

A REVIEW OF POSTAL LEGISLATIVE PROPOSALS WITH COMMENTS

The day's news has been filled with reports of the ongoing contest among and between the House, Senate, and White House over the nation's continuing economic challenges. As if that were not bad enough, those within the mailing industry are witnessing a legislative food-fight of their own as House and Senate postal leaders jockey for position with bills to address some of the challenges that threaten to imperil the viability of the nation's postal system.

In many ways, the show being played on the postal legislative stage is a microcosm of the main event occurring within Congress on a much grander stage. There are those who seem to be striving to reform the postal system more smoothly around the edges, and there are others who seem intent on bringing about more encompassing legislative change.

At present, there are four bills that have been introduced within the postal legislative arena. They include:

- *USPS Pension Obligation Recalculation and Restoration Act of 2011* introduced by Rep. Stephen Lynch (D-MA),
- *Postal Service Improvements Act of 2011* introduced by Sen. Susan Collins (R-ME),
- *Postal Operations Sustainment and Transformation Act of 2011* introduced by Sen. Tom Carper (D-DE), and
- *Postal Reform Act of 2011* introduced by Rep. Darrell Issa (R-CA).

The bills have some things in common, and many they do not. Each reflects the ideological and philosophical predisposition of its sponsor. Each reflects its sponsor's belief as to what's needed to ensure the continuance of a self-supporting universal mail delivery system.

The following is a summary of some of the key facets of these bills. Please keep in mind as you read this that there is far more detail to each measure than what is being reported here, and it is strongly recommended that you read each bill in its entirety to fully grasp the scope of its intent and direction.

USPS Pension Obligation Recalculation and Restoration Act of 2011 (Rep. Stephen Lynch)

If this bill were enacted,

- The Office of Personnel Management (OPM) would be directed within six months to recalculate, using an updated methodology, Postal Service's past, present and future Civil Service Retirement System (CSRS) pension obligations for those employees who served as both federal workers prior to 1971 and postal employees post-1971.
- If the recalculation determined that the USPS had paid more towards its employees' CSRS obligations than is required by law, then the Postal Service would be directed to transfer any such surplus to cover its Postal Service Retiree Health Benefits fund obligations.
- The bill also would direct that OPM repay any USPS surplus payments in its Federal Employment Retirement System (FERS) accounts to the USPS to pay any retirement health-related benefits liabilities and the retirement of postal debt.

Postal Service Improvements Act of 2011 (Sen. Susan Collins)

If enacted, this bill would:

- Direct OPM to use its existing authority to change its methodology for calculating USPS' payment allocation into the CSRS pension fund, consistent with the PRC report.
- Allow the Postal Service to transfer any amounts overpaid into the CSRS fund immediately to cover its Retirement Health Benefits Fund obligation.
- If RHBF were already fully funded, the USPS could apply any excess CSRS contributions to cover either its worker's compensation obligations or pay down any postal debt.
- Give OPM the authority to change its methodology for calculating USPS' payment into the FERS fund, and allow OPM to transfer any CSRS overpayments to RHBF, the Postal Service's workers' compensation fund, or pay down postal debt.
- Require the USPS and PRC to collaborate to identify ways to increase USPS' use of negotiated service agreements for market dominant products.
- Require the any contract arbitrator to consider the USPS's financial health when rendering decisions on labor employment contract agreements.
- Require the Postmaster General to submit to Congress a comprehensive strategic plan for guiding area and district office restructuring decisions.
- Require a report to Congress in 2012 on USPS' progress in implementing any restructuring plan.
- Require the USPS to develop a plan, in consultation with the Postal Regulatory Commission (PRC), to increase the co-location of post offices at retail facilities to enable USPS to offer its products and services at that location. Such plans must include:
 - Consideration of the impact of any co-location decisions on small communities and rural areas before taking actions to co-locate post offices.
 - Measures to ensure that service continues in small communities and rural areas after any actions to co-locate.
 - USPS consideration of community input before making decisions about co-location.
 - Ensurances that the quality of products and services would be maintained.
- Require the PRC to issue an annual report on the fiscal health of the U.S. mailing industry.
- Allow the PRC to seek assistance from USPS and any other federal agency involved in tracking industry sectors (to allow the PRC to leverage existing reports on the mailing industry).
- Require the USPS to publish in the Federal Register any significant changes to mailing requirements, which the PRC does not review, at least 30 days prior to a rule change.
- Require the USPS to solicit comments on any proposed rule change and consider any financial impact.
- Require the respond to comments and provide an analysis of the financial impact.
- Directs the Postmaster General and PRC Chair to establish Competition Advocates at their respective organizations, responsible for challenging barriers to and promoting competition in the procurement of goods and services.
- Competition Advocate must prepare an annual report about current and needed initiatives to increase competition, as well as remaining barriers to competition. The report must be submitted to the PMG, BOG, PRC, and Congress
- Require the PMG and PRC Chair to establish a policy reaffirming that the senior procurement executive is ultimately accountable for all contracting decisions and actions.

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- Require the PMG and PRC Chair to post any delegations of authority outside the functional contracting unit on USPS's website.
- Require the PRC to post all noncompetitive purchase requests and USPS to post noncompetitive purchase requests above \$250,000 on their websites.
- Permit the PMG or PRC Chair to waive, in writing, public disclosure of a justification and approval document if its disclosure would risk placing the Postal Service at a competitive disadvantage relative to its private sector competitors
- Require the ethics official at USPS and PRC to review any ethical issues the Contracting Office of their respective organizations identify prior to the award of any contract
- Require the PMG and PRC Chair to establish policies that limiting contracting officers from entering into a postal contract with any party with whom the contracting officer has a personal or business relationship, as defined in the Standards of Ethical Conduct for Employees of the Executive Branch.
- Allow the PMG and PRC Chair to void any contract and recover amounts expended under the contract in any cases where there is a final conviction of bribery, conflict of interest.
- Convert federal and postal employees on workers' compensation to retirement upon attainment of retirement age if workers' compensation benefits exceed retirement benefits.

Postal Operations Sustainment and Transformation Act of 2011 (Sen. Tom Carper)

If enacted, this bill would:

- Direct the Office of Personnel Management to redetermine annually any postal surplus or liability regarding USPS payments to the Civil Service Retirement Disability Fund between the period of 2010-2043.
- Determine the period of creditable service no attributable to civilian employment within the usps calculated on the basis of "average pay."
- Transfer any surplus (or pay on any liability) to the Postal Service Retirement Health Benefits Fund.
- Transfer any surplus above that necessary to cover retirement health benefits liabilities to the Employees' Compensation Fund.
- Permit the USPS Board of Governors to determine the amount of funds to be redirected.
- Determine any surplus or liability regarding USPS payments to FERS and permit the Board to redirect any surplus to either the CSRDF or ECF, or require the USPS to make good any liability.
- Set forth requirements for the recalculation of any liability or surplus.
- Permit the USPS flexibility with the closure or consolidation of facilities provided it maintains the provision of effective and regular postal services to rural areas, communities, and small towns.
- Direct the USPS to develop a plan for the expansion of retail alternatives to post offices.
- Require the USPS to submit its plans to the postal authorizing committees in Congress.
- Require the USPS to establish standards for market-dominant products that guarantee Postal Service customers a degree of access to postal services consistent with the public need.
- Enable the USPS to reduce the frequency of mail delivery service.
- Permit the USPS to deliver intoxicants.
- Require the PRC to expedite consideration of market-dominant product transfers to the competitive category.
- Permit the USPS to provide services that utilize the processing, transportation, delivery, retail network, or technology of the USPS in a manner that is consistent with the public interest and that ensures fair competition.

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- Direct contract arbitrators to take account of the USPS' financial conditions and operating flexibilities and constraints in determining arbitrated outcomes.
- Permit the Board of Governors to its delegate authorities to the PMG.

Postal Reform Act of 2011 (Rep. Darrell Issa)

If enacted this bill would:

- Establish a Commission on Postal Reorganization (CPR) consisting of five members appointed by the President from among individuals recommended by the Speaker of the House of Representatives, the majority leader of the Senate, the minority leader of the House, the minority leader of the Senate, and the Comptroller General. Each will be entitled to recommend one nominee. No more than three members can be from the same political party. Members are appointed for the life of the Commission.
- Stipulate that no one serving on the Commission can be or have been an employee of the USPS, the Postal Regulatory Commission, a postal labor organization. In the case of former employees, no nominee can have held such a position during the previous three years.
- Direct that the chairman of the Commission shall be designated by the President, and has the power to employ a director and staff. The director also may contract with experts and consultants. Not more than one-third of those employed as staff may be individuals on detail from the USPS or PRC. No one can be detailed to the Commission if that person has participated in any activity associated with closing or consolidating a postal facility.
- Establish that the Commission will be responsible for issuing annual financial statements and establishing and maintaining controls over financial reporting.
- Require within 120 days, the USPS, in consultation with the PRC, to develop and submit to CPR a plan on the closure or consolidation of postal facilities in sufficient number to reduce total annual postal operations attributable costs by one billion dollars. All consolidations and/or closures would be completed within two years. Procedures would be put in place to verify savings and account for any changes to processing, transportation, delivery, or other postal operations.
- Require within 300 days, the USPS, in conjunction with the OIG, to develop and submit to CPR a plan to actualize the plan envisioned above.
- Require similar plans to be developed using the same sort of procedures for the closing or consolidating of area and district offices.
- Direct the Commission to transmit these plans to Congress and publish the changes in the Federal Register along with all relevant explanations for the plans.
- Direct the Commission to conduct at least five public hearings conducted in areas chosen to reflect a broadly representative range of needs and interests. All hearings will be concluded within 60 days. A summary of the hearings will be transmitted to Congress and published in the Federal Register.
- Stipulate that Commission recommendations will be final with the concurrence of at least four members of the Commission.
- Make the Postal Service responsible for implementing the final Commission closing/consolidation plan within two years.
- Stipulate that the plan would not be implemented if disapproved by a Joint Resolution of Congress. Procedures would be set forth governing congressional consideration of any joint resolution.
- Stipulate that final approved plans would not be appealable.
- Permit the USPS to reduce days of delivery to five days per week.
- Require the USPS to provide "effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. Postal patrons must have "ready access to essential postal services."

- Grant the PRC the right to review, within 60 days, any determination to close or consolidate a post office. There would be no right for PRC review if the proposed facility for closure is within two miles of another post office or contract facility.
- Authorize the establishment of the Postal Service Financial Responsibility and Management Assistance Authority ("Authority"). Its purposes would be to assist the USPS any time it defaults on any obligation owed the Treasury to:
 - restructure its organization and workforce to bring expenses in line with revenue and generate sufficient funds for capital investment and debt repayment;
 - meet all fiscal obligations to the U.S. Treasury;
 - ensure appropriate and efficient delivery of postal services;
 - provide the USPS with a temporary increase in borrowing authority;
 - ensure the long-term financial, fiscal, and economic vitality and operational efficiency of the USPS.
- Stipulate that during any such "control" period, the Authority would assume all powers of the Board of Governors (including those powers reserved to the Governors without the PMG and the Deputy).
- Stipulate that during any control period, the Board would act only as advisors to the Authority.
- Stipulate that all Level-Two postal executives would serve at the pleasure of the Authority and could not receive total compensation greater than level I of the Executive Schedule (no bonuses or awards). Subsequent pay increases would be limited by inflation as measured by CPI-U.
- Stipulate that a control period would end only after certification by the Secretary of the Treasury and OPM that (1) the USPS lived within its means for at least two years, (2) balanced budgets have been developed for the next three years, (3) plans have been made to repay any supplementary debt, (4) the USPS will properly fund postal pensions and retirement health benefits in accordance with law.
- State that the Authority would consist of five persons and shall serve for non-concurrent three-year terms. They shall serve without pay in the "public interest," and have knowledge and expertise in finance, management, organization, and operation of businesses having more than 500 employees. No member of the Authority can come from parties with business or financial interests of a postal nature, nor can any member have served for any previous five years as an officer, employee, or contractor with the USPS, the PRC, or any postal labor organization.
- Allow the Authority to employ a paid Executive Director and staff. Those so employed will not be considered civil service employees.
- Empower the Authority to:
 - require the renegotiation of an existing collective bargaining agreement to achieve specific economic savings and workforce flexibility goals;
 - reject, modify, or terminate one or more terms or conditions of an existing collective bargaining agreement if
 - it is reasonable and necessary for the Postal Service to be a financially viable provider of universal postal service to the Nation; and
 - is designed to achieve the specific economic savings or workforce flexibility goals.
- Stipulate that decisions by the Authority are appealable to the U.S. Court of Appeals for the District of Columbia.
- Stipulate that while in a "control period":
 - The PMG must develop and submit to the Authority a financial plan and budget covering all expenditures, including capital, payments on debt, and cash flow and liquidity forecasts. Expenditures cannot exceed revenue. The plans must be sufficient to ensure the USPS makes continuous, substantial progress towards long-term fiscal solvency and either lower debt or create surplus.

- During the "control period," the USPS would be allowed a temporary increase of \$10 billion in its supplemental borrowing authority.
- Make the Authority responsible for reviewing and granting any final approval or rejection to all such plans. If rejected, all plans would have to be revised sufficiently to win Authority approval.
- Require that upon approval, the PMG then would be required to submit the plan to OMB.
- Require the Authority to submit its own report to Congress.

This bill further sets out the Authority's responsibilities, which, in essence, would subsume all authority to direct and operate the Postal Service, including:

- modifying the determination of pay comparability, set forth new rules regarding collective bargaining, mediation, and binding arbitration (which would culminate, in the absence of agreement, in a last best offer arbitration);
- requiring worker compensation recipients to convert to retirement status upon attaining retirement-eligible age;
- requiring all mail products and services to pay rates sufficient to cover attributable costs and make a reasonable contribution to overhead recovery;
- retaining a CPI-based cap for market dominant services (with exceptions noted below);
- requiring products or services with rates below 90% of attributable costs to pay that rise by at least five percent above annual CPI-related increases until a level of sufficiency is reached;
- requiring nonprofit rates to rise by an additional five percent above CPI until the differential between regular Standard Mail institutional cost coverage and nonprofit Standard Mail institutional cost coverage differs by no more than 10% (in lieu of the current 40% differential);
- eliminating the preferred rate to national and state political parties;
- streamlining review of qualifying agreements for competitive products;
- enabling the USPS to increase net revenues through specific nonpostal products and services expressly authorized (advertising in facilities and on vehicles, services provided to State governments; and
- permitting the implementation of procedures for ensuring competitive and accountable contracting practices.

SOME THOUGHTS

What follows is nothing more than speculation and opinion. The thoughts expressed here do not reflect the official views or opinions of PostCom. They are offered, however, to help place some of what is going on regarding the postal legislative debate within some comprehensible context.

ON THE LIKELIHOOD OF A NEW POSTAL REFORM LAW. The first question most people within the postal community ask when they learn of the bills that are afoot is which, if any, may soon be enacted into law. Given the divergence of views evident in the four bills noted above, and given the level of acrimony that has marked recent congressional discussions regarding the nation's economy, budget, and deficit, it would be safe to say that none of the measures is likely to find its way to enactment any time this year.

There reportedly is an effort underway to see if Senators Carper and Collins can agree on common measure. The chairman of the homeland security committee, Sen. Joseph Lieberman (D-CT) is encouraging Carper and Collins to seek common ground. If a mutually acceptable legislative proposal can be crafted, Sen Lieberman reportedly is willing to ask Senate Majority Leader Harry Reid for the necessary floor time to get the compromise measure considered.

Senatorial floor consideration, however, is one thing; enactment is quite another. There is some notable Republican opposition to thrust of the Carper-Collins approach to reform. Sen. Tom Coburn (R-OK) reportedly doesn't believe that either the Carper or Collins measure goes far enough. It would be hard to imagine that Coburn would find even a melded version of Carper-Collins to his liking. Word has it that the Senator would prefer something similar to the Issa bill. When thinking of legislation that must wind its way through the Senate, it's important to keep in mind that it takes only one Senator to bring any bill to a screeching halt.

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A Carper-Collins bill or even the Lynch bill have little chance of being approved by the House. The bill introduced by Darrell Issa (and the tweets from Rep. Dennis Ross) are evidence enough of the considerably different opinion on the form a postal measure should take.

The bill advanced by House government reform committee chairman Darrell Issa is bold and unique. Issa will not take lightly any effort by the Postal Service to renege on any of its payment obligations to the Treasury. In fact, it would be fair to that the Issa bill is a warning to the Postmaster General and the postal Governors that there would be hell to pay if any USPS payment is not made at the end of this fiscal year. In essence, the thrust of the Issa measure would be to place the Postal Service into receivership in the event of any default. Whether such a sentiment is widely held in the House (let alone the Senate) is another matter, so the chances of the Issa bill finding its way to the President's desk this year (or next) are nonexistent.

THE LOOMING ISSUE OF 2012. Exactly what's in play here? Sure, it would seem that Chairman Issa is genuinely of the mind that putting the Postal Service into receivership is the most expeditious way to bring about significant postal structural and organizational reforms. Receivership would vitiate (if not outright end) all USPS contracts with labor. It would neuter the USPS Board of Governors. It would limit postal pay and benefits. It would expedite the closing and consolidating of postal facilities. It would require all postal rates to be fully compensatory. It would virtually hand over to a receiver (i.e., the "Authority") responsibility for running the Postal Service.

Is that really the end game? Perhaps. And perhaps there's more.

Washington eyes clearly are set on the 2012 congressional and presidential elections. Right now, Republicans control the House. Some are betting that after the 2012 election the GOP also will control the Senate. If Republicans manage to take over congressional control, undoubtedly it will be viewed by the GOP as a mandate to get tough on government waste and spending and establish some tighter fiscal control. That would seem to enhance the chances of an Issa-like bill making it to the President's desk.

Then, of course, there's the question of who will be sitting at the President's desk. Mr. Obama is hoping it will be him. Republican leaders clearly hope it will be one of their own. If a Republican were to win the White House, and if an Issa-like measure were to win congressional approval, few would doubt the President would sign it.

Until the 2012 elections are over, there seems to be no reason for the GOP to want to do anything that could make Mr. Obama look like the nation's postal savior. Rather, it would seem there would be more delight in watching an Executive Branch agency behave like a business going under. That would give Republicans' call for new presidential leadership a boost.

Postal labor clearly has no use for the Issa measure, and postal labor predominantly votes Democrat. The President knows this, and he will be in no mood to brook any break with postal labor. A strong grassroots postal labor effort to get out the vote means the kind of boots on the ground that Mr. Obama very much needs to win re-election.

But what about after the election? What if the GOP takes Congress but Mr. Obama wins the Presidency? What will he do then?

Presidents who manage to win two terms in office are not able to run again. Once re-elected, their minds usually turn more toward their legacies and how history will judge them as a national leader. It would be hard to imagine any president winning lauds for leadership if he simply allowed something as significant to the nation as the Postal Service to go into default. Rather, the eyes of history and the nation would be intensely focused on the quality and manner of the president's leadership, and the incumbent will be pressed hard to find some way to accommodate congressional demands. If placing the Postal Service into receivership is deemed the most expedient political path to preserving a viable, self-supporting postal infrastructure, then postal labor could find itself being tossed under the bus. And there should be no doubt in mailers' minds that labor wouldn't be under there alone.

Receivership would mean above inflation rate increases at least for those whose mail rates are "under water," that is, whose rates that are insufficient to recover attributable costs, let alone make a reasonable contribution to the recovery of postal overhead. At a minimum, that could mean hard times and thinner wallets for periodical publishers, some mail order catalog merchants, and nonprofit rate mailers. The demands will be many that will be made on those who rely on a postal steward desperately in need of fiscal relief.

HOW DO YOU SPELL RELIEF? Even if a new law were enacted, there's little chance USPS fiscal relief would be immediate. The Issa bill, for instance, provides for at least two years before the Postal Service actually is expected to shut down facilities to achieve appreciable postal operational savings. In the absence of significant mail volume and revenue growth, USPS balance sheets would bleed more red ink. If the chopping away at labor and management compensation and getting ready to close facilities and reduce days of delivery service are insufficient to turn the red ink black, then the only way left to spell relief would be e-x-i-g-e-n-c-y, and that would mean greater than inflation postal rate increases for just about everyone.

WHAT ABOUT THE CPI CAP? While the Issa measure calls for retention of an inflation-based cap on market-dominant postal prices, it would be hard to imagine a receiver not vitiating the cap if it were the only other way to set postal finances straight. The idea

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of rates greater than CPI gives mailers the willies. Postal rates going up greater than inflation will lessen tremendously the value and utility of doing business by mail. For some, it would mean businesses coming to an end. For the Postal Service, it would mean a further exacerbation of an already precarious fiscal position. When volume goes, so does revenue, the current trickle of business going out of the mail could easily turn into a torrent.

IS RECEIVERSHIP THE ONLY PROBLEM? No, it may not be. Consider for a moment the postal Governors. It is reasonable to interpret the rules that would govern the Postal Service while it's in the hands of its Authority as an indictment and criticism of the leadership the Governors have provided the Postal Service. How can nine presidentially-appointed luminaries ostensibly selected for their business and administrative acumen allow an institution as important to the nation's economic infrastructure as the Postal Service to get into the mess it's in today? How could it be that for the past decade the Governors have done nothing to get management to stem the ebbing tide of postal volume and revenue? How could they contenance that baby steps alone would be sufficient to address the many challenges the Postal Service faces? Why has there not been a steady beating of postal gubernatorial feet to 535 congressional offices to get legislators to understand how they themselves deserve a share of the fault for the Postal Service's dilemma?

Okay, forget all that for now. For the time being, the Governors still have to face the prospect of public criticism and congressional ire if they make good on the threat not to make this year's FEHB or FERS payments. The result for doing so may mean being told to sit in the corner like naughty little children while someone else takes over responsibility for shepherding the nation's postal system. Given the pride that comes with carrying the title "The Honorable, " such a prospect would seem most unsavory.

So what are the options if the Governors see things differently than they did a week ago? Can they nullify the contract that's just been signed with the APWU? No, they can't. Can they take an even harder line as they deal with their remaining unions' contracts? That seems unlikely. Will they marshal the courage to boldly move to close and consolidate as many facilities as possibly can be deemed not essential to the provision of an acceptable level of universal service? Well, that remains to be seen.

So what else is there? Unfortunately, they may find the dictionary that spells "relief" the same way a receiver would. And that would mean ordering a round of postal rate hikes that exceed the inflation-based cap and rectifying immediately the problem of those under water.

Of course, while doing so may seem politically expedient, the ultimate result could be an economic disaster. Many who have used mail as a medium for business communication and commerce would be beating feet out the door. The flight to electronic alternatives, the calls for monopoly abolition and the call for the creation of competitive, alternative mail delivery will only make the nation's postal challenges that much greater. And that takes no measure whatever of the postal-related businesses that would close, the people who would be unemployed, the tax revenues lost, and the worsening of the nation's fiscal state at every level of government.

WHAT'S A PERSON TO DO? If the best happens, everyone involved in dealing with this dilemma will grow up, take full responsibility for all their actions, understand that in a time of crisis cool heads and shared sacrifice may be the order of the day, and get on with the job of solidifying and strengthening the value and utility of the nation's mail system. And if that doesn't happen? Well . . . word has it that the weather's nice in Liechtenstein this time of year.