

**Calendar No. 191**

106TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
106-102

**DECEPTIVE MAIL PREVENTION AND  
ENFORCEMENT ACT**

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**R E P O R T**

OF THE

**COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE**

together with

**ADDITIONAL VIEWS**

TO ACCOMPANY

**S. 335**

TO AMEND CHAPTER 30 OF TITLE 39, UNITED STATES CODE, TO  
PROVIDE FOR THE NONMAILABILITY OF CERTAIN DECEPTIVE  
MATTER RELATING TO GAMES OF CHANCE, ADMINISTRATIVE  
PROCEDURES, ORDERS, AND CIVIL PENALTIES RELATING TO  
SUCH MATTER, AND FOR OTHER PURPOSES



JULY 1, 1999.—ORDERED TO BE PRINTED

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### DECEPTIVE MAIL PREVENTION AND ENFORCEMENT ACT

JULY 1, 1999.—Ordered to be printed

Mr. THOMPSON, from the Committee on Governmental Affairs,  
submitted the following

### REPORT

[To accompany S. 335]

The Committee on Governmental Affairs, to which was referred the bill (S. 335) to amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to games of chance, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes; having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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### I. PURPOSE

The purpose of this bill is to establish strong consumer protections to prevent a number of types of deceptive mailings. The legislation will impose various requirements on sweepstakes mailings, skill contests, facsimile checks, and mailings made to look like gov-

ernment documents. The bill will establish strong financial penalties, provide the Postal Service with additional authority to investigate and stop deceptive mailings, and preserve the ability of states to impose stricter requirements on deceptive mailings.

## II. SUMMARY OF LEGISLATION

S. 335, as amended by the Committee substitute, would require sweepstakes mailings to clearly and conspicuously display: (1) a statement in the mailing, including the rules and order form, that no purchase is necessary to enter the contest; (2) a statement that a purchase would not improve the recipient's chances of winning; (3) all terms and conditions of the sweepstakes promotion, including the rules and entry procedures in language that is easy to find, read and understand; (4) the sponsor or mailer of the promotion and the principal place of business or other contact address of the sponsor or mailer; and (5) rules that clearly state the estimated odds of winning each prize, the quantity, estimated retail value, and nature of each prize, and the schedule of any payments made over time. In addition, the bill would prohibit sweepstakes mailings from making certain statements, including statements that an entry must be accompanied by an order or payment for a product previously ordered or that an individual is a winner of a prize unless that individual actually has won a prize.

The bill also imposes requirements on skill contest mailings. Skill contests are defined as a puzzle, game, competition, or other contest in which a prize is awarded based on skill, and a purchase, payment, or donation is required. Skill contests mailings would be required to follow provisions on rules and disclosure of the sponsor similar to sweepstakes promotions. Skill contests mailings also must disclose: (1) the number of rounds, the cost to enter each round, whether subsequent rounds will be more difficult, and the maximum cost to enter all rounds; (2) the percentage of entrants who may solve correctly the skill contest; (3) the identity of the judges and the method used in judging; and (4) the date the winner will be determined as well as quantity and estimated value of each prize.

The bill imposes new federal standards on facsimile checks sent in any mailing. These checks must include a statement on the check itself that it is non-negotiable and has no cash value.

The legislation strengthens existing law on government look-alike mailings. Such mailings often come in a brown envelope and may use terms that imply a connection with the federal government, but actually are solicitations by a private sector company for a product or service. To address government look-alike mailings, the bill prohibits mailings that imply a connection to, approval, or endorsement by the federal government through the misleading use of a seal, insignia, reference to the Postmaster General, citation to a federal statute, trade or brand name, or any other term or symbol, unless the mailings carry two disclaimers already contained in existing law.

Additionally, the bill prohibits mailings that contain any false representation implying that federal government benefits or services will be affected by any purchase or non-purchase. Any mailing that offers to provide any product or service provided by the federal government without cost must contain a notice to that effect.

In addition to restrictions on the deceptive mailings themselves, the bill imposes new obligations on the companies sending sweepstakes and skill contests. Any person who uses the mail for any covered mailing would be required to adopt reasonable practices and procedures to prevent the mailing of these materials to any person, who by virtue of a written request, including requests made by a conservator, guardian, individual with power of attorney or a state attorney general, states their intent not to receive such mailings. The bill requires these persons or companies to maintain records of such requests for five years.

The bill further requires companies sending sweepstakes or skill contests to establish a universal notification system which would allow consumers to call one toll-free number to learn how to be removed from the mailing lists of such companies. All sweepstakes or skill contest mailings would be required to contain this telephone number and the address of the notification system.

Under current law, the United States Postal Service ("USPS") has inadequate authority to investigate, penalize, and stop deceptive mailings. The USPS does not have subpoena authority, is unable to obtain an order to stop deceptive mailings nationwide, and may only seek financial penalties when a company violates an order previously imposed by the USPS for sending deceptive mailings. This legislation addresses these weaknesses in current law by granting the USPS subpoena authority, nationwide stop mail authority, and the ability to impose civil penalties.

The bill also increases the civil penalties that the USPS may impose. The civil penalties for sending mailings that do not comply with the bill would be up to \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000. Any person who, through the use of the mail, evades or attempts to evade the terms of an order would be liable for twice the amount of this civil penalty.

The bill also recognizes the states' strong role in investigating and prosecuting deceptive mailings. The bill states that nothing in the Act shall preempt any provision of state or local law that imposes more restrictive requirements, regulations, damages, costs or penalties. Nothing contained in the bill shall be construed to prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

The provisions of the bill would take effect 120 days after the date of enactment.

### III. BACKGROUND AND NEED FOR LEGISLATION

The direct marketing industry has used sweepstakes mailings for over 30 years as a method to promote the sale of their products. Companies use sweepstakes to sell magazines and other merchandise, while other groups use sweepstakes mailings to raise funds or promote services.

While most sweepstakes are legitimate and appropriate marketing devices, some of these promotions can be used to defraud

and deceive consumers. Four major sweepstakes firms each send out hundreds of millions of mailings every year, and there is evidence that a significant number of individuals make excessive purchases in response to these mailings. In the aggregate, the sweepstakes industry has sent over one billion mailings per year in recent years. Deceptive mailings include a wide variety of promotions, including sweepstakes, skill contests, solicitations, and sales of goods or services by mail.

The Magazine Publishers of America estimate that Americans annually spend \$7 billion on magazine subscriptions, and 12% of those sales derive from sweepstakes promotions. Thus, sweepstakes companies generate nearly \$1 billion of magazine revenues per year. Indeed, sweepstakes mailings account for nearly one third of all 156 million new magazine subscriptions sold each year.

In the last 20 years, major sweepstakes companies have greatly increased their grand prizes and the sophistication of their marketing practices. They conduct a variety of contests every year, many offering a multi-million dollar prize. Companies use many traditional direct marketing principles, such as targeting consumers according to recency, frequency and monetary value or the dollar amount of the purchases.

Sweepstakes companies are constantly testing their marketing appeals, and have generally concluded that consumers make purchases in response to mailings with large prizes, "involvement devices" such as stickers and stamps, and certain types of personalized appeals. As with many direct mail companies, sweepstakes firms send a large number of mailings to the general public that are often followed by targeted mailings to specialized lists of, or repeat, customers.

Mass mailings can be personalized within several places in a letter, and can feature symbols, devices, or documents that make them look unique. In general, the goal of such mass mailings is to distinguish them from "junk" mail, enticing the consumer to open the envelope. Upon viewing the contents of these mass mailings, the consumer finds a personalized mailing that offers a message that can convince the consumer to make a purchase.

Those on a target list can be sent even more sophisticated mailings, informing them when they became a customer, how many purchases they have made recently, and when they last entered a contest without making a purchase. Such mailings reinforce the concept that purchases are linked with receiving sweepstakes mailings and, therefore, with winning a prize. The implication, sometimes made by a direct statement, is that if the customer does not purchase a product, they may not receive the future sweepstakes mailings necessary to win a prize.

The tactics of sweepstakes mailings have generated thousands of consumer complaints, including complaints to state Attorneys General, the Federal Trade Commission ("FTC"), the USPS, consumer groups, and Members of Congress.

Skill contests differ from sweepstakes in that the consumer must demonstrate skill, such as solving a word puzzle, in order to win the prize. The key difference between a skill contest and a sweepstakes is that a skill contest does not rely on chance, and may require consideration to participate. Winning a sweepstakes must be

based solely on chance and no purchase can be required. Like sweepstakes promotions, skill contests may also be used in a deceptive manner to promote unnecessary purchases or payments.

Consumers may be similarly deceived by skill contests offering large prizes in return for the payment of a small “judging fee.” Responding to such mailings by sending money may only result in the consumer receiving even more mailings with additional skill contests that must be completed before any prize is awarded. Many skill contests have several levels that culminate in a complex contest that is extremely difficult. Thus, by the time the consumer is close to actually winning a prize, they have invested substantial sums of money solving relatively easy puzzles only to be presented with an extremely difficult puzzle that they have very little chance of solving.

Facsimile checks are also used in promotional mailings, sometimes by operators of sweepstakes or skill contests, to catch the eye of the recipient. Mailings may be designed so that such facsimile checks are displayed through a window envelope, prompting many consumers to open the mailing.

Envelopes and checks may be designed to resemble government mailings, using symbols such as an eagle, the Statue of Liberty, or words such as “Buy U.S. Savings Bonds.” The facsimile check itself may look real in many respects, such as having an authorized signature and showing the name of a financial institution. Such facsimile checks can deceive consumers.

Mailings may also be deceptive through the use of a variety of terms or symbols designed to make the mailing appear to be connected or endorsed by the federal government. Some mailings may offer to sell a product the government provides for free without so indicating.

#### *Federal and state law*

Sweepstakes and skill contests are largely regulated by state law. At the federal level, the USPS and FTC possess jurisdiction to regulate and investigate sweepstakes and skill contests. Current federal laws do not specifically cover sweepstakes but address them indirectly by forbidding lotteries, false representations, and unfair trade practices.

Chapter 30 of title 39 contains the civil provisions authorizing enforcement actions against deceptive mailings. Sweepstakes that obtain money through the mails by means of false representations violate 39 U.S.C. 3005. This statute also forbids conducting a lottery which, although not expressly stated, requires that all sweepstakes must contain an option to enter without payment of consideration. A lottery contains three elements: prize, chance, and consideration. A free entry option excludes the consideration element. No federal statutes or regulations enforced by the USPS make specific reference to sweepstakes.

Criminal action can be taken against deceptive mailings under 18 U.S.C. §1341, the federal mail fraud statute. The two necessary elements for a violation of this statute are (1) formation of a scheme with the intent to defraud, and (2) use of the mails in furtherance of that scheme. Parties sending deceptive mailings have been prosecuted under this statute, albeit infrequently.

The FTC may also take action against practices that are unfair or deceptive. The FTC utilizes several standards to determine whether a practice is deceptive. There must be a representation, omission, or practice that is likely to mislead the consumer. The FTC evaluates the relevant misrepresentation statement from the viewpoint of a consumer acting reasonably under the circumstances.

Twenty-seven states have specific statutes which govern sweepstakes. State laws cover numerous facets of sweepstakes promotions, including general disclosures, odds of winning, number and value of prizes awarded, rules, winners list, pre-contest filing, simulated checks, prize restrictions, and the use of certain words.

States such as New York make it unlawful to represent that a person is a "winner" or has been "selected" or words of similar import when all or a substantial number of those solicited receive the same "prize" or "opportunity." State laws which restrict the use of certain terms are directed at sweepstakes that suggest to the recipient that he or she is a member of a select group when everyone who receives the sweepstakes is a member of the same class of contestants.

#### IV. INVESTIGATIONS AND FINDINGS

The investigation and hearings held by the Permanent Subcommittee on Investigations and the Subcommittee on International Security, Proliferation, and Federal Services revealed that deceptive mailings can take many forms and use a variety of techniques. Such practices include:

1. Misleading promotions suggesting that an individual has won a major sweepstakes, but will only receive the prize if a product is purchased;
2. Misleading promotions suggesting that purchase of a product is necessary for, or will increase the chances of winning in, future sweepstakes contests;
3. Confusing promotional copy and official rules that include inconsistencies which encourage individuals to make unnecessary purchases in the hope of winning a prize;
4. Sending multiple sweepstakes promotions with different copy for the same sweepstakes contest, implying that each promotion involves a different sweepstakes;
5. Targeting customers making purchases with repeated subsequent mailings, which entice consumers to make excessive and unneeded purchases;
6. Misleading statements seeming to guarantee the award of a large cash prize, and requesting purchase of a product, when most individuals actually receive an insignificant cash award, such as \$.50 or \$1.00;
7. Using a deceptively named company, and using envelopes and/or symbols and statements that create the impression that the mailing is official government correspondence;
8. Offering to sell information that is provided for free by the federal government or enticing a purchase by falsely implying a cut in federal benefits; and
9. Sending facsimile checks that entice individuals to respond to marketing appeals.



Companies use these techniques and others to persuade consumers to send money or make unnecessary purchases. Many companies conduct legitimate sweepstakes and offer worthwhile products, but use deceptive mailings to generate excessive and unnecessary purchases. This legislation is necessary to protect vulnerable consumers from these practices.

*Express and implied claims or representations*

The investigation by the Permanent Subcommittee on Investigations found that many mailings use deceptive language to entice consumers into making purchases of products that they neither need nor want. Mailings often suggest that an individual has won a large prize or that a purchase is necessary or will increase the chances of winning a large prize.

The legislation approved by the Committee addresses this problem by declaring as nonmailable any matter that makes certain misleading representations. The legislation prohibits various practices that mislead consumers, particularly consumers who may be more trusting or otherwise vulnerable to a computer-generated mass mailing. Through sophisticated mass mail techniques, the most vulnerable of consumers can be identified and repeatedly targeted for misleading sweepstakes solicitations.

Sweepstakes promotions may contain outright false representations. Most promotions contain representations that are technically accurate but include implied misrepresentations. Under this legislation, a "representation" is prohibited if it is directly false or impliedly false. This interpretation is consistent with both case law and the FTC's October 14, 1983 Policy Statement on Deception which stated:

In cases of implied claims, the Commission will often be able to determine meaning through an examination of the representation itself, including an evaluation of such factors as the entire document, the juxtaposition of various phrases in the document, the nature of the claim, and the nature of the transaction.

Sections 3001 (h), (i), and (k) of the bill approved by the Committee use the terms "misrepresents," "represents," and "representation" in describing nonmailable matter. For purposes of this bill, the Committee intends that "misrepresents," "represents," and "representation" mean both express and implied representations.

Drawing from the experience of the FTC, the Committee believes that a mailing can be misleading or deceptive even when the representation is suggested or implied. In *Thompson Medical Company, Inc. v. Federal Trade Commission*, 791 F.2d 189, 197 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987), the court stated that "[t]he tendency of a particular advertisement to deceive is determined by the net impression it is likely to make upon the viewing public. Consequently, literally true statements may nonetheless be found deceptive, and advertisements reasonably capable of being interpreted in a misleading way are unlawful even though other, non-misleading interpretations may also be possible." In that case, the court held that Aspercreme advertisements were misleading because Aspercreme did not contain aspirin as its name suggested

and the advertisement falsely implied that it was a cure for arthritis.

Case law and the FTC's 1983 Policy Statement on Deception also established that representations directed toward a particularly vulnerable group of consumers must be interpreted from the standpoint of a person from within that group. Therefore, where a mailer has successfully identified, through its own mailings or list rental, a particularly vulnerable group, direct or implied representations must be interpreted as they would be interpreted by a member of that group.

*Required statements, notices and disclaimers*

Subsection (k)(5) requires that "any statement, notice, or disclaimer required" with respect to promotional mailings for sweepstakes and skill contests (hereinafter, "statements") must be "clearly and conspicuously displayed." This provision ensures that the statements and disclaimers required by the bill will be readily apparent and understood by the average reader.

Prior to adopting the "clear and conspicuous" standard, the Committee reviewed the definitions of "clear and conspicuous" found in the FTC's opinions and in case law. The FTC defines "clear and conspicuous" in its 1983 Policy Statement as follows:

[I]n all cases the required or advised disclosures must be effectively communicated to consumers. To achieve this general performance standard, the Commission's rules and guides require that disclosures be "clear and conspicuous," using that term or other conceptually similar articulations. In order to determine whether the disclosure is effectively communicated, the Commission considers the disclosure in the context of all of the elements of the advertisement. Ordinarily, a disclosure is clear and conspicuous, and therefore is effectively communicated, when it is displayed in a manner that is readily noticeable, readable and/or audible (depending on the medium), and understandable to the audience to whom it is disseminated.

63 Fed. Reg. 24996, 25002 (footnotes omitted).

The Committee also reviewed case law using the "clear and conspicuous" standard. "Clear and conspicuous" is a disclosure standard used in laws involving banking, commerce and trade issues, customs, and the USPS. Several cases provide useful guidance on what is intended by the words "clear and conspicuous." In *Lowery v. Finance America Corp.*, 231 S.E.2d 904, 910 (N.C. App. Ct. 1977), the court explained that the "insurance disclosures contained in the Federal Disclosure Statement given to the Lowerys are not clear, conspicuous and in meaningful sequence." The court noted, "[f]irst, the cost of the insurance is neither clearly nor conspicuously revealed. The cost is typed in two of many boxes at the top of the page. These boxes are designated 'Credit Life' and 'Credit Dis.' The meaning of these words is not clear to laymen for whose protection the Act and Regulation are meant."

In *Channell v. Citicorp National Services*, 89 F.3d 379, 382 (N.D. Ill. 1996), the court found that "[t]he Act and Regulation M do not define 'clear and conspicuous,' but the words are staples of commercial law." Indeed, the Uniform Commercial Code defines "con-

spicuous” as so written that a reasonable person against whom it is to operate ought to have noticed it. Uniform Commercial Code (UCC) §1–201(10).

Finally, the United States District Court for the Southern District of Florida found “that the terms ‘annual percentage rate’ and ‘finance charge’ [were] displayed in the Disclosure Statement more conspicuously than the other terms. Although they [were] printed in the same size, style, and boldness of some other terms, ‘annual percentage rate’ and ‘finance charge’ [were] found at the top of the page, with boxes around them which highlight[ed] them in relation to the other terms.” *Malfa v. Household Bank, F.S.B.*, 825 F. Supp. 1018, 1020 (S.D. FL 1993).

These court cases show that the term “clear and conspicuous” requires language that is readily noticeable and readily understandable. In some cases, the standard will require typeface sufficiently large in comparison to the surrounding typeface to draw the average reader’s attention to it. In other cases, where typeface is used that is similar in size or style to the typeface of other important material on the document, the required language must be highlighted in some form to make it noticeable. Examples of highlighting include using bold letters, surrounding the language with a noticeable box, using contrasting ink or background color, and placing the language in a very visible location on the relevant page. The requirement in the bill that these statements be “clear and conspicuous” is one of the most important provisions in this legislation. In recognition of the endless variety and possible combinations of typeface on a page, the Committee declined to require explicit typeface styles and size. The bill instead relies on the common sense application of the term “clear and conspicuous” and expects strong enforcement by the USPS. The “clear and conspicuous” standard can only be satisfied if the relevant statements and disclaimers are easily noticeable and understandable to the average reader of a sweepstakes promotion.

#### *Statements concerning purchases*

During the investigation and hearings of the Permanent Subcommittee on Investigations, the Subcommittee gathered evidence which demonstrated that many individuals purchased products that they did not need or want because they thought a purchase was necessary to enter the sweepstakes, or that a purchase would increase their chances of winning. The American Association of Retired Persons (“AARP”), in testimony to the Subcommittee, presented survey data that showed forty percent of seniors thought a purchase would or might increase their chance of winning a prize in a sweepstakes. The Committee believes the statements “no purchase necessary” and “a purchase will not increase your chances of winning” are essential to provide adequate consumer protection and reduce the misperception that a purchase is required or will increase an individual’s chances of winning a sweepstakes.

The bill improves existing practices by requiring two disclosures, “no purchase necessary” and “a purchase will not increase an individual’s chance of winning.” These disclosures must be “in the mailing, in the rules, and on the order or entry form.” The Com-

mittee finds that these two statements are particularly important. They communicate to the recipient that buying a product is neither necessary nor advantageous with respect to the sweepstakes. By requiring these two disclaimers to appear in the three locations in a sweepstakes promotion most likely to be read by the recipient, the bill makes some effort to ensure that this key message reaches consumers who participate in sweepstakes. Moreover, the term “in the mailing” means a location in the sweepstakes promotion other than the rules or the order or entry form that is the most likely document to be read with respect to promoting the sweepstakes. In most cases, this will be the front of the first piece of the mailing. Because promotional mailings differ to such a large extent, however, it may also be on or inside a brochure in the mailing. The Committee cannot anticipate the content and style of each promotion, but intends that this third location be a place in the mailing that is designed as the centerpiece of the sweepstakes promotion.

#### *Rules and entry procedures*

In response to examples of confusing rules and entry procedures, the bill requires that the disclosure of the terms and conditions of the sweepstakes or skill contests, including the rules and entry procedures, be “easy to find, read, and understand.” This means that the rules cannot be buried in a piece of the promotional mailing that is likely to be overlooked or ignored. In addition, the rules cannot be written in language that would be confusing or unintelligible to the average person. The Committee intends that the rules be readily available to the average recipient and, once found, be readable and simple to understand.

#### *Applicability of requirements imposed by the legislation*

The Committee recognizes that many different companies are involved in the creation and mailing of covered matter under the bill. This legislation would not make unlawful the normal business activities of related industries, such as those in the printing and mailing industries, which do not sponsor promotional materials but merely print or mail materials at the behest of others.

The critical requirement in section 3005 of title 39, relating to false representations, is that a person engage in “a scheme or device for obtaining money or property through the mail.” An innocent and unknowing person or company, that merely prints or mails matter for a sweepstakes or contest sponsor, does not engage in a scheme for obtaining money or property through the mail unless such person or company originates or mutually assists with the creation of the mailing. Therefore, such persons would not fall within the ambit of the proposed legislation, including the definition of promoter in section 8 of the bill, unless they participate directly in the creative development of the mailing. The focus of any inquiry should be on the degree to which the individual or company substantially developed the contest and layout of the mailing versus the simple printing or mailing of matter.

#### *Removal of individuals from mailing lists*

During the course of the hearing by the Permanent Subcommittee on Investigations, witnesses testified about the difficul-

ties that they encountered when they attempted to remove their names or the names of family members from sweepstakes mailing lists. The hearings revealed that, currently, the only method of removal is to contact each individual company. The witnesses testified that it is unnecessarily difficult to obtain the correct address to send a request for removal. Furthermore, once an individual sends a removal request to an individual company, it often takes many months for the company to cease all mailings, if they do so at all. The Committee believes that it is essential to ensure simple and timely cessation of sweepstakes and skill contest mailings to vulnerable consumers. For many families, this may be the only mechanism to protect their loved ones from exploitation. As such, the bill requires companies to participate in a uniform notification system that will effect removal of names from mailing lists sent by certain companies. It was brought to the Committee's attention that it may be difficult for some types of companies engaging in third party mailings to comply with the requirements of section 8.

*Ability of Postal Service, the Federal Trade Commission and state officials to act against deceptive mailings*

In September 1998, the General Accounting Office reported that no comprehensive data exists to indicate the full extent of the problems consumers have experienced with deceptive mailings. The lack of comprehensive data is primarily because consumers often do not report their problems with deceptive mailings and no centralized database exists from which comprehensive data could be obtained.

The Committee strongly recommends that the USPS and the FTC, in consultation with the National Association of Attorneys General, the AARP, the Better Business Bureau, the National Fraud Information Center, the Direct Marketing Association ("DMA"), and other interested parties, take steps to implement a centralized database containing comprehensive data about reported cases of deceptive mailings.

Such a database would be a repository of information reported by consumers at the local, state, and federal levels. Having more access to comprehensive information would enable the USPS to more readily identify which deceptive practices are most pervasive.

## V. LEGISLATIVE HISTORY

### A. Legislation

During the 105th and 106th Congresses, a number of bills have been introduced regarding deceptive mailings and sweepstakes.

#### *S. 301, the Honesty in Sweepstakes Act of 1999*

In 1998, Senator Campbell introduced the Honesty in Sweepstakes Act of 1998. This bill was referred to the Committee on Governmental Affairs and to the Subcommittee on International Security, Proliferation, and Federal Services. Senator Campbell reintroduced a modified version of this bill in 1999. The bill would amend federal postal law to prohibit delivery of any mail constituting a solicitation or offer in connection with a sales promotion for a product or service that uses any game of chance offering anything of value (including any sweepstakes) or anything resembling a negotiable

instrument, unless specified notices in a specific type size are printed on the envelope and enclosed material.

This legislation would impose new disclosure requirements to inform recipients that they are not automatic winners and that no purchase is necessary to enter. The disclaimer must be in conspicuous and legible type. If the envelope contains language suggesting the recipient is a winner, then the disclosure must also appear on the envelope. Facsimile checks must also state that they are not checks or negotiable instruments and have no value.

Under the bill, civil penalties for deceptive mailings were set at up to \$50,000 for each mailing of less than 50,000 pieces, \$100,000 for mailings of 50,000 to 100,000 pieces, with an additional \$10,000 for each additional 10,000 pieces. The total fine for a violation could not exceed \$2 million. The legislation requires the USPS to retain all civil penalties it collects to fund programs to increase consumer awareness of deceptive mailings.

*S. 335, the Deceptive Mailings Prevention and Enforcement Improvement Act*

This legislation, introduced by Senator Collins, would establish new standards for sweepstakes and other prize promotion mailings, including clear disclosures that no purchase is necessary to enter the contest, the value and odds of winning each prize, the name of the promoter of the contest, and an understandable statement of the rules.

In addition, the legislation would strengthen current laws against mailings that mimic government documents. Mailings could not use any language or device that gives the appearance that the mailing is connected, approved, or endorsed by the federal government, or that implies that the mailing is afforded any special protection by the federal government. Any mailing selling a product the government provides for free must include a disclosure that the product is available from the government at no cost. Mailings could not contain statements implying that federal government benefits or services would be affected by any purchase, non-purchase, response, or non-response to a mailing.

The bill also provides strong new financial penalties for mailings that do not comply with these standards. Civil monetary penalties include fines ranging from \$50,000 to \$2 million, depending on the number of mailings at issue.

The bill makes federal law enforcement efforts more effective by giving the USPS additional tools to combat these practices. The bill authorizes, in limited cases, administrative subpoenas for records and documents during USPS investigations of fraudulent mailings. Upon application to a district court, the USPS would be authorized to detain mail nationwide, instead of in a single judicial district, when mailings violate 39 U.S.C. §3005. Under current law, the USPS must file an action in each judicial district in which mail is received. These provisions will assist the USPS in taking immediate steps to stop deceptive mailings.

The legislation would also preserve the important role that states play in fighting this type of fraud and deception. The bill would not preempt state or local laws protecting consumers from fraudulent or deceptive mailings.

*S. 336, the Deceptive Games of Chance Mailings Elimination Act of 1999*

Senator Levin introduced legislation in 1998, and again in 1999, that would add new requirements to the deceptive mail statute. His legislation would declare as nonmailable any solicitation or sweepstakes promotion unless it: 1) conforms with postal regulations; 2) contains sufficiently large and noticeable disclaimers that no purchases are necessary, a disclosure of the chances of winning, an advisory that purchases do not enhance the chances of winning; 3) is clearly labeled as a game of chance and contains no misleading statements representing that recipients are guaranteed winners; and 4) does not represent that the recipient is a member of a selected group whose chances of winning are enhanced as a member of that group. The bill allows the Postmaster General to use subpoenas for investigations into deceptive mailings and to ask the Attorney General to enforce subpoenas. The bill also allows the USPS to assess civil penalties in lieu of, or as part of, an administrative order.

*S. 975, the Sweepstakes Toll-Free Option Protection Act of 1999*

This bill was introduced by Senator Edwards and would amend chapter 30 of title 39, United States Code, to provide for a uniform notification system by which individual consumers may elect not to receive mailings relating to skill contests or sweepstakes.

*B. Hearings*

The Subcommittee on International Security, Proliferation, and Federal Services, chaired by Senator Thad Cochran, held a hearing on deceptive mailings on September 1, 1998. This hearing included testimony from Senator Ben Nighthorse Campbell; the head of the United States Postal Inspection Service ("USPIS"); the Attorney General of Florida; the head of the DMA, the trade association representing sweepstakes and other direct mail companies; and a professor of gerontology, who was conducting a study of the impact of sweepstakes on the elderly.

During the hearing, the USPIS official testified that the USPS has been working with FTC, the AARP, and the state Attorneys General to combat deceptive mailings. This effort has been aimed largely at the most fraudulent contests, usually smaller firms that attempt to persuade consumers to pay money in connection with entering a sweepstakes. USPS requested additional authority to help postal inspectors regulate deceptive mailings. The Attorney General of Florida testified that his office was investigating allegations of double billing, sales of lists of vulnerable consumers to other sweepstakes companies, false deadlines, aggressive collection practices, and deceptive language in sweepstakes entries.

The DMA representative testified about sweepstakes marketing practices and expressed concern about the fraud that currently exists, but also about consumers who respond inappropriately to sweepstakes offers. He said that DMA supports efforts to strengthen rules against fraudulent sweepstakes. DMA also favored increased self-regulation and consumer education. According to the DMA representative, DMA was preparing to strengthen its sweepstakes guidelines; develop programs to identify high activity re-

spondents and inform them that no purchase is necessary to enter; improve training for customer service agents to identify problem cases; develop a consumer information program to educate the public about legitimate sweepstakes; serve as a clearinghouse for consumer complaints; and work more closely with consumer organizations to educate people about avoiding financially risky behavior in connection with sweepstakes.

The Director of Gerontology at Arizona State, Dr. William Arnold, had been requested to conduct a study for the AARP on the elderly and sweepstakes. He testified that senior citizens have a different belief system, and are more trusting of mailings that appear to have government connections or other authority figure endorsements.

In 1998, the Permanent Subcommittee on Investigations, chaired by Senator Collins, commenced an investigation into deceptive mailings. The investigation was prompted by constituent complaints and by the initial hearing held by the Subcommittee on International Security, Proliferation, and Federal Services.

The inquiry by the Permanent Subcommittee on Investigations resulted in two days of hearings entitled "Deceptive Mailings and Sweepstakes Promotions" on March 8 and 9, 1999. During the first day of the hearings, elderly sweepstakes contestants and the children of such contestants described the marketing practices that deceived them or their family members. The witnesses testified that they or their family members believed that purchases increased their chances of winning, the wordings of the mailings and personalized letters from the sweepstakes companies mistakenly implied that they were very likely to win a prize, and the "no purchase necessary" disclaimers were ineffective. The investigation revealed that the volume of sweepstakes mailings exceeded one billion in 1998, and that purchase activity resulted in more mailings to an individual. Family members also testified about the trusting nature of their relatives and that many refused to leave home, attend doctor's appointments, or visit other friends and family in anticipation of the big payoff that they were promised by the sweepstakes mailings. Evidence at the hearing showed that some consumers had spent tens of thousands of dollars, depleted savings, and had been forced to seek employment after entering retirement. The hearings also examined the companies' billing practices and the procedures to remove the names of consumers from mailing lists upon request. All the witnesses expressed problems in these areas.

Also, during the first day, the Attorney General of Maryland and a representative from the AARP testified about the impact of sweepstakes mailings on the elderly. The Maryland Attorney General indicated that some companies utilize misleading and confusing marketing tactics, including small type, which is often overlooked by consumers with poor eyesight. In addition, some sweepstakes mailings mimic government documents, contain separate addresses for order and non order entries, and appear to "guarantee" winning as long as the entry is returned.

Sweepstakes promotions are also a major concern to AARP because of the harmful impact on its members. AARP has launched public campaigns against charity and telemarketing fraud based on its research examining senior citizens' behavior and perceptions pertaining to sweepstakes. The National Consumer League's Na-



tion Fraud Information Center has for the last four years listed sweepstakes as one of the most frequent complaints to their consumer hotline. Many of the complaints were about mailings that asked consumers to call a number to claim their winnings, but invariably they were asked to pay a fee or buy something in order to receive their prize. Many consumers also called the hotline to complain about repeat solicitations or when they were confused by the deceptive practices of major sweepstakes companies.

AARP commissioned a survey to determine what motivates elderly people to participate in sweepstakes. The preliminary findings, which were discussed at the hearing, showed that forty percent of older Americans respond to sweepstakes solicitations. Twenty-three percent of those senior citizens surveyed believe that purchasing merchandise increases their odds of winning, and another seventeen percent believe that purchasing a product might increase their chances of winning.

During the second day of hearings, representatives of American Family Enterprises, Publishers Clearing House, Time, Inc., and The Reader's Digest Association, Inc., testified about their sweepstakes practices. All four companies defended their marketing practices as reasonable means to sell products. The companies testified that they use sweepstakes to entice consumers to open mailings, but all indicated that the vast majority of people who enter sweepstakes do not make purchases. They testified that the great majority of their customers order only occasionally and in quite small amounts. They indicated that many consumers like their products, and order them as gifts for friends and relatives.

With respect to their mailings, the four companies testified that a "no purchase necessary" statement is included. The companies acknowledged that only a small minority of consumers are confused by the mailings. Some of the companies said that they have made changes in their mailings and have begun consumer education programs, including the use of explanatory letters to repetitive purchasers. The sweepstakes companies testified that they are working with industry trade associations to encourage the use of non-promotional or "no purchase necessary" letters to ensure that their customers understand that it is not necessary to purchase a product in order to enter or win their sweepstakes. All four companies expressed support for reasonable federal legislation to respond to this growing problem.

### *C. Committee action*

S. 335 was introduced by Senator Collins on February 1, 1999, and on that day the bill was referred to the Committee on Governmental Affairs. On March 8, 1999, the bill was referred to the Subcommittee on International Security, Proliferation and Federal Services, and on April 12, 1999, the Subcommittee favorably reported by polling letter the legislation for consideration by the full Committee.

On May 20, 1999, Chairman Thompson held a business meeting at which S. 335 was considered. Senator Collins offered an amendment in the nature of a substitute, which was approved by voice vote.

With no other amendments offered, Chairman Thompson moved adoption of S. 335, as amended. The Committee bill ordered the bill reported by unanimous voice vote.

## VI. SECTION-BY-SECTION ANALYSIS

### *Section 1: Short title*

This section cites the title of the bill as the “Deceptive Mail Prevention and Enforcement Act.”

### *Section 2: Restrictions on mailings using misleading references to the United States government*

This section amends existing law, section 3001 (h) and (i) of title 39 of the U.S.C. and adds a new paragraph (j). This section adds to existing law preventing mailings from deceptively appearing to be connected to the federal government.

Paragraph (1) amends subsection (h) of existing law to broaden the types of mailings which are subject to the requirements of this subsection. The bill adds new terms to the list of those that would trigger the existing disclaimer requirements for solicitations by a nongovernmental entity for the purchase of, or payment for, a product or service. In addition, paragraph (1)(C) imposes a new requirement which prohibits mailings covered under subsection (h) from containing a false representation implying that federal government benefits or services will be affected by any purchase or nonpurchase.

The new terms provide that any mailing which reasonably could be interpreted or construed as implying any endorsement, approval, or connection to the federal government through a reference to the Postmaster General, or name of a federal agency, department, commission, or program would be considered nonmailable matter unless it satisfied the requirements of section 3001(h) (1), (2), or (3). In addition, mailings containing any reference to the Postmaster General or a citation to a federal statute that misrepresents either the identity of the mailer or the protection afforded such matter by the federal government would be considered nonmailable matter unless it met the requirements of section 3001(h) (1), (2), or (3).

The Committee made these changes to existing law because of concern that the terms used to establish a government connection were unduly limited. By expanding the coverage of this subsection to include use of a reference to the Postmaster General, or name of a federal agency, department, commission, or program the Committee intends to broaden the coverage of this subsection. The Committee believes that mailings should not use references to the Postmaster General or a Postmaster, the name of a federal agency, department, or commission, or the name of a federal program, in an effort to deceive consumers into believing the mailing or offer is connected to the federal government.

In addition, the Committee is concerned that mailings which sell products or services may contain false representations implying that an individual’s federal benefits or services will be impacted if that individual does not make a purchase or agree to pay for a service. While companies and organizations may use accurate information about federal benefits or services, this section will prohibit

mailings that appear to be connected to the government from soliciting funds through false representations implying that a reduction in an individual's government benefits may result if a product or service is not purchased. This provision is intended to prohibit the personalized representation in a mailing that an individual's own benefits, or those of a family member, will be affected, as opposed to a false representation about federal benefits in general. Advocacy mailings that solicit funds and discuss the general status of federal benefits or programs are not covered by the bill.

Paragraph (2) amends subsection (i) of existing law to broaden the types of mailings which are subject to the requirements of this subsection. In a manner identical to paragraph (1), this paragraph adds new terms to the list of those that would trigger the existing disclaimer requirements for solicitations by a nongovernmental entity for information or the contribution of funds or membership fees. In addition, paragraph (2)(C) imposes a new requirement which prohibits mailings covered under subsection (i) from containing a false representation implying that federal government benefits or services will be affected by any purchase or nonpurchase.

As in paragraph (1), paragraph (2) adds new terms to existing law to restrict the use of terms implying any endorsement, approval, or connection to the federal government. The Committee made these changes to existing law for the same reasons it modified subsection (h).

Paragraph (3) redesignates subsections (j) and (k) of existing law as subsections (m) and (o). The Committee believes that any regulations necessary to implement the provisions of this bill shall be provided with appropriate notice and opportunity for comment. Since provisions of this bill relate to the mailability of matter under the existing Chapter 30, which is titled Nonmailable Matter, the Committee notes the applicability of existing subsection 3001 (j), which is redesignated as (m), to any regulations issued to implement provisions of this Act.

Paragraph (4) adds a new subsection (j) that declares as non-mailable any matter that constitutes a solicitation for the purchase of any product or service that is provided without cost by the federal government if it does not contain a clear and conspicuous statement that the product or service is provided without cost by the federal government. The Committee has reviewed mailings that offer to sell services the government provides for free. Such mailings may use a corporate name that implies a connection to the federal government, and may refer to certain federal laws or requirements. A mailing, for example, may offer to complete a form to obtain a Social Security number for an individual for a \$15 fee. Under the provisions of the bill, such a mailing must contain a

statement indicating that such information is provided by the federal government and can be obtained without cost from the federal government.

The Committee recognizes that there may be instances where a company makes use of government forms or services that are provided for free, but adds value to these forms or services by providing an additional service or additional expertise. For example, a tax preparer may obtain and provide to a client government tax form and, in doing so, also provides tax advice. In such instances where an individual is paying for the expertise of a company, and the mere acquisition of a government form is incidental to the service, this subsection shall not apply.

Similarly, a company may offer to sell a service that the federal government provides for free on a limited or qualified basis. For example, the federal government may offer certain individuals limited tax preparation services. If such a service is not provided for free to the public in general, then it would be permissible under this provision to mail solicitations offering such a service without the required disclaimer.

### *Section 3: Restrictions on sweepstakes and deceptive mailings*

This section establishes a number of consumer protections by making sweepstakes, skill contests, and facsimile checks non-mailable under certain circumstances.

Section 3001 of existing law is amended by adding a new subsection (k) which details the requirements for sweepstakes, skill contests, and facsimile checks. Subsection (k)(1)(A) defines a facsimile check as any matter designed to resemble a check or other negotiable instrument that is not negotiable. Subsection (k)(1)(B) defines a skill contest as a puzzle, game, competition, or other contest in which (i) a prize is awarded or offered; (ii) the outcome depends predominately on the skill of the contestant; and (iii) a purchase, payment, or donation is required or implied to be required to enter the contest. In such mailings, the payment of consideration may be described in any of a number of methods, including but not limited to the purchase of a product, payment of a judging or other fee, or making of a contribution or donation.

Subsection (k)(1)(C) defines a sweepstakes as a game of chance for which no consideration is required to enter. Subsection (k)(2) directs the USPS not to deliver, and dispose of, any mail declared nonmailable by paragraph (3). Subsection (k)(3) sets forth the conditions by which the USPS shall determine if sweepstakes, skill contests, and facsimile checks are nonmailable.

Subsection (k)(3)(A)(i) limits the requirements on sweepstakes mailings to those mailings that include entry materials for a sweepstakes. The Committee notes that some mailings may contain information about a particular sweepstakes, but not offer an individual the opportunity to enter the sweepstakes or purchase a product. Such mailings might announce a future sweepstakes or respond to the inquiry of an individual about an ongoing sweepstakes. The Committee believes that, since such mailings do not offer the opportunity to make a purchase, there is no direct link between placing an order and entering a sweepstakes. While this subsection does not impose requirements on sweepstakes mailings that do not include entry materials, the Committee cautions those send-

ing such sweepstakes mailings to avoid marketing practices designed to circumvent the consumer safeguards provided in this section.

Subsection (k)(3)(A)(ii) contains a number of requirements for sweepstakes mailings. Subsections (k)(3)(A)(ii)(I) and (II) require all sweepstakes mailings to contain a statement in the mailing, in the rules, and on the order form that no purchase is necessary to enter the sweepstakes and that a purchase will not improve the chances of winning with that entry.

The Committee recognizes the wide variety of formats used in sweepstakes mailings, and should a mailing not contain a separate solicitation, rules and entry or order form, these statements need only appear in the rules and on the order form. Should mailings contain the rules and order form on the same document or on separate sides of a document, the statements required by these subsections shall appear in both places.

Subsection (k)(3)(A)(ii)(III) requires the terms and conditions of sweepstakes mailings, including the rules and entry procedures, to be written in language that is easy to find, read, and understand.

Subsection (k)(3)(A)(ii)(IV) requires each sweepstakes mailing to state the name of the sponsor or mailer and their principal place of business or the address at which they may be contacted. The Committee is concerned that many sweepstakes mailings use the name of fictitious companies or identities intended to hide the true name of the company responsible for the sweepstakes mailing. The use of fictitious company names, combined with the use of Post Office Boxes or addresses of Commercial Mail Receiving Agencies ("CMRAs") makes it difficult for consumers and enforcement agencies to identify the actual name and address of the party responsible for the mailing. The Committee expects those sending sweepstakes mailings to disclose on each mailing a name and address where the sponsor of the sweepstakes may be contacted.

Subsection (k)(3)(A)(ii)(V)(aa) requires the rules in each sweepstakes mailing to list the estimated odds of winning each prize, and the odds should be stated in clear terms. For example, the odds of winning the grand prize of \$1,000,000 are 1 in 1,000,000. If the odds of winning a particular prize or all prizes are dependant on the number of entries received, the rules should state the estimated odds based on the number of expected entries.

Subsection (k)(3)(A)(ii)(V)(bb) requires the rules in each sweepstakes mailing to clearly state the quantity, estimated retail value, and nature of each prize.

Subsection (k)(3)(A)(ii)(V)(cc) requires the rules in each sweepstakes mailing to clearly state the schedule of any payments made over time. For example, if a \$1,000,000 prize is to be awarded over 20 years, the rules should indicate that the \$1,000,000 shall be paid in equal amounts of \$50,000 per year for 20 years starting in 1999.

Subsection (k)(3)(A)(ii)(VI) prohibits sweepstakes mailings from representing that individuals not purchasing products may be disqualified from receiving future sweepstakes mailings. The Committee is concerned that some sweepstakes mailings link ordering products with entering the contests, and may give the impression that not purchasing a product will prevent an individual from receiving future contest entries.

Subsection (k)(3)(A)(ii)(VII) prohibits sweepstakes mailings from requiring that an entry be accompanied by an order or payment for a product previously ordered. This subsection outlaws “prompt pay” sweepstakes, which offer the opportunity to enter a sweepstakes only to those making or paying for a purchase. The Committee believes that such sweepstakes inappropriately link the purchase of a product with entering a sweepstakes.

Subsection (k)(3)(A)(ii)(VIII) prohibits sweepstakes mailings from representing that an individual is a winner of a prize unless that individual has actually won a prize.

Subsection (k)(3)(A)(ii)(IX) prohibits sweepstakes mailings from containing any representation that contradicts or is inconsistent with the sweepstakes rules or with any other disclosure required under this subsection. Sweepstakes mailings are prohibited from including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with the rules or disclosures.

Subsection (k)(3)(A)(ii)(X) prohibits sweepstakes from representing that the purchase of a product will allow a sweepstakes entry to receive an advantage in the winner selection process. This subsection also prohibits sweepstakes from representing that the purchase of a product will allow an entry to be eligible for additional prizes in that sweepstakes, or provide an entry submitted in a future sweepstakes to have a better chance of winning. The Committee is concerned that some sweepstakes mailings suggest that the purchase of a product will improve the chances of winning. Sweepstakes mailings should not contain statements or references to special treatment for sweepstakes entries that include a purchase; nor should sweepstakes mailings offer additional prizes only to those making a purchase. Sweepstakes mailings should treat all sweepstakes entries in the same manner, whether or not they are accompanied by the purchase of a product.

Subsection (k)(3)(B)(i) establishes requirements for mailings, including entry materials for skill contests or promotions that purport to be a skill contest. Subsection (k)(3)(B)(ii)(I) requires skill contests to state all terms and conditions, including the rules and entry procedures, in language that is easy to find, read, and understand. Subsection (k)(3)(B)(ii)(II) requires each skill contest mailing to state the name of the sponsor or mailer and their principal place of business or the address at which they may be contacted.

Subsection (k)(3)(B)(ii)(III) lists the requirements for the rules of skill contests. These include: (aa) the number of rounds or levels of the contest and the cost to enter each round or level; (bb) if subsequent rounds or levels of the contest will be more difficult to solve; (cc) the maximum cost to enter all rounds or levels of the contest; (dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past three skill contests conducted by the sponsor; (ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor; (ff) the method used in judging; (gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded; (hh) the quantity, estimated retail value, and nature of each prize; and (ii) the schedule of any payments made over time.

Subsection (k)(3)(C) requires any facsimile check to contain a statement on the check itself that it is not a negotiable instrument and has no cash value. The Committee has reviewed a number of promotional mailings containing documents that appear to be checks. These documents seek to attract the attention of consumers, often by portraying a device that resembles a check. Such facsimile checks may include a bank name, the name of the recipient of the letter listed as the payee, a dollar amount, and an authorized signature. Facsimile checks may create consumer confusion, increasing the impression that an individual has actually won a large amount of money or is eligible to receive the payment listed on the facsimile check. The Committee believes that, including a clear and conspicuous disclaimer on the face of the facsimile check which states that the check is not a negotiable instrument and has no cash value, will decrease the consumers confusion over the nature of the facsimile check.

Subsection (k)(4) provides an exemption from the nonmailability provisions of the bill for magazines, newspapers, and other periodicals containing sweepstakes, skill contests, and facsimile checks if the sweepstakes, skill contest, or facsimile check, contained therein (A) is not directed to a named individual, or (B) does not include an opportunity to make a payment or order a product or service.

The Committee does not intend that magazines, newspapers, and other periodicals be judged as nonmailable simply because they contain an advertisement publicizing a sweepstakes or skill contest, or contain a facsimile check. An advertisement alone does not present the same potential for abuse or deception as direct mail promotions unless such advertisement contains personalization and offers the opportunity to make a purchase. Advertisements including those elements would make the publication similar to a promotional mailing soliciting a purchase from an individual and, thus, would be required to adhere to the provisions of subsection (k)(3)(A), (B), and (C).

Subsection (k)(5) requires any statement, notice, or disclaimer required under paragraph (3) to be clearly and conspicuously displayed. This provision ensures that the statements required by the bill are readily apparent and understood by the average reader.

Subsection (k)(6) directs the USPS, when enforcing paragraph (3), to consider all the materials included in the mailing and language on and visible through the envelope. The Committee believes that mailings should be judged based upon their overall impression and that all elements of a mailing should be reviewed to determine mailability. A mailing may be designed so that some portions comply with the requirements of paragraph (3), even though other aspects of the mailing are deceptive and misleading. In such cases, the USPS shall consider the disclosures in the context of all the elements of the advertisement and, if such disclosures are ineffective in correcting the overall deceptive representation of the mail piece, it should be declared nonmailable.

Subsection (l)(1) requires any person who uses the mails for any mailings covered under subsections (h), (i), (j), or (k) to adopt reasonable practices and procedures to allow individuals to request that they no longer receive such mailings. An individual may make such a request personally, or through a conservator, guardian, or individual with power of attorney. Subsection (l)(1)(A) requires

such a request to be in writing to the mailer of such matter. Subsection (l)(1)(B) allows a written request to be submitted to an attorney general (or any state government official who transmits the request to that attorney general) for submission to the mailer of such matter.

The Committee has received numerous reports of individuals who encountered great difficulty removing their names or the names of their family members from mailing lists. The Committee believes that companies sending promotional mailings covered by the bill should implement a system to remove from their mailing lists the names of individuals who do not wish to receive such mailings. Companies may elect to establish their own toll-free telephone number to provide consumers with information about how they may be removed from mailing lists or where an appropriately authorized individual may write to request the removal of an individual. Companies may satisfy the requirements of this subsection by participating in the system established by section 8 of the bill, but shall also allow individuals identified in subsection (l)(1) to request the removal of individuals from their own mailing lists.

Subsection (l)(2) requires any person who uses the mails for any mailings covered under subsections (h), (i), (j), or (k) to maintain or cause to be maintained a record of all requests made under paragraph 1. The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for five years from the time a mailer receives the request to remove the name.

#### *Section 4: Postal Service orders to prohibit deceptive mailings*

This section amends section 3005 of existing law to allow the USPS to impose orders prohibiting the delivery and receipt of mail by those found to be mailing nonmailable matter under subsections (j) and (k), as added by sections 2 and 3 of the bill. The bill simply adds subsections (j) and (k) to those already included in section 3005.

Under existing law, such an order allows the Postmaster to return mail delivered to a company found in violation of the law, forbids the payment by a postmaster of any money order or postal note drawn to such a company, provides for return to the customer of the sum in such postal note, and requires the person in violation to cease and desist from engaging in the deceptive activities.

#### *Section 5: Temporary restraining order*

This section authorizes a district court, upon a proper showing, to issue an order to detain incoming and outgoing mail which is the subject of a proceeding under sections 3005 or 3006. A proper showing shall require proof of a likelihood of success on the merits. When mail is sent or received in more than one district, the order may be sought in a single district but will be applicable in all relevant districts.

Section 3007 of existing law is amended by redesignating subsection (b) as (c) and striking existing subsection (a) and inserting new subsection (a) and (b). Subsection (a)(1) authorizes the USPS, in preparation for or during the pendency of proceedings under sections 3005 and 3006, to request from a district court in any district in which mail is sent or received, or in any district in which the



defendant is located, a temporary restraining order and preliminary injunction. Proceedings must follow the requirements of Rule 65 of the Federal Rules of Civil Procedure.

Subsection (a)(2)(A) establishes that, upon a proper showing, the court shall enter an order which shall remain in effect during the pendency of any statutory proceedings and any judicial review of such proceedings, or any action to enforce orders issued under the proceedings. The order shall direct the Postmaster, in any and all districts, to detain the defendant's incoming and outgoing mail that is the subject of proceedings under sections 3005 and 3006. Currently, the USPS must apply to each district in which a defendant receives mail in order to obtain an injunction detaining the incoming mail. The Committee found numerous instances where a promoter used several addresses in multiple districts under a variety of names, requiring the USPS to bring an action in each judicial district to detain all incoming mail. This provision promotes the efficient use of judicial and investigative resources.

Subsection (a)(2)(B) states that a proper showing shall require proof of a likelihood of success on the merits of the proceedings under sections 3005 or 3006. The standard for issuing a temporary restraining order under existing section 3007 is probable cause. This provision changes the standard to bring the standard in line with that of other statutory injunction provisions. A proper showing shall only require proof of a likelihood of success on the merits. Where Congress has created a statutory injunction remedy, it is the sense of the Committee that no finding of irreparable harm would be necessary if the government has shown a likelihood of success on the merits of the statutory based action.

Subsection (a)(3) requires that mail detained pursuant to the statute be made available for examination by the defendant. The Committee expects that the USPS will give timely notification of the detention and of the mail's location and availability for examination. Any mail clearly shown not to be the subject of proceedings under sections 3005 and 3006 shall be delivered as addressed. The Committee expects the USPS to promptly deliver any of the defendant's mail that has no relationship to the detention. It shall carefully review such mail so as not to impose an undue burden or unfair restriction on the defendant's receipt of other mail.

Subsection (a)(4) states that no finding of intent to make a false representation or to conduct a lottery is required to support the issuance of an order under this section.

The new subsection (b) states that any judicial review of the proceedings under sections 3005 and 3006 shall be in the district in which the order under subsection (a) was issued. Thus, the decision made in the administrative forum would be appealed to the district court which granted the temporary restraining order.

#### *Section 6: Civil penalties and costs*

During the hearings held in the 105th Congress, the USPIS testified that mailers routinely change their promotions in order to comply with an issued stop order but the new promotions often violate the law in a different way. To combat this practice, section 3012 is amended to give the USPS the authority to impose a fine without having to first obtain a stop order. Under current law, the

USPS cannot impose a fine on the mailer until it has been issued a stop order and then subsequently violated that order.

At the same time, this section increases the civil fine available for failure to comply with a stop order. The bill uses two different penalty structures for these violations.

Subsection (a) of existing law is amended by increasing the civil penalty for violating or evading a stop order from \$10,000 per day to a sliding scale based on the quantity of pieces mailed. The penalty scale is \$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; and an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000.

Subsection (c), as amended, provides for a civil penalty without a stop order. This penalty also is calculated on a sliding scale based on the quantity of pieces mailed. The penalty scale is \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; and an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000.

Under current law, the civil penalty imposed by subsection (a) takes into account certain factors such as the nature, circumstances, extent, and gravity of the violation. With respect to the violator, current law also considers the defendant's ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability and other such matters as justice may require. The civil penalty imposed in subsection (c) also takes these factors into account.

Subsection (d), as amended, provides for a separate penalty if a company fails to comply with the requirement to adopt reasonable practices and procedures to prevent unwanted mailings to consumers who have requested cessation of such mailings. Violations of this provision can result in a civil penalty of \$10,000 for each improper mailing.

Subsection (e) is amended to give the USPS the authority to enforce the collection of new civil penalties. Current law provides that the USPS shall pay to the General Fund of the United States Treasury any civil penalties it recovers. However, the Committee believes that the USPS, which is charged with enforcing the provisions of this bill, is entitled to recover its administrative and judicial expenses incurred while enforcing this Act. Thus, subsection (e) provides that the USPS shall recover its administrative and judicial costs up to \$500,000 each year, payable into the Postal Service Fund. These costs are to be paid from the civil penalties collected by the USPS, with the balance of the penalties being paid to the General Fund of the United States Treasury.

#### *Section 7: Additional authority for the postal inspection service*

Section 7 adds a new section 3016 to authorize the use of subpoenas in investigations conducted under Chapter 30 of title 39.

Subsection (a) of section 3016 authorizes the use of subpoenas in any investigation conducted under this chapter. The subpoena authority allows for the production of any records, including books, papers, documents, and other tangible things which constitute or contain evidence that the Postmaster General finds relevant or material to the investigation. The Committee recognizes that sub-

poena authority will provide an additional investigative tool necessary in investigations under this chapter. The subpoena authority should assist the USPS in establishing violations of Chapter 30 of title 39 and in the assessment of penalties.

Subsection (b) of section 3016 designates the method of service of process within the United States and abroad. The section also differentiates the service of process upon natural persons versus businesses along with the proof of such service.

Subsection (c) of section 3016 prescribes the procedure for the Postmaster General to seek enforcement of a subpoena. Although the subpoenas are not self enforcing, they can be enforced by a federal district court pursuant to these regulations.

Subsection (b) of the bill authorizes the USPS to promulgate regulations setting forth the procedures it will use to implement section 3016. These regulations are to be promulgated no later than 120 days after the enactment of this section.

*Section 8: Requirements of promoters of skill contests or sweepstakes mailings*

Section 8 creates a new section 3017 entitled “Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings.”

In general, section 8 creates a new, uniform notification system by which a person or their legal guardian, such as a relative with power of attorney, can have their name and address removed from all sweepstakes mailings lists at one time. Upon appropriate notification, promoters have 45 business days to remove the names and addresses from their mailing lists. Any subsequent mailings sent after the 45 day period to people who have requested removal from mailing lists are considered nonmailable matter, and the promoter may be held liable for civil penalties for sending such nonmailable matter.

Subsection (a)(1) defines who must comply with section 8. Promoter is defined as any person who originates sweepstakes and/or games of chance mailings. The Committee does not intend to cover under this section the person who merely prints or mails matter for a skill contest or sweepstakes unless that printer or mailer also originates or materially assists with creating the sweepstakes or contest. Only the originator of the sweepstakes or contest that is the subject of the mailing must comply with section 8 to ensure that the person responsible for the creation and promotion of the sweepstakes is covered rather than the middleman who simply prints or sends the mailing.

Promoter is further defined under this subsection as a person who originates and mails more than 500,000 pieces of mail per year. Therefore, promoters who mail 500,000 or fewer pieces of mail need not comply with section 8. The Committee did not want to require the smallest promoters to participate in the uniform notification system. These smaller entities rarely send repeated and/or personally targeted mailings to individuals. However, the Committee believes that these promoters should still engage in reasonable practices that will effectively cease mailings to an individual who specifically requests that the mailings stop. As such, these small promoters must still adopt the reasonable practices and procedures required by subsection (l) of section 3.

A second exemption from compliance with Section 8 is available for promoters who send mailings that do not include an opportunity to make a payment or buy a product or service. Because these mailings do not encourage an individual to make a purchase in connection with the mailing, these types of mailings are of much less concern to the Committee.

Subsection (a)(2) defines a removal request as a written request stating that an individual elects to have their name and address removed from sweepstakes mailing lists. The Committee intends that submission of this removal request will indicate an individual's choice to be removed from all sweepstakes and skill contest mailing lists. This subsection, however, does not require specific language to state such an intent.

Subsections (a)(3) and (a)(4) define skill contests and sweepstakes, respectively. These definitions are identical to the definitions of these terms previously used in section 3 of the bill.

Subsection (b) describes nonmailable material as any matter that (i) is a skill contest or sweepstakes; (ii) is addressed to an individual who made an election to be excluded from mailing lists by using the uniform notification system; and (iii) does not comply with the requirements of subsection (c)(1).

Promoters of skill contests or sweepstakes must provide in each mailing a clear and conspicuous statement that includes the toll-free number and address of the notification system as required by subsection (c)(1)(A). Under subsection (c)(1)(B), promoters must also state how a person can use the system to prohibit promoters from sending any further mailings. The Committee believes that these requirements are essential to inform consumers of the option to halt all further sweepstakes and skill contest mailings. Placing the toll-free number directly on all mailings with a description of the specific steps a person must take to stop all mailings ensures that the removal process is easily understandable.

Subsection (c)(2) requires promoters covered by section 8 to participate in the establishment and maintenance of the notification system. Obviously, there will be promoters whose businesses are created after the system has been established. These promoters will be unable to comply with the establishment requirement and the Committee does not expect them to do so. However, section 8 requires that they contribute to the maintenance of the system.

The Committee deliberately did not specify how the system is to be created and maintained, as promoters are in the best position to make these determinations. The Committee defers to their judgment about how the system should be constructed and maintained, and has confidence in the industry's ability to do so.

Subsection (d) delineates the information that the notification system must provide to an individual who contacts the system in order to prohibit future mailings. Subsection (d)(1) states that at the time of the phone call the system must inform the individual that they must write to a specified address in order to have their name and address removed from all sweepstakes and games of skill mailing lists. Subsection (d)(2) requires that the system inform the individual that their request will take effect 45 business days after the system receives the written removal request. This message should be concise and easily understood, and not left at the end of a very long message filled with other information. Indeed, only fac-

tual information should be given to the individual: a short, simple statement on how to remove a person's name and address; the address of where to send the written request; and when the request will take effect.

Subsection (e)(1) specifies that an individual must mail a removal request to the notification system in order for their name and address to be excluded from future mailings. Merely calling a toll-free number is not enough to have one's name and address excluded. The individual must take the step of writing to the notification system. Although it would be preferable to have a system where the toll-free call would be sufficient by itself to effectuate removal of one's name and address, such a system would be difficult to maintain, since it would be very difficult to verify the identity of the person calling the number. The mailing requirement will help alleviate this concern and would also create a paper trail for use as evidence that a removal request had been made.

Subsection (e)(2) states that promoters must remove an individual's name and address from skill contests and sweepstakes mailings lists no later than 45 business days after the notification system receives an individual's removal request. Promoters shall not send any sweepstakes or skills contest mailings to the individual after the 45 business day period has elapsed.

The Committee believes that 45 business days is a sufficient period of time to allow promoters to check the system and remove individuals from their mailing lists. The goal is to keep the amount of time promoters have to remove names to a reasonable minimum, so that months and months will not elapse while numerous additional mailings flood mailboxes.

Subsection (e)(3)(A) establishes the foundation of the single, uniform notification system. This section states that an individual's election to exclude his or her name and address from skill contests and sweepstakes mailing lists shall be effective with respect to every promoter.

Subsection (e)(3)(B) states that, in order for an individual to change their election to be removed from all sweepstakes and skills contest mailing lists, the individual must advise the notification system in writing that they wish to receive such mailings again. During the time that an individual has been removed from all mailing lists, promoters should not flood such individuals with mailings or phone calls urging them to change their election.

Subsection (f) states that promoters will not be subject to civil liability if they exclude an individual's name and address from their mailing lists, so long as (i) a removal request is received by the notification system; (ii) the promoter or person maintaining the system has a good faith belief that the request is from the individual whose name and address is to be excluded or is from another duly authorized person. In other words, promoters should not be held liable for removing someone from their mailing lists if they have a good faith belief that the person wished to be dropped from the lists, even though it is subsequently discovered that the person making the request was not actually the individual or the person with the legal authority to request removal.

A major concern of the Committee is misuse of the removal list. The list could be interpreted as a roll call of those individuals who have been the most victimized by misleading sweepstakes mailings

and who are particularly vulnerable to future deception. The Committee believes that protection of these names is of the utmost importance. Therefore, under subsection (g)(1)(A), no person may provide any information, including the sale or rental of names or addresses contained in these lists, for commercial purposes. Subsection (g)(1)(B) defines “list” as any roster of names and addresses or other related information used, maintained, or created by the uniform notification system. These subsections do not preclude the system from sharing information with promoters who are using that information to remove an individual from their mailing lists.

Penalties for violation of subsection (g)(1) are significant. Subsection (g)(2) states that any person who violates subsection (g)(1) shall be assessed a civil penalty by the USPS of up to \$2,000,000 per violation. Strong civil penalties are necessary in order to deter non-compliance with subsection (g)(1).

Under subsection (h)(1)(A), any promoter who recklessly mails sweepstakes or skills contest mailings (beyond the 45 day period, which begins on the day the notification system receives the written request) to an individual who has sent in a proper removal request is liable to the United States for \$10,000 per mailing. This strong penalty is also necessary. It will deter promoters from violating the requirement that they remove an individual from their mailing lists and will encourage promoters to regularly check the notification system for the addition of new individuals.

Failure to substantially comply with the requirement that promoters establish and maintain the notification system will also subject these promoters to civil penalties under subsection (h)(1)(B). The Committee did not indicate specific amounts and believes the USPS can determine this on a case by-case basis.

Subsection (h)(2) states that the USPS shall assess civil penalties under section 8. Subsection (c) states that section 8 will take effect one year after the date of enactment of the Act.

#### *Section 9: State laws not preempted*

Subsection (a) states that nothing in this bill shall be construed to preempt any provision of state or local law that imposes more restrictive requirements, regulations, damages, costs or penalties. The Committee believes that states and localities should be able to impose and enforce laws that also seek to prevent deceptive mailings. The Committee notes that other agencies may take actions against deceptive mailings under other federal laws, and does not intend that the provisions of this bill restrict or preempt any federal law or limit any civil penalties that may be imposed under other federal laws.

Subsection (b) states that nothing contained in this section shall be construed to prohibit an authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

#### *Section 10: Effective date*

The provisions of the bill will take effect 120 days after the date of enactment.

## VII. REGULATORY IMPACT STATEMENT

Enactment of S. 335 should result in no significant regulatory impact. S. 335 contains no intergovernmental mandates, as defined by the Unfunded Mandates Reform Act ("UMRA"), and would impose no costs on state, local, or tribal governments. Although S. 335 contains several private-sector mandates, the Congressional Budget Office ("CBO") has determined that the cost of these mandates to the private sector would be well below the threshold specified in UMRA.

## VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 15, 1999.*

Hon. FRED THOMPSON,  
*Chairman, Committee on Governmental Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 335, the Deceptive Mail Prevention and Enforcement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs) and John Harris (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*S. 335—Deceptive Mail Prevention and Enforcement Act*

Summary: S. 335 would establish a number of new federal crimes and restrictions relating to deceptive mailings and sweepstakes and would increase the penalties for such offenses. CBO estimates that implementing this legislation would not result in any significant impact on the federal budget. Because enactment of S. 335 could affect direct spending and receipts, pay-a-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

S. 335 contains several private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but the costs imposed by these mandates would not exceed the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation). This legislation contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal government: Because S. 335 would establish new federal crimes relating to deceptive mailings and sweepstakes, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement by the Postal Service or court proceedings would not be significant, however, because of the small number of additional cases likely to be involved. Any additional costs to the Postal Service would be classified as off-

budget, while any increased costs to the federal judiciary would be subject to appropriation.

Because those prosecuted and convicted under S. 335 could be subject to civil penalties, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues). CBO expects that any additional receipts would be less than \$500,000 annually.

This legislation also would provide that any civil penalties collected from enforcement of laws relating to “nonmailable matter” (mainly deceptive mailings) would be paid to the Postal Service to cover administrative and related costs, up to \$500,000 a year. Any such payments would be direct spending, but CBO estimates that these amounts would be less than \$500,000 a year because we do not expect collections of fines to exceed that amount.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting S. 335 could affect both direct spending and receipts, but CBO estimates that any such effects would be less than \$500,000 a year.

Estimated impact on state, local, and tribal governments: S. 335 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: S. 335 would create several new private-sector mandates. Firms that use the postal system to distribute unsolicited advertisements would be required to remove references to the Postmaster General from those advertisements. Firms that operate sweepstakes or contests through the mail would face multiple requirements. They would be required to include a number of prominent disclosures in their mailings and to honor requests from individuals to be omitted from future mailings. Based on information from the Direct Marketing Association, CBO estimates that the total costs of these mandates to the private sector would be well below the threshold specified in UMRA.

In order to keep firms from implying that their products or services are endorsed or approved by the federal government, federal law already prohibits most use of federal symbols or the names and titles of federal agencies and officers in mailed advertisements. S. 335 would specifically extend that prohibition to the name and title of the Postmaster General. In order to comply with the mandate, firms would need to remove references to the Postmaster General from their existing advertisements. Because printing and postage constitute the bulk of firms’ expenses in producing and distributing advertisements through the mail and the new prohibition would do little to affect either, CBO expects that this mandate would not have a significant impact on firms’ costs of doing business.

The disclosures that sweepstakes and contest operators would be required to make include: an explanation that purchase of the firm’s products affects neither the odds of winning nor inclusion in future mailings; a clearly-written, understandable, and easily found statement of rules, conditions, fees, and entry procedures; and a description for each prize, giving the quantity, the retail value, and a numerical statement of the odds of winning. Firms would also be required to put disclaimers on facsimile checks and to refrain from representing a person as a winner unless that person has won a



prize. The largest sweepstakes firms already make the vast majority of these disclosures. To comply with the mandate, some firms might have to do no more than add a single disclosure, such as a numerical statement of odds. Other firms might have to do considerably more. The costs of redrafting and redesigning mailings would thus vary from firm to firm, but would not, in general, be substantial. CBO anticipates that sweepstakes and contest operators would endeavor to keep the number of pages of their mailings constant in order to avoid increases in printing and postage costs. Consequently, although variation within the industry makes a precise estimate difficult, the cost to firms of adding additional disclosures would probably be small.

S. 335 would require sweepstakes operators to honor direct written requests from individuals to be excluded from future mailings. The firms would be required to store and to honor the requests for five years. Many firms already honor such requests, and, because there is little reason to believe that the number of requests firms receive would increase significantly in the future, it is unlikely that firms' costs would increase significantly because of this mandate. Seventy to eighty percent of all recipients do not respond to mailings from major sweepstakes operators, but only a small number of people request to be excluded from future mailings. The majority of individuals just discard unwanted mailings.

Sweepstakes and contest operators that send more than 500,000 mailings per year would also be required to participate in the creation of a national notification system that would allow individuals to make a single request that their names be removed from the mailing lists of all sweepstakes and contest operators. The notification system would have to forward written requests from individuals to participating firms within 45 business days. Such firms would be required to include information about the notification system in their mailings. Most sweepstakes firms already participate in the Direct Marketing Association's Mail Preference Service, which is similar to the notification system required by S. 335. The Mail Preference Service, however, deals with all forms of direct mail, including catalogs, coupons, and other advertisements. In order to comply with the mandate, sweepstakes and contest operators would need to establish a system limited to sweepstakes and contest mailings. The Direct Marketing Association budgets approximately \$500,000 per year to operate the Mail Preference Service. CBO expects that it would cost sweepstakes and contest operators a similar amount each year to operate the notification system. Startup costs would increase the amount required in the first year.

Estimate prepared by: Federal costs: Mark Grabowicz; impact on the private sector: John Harris.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

IX. EXECUTIVE COMMUNICATIONS

UNITED STATES POSTAL SERVICE,  
Washington, DC, June 11, 1999.

Hon. FRED THOMPSON,  
*Chairman, Senate Committee on Governmental Affairs,*  
*Washington, DC.*

DEAR CHAIRMAN THOMPSON: I would like to express my appreciation for the work you and the members and staff of the Committee on Governmental Affairs have done in the development of meaningful legislation to address problems posed by deceptive mailings. We are following the issue very closely and feel the legislation as approved by the committee will enhance consumer protection and at the same time be fair to businesses that rely on the use of the mail to promote their products and services.

We have reviewed all current legislation regarding deceptive mailings and consider S. 335, the Deceptive Mail Prevention and Enforcement Act, to be the most comprehensive. The bill includes several provisions that will enhance the ability of the Postal Inspection Service to protect the American public from deceptive mailings. These include civil penalties, administrative subpoena authority, multi-district temporary restraining orders, clarification of government look-alike provisions and clear standards for mailings containing sweepstakes, games of skill, and facsimile checks.

We are proud of our accomplishments in protecting the consumer and welcome any assistance Congress can provide. Effective statutes will not only help us protect the consumer, but will also maintain the American public's confidence in the mail that many thousands of legitimate businesses rely on to market their products and services.

I look forward to working with you to help maintain the mail as an efficient, reliable, and secure service for the public.

Sincerely,

WILLIAM J. HENDERSON,  
*Postmaster General, CEO.*

## X. ADDITIONAL VIEWS OF SENATOR EDWARDS

In my office, I have a large box brimming with the sweepstakes mailings that a 92-year-old woman received during the course of the past several months. This woman's daughter sent it to me to help illustrate the anxiety and distress caused to her family by sweepstakes mailings. It seems her mother has purchased many items, believing that they will increase her chances of winning a major prize.

This distraught woman watched witnesses tell similar stories at the hearings held by the Permanent Subcommittee on Investigations. When the daughter sent me the box of mailings, she also wrote me a letter, saying "Please, please, what more can you do to put an end to all of this injustice? It is a slap in my mother's face. An affront to her dignity. We, her own family, are helpless to keep her from continuing."

I write separately to discuss a provision of this legislation that I helped author. I believe that it is an important provision that could help prevent many of the abuses that we learned about during the course of our hearings on this issue.

As summarized by the Committee's report, Section 8 of S. 335 requires that companies mailing games of chance or sweepstakes solicitations must participate in a single notification system that individuals can contact to have their name and address removed from all sweepstakes mailing lists. Currently, there is only one way to stop all of these mailings—each and every sweepstakes company must be contacted individually. Finding the correct address is extremely difficult and time consuming. And the stories I have heard from hearing panelists indicate that contacting the companies directly is ineffective due to the fact that the requestor often gets passed from one representative to the next. It is essential that we provide a way for people who want to prevent these mailings to do so simply and effectively.

I personally have had some experiences with the current system. It all started when my office got in touch with Pamela Bagwell, the daughter-in-law of an elderly man who had spent thousands of dollars buying things from sweepstakes companies. One day, Pamela Bagwell went to visit her father-in-law, Bobby. When she arrived at Bobby's home, Pamela found stacks and stacks of solicitations from sweepstakes companies. She asked Bobby about them and found out that he had made numerous purchases thinking that buying products would increase his chances of winning a prize. He was so convinced he would win a prize that he even invited his neighbors to his house on the day that the Publishers Clearing House prize patrol was supposed to deliver the grand prize check.

Pamela estimates that Bobby spent more than \$20,000 in 10 months on products he thought would help his chance of winning. Now as I mentioned before, Bobby is an elderly man. But this is

not the worst part of this story. Bobby also has dementia. Pamela, who has power of attorney for Bobby, contacted Publishers Clearing House at least 6 times in October last year to demand that the company stop sending Bobby solicitations. She even went so far as to send the company a doctor's certification that Bobby has dementia. And yet, the sweepstakes mailings continued to flood Bobby's mailbox. Pamela said that sometimes Bobby was receiving up to twenty per day, from many different companies.

I wrote to several of these companies, including American Family Publishers, Reader's Digest, Time, and Publishers Clearing House. I asked them to remove Mr. Bagwell's name from their lists. To their credit, all of the companies quickly contacted my office in writing to indicate they were taking steps to take the name off their mailing lists and to settle his many accounts. I appreciate this response. But I still think it is a sad day when people need a U.S. Senator to intervene in order to get this type of response. People should be able to quickly and effectively stop sweepstakes mailings without the aid of their Senator. Unfortunately, Pamela and Bobby Bagwell's situation is not unique. Since the hearings, my office has received numerous calls and letters, not just from North Carolinians, but from people all over the country who tell similar, alarming stories about their experiences with sweepstakes companies.

More recently, I have written letters on behalf of another constituent. His daughter came to speak to me in Charlotte, N.C. After we met, she contacted these companies several times to sort out the numerous accounts her elderly father had opened, to no avail. So again, I wrote a letter, and again, all of the companies (except American Family Publishers) notified me to say they would honor my request to remove my constituent's information from their mailing lists and to settle his accounts.

I believe that people should have the right to easily put a stop to these mailings without the assistance of their Senator. And sweepstakes promoters should be legally required to honor such a request.

My colleagues on the Permanent Subcommittee on Investigations, and I suspect other Congressional offices, have heard similar disturbing stories and had similar frustrating experiences. I appreciate the efforts of the companies to develop new standards to educate people about sweepstakes promotions. But people continue to be deceived by the mailings. Some of these people have spent hundreds or thousands of dollars, and since many of them are elderly, they are spending the money they need to live on. Strong legislative efforts, such as S. 335, the Deceptive Mail Prevention and Enforcement Act, are necessary to prevent these situations.

I believe that the legislation should include a system that makes it easy for consumers to remove their names from sweepstakes mailing lists. When the only way a consumer can get their name off the lists and settle their accounts is to have their Senator write a letter on their behalf, it is time for us to help devise an efficient system for preventing harm. I believe that the single notification system created by this legislation will do that.

Michael Pashby, Executive Vice President of Consumer Marketing for Magazine Publishers of America, told the National Asso

ciation of Attorneys General that "Allowing consumers to make a choice is how our industry operates." I agree that consumers should be able to make a choice and that one of those choices should be to stop receiving solicitations.

The use of sweepstakes solicitations is considered a legitimate marketing tool. However, we have witnessed the abuses that have been occurring as a result of this marketing technique. Senators Collins and Levin should be commended for their efforts to curb harassing, deceptive mailings. By voting unanimously to send the Deceptive Mail Prevention and Enforcement Act on to the full Senate for consideration, I believe my colleagues on the Governmental Affairs Committee have demonstrated their commitment to this goal. And I also believe that the creation of a single notification system will empower our constituents to add to these efforts.

## XI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

### SECTION 3001. NONMAILABLE MATTER.

(h) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service and **[contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement]** *which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government* is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: “THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.”, or a notice to the same effect in words which the Postal Service may prescribe; **[and]**

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: “THIS IS NOT A GOVERNMENT DOCUMENT.”, or a notice to the same effect in words which the Postal Service may prescribe; **[or]** and

(C) *does not contain a false representation implying that Federal Government benefits or services will be affected by any purchase or nonpurchase; or*

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which

he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(i) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for information or the contribution of funds or membership fees and **【contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement】** *which reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a Federal statute, name of a Federal agency, department, commission, or program, trade or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a Federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the Federal Government* is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: “THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.”, or a notice to the same effect in words which the Postal Service may prescribe; **【and】**

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: “THIS IS NOT A GOVERNMENT DOCUMENT.”, or a notice to the same effect in words which the Postal Service may prescribe; **【or】** and

(C) *does not contain a false representation implying that Federal Government benefits or services will be affected by any purchase or nonpurchase; or*

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(j)(1) *Matter otherwise legally acceptable in the mails described under paragraph (2)—*

(A) *is nonmailable matter;*

(B) *shall not be carried or delivered by mail; and*

(C) *shall be disposed of as the Postal Service directs.*

(2) *Matter that is nonmailable matter referred to under paragraph (1) is any matter that—*

(A) constitutes a solicitation for the purchase of any product or service that—

(i) is provided by the Federal Government; and

(ii) may be obtained without cost from the Federal Government; and

(B) does not contain a clear and conspicuous statement giving notice of the information under subparagraph (A) (i) and (ii).

(k)(1) In this subsection, the term—

(A) “facsimile check” means any matter designed to resemble a check or other negotiable instrument that is not negotiable;

(B) “skill contest” means a puzzle, game, competition, or other contest in which—

(i) a prize is awarded or offered;

(ii) the outcome depends predominately on the skill of the contestant; and

(iii) a purchase, payment, or donation is required or implied to be required to enter the contest; and

(C) “sweepstakes” means a game of chance for which no consideration is required to enter.

(2) Matter otherwise legally acceptable in the mails that is non-mailable matter described under paragraph (3) shall not be carried or delivered by mail and may be disposed of as the Postal Service directs.

(3) Matter that is nonmailable matter referred to under paragraph (2) is any matter (except matter as provided under paragraph

(4)) that—

(A)(i) includes entry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and

(ii)(I) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes;

(II) does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that a purchase will not improve an individual’s chances of winning with an entry from such materials;

(III) does not state all terms and conditions of the sweepstakes promotion, including the rules and entry procedures for the sweepstakes, in language that is easy to find, read, and understand;

(IV) does not disclose the sponsor or mailer of such matter and the principal place of business or an address at which the sponsor or mailer may be contacted;

(V) does not contain sweepstakes rules that clearly state—

(aa) the estimated odds of winning each prize;

(bb) the quantity, estimated retail value, and nature of each prize; and

(cc) the schedule of any payments made over time;

(VI) represents that individuals not purchasing products may be disqualified from receiving future sweepstakes mailings;

(VII) requires that a sweepstakes entry be accompanied by an order or payment for a product previously ordered;

(VIII) represents that an individual is a winner of a prize unless that individual has won a prize;



(IX) contains a representation that contradicts, or is inconsistent with sweepstakes rules or any other disclosure required to be made under this subsection, including any statement qualifying, limiting, or explaining the rules or disclosures in a manner inconsistent with such rules or disclosures; or

(X) represents that the purchase of a product will allow a sweepstakes entry to receive an advantage in the winner selection process, to be eligible for additional prizes in that sweepstakes, or for an entry submitted in a future sweepstakes to have a better chance of winning;

(B)(i) includes entry materials for a skill contest or a promotion that purports to be a skill contest; and

(ii)(I) does not state all terms and conditions of the skill contest, including the rules and entry procedures for the skill contest, in language that is easy to find, read and understand;

(II) does not clearly and conspicuously disclose the sponsor or mailer of the skill contest and the principal place of business or an address at which the sponsor or mailer may be contacted; or

(III) does not contain skill contest rules that clearly state, as applicable—

(aa) the number of rounds or levels of the contest and the cost to enter each round or level;

(bb) that subsequent rounds or levels will be more difficult to solve;

(cc) the maximum cost to enter all rounds or levels;

(dd) the estimated number or percentage of entrants who may correctly solve the skill contest or the approximate number or percentage of entrants correctly solving the past 3 skill contests conducted by the sponsor;

(ee) the identity or description of the qualifications of the judges if the contest is judged by other than the sponsor;

(ff) the method used in judging;

(gg) the date by which the winner or winners will be determined and the date or process by which prizes will be awarded;

(hh) the quantity, estimated retail value, and nature of each prize; and

(ii) the schedule of any payments made over time; or

(C) includes any facsimile check that does not contain a statement on the check itself that such check is not a negotiable instrument and has no cash value.

(4) Matter that appears in a magazine, newspaper, or other periodical and contains materials that are a facsimile check, skill contest, or sweepstakes is exempt from paragraph (3), if the matter—

(A) is not directed to a named individual; or

(B) does not include an opportunity to make a payment or order a product or service.

(5) Any statement, notice, or disclaimer required under paragraph (3) shall be clearly and conspicuously displayed.

(6) In the enforcement of paragraph (3), the Postal Service shall consider all of the materials included in the mailing and the material and language on and visible through the envelope.

*(l)(1) Any person who uses the mails for any matter to which subsection (h), (i), (j), or (k) applies shall adopt reasonable practices and procedures to prevent the mailing of such matter to any person who, personally or through a conservator, guardian, individual with power of attorney—*

*(A) submits to the mailer of such matter a written request that such matter should not be mailed to such person; or*

*(B)(i) submits such a written request to the attorney general of the appropriate State (or any State government officer who transmits the request to that attorney general); and*

*(ii) that attorney general transmits such request to the mailer.*

*(2) Any person who mails matter to which subsection (h), (i), (j), or (k) applies shall maintain or cause to be maintained a record of all requests made under paragraph (1). The records shall be maintained in a form to permit the suppression of an applicable name at the applicable address for a 5-year period beginning on the date the written request under paragraph (1) is submitted to the mailer.*

**[(j)]** *(l) Except as otherwise provided by law, proceedings concerning the mailability of matter under this chapter and chapters 71 and 83 of title 18 shall be conducted in accordance with chapters 5 and 7 of title 5.*

**[(k)]** *(m) The district courts, together with the District Court of the Virgin Islands and the District Court of Guam, shall have jurisdiction, upon cause shown, to enjoin violations of section 1716 of title 18.*

#### **SECTION 3005. FALSE REPRESENTATIONS; LOTTERIES.**

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under section 3001(d), (h) **[or]** (i), (j), or (k) of this title, or is engaged in conducting a lottery, gift, enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender;

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal; and return to the remitter of the sum named in the money order or postal note; and

(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

For purposes of the preceding sentence, the mailing of matter which is nonmailable under section 3001(d), (h), **[or]** (i), (j) or (k)

by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

**SECTION 3007. DETENTION OF MAIL FOR TEMPORARY PERIODS.**

[(a) In preparation for or during the pendency of proceedings under sections 3005 and 3006 of this title, the United States district court in the district in which the defendant receives his mail shall, upon application therefor by the Postal Service and upon a showing of probable cause to believe either section is being violated, enter a temporary restraining order and preliminary injunction pursuant to rule 65 of the Federal Rules of Civil Procedure directing the detention of the defendant's incoming mail by the postmaster pending the conclusion of the statutory proceedings and any appeal therefrom. The district court may provide in the order that the detained mail be open to examination by the defendant and such mail be delivered as is clearly not connected with the alleged unlawful activity. An action taken by a court hereunder does not affect or determine any fact at issue in the statutory proceedings.]

*(a)(1) In preparation for or during the pendency of proceedings under sections 3005 and 3006, the Postal Service, in accordance with section 409(d), may apply to the district court in any district in which mail is sent or received as part of the alleged scheme, device, lottery, gift enterprise, sweepstakes, skill contest, or facsimile check or in any district in which the defendant is found, for a temporary restraining order and preliminary injunction under the procedural requirements of rule 65 of the Federal Rules of Civil Procedure.*

*(2)(A) Upon a proper showing, the court shall enter an order which shall—*

*(i) remain in effect during pendency of the statutory proceedings, any judicial review of such proceedings, or any action to enforce orders issued under the proceedings; and*

*(ii) direct the detention by the postmaster, in any and all districts, of the defendant's incoming mail and outgoing mail, which is the subject of the proceedings under sections 3005 and 3006.*

*(B) A proper showing under this paragraph shall require proof of a likelihood of success on the merits of the proceedings under section 3005 or 3006.*

*(3) Mail detained under paragraph (2) shall—*

*(A) be made available at the post office of mailing or delivery for examination by the defendant in the presence of a postal employee; and*

*(B) be delivered as addressed if such mail is clearly shown not to be the subject of proceedings under sections 3005 and 3006.*

*(4) No finding of the defendant's intent to make a false representation or to conduct a lottery is required to support the issuance of an order under this section.*

*(b) If any order is issued under subsection (a) and the proceedings under section 3005 or 3006 are concluded with the issuance of an order under that section, any judicial review of the matter shall be in the district in which the order under subsection (a) was issued.*

[(b)] (c) This section does not apply to mail addressed to publishers of newspapers and other periodical publications entitled to a periodical publication rate or to mail addressed to the agents of the publishers.

**SECTION 3012. CIVIL PENALTIES.**

(a) Any person—

(1) who, through the use of the mail, evades or attempts to evade the effect of an order issued under the section 3005(a)(1) or 3005(a)(2) of this title;

(2) who fails to comply with an order issued under section 3005(a)(3) of this title; or

(3) who (other than a publisher described by section 3007(b) of this title) has actual knowledge of any such order, is in privity with any person described by paragraph (1) or (2) of this subsection, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with any such order, as the case may be, through the use of the mail;

shall be liable to the United States for a civil penalty in an amount not to exceed **[\$10,000 for each day that such person engages in conduct described by paragraph (1), (2), or (3) of this subsection. A separate penalty may be assessed under this subsection with respect to the conduct described in each such paragraph.] \$50,000 for each mailing of less than 50,000 pieces; \$100,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$10,000 for each additional 10,000 pieces above 100,000, not to exceed \$2,000,000.**

(b)(1) Whenever, on the basis of any information available to it, the Postal Service finds that any person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the Postal Service may, under the provisions of section 409(d) of this title, commence a civil action to enforce the civil penalties established by such subsection. Any such action shall be brought in the district court of the United States for the district in which the defendant resides or receives mail.

(2) If the district court determines that a person has engaged, or is engaging, in conduct described by paragraph (1), (2), or (3) of subsection (a), (c), or (d), the court shall determine the civil penalty, if any under this section, taking into account the nature, circumstances, extent, and gravity of the violations of such subsection, and, with respect to the violator, the ability to pay the penalty, the effect of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such subsection, the degree of culpability, and such other matters as justice may require.

(c)(1) *In any proceeding in which the Postal Service may issue an order under section 3005(a), the Postal Service may in lieu of that order or as part of that order assess civil penalties in an amount not to exceed \$25,000 for each mailing of less than 50,000 pieces; \$50,000 for each mailing of 50,000 to 100,000 pieces; with an additional \$5,000 for each additional 10,000 pieces above 100,000, not to exceed \$1,000,000.*

(2) *In any proceeding in which the Postal Service assesses penalties under this subsection the Postal Service shall determine the civil penalty taking into account the nature, circumstances, extent, and gravity of the violation or violations of section 3005(a), and with respect to the violator, the ability to pay the penalty, the effect*

of the penalty on the ability of the violator to conduct lawful business, any history of prior violations of such section, the degree of culpability and other such matters as justice may require.

(d) Any person who violates section 3001(l) shall be liable to the United States for a civil penalty not to exceed \$10,000 for each mailing to an individual.

[(c) All penalties collected under the authority of this section shall be paid into the Treasury of the United States.] (e)(1) From all civil penalties collected in the administrative and judicial enforcement of this chapter, an amount equal to the administrative and judicial costs incurred by the Postal Service in such enforcement, not to equal or exceed \$500,000 in each year, shall be—

(A) deposited in the Postal Service Fund established under section 2003; and

(B) available for payment of such costs.

(2) Except for amounts deposited in the Postal Service Fund under paragraph (1), all civil penalties collected in the administrative and judicial enforcement of this chapter shall be deposited in the General Fund of the Treasury.

[(d)] (f) In any proceeding at any time under this section, the defendant shall be entitled as a defense or counterclaim to seek judicial review, if not already had, pursuant to chapter 7 of title 5, of the order issued under section 3005 of this title. However, nothing in this section shall be construed to preclude independent judicial review otherwise available to chapter 7 of title 5 of an order issued under section 3005 of this title.

#### **SECTION 3016. ADMINISTRATIVE SUBPOENAS.**

(a) **AUTHORIZATION OF USE OF SUBPOENAS BY POSTMASTER GENERAL.**—In any investigation conducted under this chapter, the Postmaster General may require by subpoena the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General finds relevant or material to the investigation.

(b) **SERVICE.**—

(1) **SERVICE WITHIN THE UNITED STATES.**— A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

(2) **FOREIGN SERVICE.**—Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(3) **SERVICE ON BUSINESS PERSONS.**—Service of any such subpoena may be made by a Postal Inspector upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent

thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(4) **SERVICE ON NATURAL PERSONS.**—Service of any subpoena may be made upon any natural person by—

(A) delivering a duly executed copy to the person to be served; or

(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(5) **VERIFIED RETURN.**—A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(c) **ENFORCEMENT.**—

(1) **IN GENERAL.**—Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

(2) **JURISDICTION.**—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court may be punished as contempt.

(d) **DISCLOSURE.**—Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5.

The table of sections for chapter 30 of title 39, United States Code, is amended by adding at the end the following:

3016. Administrative subpoenas.

**SECTION 3017. NONMAILABLE SKILL CONTESTS OR SWEEPSTAKES MATTER; NOTIFICATION TO PROHIBIT MAILINGS**

(a) **DEFINITIONS.**—In this section, the term—

(1) “promoter” means any person who originates and causes to be mailed more than 500,000 mailings in any calendar year of any skill contest or sweepstakes, except for mailings that do not include an opportunity to make a payment or order a product or service;

(2) “removal request” means a written request stating that an individual elects to have the name and address of such individual excluded from any list used by a promoter for mailing skill contests or sweepstakes;

(3) “skill contest” means a puzzle, game, competition, or other contest in which—

(A) a prize is awarded or offered;

(B) the outcome depends predominately on the skill of the contestant; and

(C) a purchase, payment, or donation is required or implied to be required to enter the contest; and

(4) “sweepstakes” means a game of chance for which no consideration is required to enter.

(b) **NONMAILABLE MATTER.**—

(1) **IN GENERAL.**—Matter otherwise legally acceptable in the mails described under paragraph (2)—

(A) is nonmailable matter;

(B) shall not be carried or delivered by mail; and

(C) shall be disposed of as the Postal Service directs.

(2) **NONMAILABLE MATTER DESCRIBED.**—Matter that is nonmailable matter referred to under paragraph (1) is any matter that—

(A) is a skill contest or sweepstakes; and

(B)(i) is addressed to an individual who made an election to be excluded from lists under subsection (e); or

(ii) does not comply with subsection (c)(1).

(c) **REQUIREMENTS OF PROMOTERS.**—

(1) **NOTICE TO INDIVIDUALS.**—Any promoter who mails a skill contest or sweepstakes shall provide with each mailing a clear and conspicuous statement that—

(A) includes the address and toll-free telephone number of the notification system established under paragraph (2); and

(B) states how the notification system may be used to prohibit the mailing of any skill contest or sweepstakes to such individual.

(2) **NOTIFICATION SYSTEM.**—Any promoter that mails a skill contest or sweepstakes shall participate in the establishment and maintenance of a single notification system that provides for any individual (or other duly authorized person) to notify the system of the individual’s election to have the name and address of the individual excluded from all lists of names and addresses used by all promoters to mail any skill contest or sweepstakes.

(d) **NOTIFICATION SYSTEM.**—If an individual contacts the notification system through use of the toll-free telephone number provided under subsection (c)(1)(A), the system shall—

(1) inform the individual of the information described under subsection (c)(1)(B); and

(2) inform the individual that the election to prohibit mailings of skill contests or sweepstakes to that individual shall take effect 45 business days after receipt by the system of the signed removal request by the individual.

(e) **ELECTION TO BE EXCLUDED FROM LISTS.**—

(1) *IN GENERAL.*—An individual may elect to exclude the name and address of such individual from all mailing lists used by promoters of skill contests or sweepstakes by mailing a removal request to the notification system established under subsection (c).

(2) *RESPONSE AFTER MAILING REMOVAL REQUEST TO THE NOTIFICATION SYSTEM.*—Not later than 45 business days after receipt of a removal request, all promoters who maintain lists containing the individual's name or address for purposes of mailing skill contests or sweepstakes shall exclude such individual's name and address from all such lists.

(3) *EFFECTIVENESS OF ELECTION.*—An election under paragraph (1) shall—

(A) be effective with respect to every promoter; and

(B) remain in effect, unless an individual notifies the system in writing that such individual—

(i) has changed the election; and

(ii) elects to receive skill contest or sweepstakes mailings.

(f) *PROMOTER NONLIABILITY.*—A promoter, or any other person maintaining the notification system established under this section, shall not be subject to civil liability for the exclusion of an individual's name or address from any mailing list maintained by a promoter for mailing skill contests or sweepstakes, if—

(1) a removal request is received by the notification system; and

(2) the promoter or person maintaining the system has a good faith belief that the request is from—

(A) the individual whose name and address is to be excluded; or

(B) another duly authorized person.

(g) *PROHIBITION ON COMMERCIAL USE OF LISTS.*—

(1) *In general.*—

(A) *PROHIBITION.*—No person may provide any information (including the sale or rental of any name or address) in a list described under subparagraph (B) to another person for commercial use.

(B) *LISTS.*—A list referred to under subparagraph (A) is any list of names and addresses (or other related information) used, maintained, or created by the system established under this section.

(2) *CIVIL PENALTY.*—Any person who violates paragraph (1) shall be assessed a civil penalty by the Postal Service not to exceed \$2,000,000 per violation.

(h) *CIVIL PENALTIES.*—

(1) *IN GENERAL.*—Any promoter—

(A) who recklessly mails nonmailable matter in violation of subsection (b) shall be liable to the United States in an amount of \$10,000 per violation for each mailing of nonmailable matter; or

(B) who fails to substantially comply with the requirements of subsection (c)(2) shall be liable to the United States.



(2) *ENFORCEMENT.*—*The Postal Service shall assess civil penalties under this section.*

The table of sections for chapter 30 of title 39, United States Code, is amended by adding after the item relating to section 3016 the following:

*3017. Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings.*

