

**Calendar No. 296**

112th Congress }  
2d Session }

SENATE

{ REPORT  
112-143

21ST CENTURY POSTAL SERVICE ACT OF  
2012

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 1789

together with

ADDITIONAL VIEWS

TO IMPROVE, SUSTAIN, AND TRANSFORM THE UNITED STATES  
POSTAL SERVICE



JANUARY 31, 2012.—Ordered to be printed

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### TO IMPROVE, SUSTAIN, AND TRANSFORM THE UNITED STATES POSTAL SERVICE

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Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

## R E P O R T

[To accompany S. 1789]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1789) to improve, sustain, and transform the United States Postal Service, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

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### I. PURPOSE AND SUMMARY

S. 1789, the 21st Century Postal Service Act of 2012, seeks to strengthen the United States Postal Service (Postal Service or USPS) and preserve its unique role in the nation's economy and infrastructure. The dramatic rise of electronic communication and the recent economic downturn have combined to imperil the viability of the Postal Service as it currently exists. S. 1789 is intended to put the Postal Service on a path toward sustainability. The bill would lessen some of the immediate financial pressure on the Postal Service, as well as establish a framework to address some of the long-term challenges the Postal Service confronts.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

The federal government's provision of mail service dates to the early days of the country's history. By the mid-20th century, the U.S. Post Office Department was an extensive federal agency staffed by career federal civil servants. Pressure mounted, however, to transform the nation's mail service into a leaner and more self-sufficient entity.

The modern-day Postal Service was created through the enactment of the Postal Reorganization Act of 1970.<sup>1</sup> That legislation, while retaining the Postal Service as a federal entity, sought to transition the Service to a private-sector model. Whereas the Post Office Department received federal subsidies, the new Postal Service would be fully funded through the rates charged for the products and services it offered to its customers. Postal employees would no longer be part of the regular federal civil service, yet substantial federal involvement and oversight would remain. For instance, tens of thousands of postal employees would remain in the existing federal health and pension programs. Also, the Postal Service would remain subject to potential statutory mandates governing its operations, such as requirements for universal service and for six-day delivery. Additionally, postal rate increases would be approved by the Postal Regulatory Commission, an independent regulatory agency, and rates for monopoly products would be subject to statutory rates caps in order to ensure that mail service remains affordable.

Yet by the early 21st century, the structure and service model established in the 1970 Act had become seriously frayed. Congress periodically intervened to provide relief and reforms, including in the costly and complex area of employee retirement benefits. Those measures, however, could not keep pace with the collapse of the traditional demand for mail services, and now the Postal Service once again faces serious challenges. As the Government Accountability Office (GAO) stated in September 2011, "Little time remains to prevent USPS—the largest federal civilian employer—from insolvency. The stark reality is that USPS's business model is broken . . . USPS cannot continue providing services at current levels without dramatic changes in its cost structure."<sup>2</sup>

The Postal Service plays a critical role in the U.S. economy. As of the end of fiscal year 2011, the Postal Service employed just over 557,000 people<sup>3</sup> and, in the course of the year, delivered nearly 168 billion pieces of mail<sup>4</sup> to more than 150 million households and businesses.<sup>5</sup> It operates at the center of an over \$1 trillion mailing industry that employs nearly 8.7 million people in both the public and private sectors.<sup>6</sup> The Postal Service is vital, then, not only to

<sup>1</sup> P.L. 91-375, *codified at* 39 U.S.C. §§ 101 *et seq.*

<sup>2</sup> *U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown: Hearing Before the Senate Committee on Homeland Security and Governmental Affairs*, 112th Cong. (Sept. 6, 2011) (statement of Phillip Herr, Director for Physical Infrastructure Issues, Government Accountability Office, at p.1) [hereinafter Herr Testimony at HSGAC Hearing Sept. 6, 2011].

<sup>3</sup> U.S. Postal Service Form 10-K for fiscal year 2011 at p. 23, *available at* <http://about.usps.com/who-we-are/financials/10k-reports/fy2011.pdf> [hereinafter USPS FY2011 10-K].

<sup>4</sup> *See* USPS FY2011 10-K at p.18.

<sup>5</sup> Patrick R. Donahoe, Postmaster General and CEO, U.S. Postal Service, Speech at the National Press Club, (November 21, 2011), at p.1 (Nov. 21, 2011) *available at* [http://about.usps.com/news/speeches/2011/pr11\\_pmg1121.pdf](http://about.usps.com/news/speeches/2011/pr11_pmg1121.pdf) [hereinafter Donahoe NPC Speech].

<sup>6</sup> Donahoe NPC Speech, at p.1.

those who use it directly, but also as a result of the ripple effects its operations have throughout the economy.

The Postal Service faces a dilemma: even as it stretches to deliver to more addresses, the overall volume of mail it handles is in decline. In 2011, the annual number of addresses to which the Postal Service delivered increased by more than 636,000, but the 168 billion pieces of mail it handled represented a 1.7 percent decline from fiscal year 2010. This decline followed decreases in mail volume of 3.3 percent in fiscal year 2010, 12.7 percent in fiscal year 2009, 4.8 percent in fiscal year 2008, and 0.4 percent in fiscal year 2007.<sup>7</sup> In total, mail volume in fiscal year 2011 was down 21 percent since its peak in fiscal year 2006 at more than 213 billion pieces.<sup>8</sup>

The Postal Service generated a total of about \$65.7 billion in revenue in fiscal year 2011.<sup>9</sup> Expenses, however, totaled about \$70.6 billion, leading to nearly \$5 billion in losses for the year.<sup>10</sup> These losses followed a record \$8.5 billion in losses in fiscal year 2010.<sup>11</sup> The fiscal year 2011 losses would have more than doubled—exceeding \$10 billion for the year—had Congress not delayed the due date for a statutorily-required retiree health pre-funding payment originally due on September 30, 2011 until the next fiscal year.<sup>12</sup> Postmaster General Patrick R. Donahoe has repeatedly argued that, absent significant changes, the Postal Service will have completely exhausted its cash and borrowing authority at some point during fiscal year 2012, putting ongoing operations in jeopardy.<sup>13</sup>

In a November 21, 2011 speech at the National Press Club, Mr. Donahoe blamed statutory restrictions and obligations placed on the Postal Service for the difficult financial situation it faces despite aggressive actions to cut costs and grow new lines of business. He said at one point: “We are in a deep financial crisis today because we have a business model that is tied to the past. We are expected to operate like a business, but we do not have the flexibility to do so.”<sup>14</sup>

Throughout his National Press Club speech, Mr. Donahoe highlighted actions he argues that private delivery companies have taken to cut costs, but that the Postal Service is prohibited from doing, such as adjusting delivery frequency. He also cited the Postal Service’s costly pension and retiree health obligations. He said that the Postal Service has been required to pay \$11.4 billion more than it owes into the Federal Employee Retirement System (FERS) over the past 21 years.<sup>15</sup> He also said that the Postal Service’s \$6.6 billion in total losses during fiscal years 2008 and 2009—the two years which saw the most dramatic declines in mail volume fol-

<sup>7</sup>Data is from USPS Form 10-K for fiscal years 2007, 2008, 2009, 2010, 2011, available at <http://about.usps.com/who-we-are/financials>.

<sup>8</sup>USPS FY2011 10-K at p.15.

<sup>9</sup>USPS FY2011 10-K at p.15.

<sup>10</sup>USPS FY2011 10-K at p.15.

<sup>11</sup>U.S. Postal Service Form 10-K for fiscal year 2010 at p. 12, available at <http://about.usps.com/who-we-are/financials/10k-reports/fy2010.pdf>.

<sup>12</sup>P.L. 112-33, § 124.

<sup>13</sup>See, e.g., *U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown: Hearing Before the Senate Committee on Homeland Security and Governmental Affairs*, 112th Cong. (Sept. 6, 2011)(oral testimony of Patrick R. Donahoe, Postmaster General and CEO, U.S. Postal Service) available at <http://www.hsgac.senate.gov/hearings/us-postal-service-in-crisis-proposals-to-prevent-a-postal-shutdown> [hereinafter Donahoe Testimony at HSGAC Hearing Sept. 6, 2011].

<sup>14</sup>Donahoe NPC Speech at p.4.

<sup>15</sup>Donahoe NPC Speech at p.5.

lowing the recent economic slowdown—were due to the \$7 billion in retiree health pre-funding payments paid out during that period.<sup>16</sup>

The committee held a hearing to consider these and other issues facing the Postal Service on September 6, 2011. Senators Lieberman, Collins, Carper, and Scott Brown then introduced this comprehensive Postal Service reform legislation on November 2, 2011—S. 1789, the 21st Century Postal Service Act. The legislation addresses many of the major financial and structural challenges confronting the Postal Service and works to put the Postal Service on a sustainable path, so that it will continue to provide mail service to all Americans, as it has done since the early days of the Republic.

#### DISCUSSION OF LEGISLATIVE ISSUES

##### *FERS overpayments*

USPS employees, like federal employees, participate in the Federal Employees Retirement System (FERS). Thus, the Postal Service is required to make the employer contributions for postal employees participating in FERS. Each year, the Office of Personnel Management (OPM) calculates the Postal Service's liability for these contributions under FERS. OPM has determined that the Postal Service currently has a surplus under the FERS program.<sup>17</sup> Beginning in fiscal year 2011, S. 1789 authorizes the Director of OPM to provide the Postal Service with a refund of any amount it has overpaid into FERS. The Postal Service would be required to use a portion of any refund it receives for fiscal years 2011, 2012 and 2013 to provide retirement incentives to employees. Postal Service officials have told the Committee that they anticipate that the expected FERS refund will give them more than enough cash to successfully encourage 100,000 postal employees to retire—potentially saving the Postal Service as much as \$8 billion per year or more. Any funds from the FERS surplus remaining after the implementation of a retirement incentive program could be used to fund Postal Service obligations related to pensions, retiree health, and workers' compensation.

##### *Retiree health pre-funding payments*

The Postal Service is under various statutory mandates concerning retirement health benefits for its current and former employees. While it is critical that the Postal Service behave responsibly with respect to its retirement obligations, this bill seeks to recalibrate these mandates in order to lessen their immediate burden while still ensuring that the Postal Service will contribute sufficiently to meet realistic estimates of future needs.

The Postal Accountability and Enhancement Act of 2006<sup>18</sup> required the Postal Service to make a series of ten payments beginning in fiscal year 2007 to pre-fund its future retiree health obligations. The amount of each payment is set in statute and ranges from \$5.4 billion to \$5.8 billion annually, although Congress de-

<sup>16</sup> Donahoe NPC Speech at p.5.

<sup>17</sup> Office of Personnel Management Office of Inspector General, *A Study of the Risks and Consequences of the USPS OIG's Proposals to Change USPS's Funding of Retiree Benefits*, at p.23 (Feb. 28, 2011).

<sup>18</sup> P.L. 109-435.

creased the size of the payment due in fiscal year 2009 from \$5.4 billion to \$1.4 billion in an effort to ease the financial strain on the Postal Service.<sup>19</sup>

Under current law the Postal Service is scheduled in fiscal year 2017 to begin paying down whatever retiree health obligations remain over a period of 40 years.<sup>20</sup>

As of the end of fiscal year 2011, the Postal Service has made \$21 billion in retiree health payments. These retiree health payments were in addition to the premium payments the Postal Service made each year on behalf of current retirees. According to data provided to the Committee by the Postal Service, those premium payments totaled \$1.7 billion in fiscal year 2007 and are projected to reach \$4 billion annually by fiscal year 2016.

The Committee recognizes that the statutorily mandated retiree health payment schedule has been difficult to meet due to the declining revenues of the Postal Service as a result of the electronic diversion of the mail and a major recession that significantly affected mail volume. At the same time, the Committee is aware that easing or eliminating the pre-funding obligation could one day either break promises made to retirees, or leave taxpayers with a significant financial obligation in the event that the Postal Service becomes unable to make the payments itself.

In order to provide the Postal Service with financial relief while maintaining its responsibility for the costs related to its employees, S. 1789 would make three major reforms to the Postal Service's current retiree health payment schedule and structure:

1. It would replace the existing payment schedule—the remaining statutory annual payments and the 40-year amortization schedule that will start in fiscal year 2017—with a new 40-year amortization schedule that would start in fiscal year 2012.

2. It would set the pre-funding goal underlying the new amortization schedule at 80 percent of the obligation (rather than the current 100 percent), in recognition of the fact that the Postal Service, if necessary, has additional assets it could draw upon to meet these obligations.

3. It would allow current retirees' premiums to be paid out of the health benefit fund in the Treasury in which the Postal Service's pre-funding payments have been deposited since fiscal year 2007. That fund—the Postal Service Retiree Health Benefit Fund—currently includes just over \$41 billion.

According to data provided to the committee by the Postal Service, the combination of these three provisions could cut the Postal Service's total retiree health payments by roughly half each year.

#### *Postal Service Health Plan*

The Postal Service has proposed to sponsor its own health care plan, rather than continue to participate in the Federal Employee Health Benefits program, as a way to reduce health care costs as well as reduce the amount of the retiree health benefits payments.<sup>21</sup> The Committee did not legislate such a change, but instead chose to leave the outcome up to the Postal Service and its recognized unions. The Committee chose to give the Postal Service

<sup>19</sup> P.L. 111-68, § 164.

<sup>20</sup> 5 U.S.C. § 8909a(d)(2)(B).

<sup>21</sup> Donahoe Testimony at HSGAC Hearing Sept. 6, 2011 at pp.12-13.

and its employees the flexibility necessary to use the collective bargaining process to potentially develop a set of changes to the health benefits offered to postal employees. No changes in health benefits would go into effect without the concurrence of the Postal Service and each of the unions. Depending on the details of any agreement, these negotiations could, according to information provided to the Committee by the Postal Service, lead to a reduction in the Postal Service's total retiree health obligation to less than \$3 billion annually.

*Binding arbitration in resolution of labor disputes*

Unlike most federal agencies and their employees, which are governed by government-wide civil service rules, the Postal Service generally sets pay and other terms and conditions of employment through a process of collective bargaining between postal management and postal unions. If the parties are unable to reach a timely agreement, the dispute must be resolved by binding arbitration.<sup>22</sup> Under statute, when an existing collective bargaining agreement approaches its expiration date, or when a party to the agreement proposes to modify or terminate it before its expiration date, the parties have an opportunity to reach agreement or to adopt a procedure for binding resolution on their own and then with the assistance of a mediator. If the parties still cannot reach agreement, the statute calls for conclusive and binding arbitration.<sup>23</sup>

The statutory process for binding arbitration of labor disputes is established in 39 U.S.C. 1207(c). The arbitration board will consist of three members, one appointed by the Postal Service, one by the union, and one by the other two members. The instructions to the board in current statute are as follows:

(2) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 45 days after its appointment.<sup>24</sup>

The Postal Service has requested a statutory amendment to specifically require that the arbitration board must consider the Postal Service's financial health when making a decision. Then-Postmaster General Potter explained this request in April 22, 2010 testimony in the following terms:

. . . Under existing law, arbitration is always a possibility. The financial health of the Postal Service and the affordability of postal products should be key considerations in any arbitration ruling. While some arbitrators have considered the fiscal health of the Postal Service, they are not required to take it into account. . . . We ask that legislation be adopted to require arbitrators to take

<sup>22</sup> 39 U.S.C. § 1207.

<sup>23</sup> If a situation arose where a postal union did not have an agreement with the Postal Service, the existing statute gives the parties an opportunity to reach an agreement through collective bargaining on their own and then with the assistance of a mediator. But if the parties fail to reach agreement within 180 days after the commencement of collective bargaining, the statute calls for conclusive and binding arbitration. See 39 U.S.C. § 1207(d).

<sup>24</sup> 39 U.S.C. § 1207(c)(2).



into account the Postal Service's financial condition before making any decision.<sup>25</sup>

Donohoe, the current Postmaster General, reiterated the Postal Service's support for such a provision in testimony on May 17, 2011.<sup>26</sup> GAO has also recommended such a change to statute: "If USPS and its unions go to arbitration, there is no statutory requirement for arbitrators to consider USPS's financial condition. We continue to favor such an arbitration requirement."<sup>27</sup>

The unions representing postal employees have expressed strong opposition to such a provision. For example, Cliff Guffey, president of the American Postal Workers Union, AFL-CIO, testified on May 17, 2011, "I must state our unalterable opposition to proposals to change the standard" for binding labor arbitration.<sup>28</sup> The previous year, Fredric V. Rolando, President of the National Association of Letter Carriers, AFL-CIO, explained on December 2, 2010 that since "the Postal Service has at least one appointed arbitrator on every arbitration board," if the Postal Service presents evidence on postal finances, "[t]here is no way for an arbitration board to avoid considering the finances of the Postal Service in their decisions . . ." In reality, Rolando testified, "at least one of the parties (union or management) has presented evidence and testimony on the financial condition of the Postal Service to every arbitration board that has been established," and arbitrators consider all of the evidence presented, whether as a matter of legal requirement or of professional practice. He testified that it would be unwarranted for legislation to give special status to the financial condition of the Postal Service or of any other "managerial objectives."<sup>29</sup>

The Committee decided that, at this period when the Postal Service faces such dire financial difficulties, arbitrators must consider the financial condition of the Postal Service, and S. 1789 should say so explicitly. However, the Committee was determined to include a balanced provision in S. 1789, making it clear that Congress does not believe the financial condition of the Postal Service, or any other objectives put forward by either the Postal Service or one of its unions, are the only factors that arbitrators must consider.

Accordingly, section 105 of the bill states that, in resolving a labor dispute by binding arbitration under 39 U.S.C. 1207(c)—

<sup>25</sup>*The Future of the U.S. Postal Service: Hearing Before the Subcomm. on Federal Financial Management of the Senate Committee on Homeland Security and Governmental Affairs*, 111th Cong. (Apr. 22, 2010) (Testimony of John E. Potter, Former Postmaster General, at p.9).

<sup>26</sup>*Addressing the U.S. Postal Service's Financial Crisis: Hearing Before the Subcomm. on Federal Financial Management, Government Information, Federal Services and International Security of the Senate Committee on Homeland Security and Governmental Affairs*, 112th Cong. (May 17, 2011) (Testimony of Patrick R. Donahoe, Postmaster General and CEO, U.S. Postal Service at p.8).

<sup>27</sup>*Finding Solutions to Challenges Facing the U.S. Postal Service: Hearing Before the Subcomm. on Federal Financial Management, Government Information, Federal Services and International Security of the Senate Committee on Homeland Security and Governmental Affairs*, 111th Cong. (Dec. 2, 2010) (Statement submitted by Phillip Herr, Director for Physical Infrastructure Issues, Government Accountability Office, at p.9).

<sup>28</sup>*Addressing the U.S. Postal Service's Financial Crisis: Hearing Before the Subcomm. on Federal Financial Management, Government Information, Federal Services and International Security of the Senate Committee on Homeland Security and Governmental Affairs*, 112th Cong. (May 17, 2011) (Testimony of Cliff Guffey, President of the American Postal Workers Union, at p.12).

<sup>29</sup>*Finding Solutions to Challenges Facing the U.S. Postal Service: Hearing Before the Subcomm. on Federal Financial Management of the Senate Committee on Homeland Security and Governmental Affairs*, 111th Cong. (Dec. 2, 2010) (Testimony by Frederic V. Rolando, President, National Association of Letter Carriers, at pp.10–11).

“the arbitration board shall consider such relevant factors as—

- (i) the financial condition of the Postal Service;
- (ii) the requirements relating to pay and compensation comparability under section 1003(a) [of title 39 of the U.S. Code]; and
- (iii) the policies of this title [39 of the U.S. Code].”

The second clause of this provision in the bill refers to the existing statutory requirement that it “be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy.” The third clause refers to title 39, which is the title of the U.S. Code governing all aspects of the Postal Service, including both its service responsibilities and its employment policies.

The Committee believes that all of the factors stated or referenced in section 105 of the bill will be relevant to labor disputes and should be considered by the arbitration boards resolving such disputes under 39 U.S.C. 1207(c). However, the Committee certainly does not intend to stack the deck in favor of management, and this provision would not do so. Witnesses indicated to the Committee that arbitration boards are already considering the financial condition of the Postal Service, and the Committee decided it is desirable to say so explicitly. The provision does not, however, say that financial condition *preempts* any other relevant factor considered by an arbitration board or is more important than any other factor. Additionally, the factors referred to in clauses (i), (ii), and (iii) are not exclusive or limiting. The Committee determined that those factors are inherently relevant and must be considered by an arbitration board, but section 105 also provides that the board is to consider any other factors that are relevant to the dispute.

#### *Mail processing facility closures*

In order to address the financial challenges it faces using authorities it possesses under current law, the Postal Service announced a proposal on September 15, 2011, to change the First-Class mail delivery standard. The proposed service change would lengthen the delivery window for some First-Class mail. The projected cost savings from this proposal would come largely from closing or consolidating the mail processing facilities that currently support shorter delivery times. According to the Postal Service, the proposed change would enable it to close or consolidate as many as 250 mail processing facilities around the country.<sup>30</sup> Despite having concerns about these changes, the Committee chose not to curtail or eliminate the Postal Service’s existing authority to modify service standards and, in the process, restructure its processing footprint. Nonetheless, the Committee is concerned that employees, customers, and representatives of communities that could be affected by the closure or consolidation of a mail processing facility may not have an opportunity to provide sufficient input before the Postal Service makes a final decision.

<sup>30</sup> Press Release, U.S. Postal Service, *Postal Service Faces New Reality*, at p.1 (Sept. 15, 2011), available at [http://about.usps.com/news/national-releases/2011/pr11\\_103.htm](http://about.usps.com/news/national-releases/2011/pr11_103.htm).

Going forward, S. 1789 would make the process used to consider processing facility closures or consolidations more transparent and would give interested parties a more meaningful role in the decision. Specifically, Section 201 of S. 1789 would mandate that the Postal Service provide at least 45 days advance notice before making a final decision to close or consolidate a facility; that it provide adequate opportunities for public comment; and that it conduct an area mail processing study that includes a plan to reduce the capacity of the postal facility rather than close it. Before finalizing a closure, the Postal Service would have to publish a written justification for the decision that responds to any public comments and demonstrates the Postal Service has considered potential undue burdens from the proposed closure. The Postal Service would also be required to make reasonable efforts to provide alternatives for those who would be affected by the closure of the processing facility.

The Committee chose not to freeze or overturn facility closure or consolidation procedures currently underway or to overturn decisions that have already been made.<sup>31</sup> At the same time, the Committee recognizes that these changes may be going forward under procedures that would not meet the standards set forth in the bill and which stakeholders and members of the Committee would find inadequate. For that reason, the bill requires additional review in cases where a processing facility has been studied for possible closure but no final determination has been made. In those cases, the Postal Service would need to consider the option of reducing the capacity of the facility rather than closing it—if it had not already done so—and to publish the results of that consideration as an amendment to the original area mail processing study. Nothing in the bill, however, would prohibit the Postal Service from ultimately deciding to close or consolidate a facility or require it to overturn a decision made before enactment to close or consolidate a facility.

### *Post Offices*

Recognizing that closing some underused post offices is likely unavoidable if the Postal Service is to become financially stable, the Committee has sought to improve the process for determining which offices will be shut.

GAO has previously recommended shrinking the Postal Service's retail network as part of an overall restructuring to restore financial viability.<sup>32</sup> The Postal Service is actively considering 728 retail facilities for closure, and has plans to close many more.<sup>33</sup> The Postal Service announced in July 2011 that it would conduct studies of approximately 3,700 post offices, retail annexes, stations, and branches nationwide for possible closure, and submitted its closure

<sup>31</sup>Subsequent to the Committee's consideration of S. 1789, the Postal Service, in response to concerns raised by the public and Members of Congress, announced that it would delay all pending closings or consolidations of mail processing facilities until May 15, 2012. Press Release, U.S. Postal Service, *Statement on Delay of Closing or Consolidation of Post Offices and Mail Processing Facilities*, at p.1 (Dec. 13, 2011) available at [http://about.usps.com/news/national-releases/2011/pr11\\_1213closings-v2.pdf](http://about.usps.com/news/national-releases/2011/pr11_1213closings-v2.pdf).

<sup>32</sup>Government Accountability Office (GAO), *U.S. Postal Service: Restructuring Urgently Needed to Achieve Financial Viability*, GAO-09-958T, at p.6 (Aug. 2009). *But see* GAO, *U.S. Postal Service: Actions Needed to Stave off Financial Insolvency*, GAO-11-926T, at p.15 (Sept. 2011)(noting some of the challenges, including public resistance, that may arise in trying to restructure USPS's retail network).

<sup>33</sup>Congressional Research Service (CRS), *The U.S. Postal Service: Common Questions About Post Office Closures*, R41950, at pp. 3-4 (Jan. 13, 2012).

plan to the Postal Regulatory Commission (PRC) for review.<sup>34</sup> Ultimately, the Postal Service seeks to reduce the total number of retail facilities from 32,000 currently, to fewer than 20,000 by 2015.<sup>35</sup> The Postal Service has estimated that it could potentially save \$1.5 billion annually by consolidating its retail network.<sup>36</sup>

Thus far, the PRC has expressed concerns about the plans. The Commission issued an advisory opinion on December 23, 2011 stating that the Postal Service's approach failed to provide adequate retail access in the event of a post office closure.<sup>37</sup> Meanwhile, Members of Congress and others have also raised concerns about the planned closings. In response, the Postal Service in December 2011 announced that it would delay the closing or consolidation of post offices and mail processing facilities until May 15, 2012.

Current law requires the Postal Service to consider several factors in determining whether to close a post office, such as the effect of the closing on the community, the effect on postal employees, whether the closing would undermine effective service for rural communities, and the amount of the projected savings.<sup>38</sup>

The Postal Service must notify the affected public of its intent to close or consolidate a particular post office and hold a 60-day comment period prior to the proposed date of such closure or consolidation.<sup>39</sup> The public may appeal the Postal Service's decision to the PRC within 30 days after USPS has made its determination to close such post office. The Commission then has 120 days to make a determination about whether proper procedures were followed during the closure process.

Section 204 of S. 1789 improves the current process for post office closings by providing the Postal Service with the necessary tools to right-size its retail network while also ensuring that postal customers receive adequate access to retail services. The bill allows the Postal Service to provide retail alternatives to dedicated post offices, but also puts in place safeguards against premature or inappropriate closures. These safeguards are particularly important for individuals in small towns and rural areas. S. 1789 requires the Postal Service to consider several options prior to closing a post office, such as consolidating two post offices within a reasonable distance, reducing the number of operating hours at a particular post office instead of a closure or consolidation, and permitting a contractor or rural carrier to provide retail services in the community served by the post office. S. 1789 also requires the Postal Service to establish certain retail service standards that take into account such factors as the proximity of retail postal services to customers, the age and disability status of individuals in the area, and the transportation challenges in the areas served. S. 1789 prohibits the Postal Service from closing any post offices (except for health and safety reasons) prior to establishing such retail service standards.

<sup>34</sup> Press Release, U.S. Postal Service, *Postal Service Takes Next Steps in Optimizing Retail Network*, at p.1 (July 26, 2011) available at [http://about.usps.com/news/national-releases/2011/pr11\\_089.htm](http://about.usps.com/news/national-releases/2011/pr11_089.htm).

<sup>35</sup> Herr Testimony at HSGAC Hearing Sept. 6, 2011 at p.14.

<sup>36</sup> Donahoe Testimony at HSGAC Hearing Sept. 6, 2011 at p.7.

<sup>37</sup> Postal Regulatory Commission, *Advisory Opinion on Retail Access Optimization Initiative*, Docket No. N2011-1, at p.1 (Dec. 23, 2011)[hereinafter PRC Retail Access Opinion].

<sup>38</sup> 39 U.S.C. § 404(d)(2)(A).

<sup>39</sup> 39 U.S.C. § 404(d)(1).

### *Conversion of door delivery points*

The mode of mail delivery plays an important role in the efficiency and cost of delivery operations. The primary modes of delivery points for the Postal Service are door, curbside, and centralized. Door delivery refers to delivering mail to slots or receptacles at a customer's door. The Postal Service provides curbside delivery to customers who have mailboxes at the curb and that mail carriers can service from their vehicles. Centralized delivery includes cluster boxes and other mail receptacles at one delivery point, as currently used in some suburban areas, apartment buildings and gated communities. According to a recent report by the Postal Service's Office of Inspector General, door delivery is the most expensive mode of delivery, costing the Postal Service as much as \$353 per delivery point, totaling \$12 billion annually.<sup>40</sup> The USPS IG also stated that converting existing door delivery to curbside delivery could save the Postal Service more than \$4.5 billion annually, and converting all delivery modes to centralized delivery could save the Postal Service an additional \$5.1 billion per year.<sup>41</sup> Curbside delivery is more cost effective because it allows the carrier to remain in the vehicle during delivery, allowing faster mail delivery and lessening the possibility of injury (such as stress and strain, falls, and dog bites).

S. 1789 attempts to improve the efficiency of mail delivery and reduce the Postal Service's costs by authorizing the conversion of door delivery points, where practicable. Section 205 of the bill authorizes the Postal Service, where feasible, to deliver to curbside, sidewalk,<sup>42</sup> or centralized mailboxes rather than to door delivery points no later than 2015. S. 1789 also provides for certain exceptions to the conversion to curbside, sidewalk, or centralized mailboxes, including physical hardship of a customer, weather conditions in a geographical area (such as snow), street parking in urban areas that obstructs access to curbside mailboxes, or "other exceptional circumstances."

### *Changes to mail delivery schedule*

Mail is currently delivered six days a week to most homes and businesses in the United States. Six-day-a-week delivery dates to the mid-19th century,<sup>43</sup> and as late as 1950, mail was even delivered twice a day or more in some areas.<sup>44</sup> Nonetheless, beginning in 1976, there have been a series of proposals to reduce mail delivery to five days a week as a means of reducing operating costs and

<sup>40</sup> U.S. Postal Service, Office of Inspector General, *Audit Report—Modes of Delivery*, DR-AR-11-006, at p.2 (2011) [hereinafter USPS IG Report].

<sup>41</sup> USPS IG Report, at p.2.

<sup>42</sup> A sidewalk mailbox is one where the delivery point is along a sidewalk adjacent to the street address, but not directly on the street, so that a letter carrier cannot reach the mailbox without exiting his or her vehicle.

<sup>43</sup> U.S. Postal Service, *Delivery: Monday through Saturday since 1863*, at p.1 (June 2009), available at <http://about.usps.com/who-we-are/postal-history/delivery-monday-through-saturday.pdf>; CRS, *The U.S. Postal Service and Six-Day Delivery: Issues for Congress*, R40626, at p.3, (June 9, 2009), [hereinafter CRS R40626]. Six-day mail delivery has never been universal, however. Home delivery to rural addresses did not begin until 1896, and even today, there are a small number of remote or sparsely settled communities that receive mail only five days, or even three days, per week.

<sup>44</sup> CRS R40626, at p.2; U.S. Postal Service, *Deliveries per Day*, at p.1 (June 2005), available at <http://about.usps.com/who-we-are/postal-history/deliveries-per-day.pdf>.

avoiding rate increases.<sup>45</sup> Most recently, President Obama proposed allowing the Postal Service to move to five-day delivery as part of the Administration’s deficit reduction package.<sup>46</sup> To date, however, Congress has rejected these proposals and, since at least 1983, has included language in annual appropriation bills intended to preserve six-day-per-week delivery service.<sup>47</sup>

Faced with steep declines in mail volume, an increase in the number of delivery addresses, and increasingly difficult financial circumstances, the Postal Service now asserts that it is essential to move to a five-day delivery schedule. The Postal Service has estimated that it will save a net of \$3.1 billion dollars annually (\$3.3 billion in cost savings less \$0.2 billion in lost revenue) by switching to five-day delivery—and argues that this is more than it can save through any other single operational change.<sup>48</sup> According to the Postal Service, these cost savings would result from removing certain direct costs of Saturday delivery, such as transportation and fuel costs, and through efficiencies that would be achieved by delivering the same volume of mail over five days rather than six.<sup>49</sup>

The PRC has taken issue with some of the Postal Service’s analysis. On March 30, 2010, the Postal Service submitted a request to the PRC for an advisory opinion on the Postal Service’s proposal to eliminate mail delivery on Saturdays. On March 24, 2011, the PRC issued its opinion, in which it concluded that the switch to five-day delivery, while saving money, would save considerably less than the Postal Service asserted. Specifically, the PRC concluded that the likely cost savings would be approximately \$2.3 billion annually (\$1 billion less than USPS’s estimate) and that lost revenue would be nearly \$0.6 billion (\$400 million greater than USPS’s estimate); in other words, the net savings, according to the PRC would be approximately \$1.7 billion per year, only about half of what was estimated by the Postal Service.<sup>50</sup> The PRC also raised concerns that the Postal Service had not adequately addressed how the shift to five-day service might disproportionately affect certain groups or geographic areas that are arguably more dependent on mail service, including rural areas, newspapers, mail-order pharmacies, and communities that offer vote-by-mail programs.<sup>51</sup> The Postal Service subsequently issued a report strongly disputing the PRC’s conclusions.<sup>52</sup>

GAO, in response to a Congressional request, conducted an independent analysis of the Postal Service’s cost savings estimate as well as the criticisms of the estimate. In a March 2011 report, GAO concluded that the Postal Service was likely to achieve “significant cost savings” by reducing delivery to five days, but noted that some

<sup>45</sup> CRS R40626, at pp.4–7, 14–20.

<sup>46</sup> Office of Management and Budget, *Living Within Our Means and Investing in the Future: The President’s Plan for Economic Growth and Deficit Reduction*, at p.23 (Sept. 2011).

<sup>47</sup> CRS R40626 at.6–7; see, e.g., P.L. 112–74 (Consolidated Appropriations Act, 2012).

<sup>48</sup> See Postal Regulatory Commission, *Request of the U.S. Postal Service for an Advisory Opinion in the Nature of Postal Services*, Docket No. N2010–1, at p.4 (March 30, 2010); Initial Brief of the U.S. Postal Service, *Six-Day to Five-Day Street Delivery and Related Service Changes*, 2010 (Postal Regulatory Commission October 15, 2010) (No. N2010–1) at pp. 49–50, 59. [hereinafter Initial Brief].

<sup>49</sup> Initial Brief of the U.S. Postal Service, pp. 44–49.

<sup>50</sup> Postal Regulatory Commission, *Advisory Opinion on Elimination of Saturday Delivery*, Docket No. N2010–1, at pp. 1–2 (March 24, 2011) [hereinafter PRC Saturday Delivery Opinion].

<sup>51</sup> PRC Saturday Delivery Opinion, at pp.144–152.

<sup>52</sup> U.S. Postal Service, *Report of the U.S. Postal Service Regarding Advisory Opinion in Postal Regulatory Commission Docket No. N2010–1*, available at <http://about.usps.com/news/electronic-press-kits/five-day-delivery/pdf/USPS-Report-re-PRC-Advisory-Opinion.pdf>.

of those savings would depend on the extent to which the Saturday workload could be absorbed through more efficient operations the rest of the week.<sup>53</sup> GAO identified as a particular area of uncertainty whether there was excess capacity in city-delivery operations, as the Postal Service has asserted. In other words, if, because of reduced mail volume, urban mail carriers were not delivering as much mail as they could, Saturday mail could be added to the existing workload without increasing costs; on the other hand, if urban mail carriers were already working to capacity, additional routes and personnel—and therefore costs—might be needed to handle the additional mail that would have previously been delivered on Saturday. GAO also noted that a move from six-day to five-day service would not alone be sufficient to put the Postal Service on stable financial footing.

It is clear that a shift to five-day delivery has the potential to save the Postal Service a substantial amount of money but there is not agreement on what the potential cost savings might be. Changing a delivery schedule that has been in place for nearly 150 years is a significant step and one that involves difficult tradeoffs, including the potential to reduce mail volume further and to eliminate an advantage that the Postal Service has over its competitors—the provision of Saturday delivery at no additional cost.

As a result, and because public and customer reaction to the Postal Service's five-day delivery proposal has been mixed, S. 1789 prohibits the elimination of Saturday delivery for two full years while other savings initiatives are implemented. After that period, five-day delivery could only be adopted if it is truly the last, but still necessary resort. Specifically, the bill requires that the Postal Service first implement alternative measures (authorized elsewhere in the bill) to increase revenue and reduce costs; that it identify, and develop measures to ameliorate any disproportionate negative impact that the change to five-day delivery may have on particular categories of customers and communities; and that it submit a report describing the actions it has taken to Congress, GAO, and the PRC. GAO is then directed to submit an independent report evaluating the measures the Postal Service has undertaken and assessing whether a change in delivery service is necessary for the Postal Service to become profitable by 2015 and achieve long-term financial solvency. Finally, the PRC is to issue, and submit to Congress, an advisory opinion determining (1) whether the measures developed by the Postal Service ameliorate any disproportionate, negative impact that a shift to five-day delivery may have on certain customers and communities; and (2) whether, based on the GAO's report, the change to five-day service is financially necessary. Only if the PRC determines that the Comptroller General has concluded that the change is necessary to allow the Postal Service to become profitable by fiscal year 2015 and to achieve long-term financial solvency, may the Postal Service implement a five-day delivery schedule.<sup>54</sup>

<sup>53</sup> GAO, *U.S. Postal Service: Ending Saturday Delivery Would Reduce Costs, but Comprehensive Restructuring Is Also Needed*, GAO-11-270, at p.11 (March, 2011).

<sup>54</sup> Note that the bill provides that the Postal Service's ability to implement a five-day delivery schedule is dependent only on the PRC's determination regarding the Comptroller General's conclusions and does not depend on whether the PRC itself determines that such a change is advisable.

Finally, the Postal Service is not seeking—and S. 1789 makes clear that the switch to five-day delivery to street addresses does not authorize—changes in schedules for post offices, for delivery to post office boxes, or for competitive mail products such as Express Mail, or to reduce the delivery schedule for any route for which mail delivery is currently provided less frequently than six days per week. The bill also provides that there may not be more than two consecutive days without mail delivery service, even in the case of federal holidays and three-day weekends.

#### *Nonpostal products and services*

As mail volumes and revenues continue to decline, the Postal Service might consider new ways to increase its revenues through nonpostal products and services. Current law limits the Postal Service to postal products and services and to certain nonpostal services approved under criteria set out in the 2006 Postal Accountability and Enhancement Act (PAEA).<sup>55</sup> Specifically, PAEA authorized the Postal Service to continue providing nonpostal services that were offered as of January 1, 2006, and that the PRC determined should continue. PAEA required the PRC, when making its determination, to take into account “the public need for the service” and “the ability of the private sector to meet the public need for the service.”<sup>56</sup> These grandfathered nonpostal services include officially licensed retail products such as USPS apparel and china. In addition to the grandfathered nonpostal services, current law authorizes the Postal Service to provide services to federal government agencies.<sup>57</sup> Under this authority, the Postal Service provides services for such as passport applications and the sale of migratory bird hunting and conservation stamps for the U.S. Fish and Wildlife Service.<sup>58</sup>

In 2009, the Postal Service asked Congress to pass legislation allowing it to expand into new nonpostal areas.<sup>59</sup> The Congressional Research Service (CRS) has indicated that the Postal Service could increase revenue by offering more nonpostal products and services.<sup>60</sup> However, there are differing views about the wisdom of such a move. GAO reviewed the nonpostal products and services that the Postal Service offered prior to the enactment of PAEA in 2006 and found that 19 products marketed or under development during fiscal years 1995, 1996, and 1997 resulted in a net loss of nearly \$85 million through fiscal year 1997 and a net loss of \$3.7 million during the first three quarters of fiscal year 1998.<sup>61</sup> GAO stated that “whether USPS should be allowed to engage in nonpostal activities should be carefully considered, including its poor past performance in this area, as should the risks and fair competition issues.”<sup>62</sup>

<sup>55</sup> 39 U.S.C. § 404(e).

<sup>56</sup> Postal Accountability and Enhancement Act, P.L. 109–435.

<sup>57</sup> 39 U.S.C. § 411.

<sup>58</sup> U.S. Postal Service FY 2010 Annual Compliance Report, at p.71 (Dec. 29, 2010).

<sup>59</sup> U.S. Postal Service in Crisis: Hearing Before the Subcomm. on Federal Financial Management of the Senate Committee on Homeland Security and Governmental Affairs, 111th Cong. (Aug. 6, 2009) (Testimony of John E. Potter, Former Postmaster General, at p.15).

<sup>60</sup> CRS, *The U.S. Postal Service's Financial Condition: Overview and Issues for Congress*, R41024 at p.8 (Dec. 16, 2011).

<sup>61</sup> GAO, *U.S. Postal Service: Strategies and Options to Facilitate Progress toward Financial Viability*, GAO–10–455, at p.43 (Apr. 2010) [hereinafter GAO 10–455]; GAO, *U.S. Postal Service: Development and Inventory of New Products*, GAO/GGD–99–15, at p. 20 (Nov. 1998).

<sup>62</sup> GAO 10–455, at p.42.



S. 1789 attempts to provide the Postal Service with the flexibility to generate revenue through nonpostal products and services, while also including certain safeguards to ensure that such products and services will not create unfair competition with the private sector and will actually improve the Postal Service's financial position. Section 209 of the bill would allow the Postal Service to offer nonpostal products and services if the PRC has determined that the products and services: (1) make use of USPS's processing, transportation, delivery, retail network, or technology; (2) are consistent with the public interest and a demonstrated demand for the Postal Service to offer them; (3) do not create unfair competition with the private sector; and (4) have the potential to improve the Postal Service's financial condition.

*Federal Employees' Compensation Act (FECA)*

This title would make changes to the Federal Employees' Compensation Act (FECA),<sup>63</sup> the statute governing the workers' compensation program for federal civilian employees and postal employees. FECA provides wage-replacement and medical benefits and offers rehabilitation services and return-to-work assistance to workers who suffer occupational injury or disease. Survivors receive benefits if the covered worker dies from the workplace injury or illness. The program is administered by the Department of Labor (DOL), which pays benefits from a special fund and is then reimbursed by federal agencies and the Postal Service for benefits paid to their employees.

The FECA program pays a basic benefit for a total disability equal to two-thirds of an injured worker's pre-disability wage if the worker has no dependents; for those with dependents, the benefit rises to 75 percent (called "augmented compensation"). For a partial disability, the benefit is in proportion to the wage-earning capacity that the worker lost. These benefits are adjusted for inflation and are tax-free, and continue for as long as the injury or illness renders the individual unable to work. Persons with specific permanent disabilities involving the loss of, or loss of use of, an appendage or bodily function are entitled to disability benefits for a set number of weeks provided by schedules set by statute and regulation (which an individual may receive in addition to benefits for total and partial disability, but not at the same time as them). The FECA program also covers all medical costs associated with work related injuries and provides vocational rehabilitation services and assistance in returning to work. During the first 45 days after a traumatic injury, an employee receives regular salary (called "continuation of pay"), subject to tax, rather than FECA benefits. The survivors of employees killed on the job are entitled to cash benefits based on the worker's wages and a modest benefit for funeral costs.

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<sup>63</sup> 5 U.S.C. §§ 8101 *et seq.*

## THE NEED FOR FECA REFORM AND ITS INCLUSION IN S. 1789

Congress enacted FECA in 1916<sup>64</sup> and has not substantially updated it since 1974.<sup>65</sup> A series of GAO reports,<sup>66</sup> Inspector General reports,<sup>67</sup> and proposals by both the current Administration<sup>68</sup> and the previous Administration<sup>69</sup> have identified serious problems in the FECA statute that have yet to be addressed. CBO has analyzed the budgetary implications of some of these proposals.<sup>70</sup> On July 26, 2011, the Committee through, its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, held a hearing to examine the FECA program and consider proposals for improving it. The Subcommittee heard testimony from the DOL official in charge of administering FECA, the Deputy Director of the Office of Personnel Management, two representatives of employee organizations, and experts from the Government Accountability Office and from the International Association of Industrial Accident Boards and Commissions (IAIABC).<sup>71</sup>

Based on this record, the Committee found that FECA needs updating and reform in several respects. Because individuals can receive FECA benefits indefinitely, as long as their injury impairs their ability to work, and because those benefits are generally larger than federal retirement benefits, the program creates a financial incentive for injured workers to remain on the FECA rolls up to and beyond retirement age. In addition, the augmented compensation under FECA is out of line with other compensation systems. For example, no state workers compensation systems provide augmentation for dependents, and the 75 percent level of benefit far exceeds that of any comparable compensation program. Whereas state systems deter minor claims by imposing brief waiting periods

<sup>64</sup> Federal Employee Compensation Act of September 7, 1916.

<sup>65</sup> P.L. 93-416.

<sup>66</sup> GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls: Statement for the Record of Gregory D. Kutz, Director Forensic Audits and Investigative Service, to the Committee on Homeland Security and Governmental Affairs, U.S. Senate*, GAO-12-212T (Nov. 9, 2011); GAO, *Federal Employees' Compensation Act: Redefining Continuation of Pay Could Result in Additional Refunds to the Government*, GAO/GGD-95-135, (June 1995).

<sup>67</sup> U.S. Postal Service Office of Inspector General, *Postal Service Workers' Compensation Program: Audit Report*, Report Number HR-AR-11-007 (Sept. 30, 2011); Department of Labor Office of the Inspector General, *Semi Annual Report to Congress: April-September 2010* (2010).

<sup>68</sup> OMB, *Budget of the U.S. Government, Fiscal Year 2012*, "Terminations, Reductions, and Savings," at p.163 (Feb. 2011); OMB, *Budget of the U.S. Government, Fiscal Year 2011*, "Terminations, Reductions, and Savings," at p.107 (Feb. 2010) [hereinafter, OMB Budgets FY 2011 and FY 2012].

<sup>69</sup> OMB, *Major Savings and Reforms in the President's 2008 Budget*, at p.178 (Feb. 2007); OMB, *Major Savings and Reforms in the President's 2007 Budget*, at p.192 (Feb. 2006); OMB, "Major Savings and Reforms in the President's 2006 Budget," at page 201 (Feb. 11, 2005); The President, *Budget of the U.S. Government, Fiscal Year 2003*, at p. 222 (Feb. 2002).

<sup>70</sup> CBO, *Budget Options, Vol. 2, Option 920*, at p.171-172 (Aug. 2009), available at <http://www.cbo.gov/ftpdocs/102xx/doc10294/08-06-BudgetOptions.pdf> (2009); CBO, *Budget Options, Option 920*, at p.249-250 (Feb. 2007), available at <http://www.cbo.gov/ftpdocs/78xx/doc7821/02-23-BudgetOptions.pdf> (2007); CBO, *Budget Options, Option 600*, at p.222 (Feb. 2005), available at <http://www.cbo.gov/ftpdocs/60xx/doc6075/02-15-BudgetOptions.pdf> (2005).

<sup>71</sup> *Examining the Federal Workers' Compensation Program for Injured Employees: Hearing Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia to the Senate Committee on Homeland Security and Governmental Affairs*, 112th Cong., (July 26, 2011) [hereinafter HSGAC July 2011 hearing]. The following witnesses testified and submitted written statements: The Honorable Christine M. Griffin, Deputy Director, U.S. Office of Personnel Management; Mr. Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor; Mr. Andrew Sherrill, Director, Education, Workforce, and Income Security, U.S. Government Accountability Office; Mr. Joseph Beaudoin, President, National Active and Retired Federal Employees Association; Mr. Ronald Watson, Consultant, National Association of Letter Carriers, AFL-CIO, Dr. Gregory Krohm, Executive Director, International Association of Industrial Accident Boards and Commissions. Available at <http://www.hsgac.senate.gov/subcommittees/oversight-of-government-management/hearings/examining-the-federal-workers-compensation-program-for-injured-employees>.

between the time of injury and the time an employee becomes eligible for benefits, FECA's waiting period for non-postal employees does not come until after the 45-days of continuation of pay. The FECA statute also fails to allow the federal government to obtain reimbursement of continuation of pay when third parties are liable for having caused the on-the-job injury. In addition, DOL would be better able to prevent improper payments if it were allowed to cross-match FECA records with Social Security records and had other statutory authorities to improve program integrity. Finally, some benefit levels for specific injuries and for funeral costs in FECA are inordinately low because they have not been changed in many decades.

FECA reform is necessarily intertwined with the effort to stabilize the Postal Service's finances. Employees of the Postal Service represent a disproportionate number of FECA beneficiaries, and are responsible for a larger share of FECA benefits than are the employees of any federal department or agency. Specifically, approximately 40 percent of injuries, illnesses, and fatalities that resulted in FECA claims during fiscal year 2010 involved Postal Service employees.<sup>72</sup> According to DOL, in fiscal year 2010, injuries and illnesses of USPS employees resulted in 218.7 lost production days per 100 employees, compared with the rest of the federal government that lost 77.4 days per 100 employees.<sup>73</sup>

Because FECA costs are so expensive for the Postal Service, the Committee determined that cost-cutting FECA reforms must be included in this legislation to place the Postal Service on a sound financial footing.

Moreover, the Committee determined that applying FECA reforms only to the Postal Service would cause harmful fragmentation and confusion within the FECA program, and also that these reforms would be as valuable and appropriate for non-postal agencies as they are for the Postal Service. Accordingly, S. 1789 reforms the federal workers' compensation program government-wide.

In considering what—if any—elements of FECA reform to include in S. 1789, the Committee evaluated three proposals: (1) the comprehensive FECA reforms developed and advocated by the Obama Administration,<sup>74</sup> (2) S. 261, introduced by Senator Collins to address the issue of individuals (postal and non-postal) remaining on the FECA rolls past retirement age; and (3) S. 353, Senator Collins' "U.S. Postal Service Improvements Act of 2011," which contained the same FECA-related provisions as S. 261 as an integral part of the postal reform legislation. The Committee decided to adopt the best elements of these three proposals. The provisions in S. 1789 will help injured employees get rehabilitated and back to work and will reduce some disproportionately high benefit levels that now create financial incentives that directly or indirectly may be discouraging injured workers from achieving rehabilitation and going back to work. Helping and encouraging employees to get back

<sup>72</sup> Department of Labor, Occupational Safety and Health Administration, *Federal Injury and Illness Statistics for Fiscal Year 2010*, available at [http://www.osha.gov/dep/fap/statistics/fedprgms\\_stats10\\_final.html#footnote4a](http://www.osha.gov/dep/fap/statistics/fedprgms_stats10_final.html#footnote4a).

<sup>73</sup> Department of Labor, Office of Workers' Compensation Programs, *FY2010 End of Year LPD Report for All Government*, available at <http://www.dol.gov/owcp/dfec/share/lpd/FY20104thQtr/AllGovernment.htm>.

<sup>74</sup> See OMB Budgets FY 2011 and FY 2012.

to work is healthy for the employee and also saves money for the Postal Service and the rest of government.

#### KEY PROVISIONS ON FECA

*Reforms Applicable to Retirement-Age Employees.* Under current law, FECA compensation and FECA medical benefits are payable for the duration of a person's disability. Because there is no time limit for either total or partial disability, beneficiaries who are eligible for the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) retirement or disability annuities may instead choose to remain in the FECA program as long as they remain eligible. (To be eligible for disability benefits under CSRS or FERS, the employee must have worked for the requisite period of service creditable under the retirement system (5 years under CSRS, 18 months under FERS) and have become disabled due to disease or injury regardless of whether it was work-related.)

The DOL reports that, although less than two percent of new injury cases stay on the FECA rolls for more than two years, approximately 45,000 cases currently receive long-term disability benefits and 15,000, or one-third of these cases, involve beneficiaries aged 66 or older.<sup>75</sup> The U.S. Postal Service informed the Committee in November 2011, that as of September 30, 2011 the FECA rolls include 9,501 postal workers aged 55 or older; 6,028 aged 60 or older; and 2,054 aged 70 or older, 894 aged 80 or older; and 144 age 90 or older including two aged 99.

Further, as noted above, FECA compensation is generally higher than a CSRS or FERS annuity. This situation is inequitable for employees who complete their careers of government service and then receive a smaller benefit in their retirement than do their contemporaries who suffered a workplace injury. Moreover, as Gary Steinberg, the acting head of DOL's Office of Workers' Compensation Programs testified, "injured workers may have an incentive to consciously or unconsciously resist rehabilitation and instead, in certain cases, may cling to the self-perception of being 'permanently disabled.'" <sup>76</sup> Such an outcome is not only costly for the government, but it is also damaging to the employee. The executive director of the International Association of Industrial Accident Boards and Commissions, Dr. Gregory Krohm, explained that getting back to work is good for injured workers "physically"—it "complements the healing process."<sup>77</sup>

Consistently since 2002, the DOL Office of the Inspector General has reported on the FECA program and has suggested that it is a *de facto* retirement program. In 2010, the DOL Office of the Inspector General expressed its support for reforms to the FECA program, specifically saying Congress should "move claimants into a form of retirement after a certain age if they are still injured."<sup>78</sup> Both the current Administration and the previous Administration

<sup>75</sup> HSGAC July 2011 hearing (Statement of Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor, *at* p.6).

<sup>76</sup> HSGAC July 2011 hearing (Statement of Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor, *at* p.9).

<sup>77</sup> HSGAC July 2011 hearing (Statement of Dr. Gregory Krohm, Executive Director, International Association of Industrial Accident Boards and Commissions *at* p.8).

<sup>78</sup> Department of Labor Office of the Inspector General, *Semi Annual Report to Congress: April-September 2010*, *at* p.60 (2010).

have likewise advocated for converting retirement-age FECA beneficiaries “to a retirement annuity-level benefit.”<sup>79</sup>

The specific proposal of the Obama Administration is to reduce FECA benefits for enrollees to 50 percent of the pre-disability wage upon the enrollee reaching full retirement age, as defined in the Social Security Act. Joseph A. Beaudoin, president of the National Active and Retired Federal Employees Association, testified that this proposal would provide a retirement-level income, but that “it still does not fully account for disadvantages faced by FECA recipients,” notably the lost raises, promotions, and benefits from having a working career cut short by disabling injury.<sup>80</sup> Ron Watson, testifying for the National Association of Letter Carriers (NALC), also argued that FECA benefits are not generally higher than federal retirement benefits, considering that most federal employees are covered by FERS, under which retirees receive an annuity, Social Security and Thrift Savings Plan benefits.<sup>81</sup> GAO has advised the Committee that a preliminary analysis by GAO shows the median FECA benefit to be about 26 percent higher than the median annual annuity received by federal retirees.

The Committee recognizes that workers who suffer workplace disability often suffer financial as well as other disadvantages, but was persuaded by other testimony and materials showing that the current FECA benefit levels are inequitably high after retirement age. The Committee determined to incorporate a provision similar to the Administration’s proposal into S. 1789.

The Committee also gave considerable attention to the question of whether and how to apply the changed benefit structure to individuals injured before the date of enactment. Both the current Administration and the previous Administration advocated that any reduced benefits under FECA reforms should apply only to individuals injured after the date of enactment. S. 261 and S. 353 took a different approach, applying to individuals injured before the effective date as well as those injured in the future.

The Committee decided that current and future FECA enrollees should generally be subject to the same provisions. However, recognizing a potential burden to current recipients who would face cuts, the Committee opted to gradually transition current recipients to the new benefit structure and to exempt the most severely disabled employees. Therefore, the bill grandfathered certain existing FECA beneficiaries and provides a delayed transition for others, as detailed in section 302 of the bill. DOL has advised the Committee that, under these provisions, about half of FECA beneficiaries who are now on FECA’s long-term disability rolls will not see their benefit level reduced under S.1789, either because they are already over retirement age or because they qualify under the bill’s criteria for being permanently, totally disabled and unable to return to work.<sup>82</sup>

<sup>79</sup> OMB Budgets FY 2011 and FY 2012; OMB Budgets FY 2003 through FY 2008

<sup>80</sup> HSGAC July 2011 hearing (Statement of Joseph Beaudoin, President, National Active and Retired Federal Employees Association *at* p.5).

<sup>81</sup> HSGAC July 2011 hearing (Statement of Ronald Watson, Consultant, National Association of Letter Carriers, AFL-CIO *at* p. 6).

<sup>82</sup> DOL estimates that, of the 50,000 individuals on the FECA periodic roll, roughly 24,000 will qualify for either a disability or age exemption or both. And this number may grow in the next few years, those who recently qualified for total disability would avoid a reduction if they maintain that status for three years.

*Augmented Compensation for Dependents.* Under FECA, the rate of compensation is 66 2/3 percent of a worker's pre-disability wage lost due to the occupational injury, if the worker is unmarried and has no dependents. However, for beneficiaries with a spouse or other dependent, the augmented compensation provision under the FECA program raises benefits to a rate of 75 percent of their pre-disability wages. Currently, more than 70 percent of FECA beneficiaries are receiving augmented compensation.<sup>83</sup>

Both the current Administration and the previous Administration have called for eliminating the augmented compensation rate because it is out of line with benefits under state workers' compensation systems. As the acting head of the DOL Office of Workers' Compensation Programs testified, "Few state systems provide any augmentation for dependents, and none approaches the Federal level."<sup>84</sup> He also told the committee that the 75 percent rate is so high that it can create a financial disincentive for an injured employee to successfully rehabilitate and return to work.<sup>85</sup> Ron Watson, testifying on behalf of the NALC, argued that the FECA tax-free 75 percent rate does not often exceed pre-injury take-home pay and does not create a financial disincentive to forego the pay, together with substantial benefits, that the individual would receive if able to return to work.<sup>86</sup>

The Obama Administration recommended that all disabled FECA beneficiaries receive compensation at a rate of 70 percent of lost wages—a percentage that is between the current 75 percent rate for individuals who have dependents and the current 66 2/3 rate applicable to those without dependents. However, the Committee determined that the rate should be set at 66 2/3 of lost pre-disability wages for all beneficiaries. This provision, in section 303 of the bill, brings the program in line with a majority of the state programs, including the District of Columbia. Currently, 36 states and the District of Columbia have total disability benefit rates that are set at this level.<sup>87</sup> This also brings the program in line with benefits offered under other federal workers' compensation programs, such as the Longshore and Harbor Workers' Compensation Act, which also sets benefits at two-thirds of the pre-disability wage.

Section 303 also contains provisions to phase in the new compensation rate for current beneficiaries, and to exempt those who are permanently and totally disabled.

*"Schedule Compensation Payments."* An employee who suffers a permanent disability involving the loss of an appendage or bodily function is entitled to disability benefits for a number of weeks, as provided under schedules set by statute and regulation.<sup>88</sup> The employee may receive the schedule compensation benefit in addition to FECA benefits for partial or total disability but may not receive both simultaneously. Section 304 of the bill would make a limited

<sup>83</sup> HSGAC July 2011 hearing (Statement of Gary Steinberg Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor *at* p.3).

<sup>84</sup> HSGAC July 2011 hearing (Statement of Gary Steinberg Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor *at* p.8).

<sup>85</sup> HSGAC July 2011 hearing (Statement of Gary Steinberg Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor *at* p.8).

<sup>86</sup> HSGAC July 2011 hearing (Statement of Ronald Watson, Consultant, National Association of Letter Carriers, AFL-CIO *at* p. 6).

<sup>87</sup> Ishita Sengupta, Virginia Reno, and John F. Burton, Jr., *Workers' Compensation: Benefits, Coverage, and Costs, 2009*, National Academy of Social Insurance, Washington, DC, August 2011, *at* pp. 86–95.

<sup>88</sup> See 5 U.S.C. §§ 8107.

but important exception: if an individual was injured before enactment of this legislation and faces a reduction in the level of disability benefits under section 302 or 303 of the bill, the individual may receive “schedule compensation payments” once the individual starts receiving the reduced benefits for partial or total disability.

*Strengthened back-to-work program.* In addition to removing certain financial disincentives to returning to work, S. 1789 adopts several provisions from the Obama Administration’s proposal to strengthen existing programs that help injured workers get back to work:

- Extends the vocational rehabilitation program under FECA, which now covers injured workers who are totally disabled, to also cover those who are partially disabled.

- Authorizes DOL to pay a federal employer the salary of a beneficiary for up to three years as an incentive to hire workers off of the FECA program rolls. Current law permits these payments only to non-federal employers.

- Makes compliance with the Return to Work plan developed between the program and the beneficiary a condition of receiving continued benefits (except this condition would not apply to beneficiaries who are over the age of retirement).

*Subrogation of Continuation of Pay.* FECA states that, when third parties are responsible for employees’ workplace injuries, DOL may require that employees pursue collection actions and then reimburse the government to cover “compensation” that the employees received.<sup>89</sup> (In legal terminology, this is called a right of subrogation.) Alternatively, DOL may require that employees assign to the government their collection rights against third parties. However, judicial and administrative decisions have held that continuation of pay received by employees during the first 45 days after an occupational injury is not considered “compensation” and is therefore not covered under the FECA provision granting subrogation rights to DOL.

GAO recommended that Congress amend FECA’s subrogation provision to cover continuation of pay. Both the current Administration and previous Administration have proposed such an amendment, and the Committee has included this change in section 311 of the bill.

*Waiting Period.* Since minor workplace injuries often heal very quickly, state workers’ compensation programs generally impose a brief waiting period before providing compensation, in order to avoid minor or frivolous claims. FECA has a three-day waiting period for postal employees, but for non-postal workers the waiting period comes after the end of the 45-day continuation-of-pay period, during which the individual continues to receive salary while a FECA claim is being processed.<sup>90</sup>

Both the current Administration and the previous Administration proposed to establish a uniform up-front waiting period for all FECA claimants, postal and non-postal, and section 308 of the bill includes a mandatory, up-front three-day waiting period.<sup>91</sup> As

<sup>89</sup> 5 U.S.C. §§ 8131, 8132.

<sup>90</sup> 5 U.S.C. § 8117.

<sup>91</sup> OMB, *Budget of the U.S. Government, Fiscal Year 2012*, “Terminations, Reductions, and Savings,” at p. 163 (February 2011); OMB, *Budget of the U.S. Government, Fiscal Year 2011*,

under current law governing postal employees,<sup>92</sup> the injured non-postal employee may receive FECA compensation for those three days if the period of disability exceeds 14 days.

*Amount of Compensation.* The current Administration has proposed that several statutory benefit amounts, which have not been updated in many years, be significantly increased. The Committee agreed to include those statutory updates in section 313 of the bill. These limits of the current law, for severe disfigurement and funeral expenses, have not been significantly changed since 1949.

*Disability Management Review; Independent Medical Examinations.* Under current FECA practice, claimants select their own physician, and must be examined by a physician employed or selected by DOL only when the Department deems that a second opinion is needed. Both GAO and the Postal Service Inspector General have called for greater checks on the determinations of doctors selected by FECA participants. GAO, in preliminary observations on fraud-prevention controls in the FECA program, said that the lack of review by a government-selected physician worsens potential vulnerabilities both when the government validates initial claims and as it monitors long-term cases.<sup>93</sup> In addition, the USPS Inspector General reported the lack of employer-selected physicians exposed the Postal Service to a higher risk of fraud and increased workers' compensation costs.<sup>94</sup> The USPS Inspector General reported that "mandatory use of employer-selected physicians streamlines the process for managing workers' compensation cases, reduces the potential risk for fraud, and provides services that focus on returning employees to work."<sup>95</sup>

GAO has also reported complaints about the process for obtaining a second-opinion examination if an agency has doubts about the validity of a claim. Under current practice DOL determines whether a second opinion is warranted, and some employing agencies have reported to GAO "that there have been instances where Labor failed to respond to their requests to have a second-opinion examination performed at the employing agencies' request even though the costs would be borne by their agencies."<sup>96</sup> (Labor officials responded to GAO that FECA claims examiners are highly skilled at determining when second opinion examinations are needed, and that requiring such additional examinations when FECA examiners deem them unnecessary would be very resource intensive.)<sup>97</sup> GAO's preliminary observations are reinforced by experience in the private sector. The use of employer-selected physicians for independent medical examinations and second opinions is a common

"Terminations, Reductions, and Savings," at p.107 (Feb. 2010); OMB, *Major Savings and Reforms in the President's 2008 Budget*, at p.178 (Feb. 2007); OMB, *Major Savings and Reforms in the President's 2007 Budget*, at p.192 (Feb. 2006); OMB, *Major Savings and Reforms in the President's 2006 Budget*, at p.201 (Feb. 11, 2005); The President, *Budget of the U.S. Government, Fiscal Year 2003*, at p.222 (Feb. 2002).

<sup>92</sup> 5 U.S.C. § 8117.

<sup>93</sup> GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls*, GAO-12-212T, at p.14 (November 2011).

<sup>94</sup> U.S. Postal Service Office of Inspector General, *Postal Service Workers' Compensation Program: Audit Report*, Report Number HR-AR-11-007, at p.4 (September 30, 2011).

<sup>95</sup> U.S. Postal Service Office of Inspector General, *Postal Service Workers' Compensation Program: Audit Report*, Report Number HR-AR-11-007, at p.4 (September 30, 2011).

<sup>96</sup> GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls*, GAO-12-212T, at pp. 14-15 (November 2011). GAO noted that it did not verify these claims.

<sup>97</sup> GAO, *Federal Employees' Compensation Act: Preliminary Observations on Fraud-Prevention Controls*, GAO-12-212T, at pp. 14-15 (November 2011).



practice in the private sector under state-level workers' compensation programs.<sup>98</sup>

In response to this situation, section 307 of the bill requires an independent medical assessment of disability and potential for return to work for beneficiaries after six months in the program and on a regularly scheduled basis thereafter, but no less frequently than every three years. This does not change existing law where a FECA beneficiary may choose to see his or her own doctor for treatment and initial assessment. This provides a check point for continued participation in the program as the individual moves to the long-term or periodic rolls. Moreover, this section gives employing agencies, which may be concerned about potentially irregular claims, the right to request that DOL obtain a second opinion at any time. If the agency makes the request before DOL has conducted any second-opinion examination, DOL must grant the agency's request, and if the agency makes the request later, DOL must either grant the request or explain to the agency why the request was denied.

*Reporting of Outside Income; Program Integrity and Compliance.* S. 1789 includes two provisions requested by this Administration to help avoid improper FECA payments including fraudulent claims. Section 306 of the bill directs the Secretary of Labor to require beneficiaries to report to DOL any outside income they receive. Section 312 also enables DOL to cross-match FECA records with Social Security data and contains several additional provisions to strengthen integrity and compliance efforts at FECA.

### III. LEGISLATIVE HISTORY

On May 17, 2011, the Senate Homeland Security and Governmental Affairs Committee's Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee held a hearing titled "Addressing the U.S. Postal Service's Financial Crisis" to discuss long-term solutions to improve the Postal Service's financial viability. Postmaster General Patrick Donahoe; Margaret Cigno, the Director of Accountability and Compliance at the PRC; USPS Inspector General David Williams; and Phillip Herr, Director, Physical Infrastructure Issues at GAO, testified at the hearing. Representatives from the American Postal Workers Union, the National League of Postmasters, and the Direct Marketing Association also testified.

On September 6, 2011, the Senate Homeland Security and Governmental Affairs Committee held a hearing titled "U.S. Postal Service in Crisis: Proposals to Prevent a Postal Shutdown" to examine the Postal Service's current financial condition and possible solutions. Postmaster General Patrick Donahoe, OPM Director John Berry, and Phillip Herr from GAO testified at the hearing. Representatives from the private sector and postal employee and management associations also testified.

S. 1789 was introduced by Senators Lieberman, Collins, Carper, and Brown on November 2, 2011, and referred to the Committee. The Committee considered the legislation at a business meeting on November 9, 2011. S. 1789 was ordered reported favorably by a roll call vote with several adopted amendments:

<sup>98</sup>Sengupta et al., 2011, pp. 24–25.

A Lieberman-Collins-Carper-Brown substitute amends the provisions regarding the treatment of postal funding surplus to FERS, Medicare coverage for Postal Service Medicare-eligible annuitants, the Postal Service Health Benefits Program, postal facilities, the conversion of door delivery points, limitations on changes to mail delivery schedule, and the Federal Employees Compensation Act. Senators Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, Tester, Begich, Collins, Coburn, Brown, McCain, Johnson, Paul, and Moran were present and the amendment was adopted by voice vote.

Senator Levin offered an amendment that prohibits the Postal Service from entering into any contract that restricts the ability of Congress to exercise oversight authority. Senators Lieberman, Levin, Akaka, Carper, Pryor, Landrieu, Tester, Begich, Collins, Coburn, Brown, McCain, Johnson, Paul, and Moran were present and the amendment was adopted by voice vote.

An Akaka amendment strikes section 103 of S. 1789, which required Medicare-eligible postal retirees to enroll in Medicare Parts A and B and directed the Postal Service to work with OPM to develop Medigap-like plans that offer comparable benefits within the Federal Employee Health Benefits program for postal retirees and their dependents. The amendment was adopted by a roll call vote of 10–6, with Senators Akaka, Pryor, Tester, Begich, Landrieu, McCaskill, Coburn, McCain, Johnson, and Paul recorded as a yes vote, and Senators Lieberman, Carper, Collins, Brown, Moran, and Portman recorded as a no vote. Senators Lieberman, Akaka, Carper, Pryor, Tester, Begich, Collins, Brown, and Moran were present for the vote.

A Pryor-McCaskill-Landrieu amendment, as modified, requires the Postal Service to respond to each recommendation by the Postal Regulatory Commission, including each advisory opinion. Senators Lieberman, Levin, Akaka, Carper, Pryor, Begich, Pryor, Begich, Collins, Brown, Paul, and Moran were present and the amendment was adopted by voice vote.

A McCaskill amendment provides for access by the Comptroller General to the National Directory of New Hires. The amendment was adopted by voice vote, with Senators Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Begich, Collins, Brown, and Moran present.

A Moran-Tester-Collins-Pryor-Begich-McCaskill-Landrieu amendment changes the current process for closing and consolidating post offices to carefully consider the needs of rural areas and small towns. The amendment requires the Postal Service to consider instead of closing or consolidating a post office to reduce the number of operating hours, procure a contract providing retail services in the community served by the post office, or provide services through a rural carrier. The amendment was adopted by a roll call vote of 12–4, with Senators Lieberman, Levin, Akaka, Carper, Pryor, Begich, Collins, Brown, Moran, Landrieu, McCaskill, and Tester recorded as a yes vote, and Senators Coburn, McCain, Johnson, and Portman recorded as a no vote. Senators Lieberman, Levin, Akaka, Carper, Pryor, Begich, Collins, Brown, and Moran were present for the vote.

The Committee ordered the bill, as amended, favorably reported by a roll call vote of 9–1. Senators Lieberman, Levin, Carper,

Pryor, McCaskill, Begich, Collins, Brown, and Moran voted in favor of the bill, while Senator Akaka voted in opposition. Senators Landrieu and Portman asked to be recorded in favor of the bill by proxy, while Senators Tester, Coburn, McCain, Johnson, and Paul asked to be recorded against the bill by proxy.

#### IV. SECTION-BY-SECTION ANALYSIS

##### *Section 1—Short title*

Section 1 establishes the title of the legislation as the “21st Century Postal Service Act of 2012.”

##### *Section 2—Table of contents*

Section 2 sets forth the table of contents for the four titles in the Act.

#### TITLE I: POSTAL WORKFORCE MATTERS

##### *Section 101—Treatment of surplus contributions to Federal Employees Retirement System (FERS)*

This section requires a calculation of the Postal Service’s FERS balance each year, and directs any overpayment to be transferred to the Postal Service, upon request of the Postmaster General. For fiscal years 2011 through 2013, a portion of this overpayment is to be used for retirement incentives, including buyouts (up to the existing cap for federal workers of \$25,000 for any one individual) or additional service credits under section 102. If there are additional funds remaining, these may be used by the Postal Service for certain other items such as repaying debt, workers’ compensation payments, paying down the retiree health liability and pension obligations.

##### *Section 102—Additional service credit*

This section allows the Postal Service (through OPM) to offer up to one year of credited service for individuals in the CSRS pension system and up to two years for individuals in FERS as an incentive to encourage retirement. Thus, an individual who needed 30 years of service to retire and had 29 years of service could be offered an additional year so as to be eligible for full retirement. This section further provides that an individual who receives additional service credit as a retirement incentive may not also receive a cash buyout.

##### *Section 103—Restructuring of payments for retiree health benefits*

This section would restructure the Postal Service’s pre-funding requirements for retiree health benefits. The bill would immediately begin a 40-year amortized payment schedule for the Postal Service to fund retirees’ health benefits (previously scheduled to begin in fiscal year 2017). It would also reduce the pre-funding goal for retiree health benefits to 80 percent of the projected liability.

##### *Section 104—Postal Service Health Benefits Program*

This section would authorize the Postal Service to enter into negotiations with all of its recognized unions for the purpose of developing a potential new Postal Service health care plan outside the Federal Employee Health Benefit Plan (FEHB). The new Postal Service Health Benefits Program would only be implemented if all

of the unions and the Postal Service agree. This section also requires USPS to consult with organizations representing supervisory and other managerial employees of the Postal Service in the course of its negotiations over the health care plan, and provides that any postal employee not represented by a recognized employee union may participate in any new Postal Service health plan agreed on by the Postal Service and the unions at the option solely of that employee.

*Section 105—Arbitration; labor disputes*

This section would require that arbitrators deciding a contract dispute between the Postal Service and one of its recognized unions take into consideration such relevant factors as the following when rendering a binding decision: (1) the financial condition of the Postal Service; (2) the requirement in law that the Postal Service consider comparability of wages and benefits to those offered in the private sector; and (3) the policies of Title 39, the section of the U.S. Code that deals with postal matters.

TITLE II: POSTAL SERVICES AND OPERATIONS

*Section 201—Postal facilities*

This section requires certain steps before the closure of a mail processing facility:

- (1) A complete and published study that includes the feasibility of downsizing rather than closing the facility;
- (2) A 45-day public comment period after publishing the study;
- (3) A 30-day period for the Postal Service to consider any concerns raised, culminating with the publication of a justification on its web site, which shall include:
  - (a) Responses to public comments;
  - (b) A discussion of the effect of closure on the affected community, including any disproportionate impact on a State, region or locality;
  - (c) The change in travel times and distances for affected customers;
  - (d) The change in delivery times for all classes of mail;
  - (e) A consideration of geographical factors such as remoteness, weather related factors, and broadband availability;
  - (f) Any other appropriate factors.
- (4) A waiting period of at least 15 days after the publication on the USPS web site of the closure justification before USPS may close the processing facility.

*Section 202—Additional Postal Service planning*

This section requires the Postal Service to consider how its plans to increase the use of alternate retail might affect customers' access to the products and services offered by the Postal Service, and how to improve access to postal services where possible. Current law requires the Postal Service to report annually on its efforts to change and streamline its network of processing and retail facilities. One aspect of the required report involves a discussion of the Postal Service's plans to expand the use of retail alternatives to post of-

fices. This section builds on that report. It also requires any plans to replace post offices with alternate retail to: (1) consider the impact on small communities and rural areas; (2) ensure that the Postal Service continues to serve small communities and rural areas after the implementation of the plan; and (3) allow for the solicitation of community input.

*Section 203—Area and district office structure*

In an effort to reduce costs and create efficiencies, this section requires the Postal Service to develop and update every five years a strategic plan relating to area and district office structure and to develop a 10-year plan with timetables that provides for the consolidation of area and district offices wherever the Postal Service determines that such consolidation would be cost effective and would not substantially and adversely affect operations. This section also requires the Postal Service, consistent with the required plans, to consolidate district offices located within 50 miles of each other, to consolidate those area and district offices that have less than the mean mail volume and number of work hours for all area and district offices, and to relocate area offices to headquarters.

*Section 204—Post Offices; retail service standards*

This section requires the Postal Service to consider several options prior to making a determination to close or consolidate a post office. These include considering whether to consolidate two post offices within a reasonable distance, reduce the number of operating hours at a particular post office instead of a closure or consolidation, and permit a contractor or rural carrier to provide retail services in the community served by the post office. The Postal Service must provide notice at least 60 days prior to the proposed date of such post office closure or consolidation to persons served by such post office. This section also requires the Postal Service to develop a set of service standards that would guarantee its customers a certain level of access to retail services, whether at a post office or some alternative to a post office, taking into consideration the following: (1) the universal service obligation; (2) the alternate retail plan required under section 302 of the PAEA, as amended by section 202 of this bill; (3) the population served, including population density and demographic factors that may affect customers' ability to access services, such as age or disability status; (4) the feasibility of offering retail access in addition to that offered at post offices; and (5) the existing requirement that the Postal Service serve remote areas and communities with transportation challenges and other conditions, including inclement weather, that could impede access to services. Customers who believe that the Postal Service has failed to provide them or their community with a level of service consistent with the standard would be permitted to file a complaint with the PRC.

*Section 205—Conversion of door delivery points*

This section authorizes the Postal Service to convert door delivery points to curbside, sidewalk, or centralized delivery points, and defines these terms. This section also provides certain exceptions to the use of this authority, including physical hardship of a customer, weather conditions in a geographical area (such as where

snow removal efforts could obstruct access to mailboxes), circumstances in urban areas (such as obstructive street parking) that preclude efficient use of curbside delivery points, or “other exceptional circumstances.” This section further requires the Postal Service to establish procedures to solicit, consider, and respond to input from individuals affected by the conversion of door delivery points, and to report to Congress and the USPS Inspector General on its progress in carrying out this section.

*Section 206—Limitations on changes to mail delivery schedule*

This section would prohibit the Postal Service from implementing any plan to eliminate Saturday delivery for at least two years. In addition, a switch to five-day delivery could only move forward if the following conditions are met: (1) the Postal Service identifies customers who may be affected disproportionately by five-day delivery and develops measures to ameliorate the negative impact; (2) the Postal Service makes use of its other authorities under current law and the new authorities and mandates included in this bill to increase revenue and reduce costs; and (3) after implementing these other savings options, the Postal Service determines that a five-day schedule is still necessary to achieve long-term financial sustainability, and submits a report on the other steps it has taken to Congress, the PRC and GAO. GAO is to review the Postal Service’s financial situation, projections, and the adequacy of the savings initiatives already implemented in order to determine whether the implementation of five-day delivery is necessary for the Postal Service to become profitable by fiscal year 2015 and to achieve long-term financial solvency. The Postal Service would not be able to implement a five-day schedule unless the Comptroller General has made a determination that doing so is necessary, and the PRC confirms that the Comptroller General has done so.

This section further specifies that where five-day delivery is implemented, there can be no more than two consecutive days without mail (e.g., on holiday weekends). The section also clarifies that the bill does not authorize further reductions in the delivery schedule for areas that may already have less than six-day delivery, nor any changes to the schedules for post offices, post office boxes, mail acceptance, or competitive products such as Express Mail.

*Section 207—Time limits for consideration of service changes*

This section establishes a default timeline of 90 days for advisory opinions to be issued by the PRC if an alternate schedule is not mutually agreed upon between the PRC and the Postal Service. Subsequent to the issuance of the opinion, the Postal Service would not be permitted to act on the proposed service change until 30 days after it has formally responded to the opinion and any recommendations it might include. This section also requires the Postal Service to submit to the President and Congress a statement as to whether it plans to address the PRC’s concerns and implement any recommendations made by the PRC. If the Postal Service determines not to address or implement the PRC’s recommendations, it must provide the reasons for its determination.

*Section 208—Public procedures for significant changes to mailing specifications*

This section requires the Postal Service to provide at least 30 days notice of any proposed changes to mailing specifications not reviewed by the PRC, and to receive and respond to public comments on the changes. The section further requires the Postal Service to analyze the financial impact of the proposed change on the Postal Service and its customers.

*Section 209—Nonpostal products and services*

Subsection (a) of this section provides that the Postal Service may provide nonpostal products and services, provided that the PRC determines that the offering of such product or service meets all of the following criteria:

- (1) It utilizes the Postal Service's processing, transportation, delivery, or retail network or technology;
- (2) It is consistent with the public interest and a demonstrated demand for the Postal Service to provide this new product or service rather than or in addition to another entity;
- (3) It does not abuse the Postal Service's monopoly status nor create unfair competition with the private sector;
- (4) It is justified by a market analysis that has been conducted by the Postal Service and submitted to Congress and the PRC that demonstrates the potential to improve the financial position of the Postal Service.

Subsection(a) also provides that the PRC must designate any new product or service that meets the above criteria under an existing mailing product classification: market-dominant, competitive, or experimental. Classification of the product would allow it to be regulated in the same manner as existing postal products and services.

Subsection (b) of this section requires the Postal Service to submit a market analysis to the PRC during the 5-year period beginning on the date of enactment of this Act. The market analysis serves as the basis for determining whether a potential nonpostal product or service will improve the net financial position of the Postal Service.

TITLE III: FEDERAL EMPLOYEES' COMPENSATION ACT

*Section 301—Short title and references*

This section says that title III of the bill may be cited as the "Workers' Compensation Reform Act of 2012." The section also provides that, whenever a provision in title III of the bill refers to a statutory section being amended, the provision is in reference to title 5 of the United States Code unless noted otherwise.

*Section 302—Federal workers' compensation reforms for retirement age employees*

This section generally reduces FECA benefits for totally disabled enrollees to 50 percent of the pre-disability wage upon the enrollee reaching full retirement age, as defined in the Social Security Act. For partially disabled enrollees, the benefits are generally reduced to 50 percent of the pre-disability wage, multiplied by the percentage of wage-earning capacity lost due to the injury.

For individuals whose workplace injury occurs before the date of enactment, section 302 contains provisions to delay application of the reduced benefit level and to provide full exemption for those most severely injured and those already over retirement age. Specifically—

(1) Those who are permanently, totally disabled and unable to return to work are exempt from this section (“grandfathered”), and their benefit rate is not reduced to 50 percent. This category of grandfathered individuals is defined under the legislation as those who satisfy any one of the following criteria:

- (a.) Lost the use of two appendages (e.g., arms/legs);
- (b.) Receiving custodial home nursing care or full nursing home care for at least one year prior to enactment; or
- (c.) Receiving “total disability” wage-loss compensation for at least three years prior to enactment or will have done so within the first three years after enactment.

(2) Those who are already at the age of retirement on the date of enactment are also exempt from this section.

(3) For those who do not qualify as permanently, totally disabled (“grandfathered”) and are not already over the retirement age, the benefit level will be reduced to 50 percent upon reaching retirement age or three years after the date of enactment, whichever is later.

*Section 303—Augmented compensation for dependents*

This section eliminates the additional compensation in current law for beneficiaries who have dependents.

For individuals whose workplace injury occurs before the date of enactment, section 303 contains provisions to delay application of the reduced benefit level and to provide full exemption for those most severely injured. Specifically—

(1) Those who are permanently, totally disabled and unable to return to work are exempt from this section (“grandfathered”), and they will continue to receive the additional level of compensation if they have dependants. This category of grandfathered individuals is the same as those grandfathered under section 302.

(2) For those who do not qualify as permanently, totally disabled (“grandfathered”) will lose the right to receive augmented compensation three years after the bill is enacted.

*Section 304—“Schedule compensation payments”*

This section allows workers’ compensation beneficiaries to receive “schedule compensation payments” if their benefits are reduced under sections 302 or 303, after such reduction. Schedule compensation payments are specific payments authorized under existing law for certain injuries, such as loss of use of a limb. Under current law, an injured individual is not eligible to receive a schedule compensation payment for an injury simultaneously with benefits for total or partial disability.

*Section 305—Vocational rehabilitation*

This section includes several provisions to strengthen existing programs that help injured workers get back to work:



(1) Extends existing vocational rehabilitation opportunities under FECA for workers who are totally disabled to those who are partially disabled as well.

(2) Authorizes DOL to pay a federal employer the salary of a beneficiary for up to three years as an incentive to hire workers off of the FECA program rolls. Current law permits these payments only to non-federal employers.

(3) Makes compliance with the Return to Work plan developed between the program and the beneficiary a condition of receiving continued benefits (except this condition would not apply to beneficiaries who are over the age of retirement).

*Section 306—Reporting requirements*

This section requires the Secretary to require beneficiaries to report any outside income they receive to the Department of Labor. An employee who fails to comply will lose the right to receive compensation.

*Section 307—Disability management review; independent medical examinations*

This section requires an independent medical assessment of disability and potential for return to work for beneficiaries after six months in the program and on a regularly scheduled basis thereafter, but no less frequently than every three years. This does not change existing law under which a FECA beneficiary may choose to see his or her own doctor for treatment and initial assessment. Moreover, employing agencies may request that DOL obtain an independent medical examination at any time, and, if the agency makes the request before DOL has conducted such an examination, DOL must grant the agency's request.

*Section 308—Waiting period*

Because minor workplace injuries often heal quickly, FECA provides a three-day waiting period before compensation begins. For postal employees, FECA's three-day waiting period comes immediately after the injury, but for non-postal workers the waiting period does not come until after the end of the 45-day continuation-of-pay period.

Section 308 begins the three-day waiting period immediately after a work-related injury for all injured employees. As under current law, injured employees may receive FECA compensation for those three days if the period of disability exceeds 14 days.

*Section 309—Election of benefits*

If an individual is eligible for compensation benefits both under FECA and under CSRS or FERS or another retirement system for federal employees, the individual must elect which benefits to receive, and the election shall be irrevocable if the individual chose benefits under the retirement system while eligible for FECA benefits. This section prevents an injured worker from retroactively claiming workers' compensation benefits after having declined such benefits in favor of federal retirement benefits. This provision is intended to prevent a claimant from electing federal retirement benefits as a means of avoiding required participation in vocational rehabilitation or acceptance of an offered suitable job and then later

retroactively electing the potentially more generous workers' compensation benefits.

*Section 310—Sanctions for non-cooperation with nurses*

This section suspends benefits when an injured worker fails to cooperate with a field nurse. A "field nurse" is defined to mean a registered nurse who assists DOL in the medical management of disability claims and assists claimants in coordinating medical care, and DOL is authorized to use field nurses to coordinate medical services and vocational rehabilitation services.

*Section 311—Subrogation of continuation of pay*

This section allows the federal government to recover "continuation of pay" (i.e., salary that's continued to be paid to the beneficiary during the 45-day period between the injury and the initiation of FECA disability benefits) from third parties that are liable for the beneficiary's work-related injury.

*Section 312—Integrity and compliance*

This section includes several provisions to strengthen the integrity and compliance efforts within the FECA program. No later than 270 days after enactment, the Secretary of Labor must establish an Integrity and Compliance Program to prevent, identify, and recover improper payments (including those obtained by fraud) for the FECA program. The section also directs the Secretary to cooperate with other agencies, including the Postal Service, and the agency inspectors general, to prevent, identify, and recover improper payments.

The section also requires the Secretary of Health and Human Services to make the National Directory of New Hires available to the Secretary of Labor, the Postmaster General, the DOL Inspector General, the USPS Inspector General, and GAO, so that they can cross-match that data with claimant data under the FECA program. The Comptroller General is granted access to the National Directory of New Hires under this provision for any audit, evaluation, or investigation, including any audit, evaluation, or investigation relating to program integrity.

*Section 313—Amount of compensation*

This section increases the amount an injured worker receives for a severe disfigurement of the face, head or neck from \$3,500 to a maximum of \$50,000. This section also increases the amount allowed to reimburse funeral expenses incurred due to a death from a work-related injury from \$800 to a maximum of \$6,000. The limits in the current law have not been significantly changed since 1949.

*Section 314—Technical and conforming amendments*

This section contains technical and conforming amendments to the FECA statute in title 5 of the United States Code.

*Section 315—Regulations*

This section requires the Labor Department to issue regulations to carry out this title of the legislation.

## TITLE IV: OTHER MATTERS

*Section 401—Profitability plan*

This section requires the Postal Service to submit to Congress within 90 days of enactment a plan detailing how it will become profitable by fiscal year 2015 and achieve long-term financial solvency. The plan must take into consideration the Postal Service's current legal authorities, the authorities given to it under this bill, cost savings that will be achieved through negotiations with employees of the Postal Service, and projected changes in mail volume. The plan must also be updated each quarter until the last quarter of fiscal year 2015.

*Section 402—Postal rates*

This section requires the PRC, not earlier than two years after enactment, to commence a study regarding: (1) the extent to which any market-dominant classes, products, or types of mail services do not bear their attributable costs; and (2) the impact of any excess mail processing, transportation, or delivery capacity of the Postal Service on the costs attributable to any class that bears less than 100 percent of the costs attributable to such classes, products, or types of mail service. The PRC must also hold a public hearing before completing the study. At the conclusion of this study, for certain classes deemed by the PRC to recover less than 90 percent of costs, the Postmaster General may increase rates for such classes by no more than 2 percent a year above the current allowable rate increase until such time as the class is covering 90 percent of its costs.

*Section 403—Cooperation with State and local governments*

This section allows the Postal Service to work with state and local governments to provide government services (such as fishing licenses or tax forms) in post offices in the same way as it currently does with services provided on behalf of federal agencies (such as passports).

*Section 404—Shipping of wine and beer*

This section amends Title 18 of the U.S. Code and would allow the Postal Service to ship wine and beer (which private carriers such as FedEx and UPS already do), sent by a licensed winery or brewery in accordance with the laws of the state to which the items are addressed and received.

The section would further require that the Postal Service issue regulations providing that wine and beer is mailed directly to a person who is at least 21 years old and presenting a valid, government-issued form of identification at the time of delivery.

*Section 405—Annual report on U.S. mailing industry*

This section requires the PRC to publish annually a report on the financial health of the U.S. mailing industry, and requires the Postal Service and any other appropriate federal agency to assist in the report's preparation.

*Section 406—Use of negotiated service agreements*

This section authorizes the Postal Service to enter into Negotiated Service Agreements (NSAs) with individual mailers to retain existing mail volume, clearing up an ambiguity in the law. The section also requires the Postal Service to coordinate with the PRC to increase the use of NSAs.

*Section 407—Contracts disputes*

This section corrects a mistake in the Postal Accountability and Enhancement Act of 2006, which inadvertently deleted the Postal Service and the PRC from the list of agencies covered by the Contract Disputes Act of 1978. The Contract Disputes Act governs how contractor claims against federal agencies are to be handled.

*Section 408—Contracting provisions*

This section institutes contracting reforms and new ethics provisions for the Postal Service and the PRC. These include: (1) establishing the position of Advocate for Competition, who will encourage the use of commercial items, challenge barriers to competition, and review procurement; (2) clarifying that the Postmaster General and the PRC Chairman are ultimately responsible for any delegation of authority with respect to contracting, and requires public posting of such delegations; (3) requiring the Postal Service and PRC to publicly post justifications for noncompetitive contracts, with the PRC required to post all such contracts, and the Postal Service required to post all contracts valued at more than \$250,000; (4) requiring that if a contracting officer identifies an ethical issue surrounding a proposed contract, that contract must be submitted to the agency's designated ethics official before it is awarded; (5) clarifying ethics rules by requiring employees who have a decision-making role in the award of noncompetitive contracts to disclose any relationship that could potentially lead to questions about their impartiality, requiring a review by the ethics counsel of any disclosures to determine if disqualification of the employee from participation is warranted, and requiring contractors to disclose conflicts of interest. This section also allows the Postmaster General and the PRC Chairman to void a contract and recover funds when a violation is proven. This section also prohibits the Postal Service from entering into any contracts that restrict Congress from exercising its oversight authority.

## V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of S. 1789. The Congressional Budget Office states that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act and would impose no costs on state, local, or tribal governments, or private entities. The enactment of this legislation will not have significant regulatory impact.

## VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JANUARY 26, 2012.

Hon. JOSEPH I. LIEBERMAN,  
*Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1789, the 21st Century Postal Service Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*S. 1789—21st Century Postal Service Act of 2011*

Summary: S. 1789 would change the laws that govern the operation of the United States Postal Service (USPS). Major provisions of the bill would:

- Transfer more than \$11 billion in surplus retirement contributions from the Civil Service Retirement and Disability Fund (CSRDF) to the Postal Service Fund;
- Change the payments that the Postal Service is required to make to the Postal Service Retiree Health Benefits Fund (PSRHBF);
- Permit the Postal Service to reduce mail delivery from six days per week to five;
- Authorize the Postal Service to offer employees credit for additional years of service as an incentive to retire; and
- Reduce payments to most federal workers receiving benefits under the Federal Employees' Compensation Act (FECA) and reform the administration of that act.

In addition, other provisions of S. 1789 would aim to help the Postal Service reduce its costs and increase its revenues.

CBO estimates that enacting the bill would result in off-budget savings of \$25.6 billion over the 2012–2022 period and on-budget costs totaling about \$31.9 billion. (USPS cash flows are recorded in the federal budget in the Postal Service Fund and are classified as off-budget, while the cash flows of the PSRHBF, CSRDF, and the FECA account are on-budget.)

Combining those effects, CBO estimates that the net cost to the unified budget of enacting S. 1789 would be \$6.3 billion over the 2012–2022 period. All of those effects reflect changes in direct spending. In addition, we estimate that enacting S. 1789 would decrease revenues by \$15 million over the 2012–2015 period. Pay-as-you-go procedures apply because enacting the legislation would increase on-budget direct spending and decrease revenues.

S. 1789 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1789 is shown in Table 1. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 600 (income security).



Basis of estimate: For the purposes of this estimate, CBO assumes that S. 1789 will be enacted early in calendar year 2012. The bill would affect outlays of the Postal Service Fund, which is off-budget, and of the PSRHBF, CSRDF, and FECA accounts—all of which are on-budget. CBO estimates that the net cost to the unified budget would total \$6.3 billion over the 2012–2022 period. In addition, we estimate that enacting the bill would decrease revenues by \$15 million over the 2012–2015 period (with no impact on revenues after 2015).

*Background on USPS Payments for Employees Health Insurance and Retirement*

The following sections present background information relating to the major provisions of S. 1789 that would affect postal finances.

**Postal Service Obligations for Retiree Health Care.** Under current law, the Postal Service will make annual payments over the 2012–2016 period to two accounts for retirees' health insurance premiums. (USPS spending on those activities is classified as off-budget.) The agency will make a direct payment to the on-budget Federal Employees Health Benefits (FEHB) fund for current retirees. CBO estimates that this payment will be about \$2.7 billion in 2012, rising to \$3.8 billion by 2016.

In addition, over the 2012–2016 period, the Postal Service is required (under current law) to make specified annual payments that range from \$5.6 billion to \$11.1 billion to the PSRHBF, an on-budget account established by the Postal Accountability and Enhancement Act (Public Law 109–435) to prefund future retirees' health benefits. Under current law, funds in the PSRHBF may not be expended for retirees' health cost until fiscal year 2017.

Beginning in 2017, the Postal Service will make estimated annual payments to the PSRHBF to cover the “normal costs” of providing health benefits to future retirees. Those payments will be equal to the annual increase in retiree health care liabilities attributable to current employees. In addition, the agency will make annual payments amortized over 40 years to liquidate the unfunded liability for retirees' health benefits. The unfunded liability is the total liability accrued to date for retirees' health benefits minus the PSRHBF balance that is equivalent to the amount that has not been set aside to cover future liabilities. Those payments will be estimated by the Office of Personnel Management (OPM) before 2017.

The payments to the PSRHBF that are required under current law are shown in the memorandum to Table 2.

**Postal Service Pension Obligations.** Most postal employees participate in the Federal Employees Retirement System (FERS), while some workers with longer tenure participate in the Civil Service Retirement System (CSRS). The Postal Service and its employees make payroll contributions toward FERS and CSRS.

TABLE 2—OFF-BUDGET CHANGES IN DIRECT SPENDING UNDER S. 1789

	By fiscal year, outlays in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2022
Changes in USPS Payments for Retiree Health Benefits .....	508	-1,522	-1,615	-1,665	-1,761	-655	-655	-655	-655	-655	-655	-9,984
Net Effect of Transfer of Surplus Retirement Contributions	-5,700	0	0	0	0	0	0	0	0	0	0	-5,700
Reduction in Mail Delivery .....	0	0	-300	-600	-1,250	-1,250	-1,200	-1,150	-1,100	-1,050	-1,000	-8,900
Increased Credits for USPS Retirees .....	-107	-214	-215	-108	0	0	0	0	0	0	0	-643
Changes in USPS Payments for Workers' Compensation .....	0	6	7	8	-11	-27	-45	-60	-75	-91	-109	-397
Total Off-Budget Changes .....	-5,299	-1,730	-2,123	-2,364	-3,022	-1,932	-1,900	-1,865	-1,830	-1,796	-1,764	-25,624
<b>MEMORANDUM—USPS PAYMENTS FOR RETIREE HEALTH BENEFITS</b>												
Under Current Law:												
Estimated Payments to FEHB .....	2,666	2,911	3,189	3,489	3,792	0	0	0	0	0	0	16,047
Specified Payments to PSRHF <sup>a</sup> .....	2,100	5,600	5,700	5,700	5,800	0	0	0	0	0	0	24,900
Estimated Payments for Normal Costs <sup>b</sup> .....	0	0	0	0	0	4,181	4,410	4,651	4,902	5,165	5,440	28,749
Estimated Amortization Payments <sup>c</sup> .....	0	0	0	0	0	3,410	3,410	3,410	3,410	3,410	3,410	20,460
Total .....	4,766	8,511	8,889	9,189	9,592	7,591	7,820	8,061	8,312	8,575	8,850	90,156
Under S. 1789:												
Estimated Payment for Normal Costs .....	3,174	3,368	3,560	3,760	3,970	4,181	4,410	4,651	4,902	5,165	5,440	46,581
Estimated Amortization Payments .....	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	23,100
Subtotal .....	5,274	5,468	5,660	5,860	6,070	6,281	6,510	6,751	7,002	7,265	7,540	69,681
Changes in Other USPS Spending .....	0	1,522	1,615	1,665	1,761	655	655	655	655	655	655	10,492
Total .....	5,274	6,990	7,275	7,525	7,831	6,936	7,165	7,406	7,657	7,920	8,195	80,173
Changes in Payments for Retiree Health Benefits 508 .....	508	-1,522	-1,615	-1,665	-1,761	-655	-655	-655	-655	-655	-655	-9,984

Notes: Components may not sum to totals because of rounding.  
 USPS = United States Postal Service; FEHB = Federal Employees Health Benefits fund; PSRHF = Postal Service Retiree Health Benefits Fund.  
 a. In fiscal year 2012, the Postal Service is required to pay \$11.1 billion to the PSRHF. However, OBO estimates that the agency will be able to pay only \$2.1 billion.  
 b. These payments are equal to the annual increase in retiree health care liabilities attributable to current employees.  
 c. These costs are based on information provided by the Office of Personnel Management.



Beginning in fiscal year 2017, the Postal Service will make annual payments amortized over 27 years to liquidate any “unfunded liability” (as estimated by OPM) for retirees’ CSRS pensions benefits. The unfunded liability is the total liability accrued to date for retirees’ pension benefits minus the portion of the CSRDF attributable to Postal Service contributions that is equivalent to the amount that has not been set aside to cover future liabilities.

*Off-Budget Changes in Direct Spending (Postal Service Fund)*

CBO estimates that enacting S. 1789 would reduce net USPS spending by \$25.6 billion over the 2012–2022 period; as noted above, USPS spending is classified as off-budget. Details of changes in spending from the Postal Service Fund are summarized in Table 2 and discussed in the following subsections.

**Changes in Payments for Retiree Health Benefits.** CBO estimates that the bill’s provisions that would change payments to the PSRHBFB would result in off-budget savings of about \$10 billion over the 2012–2022 period, as discussed below.

*Payments to the PSRHBFB under S. 1789.* The legislation would authorize the Postal Service, over the 2012–2016 period, to make payments to the FEHB fund for current retirees’ health insurance premiums from the PSRHBFB (under current law, funds in the PSRHBFB are not available for spending until fiscal year 2017). S. 1789 also would eliminate the current specified payments into the PSRHBFB for fiscal years 2012 through 2016. In addition, beginning in 2012, the bill would direct the Postal Service to make estimated annual payments to the PSRHBFB to cover the normal costs of providing health benefits to future retirees and estimated 40-year amortization payments to cover 80 percent of the unfunded liability for retirees’ health benefits (under current law, those payments would not begin until 2017). The payments required under S. 1789 are shown in the memorandum on Table 2; as detailed in the table’s footnotes, CBO does not expect the Postal Service to be able to make the full payments required in 2012.

The bill’s changes in payments for retirees’ health insurance premiums would lower the Postal Service’s costs for those activities over the 2013–2022 period as shown in Table 2 (see memorandum). For example, under current law, the Postal Service will pay a total of about \$8.5 billion in 2013, but under S. 1789, the agency would pay \$5.5 billion in that year. CBO also expects that lowering health care expenses would lead to an increase in other USPS costs totaling \$1.5 billion in 2013 and about \$10.5 billion over the 2013–2022 period. We estimate that enacting S. 1789 would reduce net USPS spending by about \$10 billion over the 10-year period. (Those provisions also would affect cash flows of the PSRHBFB, as discussed below.)

*Changes in Other USPS Spending.* CBO expects that lowering health care expenses would lead the agency to modify its ongoing efforts under current law to reduce spending. Faced with an imbalance of receipts from postal customers and operational costs, the Postal Service has made significant efforts to reduce spending in recent years. For example, early in 2009, the Postal Service announced plans to cut spending by \$5.9 billion over the 2009–2010 period. Just a few months later, in response to worsening financial conditions, the agency accelerated the plan to cut \$5.9 billion in

2009 alone. Since then, the Postal Service has announced the possibility of closing offices, laying off employees, and making major reductions in service.

CBO expects that lowering health care expenses would lead the agency to alter its cost-reduction program by cutting spending less aggressively than it would without the legislation. CBO anticipates that enacting this legislation would lead the USPS to increase its net operational spending relative to current law. We estimate that the net increase in such USPS outlays over the 2013–2022 period would be about half of the reduction in health care payments about \$1.5 billion in 2013 and \$10.5 billion over the 2013–2022 period.

**Net Effect of Transfer of Surplus Postal Retirement Contributions.** For each of fiscal years 2011 through 2013, S. 1789 would authorize the Postal Service Fund to receive a transfer of any surplus in the USPS FERS account within the CSRDF as of the end of the fiscal year. S. 1789 would permit the Postal Service to use the transferred amounts to fund employee buyout plans, pay off its debt to the U.S. Treasury, make payments for workers' compensation benefits, and for other expenses.

OPM estimates that the Postal Service's surplus for its FERS account in the CSRDF was \$11.4 billion as of September 30, 2011. Under the bill, CBO estimates that \$11.4 billion would be transferred from the CSRDF to the Postal Service Fund in fiscal year 2012. This intragovernmental transfer would be classified as a savings of \$11.4 billion in off-budget direct spending for the Postal Service Fund in 2012. (This transfer also would result in a cost of \$11.4 billion to the on-budget CSRDF as discussed below.)

As with the bill's provision to lower the health care expenses, CBO expects that the transfer would lead the agency to alter its cost-reduction program by cutting spending less aggressively than it otherwise would and thus increase other expenses relative to current law. We estimate that this increase in other expenses would be about half the \$11.4 billion that would be transferred—\$5.7 billion in 2012; we estimate that the net effect of this provision would be a savings of \$5.7 billion in 2012 (as shown in Table 2).

CBO has no basis for estimating whether there would be any surplus in the USPS FERS account in fiscal years 2012 and 2013 to transfer to the Postal Service Fund.

**Reduction in Mail Delivery.** S. 1789 would authorize the Postal Service to deliver mail five days per week, beginning no earlier than two years after enactment. Before any change in service, however, the Government Accountability Office (GAO) would have to evaluate the financial need for such a change and the Postal Regulatory Commission (PRC) would have to determine that a reduction in mail delivery would be necessary for the Postal Service to achieve long-term financial solvency. In addition, the bill would require the Postal Service to develop measures to reduce any disproportionate effects that five-day delivery would have on certain customers and communities.

CBO estimates that reducing mail delivery to five days per week would result in savings of about \$1.3 billion by fiscal year 2016. Estimated savings in 2015 and 2014 would be lower—about \$600 million and \$300 million, respectively—as the Postal Service gradually increases efficiency under the new delivery system. Beginning in 2018, we expect that annual savings would gradually decline as

those funds would probably be spent by the Postal Service or returned to mailers in the form of lower rates rather than accumulating as large annual surpluses in the Postal Service Fund. We estimate that annual savings would fall to \$1 billion by 2022.

Implementation of five-day delivery under S. 1789 would depend upon evaluations by GAO and PRC, and we cannot predict the actions of those agencies. However, we expect that there is a 50 percent chance that GAO and PRC actions would lead to five-day delivery. The anticipated savings of about \$1.3 billion in 2016 is based on estimates prepared by the Postal Service and the PRC, reduced by 50 percent to reflect the uncertainty of future actions by GAO and the PRC.<sup>1</sup>

**Increased Credits for USPS Retirees.** For certain employees who retire before 2015, section 102 of S. 1789 would authorize the USPS to offer credit for additional years of service as an incentive to retire. As discussed below, the provision would affect spending from the CSRDF and would result in several thousand USPS employees retiring over the 2012–2014 period a few years earlier than expected under current law. Over that period, the Postal Service would make lower employer contributions toward retirement and would spend less in salaries and benefits. CBO estimates that provision of S. 1789 would save the USPS about \$640 million over the 2012–2015 period.

**Changes in Workers' Compensation for the USPS.** The bill would make several changes to the Federal Employees' Compensation Act, which provides wage and medical benefits to federal employees who are injured in the course of their work.

Based on information from the Department of Labor (DOL), CBO estimates that the changes proposed in S. 1789 would reduce gross outlays under FECA by \$1.2 billion over the 2012–2022 period. That gross savings would be partially offset by reduced reimbursements from federal agencies, including the Postal Service, of \$1 billion during that period, for net savings to the FECA account over 10 years of about \$200 million. Based on historical spending patterns, CBO estimates that about 40 percent of the gross FECA savings would accrue to the USPS, which, accordingly, would pay about \$400 million less in reimbursements to the FECA account under S. 1789 over the 2012–2022 period as shown in Table 2.

#### *On-Budget Changes in Direct Spending and Revenues*

CBO estimates that enacting S. 1789 would increase on-budget direct spending by \$31.9 billion over the 2012–2022 period. Those costs would result from changes in the cash flows of PSRBHF, CSRDF, and FECA accounts as summarized in Table 3 and discussed in the following subsections.

**Changes in USPS Payments to PSRHBF.** As discussed previously, the bill would change payments that the Postal Service makes for retiree health benefits, and CBO estimates that those changes would decrease net on-budget direct spending by about

<sup>1</sup>The Postal Service estimates that eliminating mail delivery on Saturdays would eventually result in net savings of \$3.1 billion annually, mostly in personnel and transportation costs. The PRC estimates that reduction of mail delivery from six to five days per week would save only \$1.7 billion per year. The PRC estimates lower net savings largely because it disagrees with the Postal Service's assumption that most mail currently delivered on Saturday could be delivered on Mondays with minimal increased costs. PRC's estimate therefore includes a bigger expected offset to the gross savings for eliminating Saturday deliveries.

\$500 million in 2012 but would increase direct spending by about \$20.5 billion over the 2012–2022 period. Those costs result from changes in cash flows of the PSRHBF as displayed in the memorandum to Table 3; as detailed in the table’s footnotes, CBO does not expect the Postal Service to be able to make the specified payments required in 2012. S. 1789 would not affect the net cash flows of the FEHB fund (although under the bill’s provisions, the payments to this fund would be made out of the PSRHBF rather than the Postal Service Fund).

CBO estimates that the payments to FEHB from the PSRHBF would range from \$2.7 billion in 2012 to \$3.8 billion in 2016. The bill would eliminate the specified payments required under current law from the Postal Service Fund into the PSRHBF over the 2012–2016 period (which total \$24.9 billion). In addition, S. 1789 would direct the Postal Service, beginning in 2012, to make estimated annual payments to the PSRHBF to cover the costs of providing health benefits to future retirees. (Currently, payments for those so-called “normal costs” will not be made until 2017.) Based on information from OPM, CBO estimates that those payments would grow from \$3.2 billion in 2012 to \$5.4 billion by 2022. Under the bill, the agency also would make estimated 40-year amortization payments toward the unfunded liability for retirees’ health benefits beginning in 2012 rather than in 2017 as under current law. OPM estimates that those payments would be \$2.1 billion annually.

TABLE 3—CHANGES IN DIRECT SPENDING FOR ON-BUDGET ACCOUNTS UNDER S. 1789

	By fiscal year, outlays in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2022
Changes in USPS Payments to PSRHB <sup>F</sup> .....	-508	3,043	3,229	3,329	3,522	1,310	1,310	1,310	1,310	1,310	1,310	20,475
Transfer of Surplus Retirement Contributions .....	11,400	0	0	0	0	0	0	0	0	0	0	11,400
Increased Credits for USPS Retirees .....	53	80	81	27	-1	-1	-1	-1	-1	-1	-1	234
Net Changes in FECA .....	0	16	1	-6	-44	-37	-25	-28	-29	-31	-35	-219
<b>Total Changes in On-Budget Costs ...</b>	<b>10,945</b>	<b>3,139</b>	<b>3,311</b>	<b>3,350</b>	<b>3,477</b>	<b>1,272</b>	<b>1,284</b>	<b>1,281</b>	<b>1,280</b>	<b>1,278</b>	<b>1,274</b>	<b>31,891</b>
<b>Memorandum—PSRHB<sup>F</sup> Estimates:</b>												
<b>Under Current Law:</b>												
Specified Payment from USPS <sup>a</sup> .....	-2,100	-5,600	-5,700	-5,700	-5,800	0	0	0	0	0	0	-24,900
Normal Payments .....	0	0	0	0	0	-4,181	-4,410	-4,651	-4,902	-5,165	-5,440	-28,749
Amortization Payments .....	0	0	0	0	0	-3,410	-3,410	-3,410	-3,410	-3,410	-3,410	-20,460
<b>Total .....</b>	<b>-2,100</b>	<b>-5,600</b>	<b>-5,700</b>	<b>-5,700</b>	<b>-5,800</b>	<b>-7,591</b>	<b>-7,820</b>	<b>-8,061</b>	<b>-8,312</b>	<b>-8,575</b>	<b>-8,850</b>	<b>-74,109</b>
<b>Under S. 1789:</b>												
FEHB Payment <sup>b</sup> .....	2,666	2,911	3,189	3,489	3,792	0	0	0	0	0	0	16,047
Normal Payments .....	-3,174	-3,368	-3,560	-3,760	-3,970	-4,181	-4,410	-4,651	-4,902	-5,165	-5,440	-46,581
Amortization Payments .....	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-2,100	-23,100
<b>Total .....</b>	<b>-2,608</b>	<b>-2,557</b>	<b>-2,471</b>	<b>-2,371</b>	<b>-2,278</b>	<b>-6,281</b>	<b>-6,510</b>	<b>-6,751</b>	<b>-7,002</b>	<b>-7,265</b>	<b>-7,540</b>	<b>-53,634</b>
<b>Changes for PSRHB<sup>F</sup> .....</b>	<b>-508</b>	<b>3,043</b>	<b>3,229</b>	<b>3,329</b>	<b>3,522</b>	<b>1,310</b>	<b>1,310</b>	<b>1,310</b>	<b>1,310</b>	<b>1,310</b>	<b>1,310</b>	<b>20,475</b>

Notes: Components may not sum to totals because of rounding.  
 PSRHB<sup>F</sup> = Postal Service Retiree Health Benefits Fund; USPS = United States Postal Service; FECA = Federal Employees' Compensation Act; FEHB = Federal Employees Health Benefits Fund.  
<sup>a</sup>In fiscal year 2012, the Postal Service is required to pay \$11.1 billion to the PSRHB<sup>F</sup>. However, CEO estimates that the agency will be able to pay only \$2.1 billion.  
<sup>b</sup>Under current law, the FEHB payment would be made from the PSRHB<sup>F</sup> beginning in 2017, so S. 1789 would not affect cash flows over the 2017–2022 period.

**Transfer of Surplus Postal Retirement Contributions.** As discussed previously, S. 1789 would transfer to the Postal Service Fund any surplus in the USPS FERS account within the CSRDF as of September 30, 2011. Based on information from OPM, CBO estimates that \$11.4 billion would be transferred from the CSRDF to the Postal Service Fund in 2012. This transfer would increase on-budget spending from the CSRDF by \$11.4 billion in 2012.

**Increased Credits for USPS Retirees.** For certain employees who retire before 2015, section 102 would authorize the USPS to offer credit for additional years of service as an incentive to retire. Eligible USPS employees in CSRS could be offered up to one year of additional service credit, and eligible employees in FERS could be offered up to two years of credit; those years of service would be used to determine eligibility for retirement and would be included in the calculation of any retirement annuity. Employees who accept the additional service credit offer could not also receive a voluntary separation incentive payment (cash buyout) available under current law.

Accepting an additional service credit would boost an employee's retirement annuity by about 2 percent; on average, that increase would add \$1,000 to \$2,000 per year to the employee's pension. Based on the response to recent buyout offers, CBO estimates that a relatively small number of USPS employees would accept the service credit offer and that it would mostly appeal to employees who are within a year or two of eligibility for full retirement.

CBO estimates that under this provision direct spending would increase by \$234 million over the 2012–2022 period; employees who accept the service credit would begin receiving retirement benefits from the Civil Service Retirement and Disability Trust Fund earlier than under current law.

The payment of employee retirement contributions made on behalf of participating employees would end earlier than expected under current law. The payment of employee contributions toward retirement are recorded in the budget as revenues. CBO estimates that enacting S. 1789 would lower revenues by \$15 million over the 10-year period because of early retirement.

**Changes in Workers' Compensation for Agencies Other Than USPS.** The bill would make several changes to the Federal Employees' Compensation Act, which provides wage and medical benefits to federal employees who are injured in the course of their work. Proposed changes include:

- Reducing benefits to 50 percent of a claimant's pre-injury wage upon reaching retirement age (as defined in the Social Security Act);
- Eliminating augmented benefits to claimants who have dependents (so that all claimants who are below retirement age—except certain exempt individuals—receive a benefit equal to two-thirds of their pre-injury wage);
- Improving cross-matching of data to identify cases where individuals are wrongly receiving benefits;
- Increasing benefits under the disfigurement compensation schedule and for funeral expenses;
- Establishing a schedule for managing disability reviews, including requiring periodic medical exams; and

- Improving the ability of the government to recapture compensation costs from responsible parties.

Under current law, FECA provides compensation for lost wages of up to 75 percent of a worker's salary if that person can no longer work because of debilitating injuries sustained on the job, as well as medical expenses relating to the injury and certain death benefits. In 2010, governmentwide benefits totaled \$2.9 billion; most of those expenses are charged back to the beneficiaries' employing agency, so that in 2010, net FECA outlays (gross outlays less reimbursements from agencies) totaled \$216 million.

Based on information from DOL, CBO estimates that the changes proposed in S. 1789 would reduce gross outlays under FECA by \$1.2 billion over the 2012–2022 period—which would be partially offset by reduced reimbursements of \$1 billion during that period—for net savings to the FECA account of about \$200 million over the period (see Table 3).

*Other provisions that could affect direct spending*

The bill would direct arbitrators involved in future labor negotiations to consider the financial condition of the Postal Service when mediating disputes between USPS and its labor unions and would reform certain Postal Service contracting practices. Those provisions might reduce USPS costs, but CBO expects that any net savings probably would be indistinguishable from savings that could result from the Postal Service's current efforts to negotiate more favorable labor contracts and improve procurement practices.

In recent years the Postal Service has attempted to reduce its workforce by offering incentives for employees to retire early. (The agency has reduced its employee complement by more than 100,000 workers over the past three years, mostly through attrition.) CBO expects the Postal Service will continue to offer such incentives to lower its costs. As discussed earlier, S. 1789 would permit the Postal Service to use amounts transferred from its FERS account within the CSRDF to pay for employee buyout plans (including payments of up to \$25,000 per employee). It is possible that enacting S. 1789 could increase the number of employees who retire during the next several years and thus lower USPS labor costs, but CBO has no basis for estimating any such effects.

S. 1789 also would authorize the Postal Service to establish a program to provide services for agencies of the federal government or the states for a fee. Implementing this program would require the Postal Service to offer cost-effective alternatives for services to state or federal agencies. Those proposed programs might increase USPS income but also would add to costs. CBO has no information to predict the net budget impact of such new ventures if any were undertaken by the Postal Service.

*Spending Subject to Appropriation*

Changes to FECA in S. 1789 would result in lower discretionary costs of about \$600 million over the 2012–2022 period to federal agencies' salaries and expense accounts because of the lower reimbursements that would be required. However, S. 1789 would require DOL to institute and manage the new disability reviews, appeals from the procedures, and other requirements of the bill. CBO estimates that implementing those provisions would increase

spending by about \$200 million over the 2012–2022 period, assuming appropriation of the necessary amounts, resulting in an estimated net discretionary cost of \$415 million over the 2012–2022 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.



CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 1789, THE 21ST CENTURY POSTAL SERVICE ACT OF 2011, AS ORDERED REPORTED BY THE SENATE COMMITTEE  
ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS ON NOVEMBER 9, 2011

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012– 2017	2012– 2022
Statutory Pay-As-You-Go Impact .....	10,941	3,134	3,306	3,349	3,477	1,272	1,284	1,281	1,280	1,278	1,274	25,479	31,876
NET INCREASE OR DECREASE (–) IN THE ON-BUDGET DEFICIT .....													

Intergovernmental and private-sector impact: S. 1789 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On December 1, 2011, CBO transmitted a cost estimate for H.R. 2309, the Postal Reform Act of 2011, as ordered reported by the House Committee on Oversight and Government Reform on October 13, 2011. We estimated that enacting H.R. 2309 would result in off-budget savings totaling \$26.2 billion and on-budget costs of \$7.7 billion over the 2012–2021 period for a net savings to the unified budget of \$18.5 billion.

Estimate prepared by: Federal Spending: Mark Grabowicz—USPS, Christi Hawley Anthony—Federal Employees’ Compensation, Amber Marcelino—USPS Retiree Credits; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

**TITLE V—GOVERNMENT ORGANIZATION AND EMPLOYEES**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**Subpart G—Insurance and Annuities**

\* \* \* \* \*

**CHAPTER 81—COMPENSATION FOR WORK INJURIES**

\* \* \* \* \*

**Subchapter I—Generally**

\* \* \* \* \*

**§ 8101. Definitions**

For the purpose of this subchapter (5 USCS §§ 8101 et seq.)—

(1) “employee” means—

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

(D) an individual employed by the government of the District of Columbia *for an injury that occurred before the effective date of section 204(e) of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93–198; 87 Stat. 783; 5 U.S.C. 8101 note)*; and

(E) \* \* \*

(2) \* \* \*

- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
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- (12) \* \* \*
- (13) \* \* \*
- (14) \* \* \*
- (15) \* \* \*
- (16) \* \* \*
- (17) \* \* \*

(18) “price index” means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; **[and]**

(19) “organ” means a part of the body that performs a special function, and for purposes of this subchapter (5 USCS §§ 8101 et seq.) excludes the brain, heart, and back; **[and]**

(20) “United States medical officers and hospitals” includes medical officers and hospitals of the Army, Navy, Air Forces, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor; **[.]**

(21) *‘retirement age’ has the meaning given that term under section 216(l)(1) of the Social Security Act (42 U.S.C. 416(l)(1));*

(22) *‘covered claim for total disability’ means a claim for a period of total disability that commenced before the date of enactment of the Workers’ Compensation Reform Act of 2012;*

(23) *‘covered claim for partial disability’ means a claim for a period of partial disability that commenced before the date of enactment of the Workers’ Compensation Reform Act of 2012; and*

(24) *‘individual who has an exempt disability condition’ means an individual—*

(A) *who—*

(i) *is eligible to receive continuous periodic compensation for total disability under section 8105 on the date of enactment of the Workers’ Compensation Reform Act of 2012; and*

(ii) *meets the criteria under section 8105(c);*

(B) *who, on the date of enactment of the Workers’ Compensation Reform Act of 2012—*

(i) *is eligible to receive continuous periodic compensation for total disability under section 8105; and*

(ii) *has sustained a currently irreversible severe mental or physical disability for which the Secretary of Labor has authorized, for at least the 1-year period ending on the date of enactment of the Workers’ Compensation Reform Act of 2012, constant in-home care or custodial care, such as placement in a nursing home; or*

(C) who is eligible to receive continuous periodic compensation for total disability under section 8105—

(i) for not less than the 3-year period ending on the date of enactment of the Workers' Compensation Reform Act of 2012; or

(ii) if the individual became eligible to receive continuous periodic compensation for total disability under section 8105 during the period beginning on the date that is 3 years before the date of enactment of the Workers' Compensation Reform Act of 2012 and ending on such date of enactment, for not less than the 3-year period beginning on the date on which the individual became eligible.

\* \* \* \* \*

#### § 8104. Vocational rehabilitation

(a) [The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter (5 USCS §§ 8101 et seq.) to undergo vocational rehabilitation.] *IN GENERAL.*—

(1) *DIRECTION.*—*Except as provided in paragraph (2), not earlier than the date that is 6 months after the date on which an individual eligible for wage-loss compensation under section 8105 or 8106 is injured, or by such other date as the Secretary of Labor determines it would be reasonable under the circumstances for the individual to begin vocational rehabilitation, and if vocational rehabilitation may enable the individual to become capable of more gainful employment, the Secretary of Labor shall direct the individual to participate in developing a comprehensive return to work plan and to undergo vocational rehabilitation at a location a reasonable distance from the residence of the individual. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as practicable, shall use the services or facilities of State agencies and corresponding agencies which cooperate with the [Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29] the Secretary of Education in carrying out the purposes of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title (5 USCS § 8103). The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost to the agency reimbursable in full [under section 32(b)(1) of title 29] under section 5 of the Rehabilitation Act of 1973 (29 U.S.C. 704) is excluded.*

(2) *EXCEPTION.*—*The Secretary of Labor may not direct an individual who has attained retirement age to participate in developing a comprehensive return to work plan or to undergo vocational rehabilitation.*

(b) *CONTENTS OF RETURN TO WORK PLAN.*—*A return to work plan developed under subsection (a)—*

(1) shall—

(A) set forth specific measures designed to increase the wage-earning capacity of an individual;

(B) take into account the prior training and education of the individual and the training, educational, and employment opportunities reasonably available to the individual; and

(C) provide that any employment undertaken by the individual under the return to work plan be at a location a reasonable distance from the residence of the individual;

(2) may provide that the Secretary will pay out of amounts in the Employees' Compensation Fund reasonable expenses of vocational rehabilitation (which may include tuition, books, training fees, supplies, equipment, and child or dependent care) during the course of the plan; and

(3) may not be for a period of more than 2 years, unless the Secretary finds good cause to grant an extension, which may be for not more than 2 years.

[(b)] (c) *COMPENSATION*.—Notwithstanding section 8106 (5 USCS § 8106), individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title (5 USCS §§ 8105 and 8110), less the amount of any earnings received from remunerative employment[, other than employment undertaken pursuant to such rehabilitation].

(d) *ASSISTED REEMPLOYMENT AGREEMENTS*.—

(1) *IN GENERAL*.—The Secretary may enter into an assisted reemployment agreement with an agency or instrumentality of any branch of the Federal Government or a State or local government or a private employer that employs an individual eligible for wage-loss compensation under section 8105 or 8106 to enable the individual to return to productive employment.

(2) *CONTENTS*.—An assisted reemployment agreement under paragraph (1)—

(A) may provide that the Secretary will use amounts in the Employees' Compensation Fund to reimburse an employer in an amount equal to not more than 100 percent of the compensation the individual would otherwise receive under section 8105 or 8106; and

(B) may not be for a period of more than 3 years.

(e) *LIST*.—To facilitate the hiring of individuals eligible for wage-loss compensation under section 8105 or 8106, the Secretary shall provide a list of such individuals to the Office of Personnel Management, which the Office of Personnel Management shall provide to all agencies and instrumentalities of the Federal Government.

\* \* \* \* \*

### § 8105. Total Disability

(a) [(If)] *IN GENERAL*.—Subject to subsection (b), if the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of his monthly pay, which is known as his basic compensation for total disability.

(b) *CONVERSION OF ENTITLEMENT AT RETIREMENT AGE*.—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), the basic compensation for total disability for an employee who has attained retirement age shall be 50 percent of the monthly pay of the employee.*

(2) *EXCEPTIONS.*—

(A) *COVERED RECIPIENTS WHO ARE RETIREMENT AGE OR HAVE AN EXEMPT DISABILITY CONDITION.*—*Paragraph (1) shall not apply to a covered claim for total disability by an employee if the employee—*

*(i) on the date of enactment of the Workers' Compensation Reform Act of 2012, has attained retirement age; or*

*(ii) is an individual who has an exempt disability condition.*

(B) *TRANSITION PERIOD FOR CERTAIN EMPLOYEES.*—*For a covered claim for total disability by an employee who is not an employee described in subparagraph (A), the employee shall receive the basic compensation for total disability provided under subsection (a) until the later of—*

*(i) the date on which the employee attains retirement age; and*

*(ii) the date that is 3 years after the date of enactment of the Workers' Compensation Reform Act of 2012.*

[(b)] (c) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is prima facie permanent total disability.

\* \* \* \* \*

#### **§ 8106. Partial Disability**

(a) [(If)] *IN GENERAL.*—*Subject to subsection (b), if the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 2/3 percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.*

(b) *CONVERSION OF ENTITLEMENT AT RETIREMENT AGE.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), the basic compensation for partial disability for an employee who has attained retirement age shall be 50 percent of the difference between the monthly pay of the employee and the monthly wage-earning capacity of the employee after the beginning of the partial disability.*

(2) *EXCEPTIONS.*—

(A) *COVERED RECIPIENTS WHO ARE RETIREMENT AGE.*—*Paragraph (1) shall not apply to a covered claim for partial disability by an employee if, on the date of enactment of the Workers' Compensation Reform Act of 2012, the employee has attained retirement age.*

(B) *TRANSITION PERIOD FOR CERTAIN EMPLOYEES.*—*For a covered claim for partial disability by an employee who is not an employee described in subparagraph (A), the employee shall receive basic compensation for partial disability in accordance with subsection (a) until the later of—*

- (i) the date on which the employee attains retirement age; and
- (ii) the date that is 3 years after the date of enactment of the Workers' Compensation Reform Act of 2012.

[(b)] (c) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who—

- (1) fails to make an affidavit or report when required; or
- (2) knowingly omits or understates any part of his earnings; forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title (5 USCS § 8129), unless recovery is waived under that section.

[(c)] (d) A partially disabled employee who—

- (1) refuses to seek suitable work; or
  - (2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him;
- is not entitled to compensation.

\* \* \* \* \*

#### **§ 8106a. Reporting requirements**

(a) *DEFINITION.*—In this section, the term ‘employee receiving compensation’ means an employee who—

- (1) is paid compensation under section 8105 or 8106; and
- (2) has not attained retirement age.

(b) *AUTHORITY.*—The Secretary of Labor shall require an employee receiving compensation to report the earnings of the employee receiving compensation from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.

(c) *CONTENTS.*—An employee receiving compensation shall include in a report required under subsection (a) the value of housing, board, lodging, and other advantages which are part of the earnings of the employee receiving compensation in employment or self-employment and the value of which can be estimated.

(d) *FAILURE TO REPORT AND FALSE REPORTS.*—

(1) *IN GENERAL.*—An employee receiving compensation who fails to make an affidavit or other report required under subsection (b) or who knowingly omits or understates any part of the earnings of the employee in such an affidavit or other report shall forfeit the right to compensation with respect to any period for which the report was required.

(2) *FORFEITED COMPENSATION.*—Compensation forfeited under this subsection, if already paid to the employee receiving compensation, shall be recovered by a deduction from the com-

*pendation payable to the employee or otherwise recovered under section 8129, unless recovery is waived under that section.*

\* \* \* \* \*

**§ 8107. Compensation schedule**

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, **[at the rate of 66 2/3 percent of his monthly pay]** *at the rate specified under subsection (d).* The basic compensation is—

- (1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;
- (2) payable regardless of whether the disability also involves another impairment of the body; and
- (3) in addition to compensation for temporary total or temporary partial disability.

(b) \* \* \*

(c) The compensation schedule is as follows:

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
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- (18) \* \* \*
- (19) \* \* \*
- (20) \* \* \*

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation **[not to exceed \$3,500]** *in proportion to the severity of the disfigurement, not to exceed \$50,000* shall be awarded in addition to any other compensation payable under this schedule. *The maximum amount of compensation under this paragraph shall be increased on March 1 of each year by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.*

(22) \* \* \*

(d) **RATE FOR COMPENSATION.—**

(1) **ANNUAL SALARY.—**



(A) *IN GENERAL.*—Except as provided in paragraph (2), the rate under subsection (a) shall be the rate of  $66\frac{2}{3}$  percent of the annual salary level established under subparagraph (B), in a lump sum equal to the present value (as calculated under subparagraph (C)) of the amount of compensation payable under the schedule.

(B) *ESTABLISHMENT.*—

(i) *IN GENERAL.*—The Secretary of Labor shall establish an annual salary for purposes of subparagraph (A) in the amount the Secretary determines will result in the aggregate cost of payments made under this section being equal to what would have been the aggregate cost of payments under this section if the amendments made by section 304(a) of the Workers' Compensation Reform Act of 2012 had not been enacted.

(ii) *COST OF LIVING ADJUSTMENT.*—The annual salary established under clause (i) shall be increased on March 1 of each year by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.

(C) *PRESENT VALUE.*—The Secretary of Labor shall calculate the present value for purposes of subparagraph (A) using a rate of interest equal to the average market yield for outstanding marketable obligations of the United States with a maturity of 2 years on the first business day of the month in which the compensation is paid or, in the event that such marketable obligations are not being issued on such date, at an equivalent rate selected by the Secretary of Labor, true discount compounded annually.

(2) *CERTAIN INJURIES.*—For an injury that occurred before the date of enactment of the Workers' Compensation Reform Act of 2012, the rate under subsection (a) shall be  $66\frac{2}{3}$  percent of the employee's monthly pay.

(e) *SIMULTANEOUS RECEIPT.*—

(1) *TOTAL DISABILITY.*—An employee who receives compensation for total disability under section 8105 may only receive the lump sum of schedule compensation under this section in addition to and simultaneously with the benefits for total disability after the earlier of—

(A) the date on which the basic compensation for total disability of the employee becomes 50 percent of the monthly pay of the employee under section 8105(b); or

(B) the date on which augmented compensation of the employee terminates under section 8110(b)(2)(A)(ii), if the employee receives such compensation.

(2) *PARTIAL DISABILITY.*—An employee who receives benefits for partial disability under section 8106 may only receive the lump sum of schedule compensation under this section in addition to and simultaneously with the benefits for partial disability after the earlier of—

(A) the date on which the basic compensation for partial disability of the employee becomes 50 percent of the dif-

ference between the monthly pay of the employee and the monthly wage-earning capacity of the employee after the beginning of the partial disability under section 8106(b); or  
 (B) the date on which augmented compensation of the employee terminates under section 8110(b)(2)(B), if the employee receives such compensation.

\* \* \* \* \*

**§ 8110. Augmented compensation for dependents**

(a) \* \* \*

(b) *TERMINATION OF AUGMENTED COMPENSATION.*—

(1) *IN GENERAL.*—Subject to paragraph (2), augmented compensation for dependents under subsection (c) shall not be provided.

(2) *EXCEPTIONS.*—

(A) *TOTAL DISABILITY.*—For a covered claim for total disability by an employee—

(i) the employee shall receive augmented compensation under subsection (c) if the employee is an individual who has an exempt disability condition; and

(ii) the employee shall receive augmented compensation under subsection (c) until the date that is 3 years after the date of enactment of the Workers' Compensation Reform Act of 2012 if the employee is not an employee described in clause (i).

(B) *PARTIAL DISABILITY.*—For a covered claim for partial disability by an employee, the employee shall receive augmented compensation under subsection (c) until the date that is 3 years after the date of enactment of the Workers' Compensation Reform Act of 2012.

(C) *PERMANENT DISABILITY COMPENSATED BY A SCHEDULE.*—For a claim for a permanent disability described in section 8107(a) by an employee that commenced before the date of enactment of the Workers' Compensation Reform Act of 2012, the employee shall receive augmented compensation under subsection (c).

[(b)] (c) A disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented—

(1) at the rate of 8 $\frac{1}{3}$  percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title (5 USCS § 8105 or 8107(a));

(2) at the rate of 8 $\frac{1}{3}$  percent of the difference between his monthly pay and his monthly wage-earning capacity if that compensation is payable under section 8106(a) of this title (5 USCS § 8106(a)).

\* \* \* \* \*

**§ 8112. Maximum and minimum monthly payments**

(a) Except as provided by subsections (b) and (c) and section 8138 of this title [5 USCS § 8138], the monthly rate of compensation for disability, [including augmented compensation under section 8110 of this title (5 USCS § 8110) but] not including additional compensation under section 8111 of this title (5 USCS § 8111), may not be more than [75 percent] 66 $\frac{2}{3}$  percent of the monthly pay of the

maximum rate of basic pay for GS-15, and in case of total disability may not be less than **[75 percent]** *66<sup>2</sup>/<sub>3</sub> percent* of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less.

(b) *Exceptions.*—

(1) *COVERED DISABILITY CONDITION.*—*For a covered claim for total disability by an employee, if the employee is an individual who has an exempt disability condition—*

(A) *the monthly rate of compensation for disability that is subject to the maximum and minimum monthly amounts under subsection (a) shall include any augmented compensation under section 8110; and*

(B) *subsection (a) shall be applied by substituting ‘75 percent’ for ‘66<sup>2</sup>/<sub>3</sub> percent’ each place it appears.*

(2) *PARTIAL DISABILITY.*—*For a covered claim for partial disability by an employee, until the date that is 3 years after the date of enactment of the Workers’ Compensation Reform Act of 2012—*

(A) *the monthly rate of compensation for disability that is subject to the maximum and minimum monthly amounts under subsection (a) shall include any augmented compensation under section 8110; and*

(B) *subsection (a) shall be applied by substituting ‘75 percent’ for ‘66<sup>2</sup>/<sub>3</sub> percent’ each place it appears.*

**[(b)]** (c) The provisions of **[subsection (a)]** *subsections (a) and (b)* shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.

\* \* \* \* \*

**§ 8113. Increase or decrease of basic compensation**

(a) \* \* \*

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title (5 USCS § 8104), the Secretary, on review under section 8128 of this title (5 USCS § 8128) and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, **[may reduce]** *shall reduce* prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary. *An individual who has attained retirement age may not be required to undergo vocational rehabilitation.*

\* \* \* \* \*

**§ 8116. Limitations on right to receive compensation**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) *RETIREMENT BENEFITS.*—

(1) *IN GENERAL.*—An individual entitled to compensation benefits payable under this subchapter and under chapter 83 or 84 or any other retirement system for employees of the Government, for the same period, shall elect which benefits the individual will receive.

(2) *ELECTION.*—

(A) *DEADLINE.*—An individual shall make an election under paragraph (1) in accordance with such deadlines as the Secretary of Labor shall establish, which shall be a reasonable period after the individual has received notice of a final determination that the individual is entitled to compensation benefits payable under this subchapter.

(B) *REVOCABILITY.*—An election under paragraph (1) shall be revocable, notwithstanding any other provision of law, except for any period during which an individual—

(i) was qualified for benefits payable under both this subchapter and under a retirement system described in paragraph (1); and

(ii) was paid benefits under the retirement system after having been notified of eligibility for benefits under this subchapter.

(3) *INFORMED CHOICE.*—The Secretary of Labor shall provide information, and shall ensure that information is provided, to an individual described in paragraph (1) about the benefits available to the individual under this subchapter or under chapter 83 or 84 or any other retirement system referred to in paragraph (1) the individual may elect to receive

\* \* \* \* \*

**§ 8117. [Time of accrual of right] *Waiting period***

(a) **[An employee other than a Postal Service employee is not entitled]** *IN GENERAL.*—An employee is not entitled to continuation of pay within the meaning of section 8118 for the first 3 days of temporary disability or, if section 8118 does not apply, is not entitled to compensation for the first 3 days of temporary disability, except—

(1) when the disability exceeds 14 days; or

**[(2) when the disability is followed by permanent disability; or]**

**[(3)]** (2) as provided by sections 8103 and 8104 of this title (5 USCS §§ 8103 and 8104).

(b) **[A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service]** *Use of Leave.*—An employee may use annual leave, sick leave, or leave without pay during **[that 3-day period]** *the first 3 days of temporary disability*, except that if the disability exceeds 14 days **[or is followed by permanent disability]**, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.

\* \* \* \* \*

**§ 8118. Continuation of pay[; election to use annual or sick leave]**

(a) \* \* \*

(b) Continuation of pay under this subchapter (5 USCS §§ 8101 et seq.) shall be furnished—

(1) without a break in time, except as provided under [section 8117(b) (5 USCS § 8117(b))] *section 8117*, unless controverted under regulations of the Secretary;

(2) for a period not to exceed 45 days; and

(3) under accounting procedures and such other regulations as the Secretary may require.

[(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title (5 USCS § 8117) do not begin to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.]

[(d)] (c) If a claim under subsection (a) is denied by the Secretary, payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code.

[(e)] (d) Payments under this section shall not be considered as compensation as defined by section 8101(12) of this title (5 USCS § 8101(12)).

\* \* \* \* \*

**§ 8123. Physical examinations**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) *DISABILITY MANAGEMENT REVIEW.*—

(1) *DEFINITIONS.*—*In this subsection—*

(A) *the term “covered employee” means an employee who is in continuous receipt of compensation for total disability under section 8105 for a period of not less than 6 months; and*

(B) *the term ‘disability management review process’ means the disability management review process established under paragraph (2)(A).*

(2) *ESTABLISHMENT.*—*The Secretary of Labor shall—*

(A) *establish a disability management review process for the purpose of certifying and monitoring the disability status and extent of injury of each covered employee; and*

(B) *promulgate regulations for the administration of the disability management review process.*

(3) *PHYSICAL EXAMINATIONS REQUIRED.*—*Under the disability management review process, the Secretary of Labor shall periodically require covered employees to submit to physical examinations under subsection (a) by physicians selected by the Secretary. A physician conducting a physical examination of a covered employee shall submit to the Secretary a report regarding*

*the nature and extent of the injury to and disability of the covered employee.*

**(4) FREQUENCY.—**

**(A) IN GENERAL.—***The regulations promulgated under paragraph (2)(B) shall specify the process and criteria for determining when and how frequently a physical examination should be conducted for a covered employee.*

**(B) MINIMUM FREQUENCY.—**

**(i) INITIAL.—***An initial physical examination shall be conducted not more than a brief period after the date on which a covered employee has been in continuous receipt of compensation for total disability under section 8015 for 6 months.*

**(ii) SUBSEQUENT EXAMINATIONS.—***After the initial physical examination, physical examinations of a covered employee shall be conducted not less than once every 3 years.*

**(5) EMPLOYING AGENCY OR INSTRUMENTALITY REQUESTS.—**

**(A) IN GENERAL.—***The agency or instrumentality employing an employee who has made a claim for compensation for total disability under section 8105 may at any time submit a request for the Secretary of Labor to promptly require the employee to submit to a physical examination under this subsection.*

**(B) REQUESTING OFFICER.—***A request under subparagraph (A) shall be made on behalf of an agency or instrumentality by—*

*(i) the head of the agency or instrumentality;*

*(ii) the Chief Human Capital Officer of the agency or instrumentality; or*

*(iii) if the agency or instrumentality does not have a Chief Human Capital Officer, an officer with responsibilities similar to those of a Chief Human Capital Officer designated by the head of the agency or instrumentality to make requests under this paragraph.*

**(C) INFORMATION.—***A request under subparagraph (A) shall be in writing and accompanied by—*

*(i) a certification by the officer making the request that the officer has reviewed the relevant material in the employee's file;*

*(ii) an explanation of why the officer has determined, based on the materials in the file and other information known to the officer, that requiring a physical examination of the employee under this subsection is necessary; and*

*(iii) copies of the materials relating to the employee that are relevant to the officer's determination and request, unless the agency or instrumentality has a reasonable basis for not providing the materials.*

**(D) EXAMINATION.—***If the Secretary of Labor receives a request under this paragraph before an employee has undergone an initial physical examination under paragraph (4)(B)(i), the Secretary shall promptly require the physical examination of the employee. A physical examination under this subparagraph shall satisfy the requirement under*

paragraph (4)(B)(i) that an initial physical examination be conducted.

(E) AFTER INITIAL EXAMINATION.—

(i) IN GENERAL.—If the Secretary of Labor receives a request under this paragraph after an employee has undergone an initial physical examination under paragraph (4)(B)(i), the Secretary shall—

(I) review the request and the information, explanation, and other materials submitted with the request; and

(II) determine whether to require the physical examination of the employee who is the subject of the request.

(ii) NOT GRANTED.—If the Secretary determines not to grant a request described in clause (i), the Secretary shall promptly notify the officer who made the request and provide an explanation of the reasons why the request was denied.

(f) FIELD NURSES.—

(1) DEFINITION.—In this subsection, the term ‘field nurse’ means a registered nurse that assists the Secretary in the medical management of disability claims under this subchapter and provides claimants with assistance in coordinating medical care.

(2) AUTHORIZATION.—The Secretary may use field nurses to coordinate medical services and vocational rehabilitation programs for injured employees under this subchapter. If an employee refuses to cooperate with a field nurse or obstructs a field nurse in the performance of duties under this subchapter, the right to compensation under this subchapter shall be suspended until the refusal or obstruction stops.”

\* \* \* \* \*

### § 8131. Subrogation of the United States

(a) If an injury or death for which *continuation of pay* or compensation is payable under this subchapter (5 USCS §§ 8101 et seq.) is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to—

(1) assign to the United States any right of action he may have to enforce the liability or any right he may have to share in money or other property received in satisfaction of that liability; or

(2) prosecute the action in his own name. An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to *continuation of pay* or compensation under this subchapter (5 USCS §§ 8101 et seq.).

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees’ Compensation Fund the amount of *continuation of pay* or compensation already paid to the beneficiary and the ex-

pense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payments of *continuation of pay* or compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) \* \* \*

\* \* \* \* \*

### § 8132. Adjustment after recovery from a third person

If an injury or death for which *continuation of pay* or compensation is payable under this subchapter (5 USCS §§ 8101 et seq.) is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to *continuation of pay* or compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement [by him or in his behalf] *by the beneficiary or on behalf of the beneficiary*, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of *continuation of pay and compensation* paid by the United States and credit any surplus on future payments of [compensation payable to him] *continuation of pay or compensation payable to the beneficiary* for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or [his designee] *the designee of the beneficiary* the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employees' Compensation Fund. [If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States] *If continuation of pay or compensation has not been paid to the beneficiary, the money or property shall be credited against continuation of pay or compensation payable to the beneficiary by the United States for the same injury.* However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States.

\* \* \* \* \*

### §§ 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of  $66\frac{2}{3}$  percent (except as provided in subsection (g)) for the widow or widower and children.



(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of **[75 percent]** *66<sup>2</sup>/<sub>3</sub> percent (except as provided in subsection (g))*, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower, or child, as follows:

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of **[75 percent]** *66<sup>2</sup>/<sub>3</sub> percent (except as provided in subsection (g))*.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent as follows:

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, or child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of **[75 percent]** *66<sup>2</sup>/<sub>3</sub> percent (except as provided in subsection (g))*.

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed—

(1) the monthly pay computed under section 8114 of this title (5 USCS § 8146a), except for increases authorized by section 8146a of this title (5 USCS § 8146a); or

(2) **[75 percent]** *66<sup>2</sup>/<sub>3</sub> percent (except as provided in subsection (g))* of the monthly pay of the maximum rate of basic pay for GS-15.

(f) \* \* \*

(g) *If the death occurred before the date of enactment of the Workers' Compensation Reform Act of 2012, subsections (a) and (e) shall be applied by substituting '75 percent' for '66<sup>2</sup>/<sub>3</sub> percent' each place it appears.*

\* \* \* \* \*

**8134. Funeral expenses; transportation of body**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to ex-

ceed ~~[\$800]~~ \$6,000, in the discretion of the Secretary of Labor. *The maximum amount of compensation under this subsection shall be increased on March 1 of each year by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.*

(b) \* \* \*

\* \* \* \* \*

**§ 8139. Employees of the District of Columbia**

Compensation awarded *under this subchapter* to an employee of the government of the District of Columbia shall be paid in the manner provided by statute for the payment of the general expenses of the government of the District of Columbia.

\* \* \* \* \*

**§ 8141. Civil Air Patrol volunteers**

(a) \* \* \*

(b) In administering this subchapter (5 USCS §§ 8101 et seq.) for a member of the Civil Air Patrol covered by this section—

(1) \* \* \*

(2) the percentages applicable to payments under section 8133 of this title (5 USCS § 8133) are—

(A) \* \* \*

(B) 20 percent for section 8133(a)(3) of this title (5 USCS § 8133(a)(3)) for one child and 10 percent additional for each additional child, but not to exceed a total of ~~[75 percent]~~ *66<sup>2</sup>/<sub>3</sub> percent (except as provided in subsection (c))*, if the member died fully or currently insured under subchapter II of chapter 7 of title 42 (42 USCS §§ 401 et seq.); and

(C) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

*(c) If the death occurred before the date of enactment of the Workers' Compensation Reform Act of 2012, subsection (b)(2)(B) shall be applied by substituting '75 percent' for '66<sup>2</sup>/<sub>3</sub> percent'.*

~~[(c)]~~ (d) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title (5 USCS § 8120), or other reports agreed on under that section.

\* \* \* \* \*

**§ 8147. Employees' Compensation Fund**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) *Notwithstanding subsection (b), any benefits or other payments paid to or on behalf of an employee under this subchapter or any extension or application thereof for a recurrence of injury, consequential injury, aggravation of injury, or increase in percentage of impairment to a member for which compensation is provided under the schedule under section 8107 suffered in a permanent position with an agency or instrumentality of the United States while the employment with the agency or instrumentality is covered under an assisted reemployment agreement entered into under section 8104(d) shall not be included in total cost of benefits and other payments in the statement provided to the agency or instrumentality under subsection (b) if the injury was originally incurred in a position not covered by an assisted reemployment agreement.*

\* \* \* \* \*

**§ 8148. Forfeiture of benefits by convicted felons**

(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for or receipt of any benefit under this subchapter or subchapter III of this chapter (5 USCS §§ 8101 et seq. or 8191 et seq.), shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III (5 USCS §§ 8101 et seq. or 8191 et seq.) for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under [section 8106] *section 8106a* or 8129 (5 USCS § 8106 or 8129).

(b) \* \* \*

(c) \* \* \*

\* \* \* \* \*

**§ 8153. Integrity and Compliance Program**

(a) *DEFINITIONS.—In this section—*

(1) *the term ‘FECA program’ means the Federal Employees Compensation Program administered under this subchapter;*

(2) *the term ‘Integrity and Compliance Program’ means the Integrity and Compliance Program established under subsection (b);*

(3) *the term ‘provider’ means a provider of medical or other services under the FECA program; and*

(4) *the term ‘Secretary’ means the Secretary of Labor.*

(b) *INTEGRITY AND COMPLIANCE PROGRAM.—Not later than 270 days after the date of enactment of this section, the Secretary shall establish an Integrity and Compliance Program for the purpose of preventing, identifying, and recovering improper payments (including improper payments obtained by fraud) for the FECA program, which shall include—*

(1) *procedures for identifying potentially improper payments (including improper payments obtained by fraud) before payment is made to claimants and providers, including, where appropriate, predictive analytics;*

(2) reviews after payment is made to identify potentially improper payments (including improper payments obtained by fraud) to claimants and providers;

(3) on-going screening and verification procedures to ensure the continued eligibility of medical providers to provide services under the FECA program, including licensure, Federal disbarment, and the existence of relevant criminal convictions;

(4) provision of appropriate information, education, and training to claimants and providers on requirements to ensure the integrity of the FECA program, including payments under the FECA program;

(5) appropriate controls and audits to ensure that providers adopt internal controls and procedures for compliance with requirements under the FECA program;

(6) procedures to ensure—

(A) initial and continuing eligibility of claimants for compensation, benefits, or services under the FECA program; and

(B) ongoing verification of databases of information relating to claimants to ensure accuracy and completeness; and

(7) appropriately sharing and accessing data and information with other agencies and instrumentalities of the United States, including the United States Postal Service.

(c) INTERAGENCY COOPERATION ON ANTI-FRAUD EFFORTS.—

(1) IN GENERAL.—In administering the FECA program, including the Integrity and Compliance Program, the Secretary shall cooperate with other agencies and instrumentalities of the United States (including the United States Postal Service) and the Inspectors General of such agencies and instrumentalities to prevent, identify, and recover improper payments (including improper payments obtained by fraud) under the FECA program.

(2) TASK FORCE.—

(A) IN GENERAL.—There is established a task force, which shall be known as the FECA Integrity and Compliance Task Force (in this paragraph referred to as the ‘Task Force’).

(B) MEMBERSHIP.—The members of the Task Force shall be—

(i) the Secretary, who shall serve as the Chairperson of the Task Force;

(ii) the Postmaster General, who shall serve as the Vice Chairperson of the Task Force;

(iii) the Attorney General;

(iv) the Director of the Office of Management and Budget;

(v) the Inspector General of the Department of Labor;

(vi) the Inspector General of the United States Postal Service;

(vii) the Inspectors General of other appropriate agencies and instrumentalities of the United States that employ a significant number of individuals receiving compensation, benefits, or services under the FECA program, as determined by the Chairperson and Vice Chairperson of the Task Force; and

(viii) other appropriate Federal officials, as determined by the Chairperson and Vice Chairperson of the Task Force.

(C) DUTIES.—The Task Force shall—

(i) set forth, in writing, a description of the respective roles and responsibilities in preventing, identifying, recovering, and prosecuting fraud under, and otherwise ensuring integrity and compliance of, the FECA program of—

(I) the Secretary (including subordinate officials such as the Director of the Office of Workers' Compensation Programs);

(II) the Inspector General of the Department of Labor;

(III) the Inspectors General of agencies and instrumentalities of the United States that employ claimants under the FECA program;

(IV) the Attorney General; and

(V) any other relevant officials;

(ii) develop procedures for sharing information of possible fraud under the FECA program or other intentional misstatements by claimants or providers under the FECA program, including procedures addressing—

(I) notification of appropriate officials of the Department of Labor of potential fraud or intentional misstatements, including provision of supporting information;

(II) timely and appropriate response by officials of the Department of Labor to notifications described in subclause (I);

(III) the inclusion of information and evidence relating to fraud and other intentional misstatements in criminal, civil, and administrative proceedings relating to the provision of compensation, benefits, or medical services (including payments to providers) under the FECA program;

(IV) the coordination of criminal investigations with the administration of the FECA program; and

(V) the protection of information relating to an investigation of possible fraud under the FECA program from potential disclosure, including requirements that enable investigative files to be appropriately separated from case management files;

(iii) not later than 1 year after the date of enactment of this section, submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform and the Committee on Education and the Workforce of the House of Representatives a report that includes the description and procedures required under clauses (i) and (ii).

(d) IMPROVEMENTS TO ACCESS OF FEDERAL DATABASES.—

(1) IN GENERAL.—The Secretary, the Postmaster General, the Inspector General of the United States Postal Service, and the

*Inspector General of the Department of Labor shall have access to and make use of the agency databases described in this subsection in order to improve compliance with the requirements under and the integrity of the FECA program.*

(2) *Social security earnings information.—*

(A) *IN GENERAL.—Notwithstanding section 552a or any other provision of Federal or State law, upon written request, the Commissioner of Social Security shall make available to the Secretary, the Inspector General of the Department of Labor, the Postmaster General, and the Inspector General of the United States Postal Service the Social Security earnings information of a living or deceased employee required by the Secretary to carry out this subchapter.*

(B) *PROCEDURES.—The Secretary shall establish procedures for correlating the identity and status of recipients of compensation, benefits, or services under this subchapter with Social Security earnings information described in subparagraph (A).*

(3) *OFFICE OF PERSONNEL MANAGEMENT FEDERAL RETIREE DATABASE.—Notwithstanding section 552a or any other provision of Federal or State law, upon written request, the Director of the Office of Personnel Management shall make available to the Secretary, the Inspector General of the Department of Labor, the Postmaster General, and the Inspector General of the United States Postal Service the information in the databases of Federal employees and retirees maintained by the Director.*

(4) *DEPARTMENT OF VETERANS AFFAIRS BENEFICIARIES DATABASE.—Notwithstanding section 552a or any other provision of Federal or State law, upon written request, the Secretary of Veterans Affairs shall make available to the Secretary, the Inspector General of the Department of Labor, the Postmaster General, and the Inspector General of the United States Postal Service the information in the database of disabled individuals maintained by the Secretary of Veterans Affairs.*

(5) *NATIONAL DIRECTORY OF NEW HIRES.—Notwithstanding section 552a, section 453(j) of the Social Security Act (42 U.S.C. 653(j)), or any other provision of Federal or State law, upon written request, the Secretary of Health and Human Services shall make available to the Secretary, the Inspector General of the Department of Labor, the Postmaster General, the Inspector General of the United States Postal Service, and the Comptroller General of the United States the information in the National Directory of New Hires. The Comptroller General may obtain information from the National Directory of New Hires under this paragraph for any audit, evaluation, or investigation, including any audit, evaluation, or investigation relating to program integrity.*

(6) *PROVISION.—Information requested under this subsection shall be provided—*

(A) *in a timely manner;*

(B) *at a reasonable cost to the Secretary, the Inspector General of the Department of Labor, the Postmaster General, the Inspector General of the United States Postal*

*Service, or the Comptroller General of the United States; and*

*(C) in the manner, frequency, and form reasonably specified by the officer making the request, which, upon request, shall include electronic form.*

**(7) ASSESSMENT OF DATA COST-EFFECTIVENESS.—**

*(A) IN GENERAL.—The Secretary shall consider and assess procedures for correlating the identity and status of recipients of compensation, benefits, or services under this subchapter with information relating to employees, retirees, and individuals described in paragraphs (3), (4), and (5).*

*(B) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform and the Committee on Education and the Workforce of the House of Representatives a report on the cost-effectiveness of the use of the databases described in paragraphs (3), (4), and (5) for program compliance and integrity. The report required under this subparagraph may be included as part of the report required under subsection (f).*

**(8) UNITED STATES POSTAL SERVICE FECA ENROLLEE DATABASE.—***Not later than 180 days after the date of enactment of this section, in order to track, verify, and communicate with the Secretary and other relevant entities, the Postmaster General shall establish an electronic database of information relating to employees of the United States Postal Service who have applied for or are receiving compensation, benefits, or services under this subchapter.*

**(e) GENERAL PROTOCOLS AND SECURITY.—**

**(1) ESTABLISHMENT.—**

*(A) IN GENERAL.—In order to ensure strong information security and privacy standards, the Secretary, the Postmaster General, the Inspector General of the Department of Labor, and the Inspector General of the United States Postal Service shall establish protocols for the secure transfer and storage of any information provided to an individual or entity under this section.*

*(B) CONSIDERATIONS.—In establishing protocols under subparagraph (A), the Secretary, the Postmaster General, the Inspector General of the Department of Labor, and the Inspector General of the United States Postal Service shall consider any recommendations submitted to the Secretary by the Inspector General of the Department of Health and Human Services with respect to the secure transfer and storage of information, and to comply with privacy laws and best practices.*

*(C) FRAUD CASE PROTECTION.—The Secretary, the Postmaster General, the Inspector General of the Department of Labor, and the Inspector General of the United States Postal Service shall establish protocols and procedures to enable information and materials relating to an active investigation of possible fraud relating to the FECA program to be appropriately kept separate from the files for employees*

*relating to the provision of compensation, benefits, or services under the FECA program.*

*(2) COMPLIANCE.—The Secretary, the Postmaster General, the Inspector General of the Department of Labor, and the Inspector General of the United States Postal Service shall ensure that any information provided to an individual or entity under this section is provided in accordance with protocols established under paragraph (1).*

*(f) REPORT.—Not later than 1 year after the date of enactment of this section, and annually thereafter for 5 years, the Secretary shall submit a report on the activities of the Secretary under this section, including implementation of the Integrity and Compliance Program, to—*

*(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and*

*(2) the Committee on Oversight and Government Reform and the Committee on Education and the Workforce of the House of Representatives.*

*(g) GAO REVIEW.—The Comptroller General of the United States shall—*

*(1) conduct periodic reviews of the Integrity and Compliance Program; and*

*(2) submit reports on the results of the reviews under paragraph (1) to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform and the Committee on Education and the Workforce of the House of Representatives not later than—*

*(A) 2 years after the date of enactment of this section; and*

*(B) 3 years after submission of the report under subparagraph (A).*

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**Subchapter III—Civil Service Retirement**

\* \* \* \* \*

**§ 8332. Creditable service**

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*
- (i) \* \* \*
- (j) \* \* \*
- (k) \* \* \*
- (l) \* \* \*
- (m) \* \* \*
- (n) \* \* \*



(o) \* \* \*

(p)(1)(A) For an employee of the United States Postal Service who is covered under this subchapter and voluntarily separates from service before October 1, 2014, at the direction of the United States Postal Service, the Office shall add not more than 1 year (as specified by the United States Postal Service) to the total creditable service of the employee for purposes of determining entitlement to and computing the amount of an annuity under this subchapter (except for a disability annuity under section 8337).

(B) An employee who receives additional creditable service under this paragraph may not receive a voluntary separation incentive payment from the United States Postal Service.

(2)(A) Subject to subparagraph (B), and notwithstanding any other provision of law, no deduction, deposit, or contribution shall be required for service credited under this subsection.

(B) The actuarial present value of the additional liability of the United States Postal Service to the Fund resulting from this subsection shall be included in the amount calculated under section 8348(h)(1)(A).

\* \* \* \* \*

**§ 8337. Disability retirement**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(f)(1) \* \* \*

(2) \* \* \*

(3) [Paragraphs] Except as provided under chapter 81, paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter (5 USCS §§ 8331 et seq.) or subchapter I of chapter 81 (5 USCS §§ 8101 et seq.).

(g) \* \* \*

(h) \* \* \*

\* \* \* \* \*

**CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM**

\* \* \* \* \*

**Subchapter II—Basic Annuity**

\* \* \* \* \*

**§ 8411. Creditable service**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(f) \* \* \*

(g) \* \* \*

(h) \* \* \*

- (i) \* \* \*
- (j) \* \* \*
- (k) \* \* \*
- (l) \* \* \*

*(m)(1)(A) For an employee of the United States Postal Service who is covered under this chapter and voluntarily separates from service before October 1, 2014, at the direction of the United States Postal Service, the Office shall add not more than 2 years (as specified by the United States Postal Service) to the total creditable service of the employee for purposes of determining entitlement to and computing the amount of an annuity under this chapter (except for a disability annuity under subchapter V of that chapter).*

*(B) An employee who receives additional creditable service under this paragraph may not receive a voluntary separation incentive payment from the United States Postal Service.*

*(2)(A) Subject to subparagraph (B), and notwithstanding any other provision of law, no deduction, deposit, or contribution shall be required for service credited under this subsection.*

*(B) The actuarial present value of the additional liability of the United States Postal Service to the Fund resulting from this subsection shall be included in the amount calculated under section 8423(b)(1)(B).*

\* \* \* \* \*

### **§ 8423. Government Contributions**

- (a) \* \* \*
- (b)(1) The Office shall compute—
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*

*(5)(A) In this paragraph, the term ‘postal funding surplus’ means the amount by which the amount computed under paragraph (1)(B) is less than zero.*

*(B)(i) Beginning with fiscal year 2011, for each fiscal year in which the amount computed under paragraph (1)(B) is less than zero, upon request of the Postmaster General, the Director shall transfer to the United States Postal Service from the Fund an amount equal to the postal funding surplus for that fiscal year for use in accordance with this paragraph.*

*(ii) The Office shall calculate the amount under paragraph (1)(B) for a fiscal year by not later than June 15 after the close of the fiscal year, and shall transfer any postal funding surplus to the United States Postal Service within 10 days after a request by the Postmaster General.*

*(C) For each of fiscal years 2011, 2012, and 2013, if the amount computed under paragraph (1)(B) is less than zero, a portion of the postal funding surplus for the fiscal year shall be used by the United States Postal Service for the cost of providing to employees of the United States Postal Service who voluntarily separate from service before October 1, 2014—*

- (i) voluntary separation incentive payments (including payments to employees who retire under section 8336(d)(2) or 8414(b)(1)(B) before October 1, 2014) that may not exceed the maximum amount provided under section 3523(b)(3)(B) for any employee; and*

- (ii) retirement service credits, as authorized under section 8332(p) or 8411(m).
- (D) Any postal funding surplus for a fiscal year not expended under subparagraph (C) may be used by the United States Postal Service for the purposes of—
  - (i) repaying any obligation issued under section 2005 of title 39; or
  - (ii) making required payments to—
    - (I) the Employees' Compensation Fund established under section 8147;
    - (II) the Postal Service Retiree Health Benefits Fund established under section 8909a;
    - (III) the Employees Health Benefits Fund established under section 8909; or
    - (IV) the Civil Service Retirement and Disability Fund.

[(5)](6) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

- (A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f) (5 USCS § 8347(f)); and
- (B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

\* \* \* \* \*

**§ 8464a. Relationship between annuity and workers' compensation**

- (a)(1) \* \* \*
- (2) \* \* \*
- (3) [Paragraphs] *Except as provided under chapter 81, paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this chapter or subchapter I of chapter 81 (5 USCS §§ 8401 et seq. or 8101 et seq.).*
- (b) \* \* \*

\* \* \* \* \*

**CHAPTER 89—HEALTH INSURANCE**

\* \* \* \* \*

**§ 8906. Contribution**

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g)(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.
- (2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United

States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971 while employed by the United States Postal Service, shall [through September 30, 2016, be paid by the United States Postal Service, and thereafter shall] *after the date of enactment of the 21st Century Postal Service Act of 2012* be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

(h) \* \* \*

(i) \* \* \*

\* \* \* \* \*

**§ 8909a. Postal Service Retiree Health Benefit [Benefits] Fund**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d)(1) \* \* \*

(2)(A) \* \* \*

(B) Not later than June 30, [2017] 2012, the Office shall compute, and by June 30 of each succeeding year shall recompute, a schedule including a series of annual installments which provide for the liquidation of any liability or surplus by September 30, 2056, or within 15 years, whichever is later, of 80 percent of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

(3)(A) The United States Postal Service shall pay into such Fund—

- (i) \$ 5,400,000,000, not later than September 30, 2007;
- (ii) \$ 5,600,000,000, not later than September 30, 2008;
- (iii) \$ 1,400,000,000, not later than September 30, 2009; and
- (iv) \$ 5,500,000,000, not later than September 30, 2010[;].
- [(v) \$ 5,500,000,000, not later than October 4, 2011;
- [(vi) \$ 5,600,000,000, not later than September 30, 2012;
- [(vii) \$ 5,600,000,000, not later than September 30, 2013;
- [(viii) \$ 5,700,000,000, not later than September 30, 2014;
- [(ix) \$ 5,700,000,000, not later than September 30, 2015; and
- [(x) \$ 5,800,000,000, not later than September 30, 2016.]

(B) Not later than September 30, 2012 [2017], and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

- (i) the net present value computed under paragraph (1); and

- (ii) any annual installment computed under paragraph (2)(B).
  - (4) \* \* \*
  - (5) \* \* \*
  - (6) \* \* \*
- (e) Subsections (a) through (d) shall be subject to section 104 of the 21st Century Postal Service Act of 2012.

\* \* \* \* \*

## TITLE XVIII—CRIMES AND CRIMINAL PROCEDURE

\* \* \* \* \*

### PART I—CRIMES

\* \* \* \* \*

#### CHAPTER 53—INDIANS

\* \* \* \* \*

#### § 1161. Application of Indian liquor laws

The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register, *and, with respect to the mailing of wine or malt beverages (as those terms are defined in section 117 of the Federal Alcohol Administration Act (27 U.S.C. 211)), is in conformity with section 3001(p) of title 39.*

\* \* \* \* \*

#### CHAPTER 83—POSTAL SERVICE

\* \* \* \* \*

#### § 1716. Injurious articles as nonmailable

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*

(f) All spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind are nonmailable and shall not be deposited in or carried through the [mails] mails, *except to the extent that the mailing is allowable under section 3001(p) of title 39.*

\* \* \* \* \*

**TITLE XXXI—MONEY AND FINANCE**

\* \* \* \* \*

**Subtitle II—The Budget Process**

\* \* \* \* \*

**CHAPTER 15—APPROPRIATION ACCOUNTING**

\* \* \* \* \*

**Subchapter III—Transfers and Reimbursements**

\* \* \* \* \*

§ 1538. *Authorization for assisted reemployment*

*Funds may be transferred from the Employees' Compensation Fund established under section 8147 of title 5 to the applicable appropriations account for an agency or instrumentality of any branch of the Federal Government for the purposes of reimbursing the agency or instrumentality in accordance with an assisted reemployment agreement entered into under section 8104 of title 5.*

\* \* \* \* \*

**TITLE XXXIX—POSTAL SERVICE**

\* \* \* \* \*

**PART I—GENERAL**

\* \* \* \* \*

**CHAPTER 4—GENERAL AUTHORITY**

\* \* \* \* \*

**§ 404. Specific powers**

(a) Subject to the provisions of section 404a, but otherwise without limitation of the generality of its powers, the Postal Service shall have the following specific powers, among others:

- (1) to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail;
- (2) to prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid;
- (3) to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed;
- (4) to provide and sell postage stamps and other stamped paper, cards, and envelopes and to provide such other evidences of payment of postage and fees as may be necessary or desirable;
- (5) to provide philatelic services;

(6) after the date of enactment of the 21st Century Postal Service Act of 2012, and except as provided in subsection (e), to provide other services that are not postal services, after the Postal Regulatory Commission—

(A) makes a determination that the provision of such services—

(i) uses the processing, transportation, delivery, retail network, or technology of the Postal Service;

(ii) is consistent with the public interest and a demonstrated or potential public demand for—

(I) the Postal Service to provide the services instead of another entity providing the services; or

(II) the Postal Service to provide the services in addition to another entity providing the services;

(iii) would not create unfair competition with the private sector; and

(iv) has the potential to improve the net financial position of the Postal Service, based on a market analysis provided to the Postal Regulatory Commission by the Postal Service; and

(B) for services that the Postal Regulatory Commission determines meet the criteria under subparagraph (A), classifies each such service as a market-dominant product, competitive product, or experimental product, as required under chapter 36 of title 39, United States Code;

[(6)] (7) to investigate postal offenses and civil matters relating to the Postal Service;

[(7)] (8) to offer and pay rewards for information and services in connection with violation of the postal laws, and, unless a different disposal is expressly prescribed, to pay one-half of all penalties and forfeitures imposed for violations of law affecting the Postal Service, its revenues, or property, to the person informing for the same, and to pay the other one-half into the Postal Service Fund; and

[(8)] (9) to authorize the issuance of a substitute check for a lost, stolen, or destroyed check of the Postal Service.

[(9) Redesignated (8)]

(b) \* \* \*

(c) \* \* \*

[(d)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.]

(d)(1) *The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall—*

(A) *consider whether—*

(i) *to close the post office or consolidate the post office and another post office located within a reasonable distance;*

(ii) *instead of closing or consolidating the post office—*

(I) to reduce the number of hours a day that the post office operates; or

(II) to continue operating the post office for the same number of hours a day;

(iii) to procure a contract providing full, or less than full, retail services in the community served by the post office;

or

(iv) to provide postal services to the community served by the post office through a rural carrier;

(B) provide postal customers served by the post office an opportunity to participate in a nonbinding survey conducted by mail on a preference for an option described in subparagraph (A); and

(C) if the Postal Service determines to close or consolidate the post office, provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) A determination of the Postal Service to close or consolidate any post office, *station*, or *branch* may be appealed by any person served by such office, *station*, or *branch* to the Postal Regulatory Commission within 30 days after such determination is made available to such person [under paragraph (3)]. The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than 120 days after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

(B) without observance of procedure required by law; or

(C) unsupported by substantial evidence on the record.

The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service. The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal. The provisions of section 556, section 557, and chapter 7 of title 5 shall not apply to any review carried out by the Commission under this paragraph.

(e)(1) \* \* \*

(2) [Nothing in this section shall be considered to permit or require that the Postal Service provide any nonpostal service, except that the] *The* Postal Service may provide nonpostal services which were offered as of January 1, 2006, as provided under this subsection.

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

(f) *CLOSING OR CONSOLIDATION OF CERTAIN POSTAL FACILITIES.—*



(1) *POSTAL FACILITY.*—In this subsection, the term ‘postal facility’—

(A) means any Postal Service facility that is primarily involved in the preparation, dispatch, or other physical processing of mail; and

(B) does not include—

(i) any post office, station, or branch; or

(ii) any facility used only for administrative functions.

(2) *AREA MAIL PROCESSING STUDY.*—

(A) *NEW AREA MAIL PROCESSING STUDIES.*—After the date of enactment of this subsection, before making a determination under subsection (a)(3) as to the necessity for the closing or consolidation of any postal facility, the Postal Service shall—

(i) conduct an area mail processing study relating to that postal facility that includes a plan to reduce the capacity of the postal facility, but not close the postal facility;

(ii) publish the study on the Postal Service website; and

(iii) publish a notice that the study is complete and available to the public, including on the Postal Service website.

(B) *COMPLETED OR ONGOING AREA MAIL PROCESSING STUDIES.*—

(i) *IN GENERAL.*—In the case of a postal facility described in clause (ii), the Postal Service shall—

(I) consider a plan to reduce the capacity of the postal facility, but not close the post facility; and

(II) publish the results of the consideration under subclause (I) with or as an amendment to the area mail processing study relating to the postal facility.

(ii) *POSTAL FACILITIES.*—A postal facility described in this clause is a postal facility for which, on or before the date of enactment of this subsection—

(I) an area mail processing study that does not include a plan to reduce the capacity of the postal facility, but not close the facility, has been completed or is in progress; and

(II) a determination as to the necessity for the closing or consolidation of the postal facility has not been made.

(3) *NOTICE; PUBLIC COMMENT; AND PUBLIC HEARING.*—If the Postal Service makes a determination under subsection (a)(3) to close or consolidate a postal facility, the Postal Service shall—

(A) provide notice of the determination to—

(i) Congress; and

(ii) the Postal Regulatory Commission;

(B) provide adequate public notice of the intention of the Postal Service to close or consolidate the postal facility;

(C) ensure that interested persons have an opportunity to submit public comments during a 45-day period after the notice of intention is provided under subparagraph (B);

- (D) before the 45-day period described in subparagraph (C), provide for public notice of that opportunity by—
- (i) publication on the Postal Service website;
  - (ii) posting at the affected postal facility; and
  - (iii) advertising the date and location of the public community meeting under subparagraph (E); and
- (E) during the 45-day period described under subparagraph (C), conduct a public community meeting that provides an opportunity for public comments to be submitted verbally or in writing.
- (4) **FURTHER CONSIDERATIONS.**—Not earlier than 30 days after the end of the 45-day period for public comment under paragraph (3), the Postal Service, in making a determination whether or not to close or consolidate a postal facility, shall consider—
- (A) the views presented by interested persons solicited under paragraph (3);
  - (B) the effect of the closing or consolidation on the affected community, including any disproportionate impact the closure or consolidation may have on a State, region, or locality;
  - (C) the effect of the closing or consolidation on the travel times and distances for affected customers to access services under the proposed closing or consolidation;
  - (D) the effect of the closing or consolidation on delivery times for all classes of mail;
  - (E) any characteristics of certain geographical areas, such as remoteness, broadband internet availability, and weather-related obstacles to using alternative facilities, that may result in the closing or consolidation having a unique effect; and
  - (F) any other factor the Postal Service determines is necessary.
- (5) **JUSTIFICATION STATEMENT.**—Before the date on which the Postal Service closes or consolidates a postal facility, the Postal Service shall post on the Postal Service website a closure or consolidation justification statement that includes—
- (A) a response to all public comments received with respect to the considerations described under paragraph (4);
  - (B) a description of the considerations made by the Postal Service under paragraph (4); and
  - (C) the actions that will be taken by the Postal Service to mitigate any negative effects identified under paragraph (4).
- (6) **CLOSING OR CONSOLIDATION OF POSTAL FACILITIES.**—
- (A) **IN GENERAL.**—Not earlier than the 15 days after posting and publishing the final determination and the justification statement under paragraph (6) with respect to a postal facility, the Postal Service may close or consolidate the postal facility.
  - (B) **ALTERNATIVE INTAKE OF MAIL.**—If the Postal Service closes or consolidates a postal facility under subparagraph (A), the Postal Service shall make reasonable efforts to ensure continued mail receipt from customers of the closed or consolidated postal facility at the same location or at an-

*other appropriate location in close geographic proximity to the closed or consolidated postal facility.*

(7) *POSTAL SERVICE WEBSITE.—For purposes of any notice required to be published on the Postal Service website under this subsection, the Postal Service shall ensure that the Postal Service website—*

*(A) is updated routinely; and*

*(B) provides any person, at the option of the person, the opportunity to receive relevant updates by electronic mail.*

(8) *PROTECTION OF CERTAIN INFORMATION.—Nothing in this subsection may be construed to require the Postal Service to disclose—*

*(A) any proprietary data, including any reference or citation to proprietary data; and*

*(B) any information relating to the security of a postal facility.*

\* \* \* \* \*

**§ 411. Cooperation with other Government agencies and within the Postal Service**

**[Executive agencies]** (a) *COOPERATION WITH STATE AND LOCAL GOVERNMENTS.—Executive agencies within the meaning of section 105 of title 5, [and the Government Printing Office] the Government Printing Office, and agencies and other units of State and local governments are authorized to furnish property, both real and personal, and personal and nonpersonal services to the Postal Service, and the Postal Service is authorized to furnish property and services to them. The furnishing of property and services under this [section] subsection shall be under such terms and conditions, including reimbursability, as the Postal Service and the head of the agency concerned shall deem appropriate.*

(b) *COOPERATION WITHIN THE POSTAL SERVICE.—The Office of the Inspector General and other components of the Postal Service may enter into agreements to furnish to each other property, both real and personal, and personal and nonpersonal services. The furnishing of property and services under this subsection shall be under such terms and conditions, including reimbursability, as the Inspector General and the head of the component concerned shall deem appropriate*

\* \* \* \* \*

**CHAPTER 7—CONTRACTING PROVISIONS**

\* \* \* \* \*

**CHAPTER 7—CONTRACTING PROVISIONS**

*Sec.*

*701. Definitions.*

*702. Advocate for competition.*

*703. Delegation of contracting authority.*

*704. Posting of noncompetitive purchase requests for noncompetitive contracts.*

*705. Review of ethical issues.*

*706. Ethical restrictions on participation in certain contracting activity.*

*707. Congressional oversight authority.*

**§ 701. Definitions**

*In this chapter—*

(1) the term ‘contracting officer’ means an employee of a covered postal entity who has authority to enter into a postal contract;

(2) the term ‘covered postal entity’ means—

(A) the Postal Service; or

(B) the Postal Regulatory Commission;

(3) the term ‘head of a covered postal entity’ means—

(A) in the case of the Postal Service, the Postmaster General; or

(B) in the case of the Postal Regulatory Commission, the Chairman of the Postal Regulatory Commission;

(4) the term ‘postal contract’ means any contract (including any agreement or memorandum of understanding) entered into by a covered postal entity for the procurement of goods or services; and

(5) the term ‘senior procurement executive’ means the senior procurement executive of a covered postal entity.

#### **§ 702. Advocate for competition**

(a) **ESTABLISHMENT AND DESIGNATION.**—

(1) **ESTABLISHMENT.**—There is established in each covered postal entity an advocate for competition.

(2) **DESIGNATION.**—The head of each covered postal entity shall designate for the covered postal entity 1 or more officers or employees (other than the senior procurement executive) to serve as the advocate for competition.

(b) **RESPONSIBILITIES.**—The advocate for competition of each covered postal entity shall—

(1) be responsible for promoting competition to the maximum extent practicable consistent with obtaining best value by promoting the acquisition of commercial items and challenging barriers to competition;

(2) review the procurement activities of the covered postal entity; and

(3) prepare and transmit to the head of each covered postal entity, the senior procurement executive of each covered postal entity, the Board of Governors, and Congress, an annual report describing—

(A) the activities of the advocate under this section;

(B) initiatives required to promote competition;

(C) barriers to competition that remain; and

(D) the number of waivers made by each covered postal entity under section 704(c).

#### **§ 703. Delegation of contracting authority**

(a) **IN GENERAL.**—

(1) **POLICY.**—Not later than 60 days after the date of enactment of the 21st Century Postal Service Act of 2012, the head of each covered postal entity shall issue a policy on contracting officer delegations of authority for the covered postal entity.

(2) **CONTENTS.**—The policy issued under paragraph (1) shall require that—

(A) notwithstanding any delegation of authority with respect to postal contracts, the ultimate responsibility and accountability for the award and administration of postal

contracts resides with the senior procurement executive; and

(B) a contracting officer shall maintain an awareness of and engagement in the activities being performed on postal contracts of which that officer has cognizance, notwithstanding any delegation of authority that may have been executed.

(b) **POSTING OF DELEGATIONS.**—

(1) **IN GENERAL.**—The head of each covered postal entity shall make any delegation of authority for postal contracts outside the functional contracting unit readily available and accessible on the website of the covered postal entity.

(2) **EFFECTIVE DATE.**—This paragraph shall apply to any delegation of authority made on or after 30 days after the date of enactment of the 21st Century Postal Service Act of 2012.

**§ 704. Posting of noncompetitive purchase requests for noncompetitive contracts**

(a) **POSTING REQUIRED.**—

(1) **POSTAL REGULATORY COMMISSION.**—The Postal Regulatory Commission shall make the noncompetitive purchase request for any noncompetitive award, including the rationale supporting the noncompetitive award, publicly available on the website of the Postal Regulatory Commission—

(A) not later than 14 days after the date of the award of the noncompetitive contract; or

(B) not later than 30 days after the date of the award of the noncompetitive contract, if the basis for the award was a compelling business interest.

(2) **POSTAL SERVICE.**—The Postal Service shall make the noncompetitive purchase request for any noncompetitive award of a postal contract valued at \$250,000 or more, including the rationale supporting the noncompetitive award, publicly available on the website of the Postal Service—

(A) not later than 14 days after the date of the award;

or

(B) not later than 30 days after the date of the award, if the basis for the award was a compelling business interest.

(3) **ADJUSTMENTS TO THE POSTING THRESHOLD FOR THE POSTAL SERVICE.**—

(A) **REVIEW AND DETERMINATION.**—Not later than January 31 of each year, the Postal Service shall—

(i) review the \$250,000 threshold established under paragraph (2); and

(ii) based on any change in the Consumer Price Index for all-urban consumers of the Department of Labor, determine whether an adjustment to the threshold shall be made.

(B) **AMOUNT OF ADJUSTMENTS.**—An adjustment under subparagraph (A) shall be made in increments of \$5,000. If the Postal Service determines that a change in the Consumer Price Index for a year would require an adjustment in an amount that is less than \$5,000, the Postal Service may not make an adjustment to the threshold for the year.

(4) *EFFECTIVE DATE.*—This subsection shall apply to any non-competitive contract awarded on or after the date that is 90 days after the date of enactment of the 21st Century Postal Service Act of 2012.

(b) *PUBLIC AVAILABILITY.*—

(1) *IN GENERAL.*—Subject to paragraph (2), the information required to be made publicly available by a covered postal entity under subsection (a) shall be readily accessible on the website of the covered postal entity.

(2) *PROTECTION OF PROPRIETARY INFORMATION.*—A covered postal entity shall—

(A) carefully screen any description of the rationale supporting a noncompetitive award required to be made publicly available under subsection (a) to determine whether the description includes proprietary data (including any reference or citation to the proprietary data) or security-related information; and

(B) remove any proprietary data or security-related information before making publicly available a description of the rationale supporting a noncompetitive award.

(c) *WAIVERS.*—

(1) *WAIVER PERMITTED.*—If a covered postal entity determines that making a noncompetitive purchase request publicly available would risk placing the Postal Service at a competitive disadvantage relative to a private sector competitor, the senior procurement executive, in consultation with the advocate for competition of the covered postal entity, may waive the requirements under subsection (a).

(2) *FORM AND CONTENT OF WAIVER.*—

(A) *FORM.*—A waiver under paragraph (1) shall be in the form of a written determination placed in the file of the contract to which the noncompetitive purchase agreement relates.

(B) *CONTENT.*—A waiver under paragraph (1) shall include—

(i) a description of the risk associated with making the noncompetitive purchase request publicly available; and

(ii) a statement that redaction of sensitive information in the noncompetitive purchase request would not be sufficient to protect the Postal Service from being placed at a competitive disadvantage relative to a private sector competitor.

(3) *DELEGATION OF WAIVER AUTHORITY.*—A covered postal entity may not delegate the authority to approve a waiver under paragraph (1) to any employee having less authority than the senior procurement executive.

#### **§ 705. Review of ethical issues**

If a contracting officer identifies any ethical issues relating to a proposed contract and submits those issues and that proposed contract to the designated ethics official for the covered postal entity before the awarding of that contract, that ethics official shall—

(1) review the proposed contract; and

(2) advise the contracting officer on the appropriate resolution of ethical issues.

**§ 706. Ethical restrictions on participation in certain contracting activity**

(a) *DEFINITIONS.*—*In this section—*

(1) *the term ‘covered employee’ means—*

(A) *a contracting officer; or*

(B) *any employee of a covered postal entity whose decisionmaking affects a postal contract as determined by regulations prescribed by the head of a covered postal entity;*

(2) *the term ‘covered relationship’ means a covered relationship described in section 2635.502(b)(1) of title 5, Code of Federal Regulations, or any successor thereto; and*

(3) *the term ‘final conviction’ means a conviction, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed.*

(b) *IN GENERAL.*—

(1) *REGULATIONS.*—*The head of each covered postal entity shall prescribe regulations that—*

(A) *require a covered employee to include in the file of any noncompetitive purchase request for a noncompetitive postal contract a written certification that—*

(i) *discloses any covered relationship of the covered employee; and*

(ii) *the covered employee will not take any action with respect to the noncompetitive purchase request that affects the financial interests of a friend, relative, or person with whom the covered employee is affiliated in a nongovernmental capacity, or otherwise gives rise to an appearance of the use of public office for private gain, as described in section 2635.702 of title 5, Code of Federal Regulations, or any successor thereto;*

(B) *require a contracting officer to consult with the ethics counsel for the covered postal entity regarding any disclosure made by a covered employee under subparagraph (A)(i), to determine whether participation by the covered employee in the noncompetitive purchase request would give rise to a violation of part 2635 of title 5, Code of Federal Regulations (commonly referred to as the ‘Standards of Ethical Conduct for Employees of the Executive Branch’);*

(C) *require the ethics counsel for a covered postal entity to review any disclosure made by a contracting officer under subparagraph (A)(i) to determine whether participation by the contracting officer in the noncompetitive purchase request would give rise to a violation of part 2635 of title 5, Code of Federal Regulations (commonly referred to as the ‘Standards of Ethical Conduct for Employees of the Executive Branch’), or any successor thereto;*

(D) *under subsections (d) and (e) of section 2635.50 of title 5, Code of Federal Regulations, or any successor thereto, require the ethics counsel for a covered postal entity to—*

(i) *authorize a covered employee that makes a disclosure under subparagraph (A)(i) to participate in the noncompetitive postal contract; or*

(ii) disqualify a covered employee that makes a disclosure under subparagraph (A)(i) from participating in the noncompetitive postal contract;

(E) require a contractor to timely disclose to the contracting officer in a bid, solicitation, award, or performance of a postal contract any conflict of interest with a covered employee; and

(F) include authority for the head of the covered postal entity to grant a waiver or otherwise mitigate any organizational or personal conflict of interest, if the head of the covered postal entity determines that the waiver or mitigation is in the best interests of the Postal Service.

(2) POSTING OF WAIVERS.—Not later than 30 days after the head of a covered postal entity grants a waiver described in paragraph (1)(F), the head of the covered postal entity shall make the waiver publicly available on the website of the covered postal entity.

(c) CONTRACT VOIDANCE AND RECOVERY.—

(1) UNLAWFUL CONDUCT.—In any case in which there is a final conviction for a violation of any provision of chapter 11 of title 18 relating to a postal contract, the head of a covered postal entity may—

(A) void that contract; and

(B) recover the amounts expended and property transferred by the covered postal entity under that contract.

(2) OBTAINING OR DISCLOSING PROCUREMENT INFORMATION.—

(A) IN GENERAL.—In any case where a contractor under a postal contract fails to timely disclose a conflict of interest to the appropriate contracting officer as required under the regulations promulgated under subsection (b)(1)(D), the head of a covered postal entity may—

(i) void that contract; and

(ii) recover the amounts expended and property transferred by the covered postal entity under that contract.

(B) CONVICTION OR ADMINISTRATIVE DETERMINATION.—A case described under subparagraph (A) is any case in which—

(i) there is a final conviction for an offense punishable under section 27(e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)); or

(ii) the head of a covered postal entity determines, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under section 27(e) of that Act.

### **§ 707. Congressional oversight authority**

*The Postal Service may not enter into any contract that restricts the ability of Congress to exercise oversight authority.*

\* \* \* \* \*



**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 12—EMPLOYEE-MANAGEMENT  
DISAGREEMENTS**

\* \* \* \* \*

**§ 1207. Labor Disputes**

(a) \* \* \*

(b) \* \* \*

(c) (1) \* \* \*

(2)(A) The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel or by other representative as they may elect. Decisions of the arbitration board shall be conclusive and binding upon the parties. **[The arbitration board shall render its decision within 45 days after its appointment.]** *The arbitration board shall render a decision not later than 45 days after the date of its appointment.*

(B) *In rendering a decision under this paragraph, the arbitration board shall consider such relevant factors as—*

*(i) the financial condition of the Postal Service;*

*(ii) the requirements relating to pay and compensation comparability under section 1003(a); and*

*(iii) the policies of this title.*

(3) \* \* \*

(d) \* \* \*

\* \* \* \* \*

**PART III—MODERNIZATION AND FISCAL  
ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 24—APPROPRIATIONS AND ANNUAL REPORT**

\* \* \* \* \*

**§ 2403. Annual report on the fiscal stability of the United States mailing industry**

(a) *IN GENERAL.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Postal Regulatory Commission shall submit a report on the fiscal stability of the United States mailing industry with respect to the preceding fiscal year to—*

*(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and*

*(2) the Committee on Oversight and Government Reform of the House of Representatives.*

(b) *ASSISTANCE.—The United States Postal Service and any Federal agency involved in oversight or data collection regarding industry sectors relevant to the report under subsection (a) shall provide any assistance to the Postal Regulatory Commission that the Postal*

*Regulatory Commission determines is necessary in the preparation of a report under subsection (a).*

\* \* \* \* \*

**PART IV—MAIL MATTER**

\* \* \* \* \*

**CHAPTER 30—NONMAILABLE MATTER**

\* \* \* \* \*

**§ 3001. Nonmailable Matter**

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*
- (i) \* \* \*
- (j) \* \* \*
- (k) \* \* \*
- (l) \* \* \*
- (m) \* \* \*
- (n) \* \* \*
- (o) \* \* \*

*(p)(1) In this subsection, the terms ‘wine’ and ‘malt beverage’ have the same meanings as in section 117 of the Federal Alcohol Administration Act (27 U.S.C. 211).*

*(2) Wine or malt beverages shall be considered mailable if mailed—*

*(A) by a licensed winery or brewery, in accordance with applicable regulations under paragraph (3); and*

*(B) in accordance with the laws of—*

*(i) the State, territory, or district of the United States where the sender or duly authorized agent initiates the mailing; and*

*(ii) the State, territory, or district of the United States where the addressee or duly authorized agent takes delivery.*

*(3) The Postal Service shall prescribe such regulations as may be necessary to carry out this subsection, including regulations providing that—*

*(A) the mailing shall be by a means established by the Postal Service to ensure direct delivery to the addressee or a duly authorized agent;*

*(B) the addressee (and any duly authorized agent) shall be an individual at least 21 years of age;*

*(C) the individual who takes delivery, whether the addressee or a duly authorized agent, shall present a valid, government-issued photo identification at the time of delivery;*

*(D) the wine or malt beverages may not be for resale or other commercial purpose; and*

- (E) *the winery or brewery involved shall—*
  - (i) *certify in writing to the satisfaction of the Postal Service, through a registration process administered by the Postal Service, that the mailing is not in violation of any provision of this subsection or regulation prescribed under this subsection; and*
  - (ii) *provide any other information or affirmation that the Postal Service may require, including with respect to the prepayment of State alcohol beverage taxes.*

- (4) *For purposes of this subsection—*
  - (A) *a winery shall be considered to be licensed if it holds an appropriate basic permit issued—*
    - (i) *under the Federal Alcohol Administration Act; and*
    - (ii) *under the law of the State in which the winery is located; and*
  - (B) *a brewery shall be considered to be licensed if—*
    - (i) *it possesses a notice of registration and bond approved by the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury; and*
    - (ii) *it is licensed to manufacture and sell malt beverages in the State in which the brewery is located.*

\* \* \* \* \*

**CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES**

\* \* \* \* \*

**Subchapter I—Provisions Relating to Market-Dominant Products**

\* \* \* \* \*

**§ 3622. Modern rate regulation**

- (a) \* \* \*
- (b) \* \* \*
- (c)(1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
- (7) \* \* \*
- (8) \* \* \*
- (9) \* \* \*

(10) *the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—*

- (A) **【either】** *will—*
  - (i) *improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; 【or】*
  - (ii) *enhance the performance of mail preparation, processing, transportation, or other functions; 【and】 or*

(iii) preserve mail volume and revenue; and  
 (B) do not cause unreasonable harm to the marketplace.

- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*

(g) COORDINATION.—*The Postal Service and the Postal Regulatory Commission shall coordinate actions to identify methods to increase the use of negotiated service agreements for market-dominant products by the Postal Service consistent with subsection (c)(10).*

\* \* \* \* \*

**Subchapter V—Postal Services, Complaints, and Judicial Review**

\* \* \* \* \*

**§ 3661. Postal services**

(a) The Postal Service shall develop and promote adequate and efficient postal services.

[(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

[(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.]

(b) *PROPOSED CHANGES FOR MARKET-DOMINANT PRODUCTS.—*

(1) *SUBMISSION OF PROPOSAL.—If the Postal Service determines that there should be a change in the nature of postal services relating to market-dominant products that will generally affect service on a nationwide or substantially nationwide basis, the Postal Service shall submit a proposal to the Postal Regulatory Commission requesting an advisory opinion on the change.*

(2) *ADVISORY OPINION.—Upon receipt of a proposal under paragraph (1), the Postal Regulatory Commission shall—*

(A) *provide an opportunity for public comment on the proposal; and*

(B) *issue an advisory opinion not later than—*

(i) *90 days after the date on which the Postal Regulatory Commission receives the proposal; or*

(ii) *a date that the Postal Regulatory Commission and the Postal Service may, not later than 1 week after the date on which the Postal Regulatory Commission receives the proposal, determine jointly.*

(3) *RESPONSE TO OPINION.—The Postal Service shall submit to the President and to Congress a response to an advisory opinion issued under paragraph (2) that includes—*

(A) a statement of whether the Postal Service plans to modify the proposal to address any concerns or implement any recommendations made by the Commission; and

(B) for any concern that the Postal Service determines not to address and any recommendation that the Postal Service determines not to implement, the reasons for the determination.

(4) ACTION ON PROPOSAL.—The Postal Service may take action regarding a proposal submitted under paragraph (1)—

(A) on or after the date that is 30 days after the date on which the Postal Service submits the response required under paragraph (3);

(B) on or after a date that the Postal Regulatory Commission and the Postal Service may, not later than 1 week after the date on which the Postal Regulatory Commission receives a proposal under paragraph (2), determine jointly; or

(C) after the date described in paragraph (2)(B), if—

(i) the Postal Regulatory Commission fails to issue an advisory opinion on or before the date described in paragraph (2)(B); and

(ii) the action is not otherwise prohibited under Federal law.

(5) MODIFICATION OF TIMELINE.—At any time, the Postal Service and the Postal Regulatory Commission may jointly re-determine a date determined under paragraph (2)(B)(ii) or (4)(B).

\* \* \* \* \*

**Subchapter VII—Modern Service Standards**

\* \* \* \* \*

**§ 3691. Establishment of modern service standards**

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*

Postal Service Plan.

Pub. L. 109–435, title III, Sec. 302, Dec. 20, 2006, 120 Stat. 3219, provided that:

- “(a) \* \* \*
- “(b) \* \* \*
- “(c) \* \* \*

“(d) ALTERNATE RETAIL OPTIONS.—The Postal Service plan [shall include] shall—

(1) include plans to expand and market retail access to postal services, in addition to post offices, including—

- “(1) (A) vending machines;
- “(2) (B) the Internet;
- “(3) (C) postage meters;
- “(4) (D) Stamps by Mail;
- “(5) (E) Postal Service employees on delivery routes;

“[(6)] (F) retail facilities in which overhead costs are shared with private businesses and other government agencies;

“[(7)] (G) postal kiosks; or

“[(8)] (H) any other nonpost office access channel providing market retail access to postal services[.]; and

“(2) where possible, provide for an improvement in customer access to postal services;

“(3) consider the impact of any decisions by the Postal Service relating to the implementation of the plan on small communities and rural areas; and

“(4) ensure that—

“(A) small communities and rural areas continue to receive regular and effective access to retail postal services after implementation of the plan; and

“(B) the Postal Service solicits community input in accordance with applicable provisions of Federal law.”

\* \* \* \* \*

### § 3692. Conversion of door delivery points

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) CENTRALIZED DELIVERY POINT.—The term ‘centralized delivery point’ means a group or cluster of mail receptacles at 1 delivery point that is within reasonable proximity of the street address associated with the delivery point.

(2) CURBLINE DELIVERY POINTS.—The term ‘curbline delivery point’ means a delivery point that is—

(A) adjacent to the street address associated with the delivery point; and

(B) accessible by vehicle on a street that is not a private driveway.

(3) DOOR DELIVERY POINT.—The term ‘door delivery point’ means a delivery point at a door of the structure at a street address.

(4) SIDEWALK DELIVERY POINT.—The term ‘sidewalk delivery point’ means a delivery point on a sidewalk adjacent to the street address associated with the delivery point.

(b) CONVERSION.—Except as provided in subsection (c), and in accordance with the profitability plan required under section 401 and standards established by the Postal Service, the Postal Service is authorized to, to the maximum extent feasible, convert door delivery points to—

- (1) curbline delivery points;
- (2) sidewalk delivery points; or
- (3) centralized delivery points.

(c) EXCEPTIONS.—

(1) CONTINUED DOOR DELIVERY.—The Postal Service may allow for the continuation of door delivery due to—

- (A) a physical hardship of a customer;
- (B) weather, in a geographic area where snow removal efforts could obstruct access to mailboxes near a road;
- (C) circumstances in an urban area that preclude efficient use of curbside delivery points;

(D) other exceptional circumstances, as determined in accordance with regulations issued by the Postal Service; or  
(E) other circumstances in which the Postal Service determines that alternatives to door delivery would not be practical or cost effective.

(2) NEW DOOR DELIVERY POINTS.—The Postal Service may provide door delivery to a new delivery point in a delivery area that received door delivery on the day before the date of enactment of this section, if the delivery point is established before the delivery area is converted from door delivery under subsection (b).

(d) SOLICITATION OF COMMENTS.—The Postal Service shall establish procedures to solicit, consider, and respond to input from individuals affected by a conversion under this section.

(e) REVIEW.—Subchapter V of this chapter shall not apply with respect to any action taken by the Postal Service under this section.

(f) REPORT.—Not later than 60 days after the end of each fiscal year through fiscal year 2015, the Postal Service shall submit to Congress and the Inspector General of the Postal Service a report on the implementation of this section during the preceding fiscal year that—

- (1) includes the number of door delivery points—
  - (A) that existed at the end of the fiscal year preceding the preceding fiscal year;
  - (B) that existed at the end of the preceding fiscal year;
  - (C) that, during the preceding fiscal year, converted to—
    - (i) curblin delivery points or sidewalk delivery points;
    - (ii) centralized delivery points; and
    - (iii) any other type of delivery point; and
  - (D) for which door delivery was continued under subsection (c)(1);
- (2) estimates any cost savings, revenue loss, or decline in the value of mail resulting from the conversions from door delivery that occurred during the preceding fiscal year;
- (3) describes the progress of the Postal Service toward achieving the conversions authorized under subsection (b); and
- (4) provides such additional information as the Postal Service considers appropriate.

\* \* \* \* \*

**TITLE XLI—PUBLIC CONTRACTS**

\* \* \* \* \*

**Subtitle III—Contract Disputes**

\* \* \* \* \*

**CHAPTER 71—CONTRACT DISPUTES**

\* \* \* \* \*

**§ 7101. Definitions**

(1) \* \* \*

- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
- (7) \* \* \*
- (8) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; **and**

(D) a wholly owned Government corporation as defined in section 9101(3) of title 31~~1.~~; *and*

(E) *the United States Postal Service and Postal Regulatory Commission.*



## VIII. ADDITIONAL VIEWS

While many of the provisions in this important and pressing legislation would meaningfully improve the financial situation of the Postal Service, we have strong objections to the FECA benefit changes and the arbitration language in the bill.

### THE FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Title III of the bill would make certain cuts to benefits and reforms to the Federal Employee Compensation Act (FECA). The benefit reductions in sections 302 and 303 are premature, unnecessary, and unfair.

The Committee report asserts that changes to FECA benefits must be included in this legislation to place the Postal Service on a sound financial footing.<sup>1</sup> However, according to CBO, these workers' compensation changes contribute nothing to the Postal Service's financial solvency in the next five critical years for stabilizing the Postal Service's finances.<sup>2</sup> Indeed, through 2016, the changes would result in a net *increase* of \$10 million in Postal Service costs, according to CBO.<sup>3</sup> In total, over the ten-year scoring window, these benefit cuts would save the Postal Service a total of \$397 million. Contrast this savings with the \$8.9 billion in net savings CBO projects the Postal Service would save over the same time period by eliminating Saturday mail delivery, which is another issue that many Senators have raised significant concerns about.<sup>4</sup> In other words, CBO estimates that the workers' compensation provisions would save about *four percent* of what five-day delivery would save during the scoring window. Due to the concerns raised about this issue, the Committee appropriately exhibits caution with delivery reductions, allowing them only after first implementing alternative cost-saving measures, undergoing review by the GAO and PRC, and finding that it is necessary to the Postal Service's solvency.<sup>5</sup> We should exhibit at least the same caution with savings that comes out of the pockets of employees disabled in service to their country.

The Committee report cites the record of the hearing of the Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia on July 26, 2011, as a basis for moving forward with this reform. However, many questions and concerns were raised at that hearing that are still outstanding and should be answered before we move forward with FECA reforms. The Committee report further states that the

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<sup>1</sup> See *supra*.

<sup>2</sup> See CBO, *Cost Estimate S. 1789—21st Century Postal Service Act of 2011*, table 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* This includes only nine years of projected savings because savings for the implementation of five-day delivery start in 2014.

<sup>5</sup> See *supra*.

FECA benefit reforms included in S.1789 are largely based a proposal by the George W. Bush Administration and carried forward by the Obama Administration; however there are some significant differences between this bill and the Administration's proposal. The benefit reductions in this bill are greater than those in the Administration's proposal, and most concerning, this bill would apply benefit reductions retroactively to up to half of FECA beneficiaries who are now on FECA's long-term disability rolls.

Witnesses at the Subcommittee's July 2011 hearing were especially concerned with the retroactive application of benefit reductions to those already injured. Gary Steinberg, Acting Director of the Office of Workers' Compensation Programs at the Department of Labor, testified that the Administration proposed prospective rather than retroactive changes to benefits because it would provide a level of fairness and equity since recipients have planned for a certain level of benefits into the future and changing things immediately has the potential to cause a hardship for them.<sup>6</sup>

FECA, like state workers' compensation programs, is a form of insurance providing wage replacement and medical benefits to employees injured on the job in exchange for mandatory relinquishment of the employees' right to sue the government for those injuries. FECA provides such employees' their exclusive remedy against the federal government, and employees may not recover non-economic losses such as compensation for pain and suffering.<sup>7</sup> Retroactive changes to benefit levels after the injury has occurred violate the government's part of this bargain. Just as a litigant is not permitted to unilaterally change the terms of a settlement after it is made, the federal government should not be able to unilaterally change its workers' compensation liability after that liability has attached. Furthermore, retroactive changes violate a basic premise of insurance. A responsible employee may choose to further insure himself or herself against disability, but that is not possible if their coverage under the workers' compensation statute can be changed after the fact.

The Government Accountability Office (GAO) is currently conducting a number of reviews of the FECA program, including a review of both pre- and post-retirement age benefits to determine fair benefit amounts at the request of a bipartisan group of members from the House Committee on Education and Workforce. The outcome of these reviews would help inform any changes to FECA benefits. Without the results of these GAO reviews we do not have the information we need to decide on fair benefit levels. There are too many complex issues related to the appropriate benefit levels that deserve more analysis. We must be extremely cautious when making cuts to benefits that could harm employees who were disabled by injuries sustained in service to their country, especially elderly disabled employees.

The tax-free nature of FECA benefits makes determining appropriate benefit levels particularly complicated. The Committee report states that the current FECA compensation benefit levels can provide a financial disincentive for an injured employee to return

<sup>6</sup>HSGAC/OGM hearing on July 26, 2011.

<sup>7</sup>5 U.S.C. § 8116(c); *United States v. Lorenzetti*, 467 U.S. 167, 169 (1984).

to work because the FECA benefit could exceed their pre-injury take home pay. While this may be the case for some higher-income workers, this is not true for those with lower wages. GAO has reported that lower wage workers often receive less in FECA benefits than their pre-injury, after-tax wages and that the majority of FECA recipients receive less on FECA than before their injury.<sup>8</sup> Lower-income employees who pay no federal income tax currently experience a one-fourth to one-third drop in income on FECA full disability, depending on whether they have dependents. With this legislation, all lower-wage workers with no federal income tax liability would experience a one-third reduction in income.<sup>9</sup>

The interaction between FECA and the Social Security program creates additional complicating factors that the Committee has not taken into account. Although the reduction in FECA benefits is triggered by reaching full retirement age, as defined in the Social Security Act, employees in the Civil Service Retirement System (CSRS) do not participate in Social Security and therefore do not receive Social Security retirement benefits. For other employees, Social Security should offset some of the reduction in benefits, but not for CSRS employees. S. 1789 does not take this important distinction into account. Employees in the Federal Employee Retirement System (FERS) do participate in Social Security. However, FERS employees with long-term disabilities may have little Social Security credit since they do not continue accruing additional Social Security benefits while receiving FECA benefits, but there is no adjustment for those employees either. In both cases, many injured employees over retirement age would have to rely on reduced FECA benefits with either very little or no additional retirement income from Social Security. Employees on FECA also are unable to save money through the Thrift Savings Program, and they may have had limited ability to save money otherwise because they missed out in wage growth during their time on FECA.

In addition, many people continue to work long after the Social Security retirement age. Those injured later in their careers will receive a lower benefit solely because of their age. Congress previously passed legislation that allowed benefit reductions at age 70, but repealed it because of the burden it placed on injured employees (and on the Department of Labor which had been tasked with conducting reviews), and because it was deemed to be age discriminatory.<sup>10</sup> This legislation raises the same concerns.

Reducing benefits at retirement age is not the norm in state workers' compensation programs. The majority of states have permanent benefits for permanent disabilities. Dr. Gregory Krohm testified before the Subcommittee that 33 states have no reduction of benefits at retirement age.<sup>11</sup> In addition, he said that "seems to be

<sup>8</sup> GAO, *Federal Employee Compensation Act: Percentages of Take-Home Pay Replaced by Compensation Benefits*, GAO/GGD-98-174 (August 17, 1998), at pp. 6-7.

<sup>9</sup> Employees who had been eligible for refundable income tax credit, such as the Earned Income Tax Credit or the Additional Child Tax Credit may fare even worse because disability payments are not categorized as earned income, needed to claim these refundable credits.

<sup>10</sup> HSGAC/OGM hearing on July 26, 2011 (Statement of Andrew Sherrill, Director, Education, Workforce, and Income Security, U.S. Government Accountability Office).

<sup>11</sup> HSGAC/OGM hearing on July 26, 2011 (Statement of Dr. Gregory Krohm, Executive Director, International Association of Industrial Accident Boards and Commissions).

a very settled part of the law in those States” and he has “seen no discussion of any of those States changing that.”<sup>12</sup>

By making the proposed changes to FECA benefits without first studying and determining the appropriate benefit levels, lower income workers may see additional, significant reductions that they cannot afford. Despite this potential, there are no provisions to take into account the severe economic hardship that may result.

Many employee groups strongly oppose the FECA provisions in this bill, including the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); the American Federation of Government Employees, AFL-CIO; the American Federation of State, County and Municipal Employees, AFL-CIO; the American Foreign Service Association; the American Postal Workers’ Union, AFL-CIO; the Federal Law Enforcement Officers Association; Federally Employed Women; the International Federation of Professional & Technical Engineers, AFL-CIO; the National Active and Retired Federal Employees; the National Association of Letter Carriers, AFL-CIO; the National Postal Mail Handlers Union; the National Rural Letter Carriers’ Union; the National Treasury Employees Union; the Organization of Professional Employees of the U.S. Department of Agriculture; and the Professional Aviation Safety Specialists, AFL-CIO.

At the Subcommittee’s hearing, Joseph Beaudoin, President of the National Active and Retired Federal Employees, summarized many of the concerns, testifying:

FECA reforms need not, and should not, sacrifice basic principles of fairness in the name of achieving cost savings. Rather, FECA reforms should save money by helping bring FECA recipients back into the workforce, eliminating inefficiencies in the processing of claims, allowing for full reimbursement from liable third parties, or reducing improper payments and fraud . . . But current proposals to take money away from individuals who are irrefutably unable to work because they were injured or become ill as a result of their service for the federal government fails a basic fairness test . . . Thus, I urge all members of Congress to seriously consider the significant financial implications that proposed reductions to FECA benefits could have on disabled public servants who have lost the ability to earn income to adjust their financial situation to new circumstances.<sup>13</sup>

We should heed his sound advice.

#### BINDING ARBITRATION IN RESOLUTION OF LABOR DISPUTES

We also remain concerned about statutorily mandating standards for arbitration decisions, in Section 105 of S. 1789, as reported. This provision has evolved over time in several bills since its inclusion as part of S. 1507 as reported by this Committee in the 111th Congress. While this report indicates that the “Committee certainly

<sup>12</sup>HSGAC/OGM hearing on July 26, 2011.

<sup>13</sup>HSGAC/OGM hearing on July 26, 2011, supra note 65 (Statement of Joseph A. Beaudoin, President, National Active and Retired Federal Employees Association).

does not intend to stack the deck in favor of management,”<sup>14</sup> the creation of any statutory criteria without accompanying statutory recognition of the current open-ended factors an arbitrator may consider demonstrates that the Committee has determined that these criteria are in fact of some greater importance. My concerns are more thoroughly addressed in the Committee Report accompanying S. 1507.<sup>15</sup>

An amendment filed by Senator Begich during consideration of S. 1789 would have helped to clarify the intent of the arbitration provision by adding that nothing in 39 U.S. Code should be taken to limit any factors that an arbitration board could consider in rendering a decision. We urge the Committee to continue working on this issue.

The Postal Service certainly faces an immediate financial crisis, brought on by a number of factors and accelerated by the worst economic crisis since the Great Depression. Efforts to reform benefit levels in the FECA program, while important, should be examined separately. We strongly support the aims of this bill, with the exception of the changes to FECA benefits in Title 3 of the bill and the arbitration language in Section 105.

DANIEL K. AKAKA.  
JON TESTER.  
MARK BEGICH.

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<sup>14</sup> See *supra*.

<sup>15</sup> S. Rept. 111-203 (additional views of Senator Akaka and Senator Levin).