68, Sec. 164).

In August 2009, Postmaster General John Potter warned that the USPS might end FY2009 with a cash shortage of up to $700 million.[30] The USPS would not, he noted, be able to pay the full $5.4 billion to the Retiree Health Benefits Fund that was due on September 30, 2009.

On September 30, 2009, Congress provided immediate relief to the USPS's financial duress in Section 164 of H.R. 2918, the Legislative Branch Appropriations Act [of] 2010. President Obama signed the bill into law (P.L. 111-68) the next day. Section 164 of the act reduced the USPS's FY2009 payment to the Retiree Health Benefits Fund from $5.4 billion to $1.4 billion. The USPS does not escape payment of the $4 billion; rather, Section 164 includes that $4 billion in the obligation to be amortized after FY2016.

As **Table 1** indicates, the USPS has to make seven more PAEA-mandated future retiree health benefits payments from FY2010 through FY2016. These remaining payments average more than $5.6 billion per year and amount to $39.4 billion.

Both the PRC and the U.S. Postal Service Office of Inspector General have issued reports that suggest that the PAEA payment schedule for future retiree health benefits is too aggressive.[31] The

[29] In FY2017, any remaining retiree health benefits obligation will be amortized over a 40-year period. The USPS then would make only one annual, out-of-pocket payment to the Postal Service Retiree Health Benefits Fund. The USPS would cease paying current retirees' health benefits from the Postal Service Fund, and instead pay it from the Retiree Health Benefits Fund.

[30] Statement of John Potter, Postmaster General, U.S. Postal Service, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *The U.S. Postal Service in Crisis*, hearing, 111th Congress, 1st sess., August 6, 2009, p. 3, at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=e4c1bd6c-.

[31] U.S. Postal Service Inspector General, *Final Management Advisory Report—Estimates of Postal Service Liability for* (continued...)

PRC estimated that the USPS should pay $3.4 billion per year, while the USPSOIG has said that the USPS should pay $1.6 billion per year through 2016 to fund its obligations.[32] In light of this, Congress may wish to reassess the PAEA's payment schedule and the differing calculations of the USPS's obligation.

Additionally, confusion arose in September 2009 when the USPS appeared unable to make the full FY2009 payment to the Retiree Health Benefits Fund.[33] The PAEA does not say what occurs in such an instance. Congress may wish to address this matter by considering building in consequences or a mechanism for missed or less-than-full payments, such as the automatic rollover of a shortfall into a subsequent fiscal year's scheduled payment.

Non-Retail Facility Closures: Public Notification and Input

The PAEA's Section 302 addresses the surfeit of USPS non-retail facilities.[34] The law states:

> Congress finds that—
>
> (A) the Postal Service has more than 400 logistics facilities, separate from its post office network;
>
> (B) ... the Postal Service has more facilities than it needs and the streamlining of this distribution network can pave the way for the potential consolidation of sorting facilities and the elimination of excess costs;
>
> (C) the Postal Service has always revised its distribution network to meet changing conditions and is best suited to address its operational needs; and
>
> (D) Congress strongly encourages the Postal Service to—
>
> (i) expeditiously move forward in its streamlining efforts; and
>
> (ii) keep unions, management associations, and local elected officials informed as an essential part of this effort and abide by any procedural requirements contained in the national bargaining agreements.

(...continued)

Retiree Health Care Benefits, Report No. ESS-MA-09-001(R) (Washington: USPOIG, July 22, 2009), at http://www.uspsoig.gov/foia_files/ESS-MA-09-001R.pdf; and Postal Regulatory Commission, *Postal Regulatory Commission Review of Retiree Health Benefit Fund Liability as Calculated by Office of Personnel Management and U.S. Postal Service Office of Inspector General* (Washington: PRC, July 30, 2009), at http://www.prc.gov/Docs/63/63987/Retiree%20Health%20Fund%20Study_109.pdf. Recently, the PRC chairman suggested that Congress may wish to recalculate the USPS's long-term obligation and the payment schedule. See Ruth W. Goldway, Chairman, Postal Regulatory Commission, statement, U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and District of Columbia, *Adapting the Postal Service to a Changing World*, pp. 6-7.

[32] For an overview of this topic, see CRS Report R40768, *The U.S. Postal Service's Finances and Financial Condition*, by Kevin R. Kosar.

[33] Gregg Carlstrom and Rebecca Neal, "What Happens if USPS Misses Trust Fund Payment? No One Knows," *Federal Times*, September 28, 2009, p. 5.

[34] As used in this report, "non-retail facilities" refer to those USPS facilities that are not do serve the public directly (as compared with retail facilities—post offices, postal stations and branches, etc.

In the move to reduce the number of these facilities, Section 302(c)(1) of the PAEA requires the USPS to produce a facilities plan that includes the

> procedures that the Postal Service will use to—
>
> (i) provide adequate public notice to communities potentially affected by a proposed rationalization decision;
>
> (ii) make available information regarding any service changes in the affected communities, any other effects on customers, any effects on postal employees, and any cost savings;
>
> (iii) afford affected persons ample opportunity to provide input on the decision; and
>
> (iv) take such comments into account in making a final decision.

Section 302(c)(5) forbids the USPS from closing or consolidating "any processing or logistics facilities without using procedures for public notice and input consistent with those described [above]."

The USPS published its facilities plan in June 2008.[35] The plan neither lists all the types of processing and logistics facilities that exist nor provides public notice and input for closing them.[36] The USPS's plan only provides public input processes in its section on area mail processing closures.[37] As noted above, the PAEA's Section 302 states that the USPS must devise and employ public notification and input processes prior to the closure of all "processing and logistics facilities." Yet the USPS has been criticized for closing some types of non-retail facilities without following the PAEA-required processes. [38]

Congress may wish to examine whether there is a discrepancy between Section 302 of PAEA and current USPS practices, and whether the PRC has the jurisdiction and authority to enforce Section 302.

The USPS's Authority to Provide Nonpostal Products and Services and the Viability of the USPS's Business Model

As noted above, Section 101 of the PAEA defined "postal service" to mean "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto." Section 102(c)(2) of the law did permit the

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[35] U.S. Postal Service, *United States Postal Service § 302 Network Plan* (Washington: USPS, June 2008), at http://www.usps.com/postallaw/_pdf/PostalServiceNetworkPlan.pdf.

[36] It is unclear how many types of these USPS facilities exist. A 2006 USPS PowerPoint presentation mentioned many types of facilities, such as bulk mail centers, airport mail centers, remote encoding centers, international service centers, logistics and distribution centers, and customer service facilities. Paul Vogel, Vice President, Network Operations Management, U.S Postal Service, "USPS Networks," February 16, 2006, p. 15.

[37] U.S. Postal Service, *United States Postal Service § 302 Network Plan*, pp. 28-29.

[38] Rep. Robert E. Andrews has criticized the USPS for proposing the closure of the Philadelphia Logistics and Distribution Center "without even notifying the public at the outset of their plan." Rep. Robert E. Andrews, press release, "Decision to Close Swedesboro Mail Facility Requires More Detail," November 6, 2009, at http://www.house.gov/list/hearing/nj01_andrews/11_11_09.html.

USPS to continue providing the types of nonpostal services (e.g., photocopy and notary services) it had been providing prior to January 1, 2006. However, Section 102(c)(3) required the PRC to

> review each nonpostal service offered by the Postal Service ... [to] determine whether that nonpostal service shall continue, taking into account—
>
> (A) the public need for the service; and
>
> (B) the ability of the private sector to meet the public need for the service.

Section 102(c)(4) mandated that "[a]ny nonpostal service not determined to be continued by the Postal Regulatory Commission [under Section 102(c)(3)] shall terminate." Additionally, PAEA's Section 102(c)(5) required that when the PRC authorized the USPS to sell a nonpostal service, the PRC had to designate whether the service would be priced and regulated as a market-dominant product, a competitive product, or an experimental product.

Taken as a whole, then, the PAEA's Section 102 aimed to direct the USPS to provide postal services and to refrain from offering new nonpostal services.

Since the enactment of the PAEA, this latter objective has come into question. As mail volumes and revenues have dropped, the USPS has sought ways to increase its postal product and services revenues.[39] In May 2009, the USPS proposed holding a "summer sale" that would give reduced postage prices to mailers who had sent over 1 million mail pieces in a six-month period. (The PRC promptly approved this proposal, and the USPS held the sale.)[40] Five months later, the USPS announced it would begin selling Hallmark greeting cards at some of its retail postal facilities.[41] (The PRC previously had approved greeting card sales.)

However, the USPS has said that these steps are not sufficient, and that it would like to be given greater authority to sell new nonpostal services. For example, Postmaster General John Potter testified before the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security that:

> we are simply unable to generate the revenue necessary to support our retail and delivery network at their current size.... Other national [postal services] complement their traditional offerings with banking, cell phone, logistics, and other services to generate the income necessary to offset the costs of their universal service obligation—costs that cannot be met solely by the price of postage.

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[39] Congress recently held a hearing to examine these activities. U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, *More Than Stamps: Adapting the Postal Service to a Changing World*, hearing, 111th Cong., 1st sess., November 5, 2009. The GAO provided testimony that included a preliminary review of the USPS's efforts to increase postal product revenue. Government Accountability Office, *U.S. Postal Service: Financial Challenges Continue, with Relatively Limited Results from Recent Revenue-Generation Efforts*, GAO-10-191T (Washington: GAO, November 5, 2009), pp. 6-7.

[40] Postal Regulatory Commission, "PRC approves USPS "Summer Sale" Rates Proposal," press release, PRC approves USPS "Summer Sale" Rates Proposal, June 4, 2009, at http://www.prc.gov/prc-docs/Newsroom/PressReleases/PRC%20approves%20USPS%20Summer%20Sale%20proposal_16.pdf.

[41] U.S. Postal Service, "Greetings and Salutations from a Post Office Near You: Postal Service Offering Greeting Cards," press release, October 29, 2009, at http://www.usps.com/communications/newsroom/2009/pr09_090.htm; and Postal Regulatory Commission, *Review of Nonpostal Services Under the Postal Accountability and Enhancement Act* (Washington: PRC, December 19, 2008), pp. 34-35, at http://www.prc.gov/Docs/61/61647/Order_No_154.pdf.

> [W]e believe the time has come to allow the Postal Service to introduce new lines of business at its retail facilities.... This change is only possible with the concurrence of Congress through new legislation, and we ask for your consideration in this regard.[42]

The USPS argument for the need for greater authority to sell nonpostal services rests on a broader argument—that the USPS's business model is "broken." Just four months after the enactment of the PAEA, Postmaster General Potter testified before Congress that,

> [u]nfortunately, significant changes in the communications and delivery markets have made continued success under the original law problematic. That is why our Nation is fortunate that so many have recognized this and acted to preserve affordable, universal Postal services.
>
> I appreciate the efforts of this committee, both houses of Congress, Comptroller General David Walker, the administration, and the President's Commission on the U.S. Postal Service. It is my hope that 30 years from today a future Postmaster General will sit at this table and report on the progress made possible by the Postal Accountability and Enhancement Act of 2006.
>
> Unfortunately, our business model remains broken, even with the positive pricing and product changes in the new law. With the diversion of messages and transactions to the Internet from the mail, we can no longer depend on printed volume growing at a rate sufficient to produce the revenue needed to cover the costs of an ever-expanding delivery network.[43]

Recently, this argument has been reiterated by the USPS's chief financial officer, Joseph Corbett, who said the USPS's "business model, quite frankly, is broken. It doesn't work for a declining-volume scenario."[44]

The argument that the USPS's business model is "broken" and cannot cover its operating costs without being allowed to enter nonpostal lines of business appears to rest on a fundamental assumption: that over the long run the USPS's operating costs will continue to outstrip its operating revenues in perpetuity;[45] and that this lag of revenue growth behind cost growth is the result of declining mail volumes (and the resultant revenues).[46] Hence, the need for the USPS to reap revenues by offering new nonpostal services.

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[42] Statement of John Potter, Postmaster General, U.S. Postal Service, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *The U.S. Postal Service in Crisis*, pp. 9-10. See also Statement of Robert F. Bernstock, President, Shipping and Mailing Services, U.S. Postal Service, in U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, *More Than Stamps: Adapting the Postal Service to a Changing World*.

[43] Statement of John E. Potter, Postmaster General, U.S. Postal Service, in U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, *The U.S. Postal Service: 101*, hearing, 110th Congress, 1st sess., April 17, 2007, p. 14.

[44] Ed O'Keefe, "USPS Loses $3.8 Billion for Year as Volume Falls," *Washington Post*, November 17, 2009, p. A29.

[45] In August 2009, the USPS said that were it not for the PAEA's "oppressive" Retiree Health Benefits Funding payment schedule, it would not have run large deficits during the recent economic slowdown. Statement of John Potter, Postmaster General, U.S. Postal Service, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *The U.S. Postal Service in Crisis*, hearing, 111th Congress, 1st sess., August 6, 2009, pp. 10-11.

[46] The USPS said that it is predicting further mail volume declines of 10 to 15 billion mail pieces in FY2010. However, (continued...)

As Congress further considers the USPS's request for broader authorities to provide nonpostal services, it may wish to investigate these fundamental assumptions regarding postal economics. Section 710 of the PAEA tasks the GAO with producing a report on the viability of the USPS's business model. In November 2009, the USPS released its own report on this topic and suggested that the GAO will deliver its report in spring 2010.[47]

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the USPS did not show how it calculated this figure. U.S. Postal Service, "Form 10-K," November 16, 2009, pp. 6-7, at http://www.usps.com/financials/_pdf/FY_2009_10K_Report_Final.pdf.

[47] U.S. Postal Service, *Assessment of U.S. Postal Service Business Model* (Washington: USPS, November 2009), at http://www.usps.com/postallaw/futurebusinessmodel.htm.