

POSTAL SERVICE REFORM ACT OF 2016

DECEMBER 5, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 5714]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 5714) to restore the financial solvency and improve the governance of the United States Postal Service in order to ensure the efficient and affordable nationwide delivery of mail, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Committee Statement and Views .....	2
Section-by-Section .....	17
Explanation of Amendments .....	30
Committee Consideration .....	30
Roll Call Votes .....	30
Application of Law to the Legislative Branch .....	30
Statement of Oversight Findings and Recommendations of the Committee .....	30
Statement of General Performance Goals and Objectives .....	30
Duplication of Federal Programs .....	31
Disclosure of Directed Rule Makings .....	31
Federal Advisory Committee Act .....	31
Unfunded Mandate Statement .....	31
Earmark Identification .....	31
Committee Estimate .....	31
Budget Authority and Congressional Budget Office Cost Estimate .....	31
Changes in Existing Law Made by the Bill, as Reported .....	47

## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

H.R. 5714, the Postal Service Reform Act of 2016 (PSRA), would restore the solvency of the United States Postal Service and ensure the efficient and affordable nation-wide delivery of mail. To accomplish these goals, the legislation would make significant reforms in retiree health care, delivery efficiency, governance, innovation, and accounting.

## BACKGROUND AND NEED FOR LEGISLATION

*Background*

The United States Postal Service traces its beginning to July 26, 1775 when the Second Continental Congress created “a line of posts” under the administration of a Postmaster General of the “United Colonies.”<sup>1</sup> In the more than 200 years since it was founded, the Postal Service’s mission has been largely unchanged: “to bind the Nation together through the personal, educational, literary, and business correspondence of the people.”<sup>2</sup> To help fulfill this responsibility, the agency has also been granted two federal monopolies: one on First-Class Mail and a second on access to the mailbox.<sup>3</sup>

For almost one hundred years, from 1872 to 1970, the agency was organized as the cabinet-level Post Office Department (POD), postage rates were set by federal statute, and the agency was partially subsidized with federal tax dollars. As a result, the POD was dependent on both political management and the appropriations process, even as the challenges of delivering mail to a growing nation became more and more complex. By 1970, the nation’s postal infrastructure was crumbling and in March of that year, postal strikes broke out across the nation.<sup>4</sup> Eventually, more than 150,000 POD employees joined these strikes in protesting low wages and unsafe working conditions. The strikes accelerated work on legislation already in progress to overhaul the nation’s postal system.<sup>5</sup>

On August 12, 1970, President Richard Nixon signed the Postal Reorganization Act (PRA) into law, just months after the two-week strike ended.<sup>6</sup> This law transformed the POD into an independent establishment of the executive branch called the United States Postal Service. The PRA eliminated direct political control of the Postal Service, and required the new entity to be self-funding by the time taxpayer subsidies phased out 10 years after the bill’s enactment. The PRA granted postal employees the right to bargain collectively and granted the Postal Service access to credit through the U.S. Department of the Treasury so it would have the ability to invest in long-term infrastructure projects. The PRA also created

<sup>1</sup> U.S. Postal Serv., *The History of the United States Postal Service*, available at [https://about.usps.com/publications/pub100/pub100\\_001.htm](https://about.usps.com/publications/pub100/pub100_001.htm).

<sup>2</sup> 39 U.S.C. § 101(a).

<sup>3</sup> 18 U.S.C. §§ 1693–1699, 1725 and 39 U.S.C. § 601–06.

<sup>4</sup> President’s Comm’n. on Postal Organization, *Towards Postal Excellence* (June 1968), available at <http://hdl.handle.net/2027/mdp.39015078700625>.

<sup>5</sup> U.S. Postal Serv. Office of Inspector Gen., *The Postal Strike of 1970*, available at <https://www.uspsoig.gov/blog/postal-strike-1970>.

<sup>6</sup> Postal Reorganization Act, Pub. L. No. 91-375 (1970).

the Postal Rate Commission to regulate the Postal Service and approve the Postal Service's rate proposals.

Following enactment of the PRA, the Postal Service improved postal working conditions and upgraded the agency's infrastructure. However, the PRA included insufficient incentives for the Postal Service to become more efficient and cost-effective over the long-term, as Postmasters General could simply request rate increases if revenue was insufficient.

By the early 2000s, the spread of the Internet threatened the long-term solvency of the Postal Service as communications and other transactions were increasingly conducted in electronic formats. Although mail volume had risen for nearly 200 years, by 2003, long-term projections began to show that the growth of the Internet could significantly reduce future mail volume.

Further, the Postal Service did not have the resources to meet rising retiree health care costs in a time of diminishing mail volumes. While the Postal Service set aside funds necessary to pay the full projected costs of employee pensions, the Postal Service had never set aside the funds necessary to pay the full costs of retiree health care benefits. Instead, these costs were paid as they became due and the Postal Service began to accrue a large unfunded liability for the cost of retiree health care it was projected to be unable to meet.

After nearly a decade of debate, the Postal Accountability and Enhancement Act (PAEA) was enacted into law in 2006 to address these challenges. The legislation required the Postal Service to begin paying down its largest unfunded liability, retiree health care, through annual installment payments over 50 years.

PAEA made other changes to postal governance. For example, in place of the negotiated rate system, PAEA instituted a postage rate cap intended to force the agency to eliminate unnecessary costs.

Under PAEA, the Postal Service improved the efficiency of its operations, including reducing its workforce by 203,000 career employees between 2006 and 2015. However, these efficiency gains have not been enough to offset steep decreases in mail volumes. Shortly after PAEA was enacted, the Great Recession contributed to steep drops in mail volumes. Mail volume dropped by nearly five percent in 2008, and by another almost 13 percent in 2009—a virtually unprecedented one-year decline. Since 2006, the total volume of mail handled by the Postal Service has declined by more than 28 percent.<sup>7</sup> Unfunded liabilities have also continued to grow, and these trends have placed the Postal Service in a precarious financial position. The agency posted a net loss of \$5.1 billion in fiscal year 2015.<sup>8</sup> Over these last nine years, the Postal Service has lost a combined \$56.8 billion.<sup>9</sup> Even without a statutory requirement to prefund accrued retiree health care costs, the agency would still have lost \$10.8 billion. As of September 30, 2015, the Postal Service also faced unfunded liabilities that are projected to cost more

<sup>7</sup>U.S. Postal Serv., *A decade of facts and figures*, available at <https://about.usps.com/who-we-are/postal-facts/decade-of-facts-and-figures.htm> (last visited Sept. 29, 2016).

<sup>8</sup>U.S. Postal Serv., *2015 Report on Form 10-K*, available at <http://about.usps.com/who-we-are/financials/10k-reports/fy2015.pdf> (last visited Sept. 29, 2016).

<sup>9</sup>*Id.* and U.S. Postal Serv., *2011 Report on Form 10-K*, available at <http://about.usps.com/who-we-are/financials/10k-reports/fy2011.pdf> (last visited Sept. 29, 2016).

than \$125 billion—nearly double the agency’s revenue of \$69 billion.<sup>10</sup>

*The Postal Service Reform Act of 2016*

H.R. 5714, the Postal Service Reform Act (PSRA), is the product of more than a year of bipartisan negotiations and is designed to put the Postal Service on a path to fiscal stability. The bill includes a wide array of reforms that will provide measured financial relief to the agency, improve operations, enable cost-cutting, provide enhanced benefits to postal customers, and promote enhanced stability in postage rates in the near-term. While making these reforms, the bill protects: the agency’s vital role as a tool for private commerce; the agency’s utility for rural, low-income, and older Americans; and the benefits postal workers have earned during their careers. Critically, it also protects American taxpayers from being forced to bail out the agency at a potential cost of \$100 billion, or provide a reinstated annual operating subsidy.

Even if PSRA legislation is enacted, the Postal Service will still be faced with \$75 billion in unfunded liabilities and is likely to face continued declines in mail volume. However, the legislation will make critical adjustments in the Postal Service’s operations and retiree health care benefits that are essential to ensuring that it continues as a self-funding agency.

The following sections discuss the rationale behind key reforms included in the legislation.

Title I—Postal Service Benefits Reform

*Health care reform*

Like most civilian federal agencies, the Postal Service currently provides health care benefits to its employees through the Federal Employees Health Benefits Program (FEHB). Managed by the Office of Personnel Management (OPM), FEHB currently offers enrollees the choice of more than 200 individual health insurance plans. Under this program, the Postal Service pays roughly three-quarters of the premium costs for plans chosen by postal employees, as well as eligible postal retirees.<sup>11</sup>

Through fiscal year 2016, the Postal Service is responsible for paying both active and retiree health care premiums on a “pay-as-you-go” basis and, since 2006, the Postal Service has also been statutorily required to prefund accrued liabilities for retiree health care. This mandate was included in PAEA, which required that by September 30, 2056, the Postal Service fully prefund its retiree health care liability just as the agency is required to prefund pension obligations.<sup>12</sup> Under PAEA, payments to prefund the retiree health care liability were to average approximately \$5.6 billion per year over the first ten years after the enactment of PAEA, and

<sup>10</sup>*Laying Out the Reality of the United States Postal Service: Hearing Before the S. Comm. On Homeland Security and Governmental Affairs*, 114th Cong. (Jan. 21, 2016) (statement of Lori Rectanus, Dir., Physical Infrastructure, U.S. Gov’t. Accountability Office), available at <http://www.gao.gov/assets/680/674728.pdf>.

<sup>11</sup>Postal retirees are eligible to retain FEHB coverage in retirement if the individual had been an FEHB enrollee for five consecutive years before retirement and if the retiree is eligible for an annuity immediately upon retirement. See Office of Personnel Mgmt., *Frequently Asked Questions: Continuing FEHB Coverage into Retirement*, available at <https://www.opm.gov/faqs/topic/insure/?cid=880bfba8-8f8b-4e64-9a72-fae98408fd0e>.

<sup>12</sup>Postal Accountability and Enhancement Act, Pub. L. No. 109–435 § 803 (2006).

these funds were to be deposited into the Postal Service Retiree Health Benefits Funds (PSRHBF).

Under PAEA, beginning in fiscal year 2017, the Postal Service will no longer be required to make “pay-as-you-go” payments for retiree health care premiums and it will no longer be required to make a specified prefunding payment. Instead, the premium payments will be drawn from the PSRHBF and the Postal Service will be responsible for making an annual normal cost payment to the fund equal to the amount of the new liability added to the fund in each year. The Postal Service will also be required to make an amortization payment to address the remaining existing unfunded liability.

While PAEA sought to address the problem of long-term retiree health care costs, the legislation did not anticipate the significant and likely permanent decline in mail volume that began almost immediately after the enactment of the bill. As a result of these trends, the Postal Service has been unable to make most of the statutorily specified payments to prefund accrued liabilities for retiree health care costs. Currently, the agency faces \$54 billion in unfunded retiree health care costs—the agency’s single largest outstanding liability—and one worth nearly 80 percent of the agency’s annual income.

The PSRA would address this issue by reforming the Postal Service’s health care benefits system for both current and retired employees. Specifically, the bill would create a new Postal Service Health Benefits Program (PSHB), which would operate within the framework of FEHB and be required to provide actuarially equivalent coverage compared to FEHB. Unlike FEHB, the PSHB would be open only to postal employees and retirees and would constitute a separate risk pool within FEHB.

Importantly, postal employees and annuitants would not be forced to change their carrier or plan type once the PSHB is set up. Under the bill, if a current enrollee’s carrier offers the same plan type in the PSHB, that enrollee will be required to sign up for coverage within the PSHB (although not necessarily for the same plan type or with the same carrier) and will no longer be eligible for enrollment in the rest of FEHB. If the current enrollee’s carrier does not offer the same plan type in the PSHB, the enrollee will be allowed to remain in FEHB. However, if the enrollee elects to change plans, or if the enrollee’s current plan is discontinued, the enrollee will be able to choose only those plans in the PSHB.

Postal employees who are enrolled in FEHB at the time of their retirement will be required to enroll in a PSHB plan as part of the transition to retirement. However, both employees and annuitants are exempt from the requirement to enroll in the PSHB if they reside in an area where there is no PSHB plan available.

Under this bill, employees will be allowed to retain their current carriers and plan types if they choose to do so, but they will likely be required to purchase that coverage through the PSHB instead of the FEHB.

Additionally, the bill would require postal employees and retirees eligible for Medicare Part A and B enrollment to enroll in those programs in order to remain eligible for PSHB (or FEHB) coverage in retirement. Rather than requiring postal employees and retirees to enroll in individual Part D plans, the legislation directs PSHB

plans to offer Part D benefits through an Employer Group Waiver Plan.

While approximately three-quarters of eligible postal employees and retirees enroll in both Medicare Parts A and B upon reaching eligibility age, the remainder of postal employees and retirees do not enroll. As a result, this bill will result in a one-time addition of approximately 83,000 individuals to the Medicare rolls, roughly the number of individuals who enroll in Medicare every eight days.<sup>13</sup>

To minimize the overall impact of the Medicare-related changes on postal employees and retirees, the legislation makes a number of accommodations. First, the bill would automatically deem individuals who would need to enroll in Medicare Part A or Part B as enrolled in order to minimize the actions necessary for impacted individuals to retain PSHB coverage. The bill also waives the late enrollment penalty for those who will be enrolled in Medicare Parts A and B as a result of the bill. Finally, for those who would otherwise be subject to a late enrollment penalty, the legislation creates a three-year phase-in period for Part B premiums. Under this phase-in period, during the first year of the PSHB, the Postal Service will pay for 75 percent of the Part B premiums for those who enroll as a result of the bill, 50 percent of the premiums in the second year, and 25 percent of the premiums in the third year. The Postal Service estimates that paying these premiums will cost \$250 million over the life of the program and supports the provision.<sup>14</sup>

Overall, the Postal Service estimates the creation of the PSHB and the enrollment of all retirees in Medicare Parts A and B will save the agency \$3 billion annually. The majority of these savings will come from improved integration with Medicare and the resulting decrease in the Postal Service's unfunded liability for retiree health care. An analysis prepared for the Postal Service and shared with the Committee estimates that the health care reforms contained in this bill will reduce the Postal Service's unfunded retiree health care liability to approximately \$400 million from its current level of \$54 billion.<sup>15</sup>

These changes will also address an inequity the Postal Service currently faces with Medicare. In 1983, as part of a wider Medicare reform, the Postal Service and its employees were required to begin paying the Medicare payroll tax. Over the last 33 years, the Postal Service and its employees have paid \$29 billion in Medicare taxes into the Medicare Part A Trust Fund.<sup>16</sup> Importantly, this figure does not take into account interest or inflation, making the current dollar total contribution much higher. Despite these contributions, the Postal Service is at a relative disadvantage compared to private sector companies. This is because private sector companies can require their retirees to fully enroll in Medicare in order to receive any additional health care benefits in retirement, but the Postal

<sup>13</sup>Dan Diamond, *10,000 People Are Now Enrolling in Medicare Every Day*, FORBES, Jul. 13, 2015, <http://www.forbes.com/sites/dandiamond/2015/07/13/aging-in-america-10000-people-enroll-in-medicare-every-day/>.

<sup>14</sup>E-mail from Ronald A. Stroman, Deputy Postmaster General, U.S. Postal Serv. to H. Comm. on Oversight & Gov't. Reform Minority Staff (June. 8, 2016, 12:57 p.m.) (on file with Committee).

<sup>15</sup>Memorandum from Adam Reese, Tom Rand, and Sanjit Puri to Postal Management, *Retiree Health Benefits* (Aug. 14, 2015).

<sup>16</sup>E-mail from Sheila T. Meyers, Manager, Gov't. Liaison, U.S. Postal Serv. to H. Comm. on Oversight & Gov't. Reform Majority Staff (Apr. 28, 2016, 9:48 a.m.) (on file with Committee).

Service cannot require its retirees to enroll in Medicare. As a result, the agency is forced to contribute billions to Medicare for which it receives no benefit if its employees and retirees do not enroll in Medicare. By requiring full enrollment in Medicare going forward, the Postal Service will no longer be forced to provide a subsidy to Medicare and will be able to address its retiree health care costs like a private sector business.

Without the reforms included in this bill, the Postal Service's retiree health care liability will continue to grow and the Postal Service will have no options for meeting this liability. It will continue to face this liability while also facing urgent unmet infrastructure needs and \$70 billion in other unfunded liabilities. Without the retiree health care reforms in the PSRA, the Postal Service will almost certainly be unable to pay out all of the benefits it has promised to retirees over the next several decades, and if the Postal Service cannot pay, the result will almost certainly be an open-ended multi-billion-dollar annual taxpayer bailout of the Postal Service.

#### *Pension reform*

H.R. 5714 would make two technical improvements to ensure the appropriate funding of the Postal Service's Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) pension liabilities. The first change would require that both CSRS and FERS Postal Service liabilities be calculated on the basis of factors specific to the Postal Service, rather than on the basis of the demographic and economic assumptions used to calculate the liabilities for the entire federal government.

The second change would create a system to allow the Postal Service to access surplus funding, should it exist, in either its CSRS or FERS accounts. Under current law, if the Postal Service is found to be underfunded in either pension system, it is required to make annual amortization payments to make up for the shortfall within a period of 30 years for FERS and a slightly shorter period for CSRS, as the now-legacy pension program phases out. To account for possible surpluses, the PSRA will direct the Office of Personnel Management (OPM) to treat shortfalls and surpluses in the same manner. The status of funding will be calculated on an annual basis and if a shortfall is found, the Postal Service will have to make an amortization payment to OPM. If a surplus is found, OPM will make an amortization payment to the Postal Service.

While these pension reforms are important to ensure accurate and fair accounting of the Postal Service's liabilities, they will have little short-term impact. As of the close of fiscal year 2015, the Postal Service had a net pension deficit of \$24.1 billion, and these reforms are not expected to significantly alter the value of that deficit.<sup>17</sup>

## Title II—Postal Service Operations Reform

### *Governance reform*

The governing body of the Postal Service is the Board of Governors, which plays a similar role for the Postal Service as a board

<sup>17</sup> *Supra* note 8.

of directors does for a publicly held corporation. Under current law, the Board of Governors is comprised of 11 members, which include nine Governors, the Postmaster General, and the Deputy Postmaster General. The President, with the advice and consent of the Senate, appoints the Governors. The Governors are responsible for appointing the Postmaster General and the Deputy Postmaster General.

Currently, eight of the nine Governor positions are vacant, and the only remaining Governor's term is set to expire in December 2016. While timely confirmation of Governor nominees has become difficult in recent years, even those confirmed as Governors in the past often failed to meet the statutory requirements for Governors set forth in title 39.<sup>18</sup>

The PSRA would adjust that structure to make it easier to have a fully functioning Board. The bill would reduce the number of Governors to five from nine. The bill would also amend the duties of the Postmaster General to allow him or her to carry out the power of the Postal Service, although the power ultimately remains vested in the Board. As a result, the Postmaster General would be authorized to carry out day-to-day operations of the Postal Service while still subject to the overall supervision of the Board. In addition, these reforms ensure that vacancies on the Board of Governors do not impair the powers of the Board, which is permitted to act upon majority vote of the Board.

The PSRA would also make small alterations in the eligibility requirements for appointees to the Board of Governors. The current statutory requirement that at least three Governors be "chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) that employs at least 50,000 employees" will be altered to an identical requirement, but will cite organizations of at least 10,000 employees instead of 50,000. The current provision overly limits the number of eligible individuals to a very small pool. It is the hope and intent of the Committee that this change will encourage future Presidents to nominate more individuals with experience in managing large organizations.

The PSRA would also change the process for funding the negotiations of international postage rates for letters and small parcels. Currently, these rates are governed by a treaty developed at the Universal Postal Union, a United Nations organization. While the U.S. Department of State (State) is responsible for negotiating on behalf of the United States at the Universal Postal Union, the Postal Service provides full reimbursement for the costs incurred by State for these negotiations. However, by statute, the State Department is required to represent all American interests when negotiating a treaty, including those of the government, the Postal Service, and the private sector (including private providers of postal services). Given this requirement, the Postal Service's subsidization of State's negotiations at the Universal Postal Union creates the appearance of a conflict of interest.<sup>19</sup> To eliminate this appearance, the PSRA modifies the payment structure to require the Postal Regulatory Commission (PRC) to approve the reimbursement

<sup>18</sup> 39 U.S.C. § 202(a)(1).

<sup>19</sup> 39 U.S.C. § 407(b)(2).



sought by the State Department. This change will help ensure that the Postal Service has the same level of consultation authority granted to private providers of international delivery and postal services.

In addition, the PSRA also clarifies and confirms the PRC's authorities to oversee the Postal Service's compliance with its service standards. Specifically, the bill clarifies the PRC's authority to levy fines against the Postal Service, payable to the U.S. Treasury, for deliberate noncompliance with the provisions of title 39, including noncompliance with the service standards established by the Postal Service itself. This provision of the bill helps ensure that the PRC has the proper disciplinary authorities to enforce compliance by the Postal Service.

#### *Secure mail delivery*

The primary cost savings measure included in the bill is found in the provisions related to delivery mode conversion. Specifically, the bill would require mandatory conversion of eligible business addresses to a more cost effective and secure centralized mode of delivery. The legislation also authorizes a program to voluntarily convert residential addresses to centralized delivery.

According to the most recent U.S. Government Accountability Office (GAO) report on the topic of delivery mode conversions, the Postal Service reported that its estimated average annual costs for Fiscal Year 2012 varied significantly by mode of delivery.<sup>20</sup> According to the Postal Service's reported figures, the average cost to deliver to each type of delivery point is as follows:

- Door delivery address: approximately \$380 per year;
- Curbside delivery address: approximately \$240 per year;
- Centralized delivery address: approximately \$170 per year.<sup>21</sup>

The GAO report identified certain limitations in the underlying data used to formulate these estimates: “[The estimates] rely on data from a 1994 USPS study. In lieu of current data, USPS adjusted the 1994 data according to increases in the Consumer Price Index—an adjustment that may not have been the same as changes in USPS delivery costs [ . . .].”<sup>22</sup> Therefore, the bill requires that the Postal Service conduct a new study to ensure that accurate data is used to assess cost savings from delivery point conversions.

Currently, in the United States 41 percent of mail delivery is made to curbside boxes, 30 percent of mail delivery is made to centralized delivery locations, and 28 percent of mail delivery is made to the door.<sup>23</sup> The number of door delivery points declined by 308,000 from 2008 to 2013, while curbside delivery points increased by 1.4 million and centralized delivery points increased by 4.5 million.<sup>24</sup> These shifts primarily reflect the construction of new delivery points over this period. While the Postal Service has been successful in providing centralized delivery service to most new ad-

<sup>20</sup>U.S. Gov't Accountability Office, *U.S. Postal Serv.: Delivery Mode Conversions Could Yield Large Savings, but More Current Data Are Needed* (May 2014) (GAO-14-444).

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*

dresses in recent years, there has been little effort to convert existing addresses.

The Postal Service can likely realize savings by transitioning to a more efficient delivery mode. In its report on delivery methods, GAO noted that the Postal Service has taken the position that “since the original [1994] study was conducted, [the Postal Service] has adopted work rules that disproportionately increase the cost of door delivery,” thereby making the difference in cost between delivery modes even more significant.<sup>25</sup>

The Committee also sees an important advantage for the consumer in expanding cluster box unit (CBU) delivery. Today, outside of CBUs, few mailboxes are secured and most mailboxes can accommodate only small packages. As a result, many packages are simply left unsecured near a door if the resident is not home at the time of delivery, putting them at risk of being stolen. Postal Service-approved CBUs meet stringent security requirements and contain secure parcel lockers as well as secure mail receptacles for individual addresses. When a customer served by a CBU receives a parcel that is too big for their mail receptacle (which itself is large enough to hold a side loading Postal Service Medium Flat Rate Box), their letter carrier will place a key to an attached parcel locker in the mail receptacle which the customer can use to open a larger parcel locker attached to the CBU. This ensures that parcels are kept in secure locations until they are retrieved by their intended recipients. In fact, the U.S. Postal Inspection Service, which is responsible for investigating mail theft, provides guidance on their website for protecting mail from thieves. The guidance lists a number of ways to protect mail from thieves, one of which is: “Consult with your local Postmaster for the most up-to-date regulations on mailboxes, including the availability of locked centralized or curbside boxes.”<sup>26</sup> A secure clusterbox will give postal customers greater peace of mind that high-value packages, such as medication and electronics, will be safely delivered to them through the mail.

The Committee recognizes that shifting to secure, centralized delivery may not be feasible for some addresses, but it would produce savings and value for some customers. The PSRA would direct the Postal Service to determine which door delivery points among both business and residential addresses are suitable for conversion to centralized delivery. The Postal Service would be required to convert business addresses deemed suitable to conversion to a more cost-effective mode of delivery over a period of five years, with centralized delivery as the preferred option. The Postal Service would also be directed to pursue voluntary conversions of residential addresses based on the number of addresses that opt for conversion in any given area. Both provisions are included in order to produce much-needed savings for the Postal Service while still maintaining its universal service obligation.

The PSRA outlines a process for the Postal Service to identify and offer conversions to residential addresses, but ultimately it is the Postal Service’s ability to demonstrate the value to customers that will enable substantial conversions that will pay for them-

---

<sup>25</sup> *Id.*

<sup>26</sup> Protecting Your Mail, U.S. Postal Inspection Service, available at <https://postalinspectors.uspis.gov/investigations/MailFraud/fraudscchemes/mailtheft/TipThieves.aspx> (last visited Aug. 18, 2016).

selves almost immediately. Given the importance of outreach to induce voluntary conversions, the Postal Service cannot rely solely on local outreach to achieve maximum returns. The Postal Service is already engaged in a national advertising campaign on the value of the mail and can incorporate this new opportunity into that campaign by focusing on the benefits of conversion to consumers. For example, in addition to highlighting the security benefits of conversions to CBUs, outreach could focus on the reduced environmental impact of delivery to centralized delivery points, as conversions allow the Postal Service to shorten delivery routes and take vehicles off the road.

Centralized delivery also offers a number of advantages to the Postal Service. Not only does centralized delivery offer immediate cost savings from reduced work hours for delivery, conversions to centralized delivery also enable one vehicle stop for multiple addresses, resulting in savings on fuel and wear and tear on delivery vehicles. Other cost savings could result from reductions in workers' compensation claims. According to a report by GAO, the Post Service's data "indicate that most injuries that occurred from 2009 through 2012 on mail delivery routes were caused by falls and dog bites."<sup>27</sup> Presumably, the risk of falling lessens as the amount of walking required for delivery decreases, and the risk of dog bites lessens by minimizing the requirement to approach a home.

#### *Postal rate modernization*

The reforms in PAEA reconstituted the Postal Rate Commission as the current Postal Regulatory Commission (PRC) and required it to establish a modern system for regulating rates and classes for the Postal Service's market-dominant products. This system was required to cap rate increases by the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U). Under this system, the Postal Service has the authority to set market-dominant rates, but in order for the rates to go into effect, the PRC must certify that they are consistent with the rate system requirements. Prior to the enactment of the PAEA, the ratemaking system was adversarial and the Postal Rate Commission was the final arbiter of specific rates.

The regulation of market-dominant rates is essential because of the Postal Service's mail monopoly. The CPI cap has been a valuable component of the PAEA rate system. It has created stability and predictability of postal rates and, more importantly, the inflation-based price cap has simulated the effect of competition and forced the Postal Service to minimize costs while maintaining service. This was a positive step forward from the former system of cost-based pricing in which rates were based largely on the costs incurred and there was little pressure to reduce costs and increase efficiencies.

To help ensure the rate system is flexible over time, the PAEA required the PRC to conduct a comprehensive review of the rate setting system in its entirety ten years after it was enacted. This review will start in December 2016. The review is statutorily required to evaluate whether the rate system is achieving a list of

---

<sup>27</sup> Gov't Accountability Office, *U.S. Postal Service: Information on Workforce Injuries Arising During Mail Delivery* (Sept. 26, 2013) (GAO-13-847R), available at <http://www.gao.gov/assets/660/658174.pdf>.

nine objectives, while taking into account a list of 14 factors. The PSRA adds four new factors to the list:

1. The reliability of delivery timelines and the extent to which the Postal Service is meeting its service standard obligations;
2. The need to ensure that the Postal Service has adequate revenues and has taken appropriate cost-cutting measures to maintain financial stability and meet all legal obligations;
3. The extent to which the Postal Service has taken actions to increase its efficiency and reduce its costs; and
4. The importance of stability and predictability of rates to ratepayers.

The PSRA also makes slight adjustments to the objectives and factors. The adjustments to the objectives language emphasizes ensuring predictability and stability in rates to enable business users and the general public to account for rate adjustments in their budget planning. The language also increases emphasis on the provision of high-quality service and delivery standards so that mailers can be certain that their mail will reach its destination by a specific date. Revised language also identifies the importance of appropriate levels of transparency when the Postal Service assigns expenditures to institutional costs.

The new language also requires that negotiated service agreements improve the net financial position of the Postal Service and do not cause unreasonable disruption to the marketplace.

The legislation also changes access to nonprofit mailing rates. Currently, national and state political committees receive the preferential rates available to nonprofit organizations. Given that the Postal Service must operate solely from its own revenues, it is not justifiable to ask ratepayers to subsidize political activity. The PSRA would repeal subsection (e) of section 3626 of title 39 to render national and state political committees ineligible for nonprofit rates.

The PSRA also seeks to streamline the Postal Service's ability to secure Negotiated Service Agreements (NSAs) for its competitive products. As a result of PAEA, the Postal Service has been able to negotiate agreements that give individual companies reduced rates in exchange for guaranteed volume or better preparation for processing. While NSAs can be valuable tools, the current statutory framework can result in delays in the approval of even the most basic agreements. The PSRA would allow the PRC to conduct after-the-fact review of functionally equivalent NSAs and allow functionally equivalent NSAs to be reviewed as a group to ensure they meet the dual requirements of covering their attributable costs and improving the net financial position of the Postal Service. This reform will enable the Postal Service to offer "on-the-spot" NSAs for competitive products if they are similar to existing NSAs.

#### *Nonpostal services*

The PSRA would not allow the Postal Service to engage in any new commercial activities. The bill would allow the Postal Service to provide some nonpostal services on behalf of state, local, and tribal entities. Under current law, the Postal Service is allowed to partner with federal agencies to provide services on behalf of those agencies. For example, the Postal Service has an arrangement with

the U.S. Department of State under which it accepts passport applications at post offices. The Postal Service's revenues exceed the costs of providing this service, and the Department of State is able to accept applications at thousands of locations across the country without having to invest in physical infrastructure or personnel. The PSRA would authorize the Postal Service to partner in a similar manner with state, local, or tribal government entities to provide services to consumers.

Products and services authorized under this section of the PSRA would be required to be non-commercial in nature, thus preventing unfair competition with the private sector. Any products or services offered by the Postal Service under this new authorization would be required to enhance value to the public, not interfere with or detract from the value of postal services, and provide a reasonable contribution to Postal Service overhead costs by covering at least 100 percent of their attributable costs. To ensure transparency and an opportunity for stakeholder input, the Postal Service would be required to publish its business plans for products and services it proposes to offer under this new authority and to allow for public comment. A majority of the presidentially-appointed Postal Service Governors would be required to approve any new product and service by a publicly recorded vote before it could be offered.

The PSRA enhances the Postal Service's ability to generate revenue by offering nonpostal endeavors that are appropriately pursued by a federal government entity. It also grandfathered in those specific products and services approved as a result of PAEA. Importantly, the Committee's decision not to allow the Postal Service to offer banking or Internet services recognizes the Postal Service's unique status as an establishment of the federal government. As a federal agency, the Postal Service enjoys a number of benefits the private sector does not. These benefits include exemptions from income and property tax, the ability to exercise eminent domain, preferential borrowing access, and implicit taxpayer backing in the event of a default. Fair competition issues would arise if the Postal Service is permitted to leverage its property and assets—including property received for free from the federal government when the Postal Service was created in 1971—to compete in areas served by the private sector.

#### *Exigent rate increase*

Title II allows the Postal Service to increase postal rates for market-dominant products by 2.15 percent, or 1 cent for a First-Class stamp. The 2.15 percent increase is half of the temporary rate surcharge, referred to as the "exigent rate increase," that ended on April 10, 2016. This one-time rate increase is designed to put the Postal Service in a better financial position going into the PRC rate review that will begin in December 2016. The inclusion of a provision authorizing a rate increase in the PSRA does not indicate that Congress should set postal rates. Instead, the rate increase is intended to allow the Postal Service to implement much needed cost-savings initiatives and capital investments aimed at realizing cost savings over the long term. The financial challenges created by mail volume losses should not be met by raising prices but rather by cutting costs. This is why PSRA allows only a minimal rate increase and ties that increase to the Postal Service's implementation

of measures that will increase efficiency and cut costs to support financial stability in the long term.

*Completion of initial PRC rate review*

Title II would require the PRC to complete its full review of the market-dominant rate system by January 1, 2018. The inclusion of a hard deadline for the completion of the review will enable affected parties to plan accordingly.

*PRC Cost attribution study*

The PRC's standard for reviewing the Postal Service's cost measurement methodology is based on attribution methodologies stemming from the Postal Reorganization Act of 1970.<sup>28</sup> The makeup of the Postal Service's product volumes has changed significantly since these methodologies were originally put in place.<sup>29</sup> Although it is difficult to quantify all of the effects of changes in product classes from 1970 through today, the substantial growth in package volume is unmistakable.

The FY 1972 annual report provides a review of the volumes of specific product classes, making some comparisons with current product classes possible.<sup>30</sup> In FY 1972, the products that would later be classified as competitive products (packages and priority mail) made up approximately 12.5 percent of the Postal Service's total revenue.<sup>31</sup> The percentage of total Postal Service revenues comprised by competitive products remained relatively stagnant for the next three decades. In FY 2006, these products comprised approximately 11.8 percent of total revenue.<sup>32</sup> However, since FY 2006, the percentage of total postal revenue comprised by competitive products has nearly doubled. In FY 2015, revenue derived from competitive products made up nearly 22 percent of the Postal Service's total revenue.<sup>33</sup>

The incredible growth in competitive products volume and revenue in recent years has created a new environment in which packages are more likely to be a major driver in the Postal Service's business decisions. In fact, Postmaster General Megan Brennan testified before the Committee: "package volume has grown by more than 1 billion packages in the last three years. In FY 2015, [the Postal Service] delivered one-third of all domestic packages in the United States."<sup>34</sup> She confirmed that "Continued innovation and growth in our package business is essential to our ability to

<sup>28</sup>Section 3633(a)(2) requires that each competitive product cover its attributable costs, which, in section 3631(b), are defined as the 'direct and indirect postal costs attributable to such product through reliably identified causal relationships.' This standard codifies the Commission's long-standing method of attribution under the Postal Reorganization Act. For purposes of initially implementing regulations pursuant to section 3633, the Commission intends to employ this long-established attribution method to determine compliance with section 3633(a)(2)." Postal Regulatory Commission, Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, Docket No. 2007-1, Aug. 15, 2007, at 67-68, available at <http://www.prc.gov/docs/57/57348/RM2007-1FINAL.pdf>.

<sup>29</sup>*Id.*

<sup>30</sup>U.S. Postal Serv., *Annual Report of the Postmaster General (FY 1972)*, at 26 [hereinafter "FY 1972 Annual Report"].

<sup>31</sup>Includes \$653.1 million in revenue for Parcels (zone rate) and \$348.3 million in revenue for Priority Mail. The FY 1972 Total revenue was \$7,996.7 million. *Id.*

<sup>32</sup>Includes \$5,042.5 million in revenue for Priority Mail, \$2,259.0 million in revenue for Package Services, and \$918.1 million in revenue for Express Mail. Total revenue for FY 2006 was \$69,144.0 million. U.S. Postal Serv., 2007 Audited Financial Statements (FY 2007), at 45, available at <http://about.usps.com/who-we-are/financials/10k-reports/fy2007.pdf>.

<sup>33</sup>*Supra* note 8.

<sup>34</sup>*Id.*

provide universal postal service to the American people as First-Class Mail continues to decline.”<sup>35</sup>

Given the growth in the Postal Service’s competitive product sales and the accompanying shift toward competitive product investments instead of monopoly product investments, the PSRA requires the PRC to re-examine the methodologies used to calculate costs and to allocate costs between attributable costs and institutional costs, as well as between competitive and monopoly products to ensure they are the most accurate methodologies available. While the current methodologies may still be appropriate, they were created at a time when competitive products and their associated regulations did not exist and when package delivery and priority mail were effectively small side operations at the Postal Service rather than key drivers of operational decision-making. The PRC’s study will re-evaluate these underlying methodologies to ensure that they are the most effective measure for understanding costs and whether the appropriate data collection, calculations, and methodologies are used to determine which portion of the business or products bear the associated costs.

If the PRC determines that current methodologies are not the most accurate for determining which portion of the business and which products and services bear associated costs, the PRC will specify how the Postal Service should more accurately measure the costs of competitive and market-dominant products. However, nothing in this title shall be used to imply that the current costing attribution or costing allocation guidelines are incorrect or correct; instead, that determination is left to the PRC.

### TITLE III—POSTAL SERVICE PERSONNEL

#### *Postal Service Chief Innovation Officer*

Among its provisions, Title III would create in statute the position of Chief Innovation Officer (CIO) at the Postal Service. The goal of this provision is to ensure there is a position within the Postal Service whose sole function is to spearhead innovation and change in an effort to grow the agency’s revenue. Given increased competition from the Internet and from other advertising media, the agency must develop postal product offerings that meet changing customer needs and increase profits for the agency. Importantly, however, the CIO does not have the authority to expand the Postal Service’s product offerings in any non-postal lines of business beyond those currently offered by the Postal Service or authorized in the PSRA.

#### *Inspector General of the Postal Community*

As the third largest office of inspector general (OIG) in the federal government, the Postal Service OIG has more than 1,100 Full Time Equivalent employees and an annual budget of almost \$250 million.<sup>36</sup> Unlike other Inspectors General leading offices of comparable size, the position of Postal Service Inspector General does not require presidential appointment or Senate confirmation. In

<sup>35</sup> *Supra* note 10.

<sup>36</sup> U.S. Postal Serv. Office of Inspector Gen., *Congressional Budget Justification FY 2017*, available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2016/FY%202017%20Congressional%20Justification.pdf>.

fact, the Postal Service OIG is currently the largest OIG not headed by a Senate-confirmed individual. Title III of the bill would make the Postal Service Inspector General a presidentially appointed, Senate-confirmed position. In addition, title III would combine the Postal Service OIG with the OIG of the PRC, forming the new Office of Inspector General of the Postal Community. The bill requires that the President nominate an individual to the Inspector General position within 180 days of enactment of this bill.

Nothing about this section shall have any impact on the clear division between the Postal Service as the operator and the PRC as the regulator. The OIGs for these two entities would be combined by this bill only to achieve appropriate efficiencies.

#### TITLE IV—POSTAL CONTRACTING REFORM

Title IV of the PSRA includes a number of reforms designed to improve the Postal Service’s contracting process. When the Postal Service was first constituted as an independent establishment in 1970, the agency was granted an exemption from most federal rules and regulations governing the acquisition of goods and services. Unfortunately, lax internal controls have led to a number of problems in recent years, such as inadequate transparency, poor business practices, improper delegations of authority, and a lack of accountability. To help address many of these issues, the bill would create a more rigorous code of ethical standards for contracting officials, improve transparency for noncompetitive contracts, and clarify and narrow the framework for delegations of contracting authority.

#### LEGISLATIVE HISTORY

H.R. 5714, the Postal Service Reform Act of 2016, was introduced on July 11, 2016 by Chairman Jason Chaffetz (R–UT) and referred to the Committee on Oversight and Government Reform, as well as the Committee on Energy and Commerce and the Committee on Ways and Means. On July 12, 2016, the Committee on Oversight and Government Reform ordered H.R. 5714 favorably reported, without amendment. Ranking Member Elijah E. Cummings (D–MD), Subcommittee on Government Operations Chairman Mark Meadows (R–NC), Subcommittee on Government Operations Ranking Member Gerald Connolly (D–VA), and Representative Stephen Lynch (D–MA) are original cosponsors.

The legislation includes provisions similar to those included in H.R. 2748 in the 113th Congress, and H.R. 2309 in the 112th Congress. H.R. 2748, the Postal Reform Act of 2013, was introduced in the 113th Congress by then-Chairman Darrell Issa (R–CA) and Representatives Blake Farenthold (R–TX) and Dennis Ross (R–FL) on July 19, 2013. The legislation was considered before the Committee on July 24, 2013 and ordered favorably reported by a record vote of 22 to 17. In the 112th Congress, H.R. 2309, the Postal Reform Act of 2011, was introduced by then-Chairman Darrell Issa on June 30, 2011. It was subsequently ordered reported from the Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy on September 21, 2011 by a record vote of 8 to 5 and ordered favorably reported by the Full Committee on October 13, 2011 by



a record vote of 22 to 18. No further action was taken on either bill in the House.

In addition, the legislation contains some provisions similar to those contained in S. 1486 introduced in the 113th Congress. That bill, the Postal Reform Act of 2014, was introduced by Senator Tom Carper (D–DE), then-Chairman of the Senate Committee on Homeland Security and Governmental Affairs, on August 1, 2013. The Committee considered S. 1486 at a business meeting on February 6, 2014 and ordered the bill reported by a record vote of 9 to 1. No further action was taken on the bill in the Senate.

#### SECTION-BY-SECTION

##### *Section 1. Short title; table of contents*

Designates the short title of the bill as the “Postal Service Reform Act of 2016” and delineates the table of contents of the bill.

##### *Section 2. Definitions*

Defines the term “Postal Service” as the United States Postal Service, and the term “postal retail facility” as a post office, branch, station, or other facility operated by the Postal Service to provide retail post services for any references included in the legislation.

#### TITLE I—POSTAL SERVICE BENEFITS REFORM

##### *Section 101. Postal Service health benefits program*

Subsection (a) of section 101 creates section 8903c in Chapter 89 of title 5, United States Code.

Subsection (a) of section 8903c defines the terms “covered Medicare individual,” “initial contract year,” “initial participating carrier,” “Office” (as the Office of Personnel Management, OPM), “Postal Service annuitant,” “Postal Service employee,” “Postal Service Medicare covered annuitant,” “Program,” and “Program plan,” for the section.

Subsection (b) of section 8903c states that the requirements of this section apply for the initial contract year and each year thereafter and that those requirements supersede any other provisions of the chapter inconsistent with such requirements.

Subsection (c) of section 8903c establishes the Postal Service Health Benefits Program (program). Specifically, it directs OPM to create a program to offer health benefits consistent with the requirements of section 8902 that includes, to the greatest extent practicable each carrier that provided health benefits to at least 1,500 postal employees or annuitants as of January 2017, as well as any other interested carriers. It also requires that the program be available to all postal employees and annuitants, provide for enrollment as individual, self plus one, and self and family, and not be available to individuals who are not postal employees or annuitants or their family members. The subsection further requires that the program use a separate risk pool for those enrolled in the program, that the plans offered under the program are actuarially equivalent to coverage carriers provide under plans offered under Chapter 89 that are not part of the program, and that continuation of coverage shall apply in the same manner as provided under section 8905a.

Subsection (d) of section 8903c specifies election of coverage under the program. It requires postal employees and annuitants who elect to receive health benefits under Chapter 89 to meet the requirements of the section and prohibits enrollment in other health benefit plans offered under other sections of the Chapter. It also creates an exemption to the requirements of the section for postal annuitants who are enrolled in a plan under this chapter that is not offered by an initial participating carrier under the program unless the annuitant voluntarily enrolls in a program plan, the plan in which the annuitant is enrolled ceases to be available, the plan in which the annuitant is enrolled becomes available under the plan, or the annuitant resides in a geographic area for which there is not a program plan in which the annuitant may enroll. It also requires that if a postal annuitant changes health plan enrollment, the annuitant may only enroll in a program plan. Finally, the subsection provides that a postal employee who is enrolled in a health benefits plan that is not offered by an initial participating carrier is exempt from this section unless the employee changes enrollment, the employee's plan becomes offered within the program, or the employee becomes an annuitant, unless as an annuitant the employee resides in a geographic area for which there is not a program plan that the annuitant may enroll.

Subsection (e) of section 8903c allows postal Medicare-eligible annuitants to obtain coverage under the section only if they, and any eligible family member covered through them, are enrolled in Medicare Part B. It also requires OPM to establish a process for affected postal annuitants and family members to ensure that they are informed of the requirement and automatically enrolled in Medicare Part B.

Subsection (f) of section 8903c directs OPM to require each program plan to provide benefits for covered Medicare individuals pursuant to the standard coordination of benefits method, rather than the exclusion method or the carve-out method. It further requires each program plan to provide a Medicare Part D prescription drug benefit to eligible employees.

Subsection (g) of section 8903c establishes the terms of the Postal Service contribution for premiums. Specifically, it directs OPM, by October 1 of each year, to determine the weighted average of the rates established for program plans for the following year for each category of enrollment (self, self plus one, self and family) and for the initial contract year to take into account the enrollment of postal employees and annuitants in plans offered by initial participating carriers as of March 31, 2017.

Subsection (h) of section 8903c, requires OPM to ensure that each program plan maintains separate reserves with respect to enrollees in the program plan and that the reserves maintained by each plan be credited with a proportionate amount of the funds in the reserves for health benefit plans offered by the carrier. The subsection also requires, for a plan that is discontinued, that OPM credit the postal service contingency reserve established under this subsection only to the separate reserves of postal plans continuing under this section.

Subsection (i) of section 8903c states that nothing in this section shall be construed as affecting section 1005(f) of title 39 regarding

variations, additions, or substitutions to the provisions of this chapter.

Subsection (j) of section 8903c requires the Postal Service to establish a Medicare Education Program not later than 180 days after enactment of this section. Under that program, the Postal Service shall notify retirees and employees about the Postal Service Health Benefits Program, provide information regarding the benefits (including a description of health care options available under the program, the requirement for Medicare enrollment and the premium transition fund established under section 104 of the bill) and respond and provide answers to inquiries from employees and annuitants about the program or Medicare enrollment. The subsection also makes technical and conforming amendments to Chapter 89.

Subsection (b) of section 101 amends provisions of title 42, United States Code, to permit the automatic enrollment of postal annuitants and family members who are not enrolled in Medicare and waives any penalty premium increase to which the individual would otherwise have been subject.

*Section 102. Postal Service Retiree Health Care Benefit Funding reform*

Subsection (a) amends section 8906(g) of title 5, United States Code, to require that the portion of the Government health care premium contributions that is equal to the net claims cost be paid first from the Postal Service Retiree Health Benefits Fund and any remaining amount to be paid by the Postal Service. Additionally, the subsection amends section 8906(g) to define net claims cost as the difference between the sum of costs incurred by a carrier in providing and administering health services and the amount withheld from the annuity of, or paid by, an individual under the section.

Subsection (b) amends section 8909a of title 5, United States Code, to eliminate the final six statutorily specified payments for retiree health care prefunding and require the retiree health premiums to be paid out of the Postal Service Retiree Health Benefits Fund beginning in fiscal year 2017, instead of fiscal year 2018. The subsection also requires the Postal Service to begin making amortization payments in 2017 necessary to satisfy any remaining unfunded liability by September 30, 2055 and maintains the current law requirement that the Postal Service make additional annual payments of normal cost associated with new retiree health benefits earned by current employees.

Subsection (c) cancels all statutorily specified payments for prefunding accrued retiree health care expenses that remain unpaid by the Postal Service on the date of enactment of this legislation.

Subsection (d) contains a technical correction to add a missing letter to the section heading of section 8909a of title 5, United States Code.

*Section 103. Postal Service pension funding reform*

Subsection (a) amends 5 U.S.C. 8348(h) (the Civil Service Retirement System (CSRS)) to require OPM to determine annually whether the Postal Service has an actuarial funding surplus or li-

ability for obligations to CSRS beneficiaries. Beginning in 2017, OPM is directed to establish an amortization schedule for any surplus or liability, recalculated annually, such that any surplus or liability is liquidated by September 30, 2043. Starting by June 30, 2033, OPM shall revise the amortization period from its otherwise scheduled end of September 30, 2043 to a period of no longer than 15 years, and revised as necessary, based on generally accepted actuarial practices and principles. The subsection also requires that when calculating CSRS liability OPM must use demographic and economic assumptions regarding wage and salary growth that are specific to current and former employees, as applicable, of the Postal Service.

Subsection (b) amends 5 U.S.C. 8423 (the Federal Employees Retirement System (FERS)) to require that Postal Service specific assumptions, identical to those in subsection (a) are applied both to the normal cost payment for current postal employees and for the Postal Service's total FERS liability. If the Postal Service is determined to have a FERS projected funding surplus, the subsection provides for a return of the surplus on a 30-year amortization schedule, identical to the amortization period of a FERS liability.

*Section 104. Medicare Part B premium transition for newly enrolling Postal Service annuitants and family members*

Subsection (a) amends section 1395r of title 42, United States Code, to reduce the Medicare Part B premiums for individuals who have been automatically enrolled in Medicare under this bill by 75 percent in the first year, 50 percent in the second year, and 25 percent in the third year.

Subsection (b) amends section 1395w of title 42, United States Code, to require the Postal Service to pay an amount equal to the reduced premiums under subsection (a) to place the Medicare Trust Fund in the same actuarial status as if the provisions of section 104 had not been enacted.

TITLE II—POSTAL SERVICE OPERATIONS REFORM

*Section 201. Governance reform*

This section changes the current structure of the Postal Service's governance system.

Subsection (a) amends section 202 of title 39, United States Code, to reduce the composition of the Board of Governors to five Governors, the Postmaster General, and the Deputy Postmaster General. The Board of Governors is responsible for appointing, removing, and setting the terms of service and pay of both the Postmaster General and the Deputy Postmaster General.

Subsection (b) amends section 203 of title 39, United States Code, to revise the duties of the Postmaster General to be the individual who carries out the power of the Postal Service vested in the Board of Governors, consistent with the directions of the Governors.

Subsection (c) amends section 205 of title 39, United States Code to indicate that vacancies in the Board of Governors do not impair the powers of the Board and that the Board shall act upon majority vote of the Board.

Subsection (d) allows the Postmaster General and the Governors to delegate responsibilities as they determine appropriate to carry out their functions and duties.

Subsection (e) amends section 407 of title 39, United States Code, to require the Postal Regulatory Commission (PRC) to review and approve payment by the Postal Service to the Department of State to cover costs of negotiating international postal rates. This amendment does not take effect until October 1 of the first fiscal year beginning after enactment of this Act.

Subsection (f) makes a number of technical and conforming amendments. This subsection clarifies the PRC's existing authority to levy fines against the Postal Service, payable to the U.S. Treasury for deliberate noncompliance with the provisions of title 39, such as the service standards established by the Postal Service.

*Section 202. Transition to more efficient and secure mail delivery*

Subsection (a) creates section 3692 in subchapter VII of chapter 36 of title 39, United States Code.

Subsection (a) of section 3692 defines a “delivery point” as a mailbox or other receptacle to which mail is delivered. A delivery point's typical method of receiving Postal Service deliveries is referred to as the “primary mode of mail delivery.” The subsection defines the different kinds of primary modes of mail delivery: 1) “Door delivery” means the mail is placed into a slot or receptacle at or near the postal patron's door or hand delivered to the patron; 2) “Centralized delivery” means mail receptacles for a number of delivery points are grouped or clustered at a single location; 3) “Curbside delivery” means the mail receptacle is situated at the edge of a sidewalk alongside the road or curb and can be served by a letter carrier from a motorized vehicle; 4) “Sidewalk delivery” means the mail receptacle is situated at the edge of a sidewalk and can be served by the letter carrier from the sidewalk.

Subsection (b) of section 3692 requires it to be the policy of the Postal Service to use the most cost-effective primary mode of mail delivery feasible and to provide access to secure, convenient mail and package delivery receptacles to the greatest number of postal patrons feasible.

Subsection (c) of section 3692 requires that new delivery points established after December 31, 2016, utilize a primary mode of mail delivery other than door delivery, with a preference for secure, centralized delivery.

Subsection (d) of section 3692 requires the incremental conversion to centralized, curbside, or sidewalk delivery of business addresses identified by the Postal Service. The Postal Service has one year after enactment of this Act to determine which door delivery points are appropriate for conversion to a more cost-effective means of delivery (e.g., centralized delivery, curbside delivery, or sidewalk delivery). The Postal Service then has five years to convert—at 20 percent a year—100 percent of those delivery points that it deemed appropriate. All eligible delivery points must be converted by September 30, 2022. The Postal Service is required to notify postal customers affected by delivery point conversions at least 60 days prior to the conversion date.

Subsection (e) of section 3692 requires the voluntary conversion to curbside, centralized, or cluster box delivery of residential ad-

dresses identified by the Postal Service where 40% of the residents consent to conversion. Within one year of enactment of this bill, each Postal Service district office must identify delivery points that are appropriate for conversion to centralized delivery, such as cluster boxes, curbside delivery, or sidewalk delivery. The Postal Service will begin a program by October 1, 2017 to convert delivery points to more cost-effective means of delivery. The Postal Service has three months after the initial identification of delivery points appropriate for conversion to divide these delivery points into groups of no more than 50 delivery points, referred to here as an address unit. The Postal Service then has six months to notify in writing the residents of the appropriate delivery points of their eligibility for conversion. Notice of eligibility must include the following:

1. Notice that the delivery point has been proposed for conversion to a more efficient and cost-effective mode of delivery in order for the Postal Service to more economically provide universal service;
2. A description of the new primary mode of delivery proposed by the Postal Service, such as centralized cluster boxes or curbside delivery, and a visual example of the mode of delivery;
3. A form that the resident can submit to indicate consent for conversion to the proposed delivery mode, as well as notice that the conversion is voluntary;
4. Description of the benefits incentivizing conversion, including but not limited to secure mail and package delivery, and the benefits to the Postal Service, such as a smaller environmental impact for delivery;
5. Description of how the conversion process would work and the monetary costs (if any) to the postal patron; and
6. Any other information the Postal Service considers necessary or helpful for incentivizing conversion.

No delivery point may be converted unless prior written consent is provided to the Postal Service by a postal patron who is at least 18 years old. Prior to the actual conversion, an eligible postal patron may withdraw the written consent for conversion. The Postal Service will include on an easily accessible public Web site an option to request that the aforementioned consent form or a consent-withdrawal form be sent to any delivery point identified for conversion.

Once the Postal Service receives a written consent form from 40 percent of the applicable address unit, the Postal Service has 90 days to convert the delivery points. At least 30 days prior to conversion, the Postal Service shall provide written notice to each delivery point in the address unit that the threshold for conversion has been met and, depending on prior action by the postal patron served by that delivery point, the next steps and options for that delivery point.

Any future or new residents moving into the address unit for which delivery points have been converted shall receive the converted delivery type.

Subsection (f) of section 3692 requires the Postal Service to consider: 1) weather conditions, physical barriers, or other factors that impact the feasibility of the delivery mode and potential cost sav-

ings; 2) historic designation or historic value of property; and 3) population density and concentration of poverty when determining whether to convert the primary mode of mail delivery.

Subsection (g) of section 3692 provides an exemption to centralized, curbside, or sidewalk delivery for mail recipients with physical hardships. In cases where door delivery is necessary to avoid causing significant physical hardship or physical safety risks to the postal patron, the Postal Service will grant a waiver to allow for door delivery at no cost to the postal patron.

Subsection (h) of section 3692 instructs the Postal Service to establish procedures for: 1) collecting and considering external input; 2) calculating and making publicly available cost savings from conversions; and 3) situating centralized delivery points in locations that maximize efficiency and convenience.

Subsection (i) of section 3692 establishes a voucher program whereby the Postal Service provides for the cost of all or any portion of the converted modes of delivery established under this section.

Subsection (j) of section 3692 requires the Postal Service to produce an annual report from fiscal years 2017 through 2023 on the implementation of the delivery conversions established under this section.

Subsection (k) of section 3692 requires the Inspector General of the Postal Community (Inspector General) to conduct an annual audit to be completed 90 days after the Postal Service releases its annual report under subsection (j).

Subsection (l) of section 3692 exempts the actions taken under this section from certain reviews required by other subchapters in chapter 36.

Subsection (b) makes a clerical amendment to the table of sections.

Subsection (c) requires that the Postal Service collect data on delivery mode costs and the potential savings of converting to more cost-effective delivery modes. The Postal Service shall submit a report on the updated delivery cost study to specified committees of Congress.

Subsection (d) requires that the Inspector General conduct a study of the costs and benefits of the delivery mode conversions required under subsection (a) within two years of the commencement of the conversions. Within a year of commencing the study, the Inspector General is required to submit a report on the results of the study to specified committees of Congress.

### *Section 203. Modernizing postal rates*

Subsection (a) amends section 3622 of title 39, United States Code, to strengthen some objectives and factors for consideration in the Postal Regulatory Commission's (PRC's) ten-year review of the current postal rate system and to require that market-dominant negotiated service agreements not cause unreasonable disruption to the marketplace.

Subsection (b) repeals section 3626 of title 39, United States Code, to render national and state political committees ineligible for rate preferences that are received by nonprofit organizations.

Subsection (c) amends section 3633 of title 39, United States Code, to streamline review of negotiated service agreements for

competitive products, including after-the-fact review for new agreements that are functionally equivalent to existing agreements that have collectively covered costs and improved the financial condition of the Postal Service.

*Section 204. Nonpostal services*

This section amends part IV of title 39 to add “Chapter 37—Nonpostal Services.”

Section 3701 of chapter 37 establishes the purpose of the chapter.

Section 3702 of chapter 37 defines the terms “nonpostal services,” “attributable costs,” and “year.”

Section 3703 of chapter 37 authorizes the Postal Service to establish a program to provide property and services on behalf of an agency of any State government, local government, or tribal government. Products and services authorized under this section are subject to safeguards to ensure that they provide enhanced value to the public, do not interfere with or detract from the value of postal services, and provide a reasonable contribution to Postal Service overhead costs by covering at least 100 percent of costs. Products and services authorized under this provision must be non-commercial in nature, preventing unfair competition with the private sector. To provide transparency and an opportunity for stakeholder input, the Postal Service is required to publish its business plan for products and services it plans to offer as authorized under this section, followed by a public comment period and a published Postal Service response. A majority of the Postal Service Governors must approve the Postal Service providing specific products and services by a publicly recorded vote.

Section 3704 of chapter 37 authorizes the Postal Service to continue providing property and services for other federal agencies and the Government Publishing Office, provided it receives reimbursement covering 100 percent of its costs. This cost-coverage requirement is intended to ensure that ratepayers do not subsidize services provided for other federal agencies.

Section 3705 of chapter 37 requires the Postal Service to annually report financial results, rates, and the quality of its nonpostal services within 90 days after the end of each fiscal year, with proprietary data protected from disclosure. The PRC must annually review compliance that nonpostal services meet cost-coverage and other requirements; order remedial action to remedy any non-compliance; and can initiate proceedings to improve data quality and completeness. The Inspector General must regularly audit applicable data collection systems and procedures.

These provisions are modeled after existing provisions for market-dominant products.

Subsection (b) makes clear that all nonpostal services continued pursuant to 404(e) of title 39 are considered expressly authorized by chapter 37 of title 39 as added by this section and are subject to the same transparency and accountability requirements as other nonpostal services.

*Section 205. Efficient and flexible universal Postal Service*

Subsection (a) amends section 404(d)(2)(A) of title 39, United States Code, to require the Postal Service, when considering a post office for potential closure, to take into account: 1) the distance,



measured by public roads, to the nearest postal retail facility; 2) weather and terrain; 3) commercial mobile service; and 4) broadband internet access penetration.

Subsection (b) amends section 404(d)(5) of title 39, United States Code, to reduce the deadline for PRC review of post office closures from 120 days to 60 days. This subsection includes an extension that can only be enacted for good cause and is limited to a period of up to an additional 60 days, or 120 days total.

Subsection (c) amends section 3661 of title 39, United States Code, to expedite PRC advisory opinions concerning Postal Service plans to close or consolidate post offices on a level affecting service on a nationwide basis and on matters that are identical to matters on which the PRC has issued an opinion within the preceding 5 years. The subsection includes an extension for good cause of an additional 30 days, or 120 days total.

Subsection (d) amends section 404(d) of title 39, United States Code, to require the Postal Service to consult with the community affected by a post office closure or consolidation on what type of alternate service they wish to receive. In order to accomplish this, the Postal Service must provide adequate notice of intentions to close or consolidate the facility at least 60 days prior to the proposed date of closing. The Postal Service shall conduct a non-binding survey of the postal patrons served by that post office to determine their preferred alternative service.

Subsection (e) amends section 404(d) of title 39, United States Code, to define “post office” in in this subsection as any Postal Service-operated retail facility as defined in this bill, which includes post offices, branches, and stations. This change is effective 60 days after enactment.

Subsection (f) amends section 3652(a) of title 39, United States Code, to require the Postal Service to use a PRC-recommended formula to determine changes in Postal Service productivity and the resulting effect on overall costs.

Subsection (g) requires the Inspector General to conduct a review of the impacts of the Post Office Structure Plan (POSTPlan) on Postal Service expenses, revenue, and retail service provision. POSTPlan is a Postal Service initiative that restructured a number of post offices by reducing hours and altering the labor structure in an effort to reduce costs and ultimately produce savings. The Inspector General is required to evaluate the relative cost savings of POSTPlan initiatives by looking at both changes in costs and changes in revenue. The Inspector General will release a report of the results of the review and resulting recommendations. The Postal Service must consider these results and recommendations when determining further action related to POSTPlan initiative impacted post offices.

*Section 206. Fair stamp-evidencing competition*

This section further amends section 404a(a) of title 39, United States Code, to require the Postal Service to follow the same rules and regulations as apply to private sector postage-evidencing products and services.

*Section 207. Market-dominant rates*

Subsection (a) allows the Postal Service to increase postal rates for market-dominant products by 2.15%, or 1 cent for a First-Class stamp. The 2.15 percent increase is half of the temporary rate surcharge, referred to as the “exigent rate increase,” that was in effect on April 9, 2016. The exigent rate increase was permitted under section 3622(d)(1)(E) (redesignated by this Act as section 3622(d)(1)(G)) of title 39, United States Code), which allows for a rate adjustment for extraordinary or exceptional circumstances as long as such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States. The subsection further requires that the 2.15% increase in rates be considered a part of the rate base for determining future rate increases.

Subsection (b) clarifies that the rate increase permitted under subsection (a) does not impact any unused rate adjustment authority maintained by the Postal Service.

Subsection (c) states that the rate increase allowed under subsection (a) does not affect the PRC’s authority to review the current rate system and make adjustments to that system as are necessary and allowed for under section 3622 of title 39, United States Code.

Subsection (d) terminates the Postal Service’s current judicial appeal and removes the right for further judicial appeal by the Postal Service related to the exigent rate increase that ended on April 10, 2016.

*Section 208. Completion of initial rate regulation review*

This section requires the PRC to complete its full review of the market-dominant rate system by January 1, 2018. Existing law allows for commencement of the review to begin on December 20, 2016.

*Section 209. Review of Postal Service cost attribution guidelines*

This section requires that the PRC initiate a review of the Postal Service’s cost attribution and cost allocation guidelines. The review will determine whether revisions are necessary to the underlying assumptions for the current costing methodologies. This includes what costs are associated with market-dominant products and competitive products. In conducting this review, the PRC should examine whether the appropriate data collection, calculations, and methodologies are used to determine which portion of the business or products bear the associated costs. The Committee takes no position on whether the current costing attribution or costing allocation guidelines are incorrect or correct. That determination is left to the PRC.

*Section 210. Aviation security for parcels*

This section creates section 5404 within chapter 54 of title 39, United States Code. Section 5404 requires that the Postal Service hold itself to the same standards it requires from industry regarding the safety and security of parcels shipped on commercial airplanes.

*Section 211. ZIP Codes*

This section makes small changes and additions to the ZIP codes related to three specific communities.

TITLE III—POSTAL SERVICE PERSONNEL

*Section 301. Postal Service Chief Innovation Officer*

Amends chapter 2 of title 39 to insert a new section, section 209.

Subsection (a) of section 209 establishes the position of Chief Innovation Officer (CIO), appointed by the Postmaster General, and requires the CIO to manage the development of innovative postal and nonpostal products and services subject to existing law.

Subsection (b) of section 209 establishes the duties of the CIO, including: 1) leading the development of postal and nonpostal products that maximize revenue to the Postal Service; 2) monitoring the performance of innovative products and services; and 3) taking into consideration, if applicable, advisory opinions of the PRC.

Subsection (c) of section 209 requires the CIO to be appointed no later than six months after enactment of this Act and clarifies that the CIO can be a current Postal Service employee, but, upon appointment, must leave any other position within the Postal Service.

Subsection (d) of section 209 requires the Postmaster General, within 12 months of the CIO's appointment, to submit to Congress a report outlining a strategy for maximizing revenue from innovative products.

The strategy must include specific innovative products to be developed, the nature of the market for each product, the likely offering date of each product, the cost of developing each product, the anticipated sales volume of each product, the anticipated revenue and profit generated by each product, the likelihood of success of each product, the market trends that may affect the success of each product, the metrics that will be utilized to assess the success of the innovation strategy, and specific ways in which innovative mailpiece design can be encouraged. The subsection requires an updated strategy on January 1, 2018 and every 3 years thereafter.

Subsection (e) of section 209 requires the Postmaster General to submit to Congress an annual report that details the progress the Postal Service has made in implementing the innovation strategy described in subsection (d).

Subsection (f) of section 209 requires the Comptroller General to conduct a study on the implementation of the innovation strategy not later than 4 years after the date of enactment of the section. The report is required to include: 1) an audit of the development costs for each innovative product; 2) the sales volumes of each product; 3) the revenues and profits of each product; and 4) the likelihood of continued success of each product.

*Section 302. Inspector General of the Postal Community*

This section creates a presidentially-appointed, Senate-confirmed Inspector General of the Postal Community (Inspector General).

Subsection (a) amends The Inspector General Act of 1978 (5 U.S.C. App.), hereinafter referred to as the "IG Act," to remove the PRC and the Postal Service from section 8G of the IG Act, which generally establishes Inspectors General in certain designated federal entities and requires those Inspectors General to be appointed

by the head of such agency. The effect of this deletion, and the subsequent additions described below, is to require the new Inspector General of the Postal Community to be presidentially-appointed.

Subsection (b) further amends the IG Act to create section 8M, "Special Provisions Concerning the United States Postal Service and Postal Regulatory Commission." This subsection creates the Inspector General of the Postal Community and requires appointment to that position within 180 days of enactment of this Act.

Subsection (a) of section 8M creates a combined Inspector General for both the Postal Service and the PRC, which is called the Inspector General of the Postal Community (Inspector General).

Subsection (b) of section 8M requires that in carrying out to the duties under the IG Act, the Inspector General shall have equal responsibility over both the PRC and the Postal Service.

Subsection (c) of section 8M clarifies that for matters dealing with the PRC, the head of the establishment as defined under the IG Act shall be the Chairman of the PRC. For matters dealing with the Postal Service, the head of the establishment as defined under the IG Act shall be the Postmaster General.

Subsection (d) of section 8M requires the Inspector General to treat the Postal Service and the PRC as separate establishments in carrying out the duties under section 5 of the IG Act and to prepare separate semiannual reports to Congress.

Subsection (e) of section 8M instructs the Postal Service and the PRC to work jointly with one another in consultation with the Inspector General to ensure adequate and appropriate office space and related provision to the Office of the Inspector General.

Subsection (f) of section 8M establishes procedures for the Inspector General's budget. For budgetary duties of the head of the establishment established under section 6(f) of the IG Act, the Postmaster General shall fulfill the role of the head of the establishment. Such procedures are for administrative ease and shall not be construed as granting any authority to the Postmaster General over the Postal Service.

Subsection (g) of section 8M transfers to the Inspector General responsibilities regarding the Postal Inspection Service that were previously held by the Inspector General of the U.S. Postal Service.

Subsection (h) of section 8M authorizes appropriations for the Office of Inspector General from the Postal Service Fund.

Subsection (c) transfers the responsibilities, personnel, and other elements of the Office of the Inspector General of the PRC to the Inspector General of the Postal Community.

Subsection (d) transfers the responsibilities, personnel, and other elements of the Office of the Inspector General of the U.S. Postal Service to the Inspector General of the Postal Community.

Subsection (e) allows the Inspector General to delegate his or her functions to officers or employees of the Office of the Inspector General. This subsection does not relieve the Inspector General of responsibility for these functions.

Subsection (f) clarifies that the transition of functions from the two offices of inspectors general to the one Office of Inspector General of the Postal Community does not terminate or impact existing legal documents, pending proceedings, or ongoing suits. This subsection also clarifies that any reference to the Inspector General of the PRC, the Inspector General of the U.S. Postal Service, or the

respective offices in any other federal law, executive order, rule, regulation, delegation of authority, or other document related to the aforementioned entities shall be deemed to refer to the Inspector General of the Postal Community or the Office of the Inspector General of the Postal Community, as applicable.

Subsection (g) transfers existing funds from the two separate offices of inspectors general to the Inspector General of the Postal Community.

Subsection (h) amends title 39, United States Code, to conform with the amendments made under this section.

Subsection (i) delays the effective date of the amendments made by this section to take effect 30 days after the Inspector General is confirmed by the Senate.

*Section 303. Right of appeal to Merit Systems Protection Board*

This section amends section 1005(a)(4)(A)(ii)(I) of title 39, United States Code, to allow certain Postal Service employees the right to appeal to the Merit Systems Protection Board.

TITLE IV—POSTAL CONTRACTING REFORM

*Section 401. Contracting provisions*

This section adds a new chapter, 7—Contracting Provisions, to title 39:

§ 701. Definitions—Defines terms used in the chapter. “Postal contract” is defined as any contract for the procurement of goods or service, including any agreement or memorandum of understanding entered into by the Postal Service or the PRC. As applied to the PRC, postal contracts are defined as those in excess of the Simplified Acquisition Threshold, currently \$150,000.

§ 702. Delegation of contracting authority—The Postal Service and PRC must issue policies on contracting officer delegations of authority. Any delegation of authority for postal contracts outside the functional contracting unit must be made readily available and accessible on its website. A contracting officer is required to maintain an awareness of and engagement in the activities being performed on all postal contracts of which that officer has cognizance, including contracts involving delegations of authority. The senior procurement executive is given ultimate responsibility and accountability for the award and administration of postal contracts.

§ 703. Posting of noncompetitive purchase requests for noncompetitive contracts—The Postal Service must publicly post the noncompetitive purchase request for any noncompetitive award for postal contracts of at least \$250,000, with this amount adjusted annually based on inflation. These postings are subject to proprietary information exceptions and competitive disadvantage waivers. The PRC must post noncompetitive purchase requests of at least \$20,000.

§ 704. Review of ethical issues—Ethics officials at the Postal Service and PRC are required to review any ethical issues relating to a proposed contract before it is awarded and advise the contracting officer on their appropriate resolution.

§ 705. Ethical restrictions on participation in certain contracting activity—The Postal Service and PRC are required to establish regulations that limit contracting officers from entering into a postal

contract with any party with whom the contracting officer has a personal or business relationship, as defined in the Standards of Ethical Conduct for Employees of the Executive Branch. The heads of these entities may grant waivers for contracts in their respective organizations, but such waivers must be posted on their respective websites. They also may void any contract and recover amounts expended under the contract in any cases where there is a final conviction of bribery or conflict of interest.

*Section 402. Technical amendment to definition*

Corrects a technical amendment made in the 2006 amendments to the Contract Disputes Act that inadvertently deleted the Postal Service and PRC from the definition of executive agencies covered by this Act. This correction will resolve any ambiguity and clarify that that Act applies to the Postal Service and the PRC, as it has since its enactment in 1978.

EXPLANATION OF AMENDMENTS

No amendments to H.R. 5714 were offered or adopted during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On July 12, 2016 the Committee met in open session and ordered reported favorably the bill, H.R. 5714, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 5714.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill restores the financial solvency and improve the governance of the United States Postal Service in order to ensure the efficient and affordable nationwide delivery of mail. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives of the bill are to restore the financial solvency and improve the governance of the United States Postal Service in order to ensure the efficient and affordable nationwide delivery of mail.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does direct the completion of specific rule makings within the meaning of 5 U.S.C. 551. Specifically, section 208 of H.R. 5714 directs the Postal Regulatory Commission's completion of a final rule or rules regarding maintaining or revising the Postal Service's authority to increase market dominant rates not later than January 1, 2018.

#### FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

#### UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

#### EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of

1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

NOVEMBER 10, 2016.

Hon. JASON CHAFFETZ,  
*Chairman, Committee on Oversight and Government Reform,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5714, the Postal Service Reform Act of 2016.

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

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 5714—Postal Service Reform Act of 2016*

Summary: H.R. 5714 would change the laws that govern the operation of the Postal Service (USPS), restructure how the federal government pays for health benefits for federal employees and annuitants, and alter how the federal government calculates the contributions that agencies make for retirement benefits. Major provisions of the bill would:

- Partially reinstate a postal rate increase that expired in April 2016 (direct spending savings of \$8.4 billion);
- Change the requirements for the security of parcels sent by air (direct spending costs of \$3.2 billion);
- Authorize the Postal Service to phase out delivery of mail directly to business customers' doors (direct spending savings of \$2.0 billion);
- Establish a new health benefits program for Postal Service employees, annuitants, and their dependents (net direct spending costs of \$4.7 billion and discretionary savings of \$1.8 billion);
- Change the nature of the payments that the Postal Service is required to make related to retiree health benefits (no net effect on direct spending); and
- Require the use of demographic data specific to Postal Service employees for the calculation of certain retirement benefits, (no net effect on direct spending, but discretionary costs totaling \$5.9 billion).<sup>1</sup>

*Effects on the federal budget*

CBO estimates that enacting H.R. 5714 would result in \$2.2 billion in direct spending savings over the 2017–2026 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 5714 would not affect revenues.

The total changes in direct spending over the 2017–2026 period are split between net off-budget savings of about \$1.9 billion and net on-budget savings of about \$0.4 billion. (USPS cash flows are recorded in the federal budget in the Postal Service Fund and are

<sup>1</sup> CBO estimates that this change would reduce costs to the Postal Service by \$0.4 billion but increase the other federal retirement costs by the same amount. In addition, CBO estimates the Postal Service would spend half of the savings it would realize in lower retirement costs. Thus we estimate this policy would lead to a government-wide cost of \$0.2 billion.



classified as off-budget, while the cash flows of the other accounts affected by H.R. 5714 are classified as on-budget.)

In addition, CBO estimates that implementing H.R. 5714 would have a net discretionary cost of \$4.1 billion over the next 10 years, subject to appropriation actions consistent with that estimate.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

*Effects on state, local, and tribal governments, and on the private sector*

By increasing postal rates for public and private mailers, H.R. 5714 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on public and private entities that send certain types of mail through the USPS. Additionally, the bill would impose a private-sector mandate on some postal annuitants by requiring them to enroll in Part B of Medicare, if eligible. CBO estimates that the annual cost for public entities of increasing the postal rates would exceed the threshold established in UMRA for intergovernmental mandates (\$77 million in 2016, adjusted annually for inflation) in four of the first five years after the rates became effective. CBO also estimates the aggregate annual cost for private entities of complying with the mandates would exceed the threshold established in UMRA private-sector mandates (\$154 million in 2016, adjusted annually for inflation) in each of the first five years the mandates were effective.

Estimated cost to the federal government: The estimated budgetary effects of HR. 5714 are shown in Table 1. The costs of this legislation fall within all budget functions that include salaries and expense accounts; most budgetary effects would occur in budget functions 370 (commerce and housing credit), 550 (health), 570 (Medicare), and 600 (income security).

TABLE I—SUMMARY OF BUDGETARY EFFECTS OF H.R. 5714, THE POSTAL SERVICE REFORM ACT OF 2016

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
<b>OFF-BUDGET INCREASES OR DECREASES (–) IN DIRECT SPENDING<sup>a</sup></b>												
Estimated Budget Authority .....	746	– 189	– 259	– 325	– 391	– 377	– 353	– 329	– 235	– 151	– 417	– 1,859
Estimated Outlays .....	746	– 189	– 259	– 325	– 391	– 377	– 353	– 329	– 235	– 151	– 417	– 1,859
<b>ON-BUDGET INCREASES OR DECREASES (–) IN DIRECT SPENDING</b>												
Estimated Budget Authority .....	28	– 13	– 102	– 10	– 19	– 13	– 35	– 83	– 61	– 79	– 116	– 361
Estimated Outlays .....	28	– 13	– 102	– 10	– 19	– 13	– 35	– 83	– 61	– 79	– 116	– 361
<b>INCREASES OR DECREASES (–) IN DIRECT SPENDING (UNIFIED BUDGET)<sup>b</sup></b>												
Estimated Budget Authority .....	774	– 202	– 361	– 335	– 410	– 364	– 388	– 412	– 296	– 230	– 533	– 2,220
Estimated Outlays .....	774	– 202	– 361	– 335	– 410	– 364	– 388	– 412	– 296	– 230	– 533	– 2,220
<b>INCREASES IN SPENDING SUBJECT TO APPROPRIATION</b>												
Estimated Authorization Level .....	381	497	409	391	393	394	405	417	419	421	2,071	4,127
Estimated Outlays .....	381	497	409	391	393	394	405	417	419	421	2,071	4,127

Note: Components may not add to totals because of rounding.  
<sup>a</sup> Cash flows of the Postal Service are classified as off-budget.  
<sup>b</sup> The federal unified budget is the sum of on-budget and off-budget accounts.

Basis of estimate: For this estimate, CBO assumes that H.R. 5714 will be enacted near the end of calendar year 2016. H.R. 5714 would have effects on off-budget direct spending, on-budget direct spending, and spending subject to appropriation. Provisions related to health care and retirement would simultaneously affect all three types of spending. In the next section we provide details about the budgetary effects for each of the three budget categories. The basis for estimates of the effects on spending for Postal Service operations, health benefits, and retirement benefits are discussed in separate sections devoted to those topics.

#### *Budgetary effects*

Enacting H.R. 5714 would decrease net direct spending for the unified budget by \$2.2 billion over the 2017–2026 period. Off-budget spending would decline by about \$1.9 billion and on-budget spending would decline by about \$0.4 billion.

Off-Budget Direct Spending (Postal Service Fund). CBO estimates that enacting H.R. 5714 would reduce net USPS spending by \$1.9 billion over the 2017–2026 period (see Table 2).

*Postal Service Operations.* Three provisions would directly affect how the Postal Service operates and would decrease its net spending by \$7.1 billion over the 2017–2026 period.

*Health Benefits.* Several provisions would affect how the government pays for the health care expenses of workers and annuitants (both postal and nonpostal) and would increase direct spending by \$5.5 billion over the 2017–2026 period.

*Retirement Benefits.* One provision would affect how the USPS pays for retirement benefits for its annuitants and would, on net, decrease direct spending by \$0.2 billion over the 2017–2026 period.

On-Budget Direct Spending. CBO estimates that enacting H.R. 5714 would, on net, reduce on-budget direct spending by almost \$0.4 billion over the 2017–2026 period.

*Health Benefits.* Several provisions would affect how the government pays for the health care expenses of employees and annuitants (both postal and nonpostal) and would decrease direct spending by \$0.8 billion over the 2017–2026 period.

*Use Postal-Specific Data for Retirement Benefits.* One provision would affect how the government pays for retirement benefits for its annuitants. CBO estimates that enacting that provision would increase direct spending by \$0.4 billion over the 2017–2026 period.

Spending Subject to Appropriation. CBO estimates that implementing H.R. 5714 would increase discretionary spending by about \$4.1 billion, assuming appropriation actions consistent with those estimates (see Table 3). Over the 2017–2026 period, implementing the bill would:

- Increase agency contributions for retirement benefits by \$5.9 billion; those contributions would be recorded as offsetting receipts of an equal amount in the Civil Service Retirement and Disability Fund (CSRDF) and would have no net effect on spending,
- Decrease spending by agencies for the Federal Employees Health Benefits (FEHB) program by \$1.8 billion, and
- Increase spending by the Inspector General for the Postal Service by less than \$0.1 billion.

TABLE 2—OFF-BUDGET AND ON-BUDGET CHANGES IN DIRECT SPENDING UNDER H.R. 5714

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
<b>INCREASES OR DECREASES (–) IN OFF-BUDGET DIRECT SPENDING</b>												
Postal Service Operations												
Rate Increase	–640	–900	–900	–900	–900	–875	–850	–825	–800	–775	–4,240	–8,365
Enhanced Security	1,400	600	150	150	150	150	150	150	150	150	2,450	3,200
Mail Delivery	0	–10	–50	–125	–200	–250	–300	–350	–340	–330	–385	–1,955
Subtotal	760	–310	–800	–875	–950	–975	–1,000	–1,025	–990	–955	–2,175	–7,120
Health Benefits												
USPS payments to OPM	0	140	580	620	670	720	770	830	890	950	2,010	6,170
PSHB Employees Premiums	0	–20	–80	–100	–100	–100	–100	–110	–110	–120	–300	–840
Medicare Part B Premiums	0	20	60	50	10	0	0	0	0	0	140	140
Subtotal	0	140	560	570	580	620	670	720	780	830	1,850	5,470
Retirement Benefits												
Use Postal-Specific Data for Retirement Benefits	–28	–37	–38	–40	–41	–43	–45	–47	–49	–51	–184	–419
Capital Improvements	14	19	19	20	21	22	23	24	25	26	92	209
Subtotal	–14	–19	–19	–20	–21	–22	–23	–24	–25	–26	–92	–209
Total Changes	746	–189	–259	–325	–391	–377	–353	–329	–235	–151	–417	–1,859
<b>INCREASES OR DECREASES (–) IN ON-BUDGET DIRECT SPENDING</b>												
Health Benefits												
Medicare	0	150	690	870	880	960	980	1,010	1,110	1,180	2,590	7,830
Medicare Part B Premiums	0	–20	–60	–50	–10	0	0	0	0	0	–140	–140
PSRHF Payments Based on Claims	0	–140	–580	–620	–670	–720	–770	–830	–890	–950	–2,010	–6,170
PSHB Annuitant Premiums	0	–20	–90	–110	–110	–110	–110	–120	–130	–140	–330	–940
FEHB Annuitant Premiums	0	–20	–100	–140	–150	–160	–180	–190	–200	–220	–410	–1,360
Subtotal	0	–50	–140	–50	–60	–30	–80	–130	–110	–130	–300	–780
Use Postal-Specific Data for Retirement Benefits	28	37	38	40	41	43	45	47	49	51	184	419
Total Changes	28	–13	–102	–10	–19	–13	–35	–83	–61	–79	–116	–361

Notes: Budget authority equals outlays for all estimates. Components may not add to totals because of rounding.  
 USPS = United States Postal Service; OPM = Office of Personnel Management; PSHB = Postal Service Health Benefits; PSRHF = Postal Service Retiree Health Benefits; FEHB = Federal Employee Health Benefits.

TABLE 3—CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 5714

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
<b>INCREASES OR DECREASES (–) IN SPENDING SUBJECT TO APPROPRIATION</b>												
Use of Postal-Specific Data for Retirement Benefits <sup>a</sup>												
Estimated Authorization Level .....	378	522	544	566	588	609	630	652	674	696	2,598	5,858
Estimated Outlays .....	378	522	544	566	588	609	630	652	674	696	2,598	5,858
Health Care Premiums for Nonpostal Employees												
Estimated Authorization Level .....	0	–30	–140	–180	–200	–220	–230	–240	–260	–280	–550	–1,780
Estimated Outlays .....	0	–30	–140	–180	–200	–220	–230	–240	–260	–280	–550	–1,780
USPS Office of Inspector General												
Estimated Authorization Level .....	3	5	5	5	5	5	5	5	5	5	23	48
Estimated Outlays .....	3	5	5	5	5	5	5	5	5	5	23	48
Total Changes.												
Estimated Authorization Level .....	381	497	409	391	393	394	405	417	419	421	2,071	4,127
Estimated Outlays .....	381	497	409	391	393	394	405	417	419	421	2,071	4,127
Memorandum <sup>a</sup>												
Offsetting Receipts Resulting From Higher Employer Contributions .....	–378	–522	–544	–566	–588	–609	–630	–652	–674	–696	–2,598	–5,858

Notes: Components may not add to totals because of rounding. USPS = United States Postal Service.

<sup>a</sup>Employer contributions are intragovernmental transactions that do not affect the deficit; negative numbers indicate an increase in such intragovernmental receipts. The receipts shown in the memorandum result from federal employer contributions financed by future appropriations; such receipts are not considered to be an offset to direct spending because they are contingent on future appropriation actions.

*Postal Service operations*

Enacting H.R. 5714 would make several changes to the operations of the USPS, including an increase in postage rates. In total, CBO estimates that enacting the bill would decrease net off-budget direct spending for those operations by \$7.1 billion over the 2017–2026 period (see Table 2).

**Rate Increase.** In December 2013, the Postal Regulatory Commission approved a 4.3 percent rate hike for first-class mail and other services, including an increase in the price of a first-class stamp from \$0.47 to \$0.49, but that increase was temporary and expired in April 2016. H.R. 5714 would authorize the Postal Service to reinstate up to 50 percent of that increase.

Based on an analysis of information from the Postal Service about the effects of rate increases on mail volume and revenue, CBO estimates that partially reinstating the recent rate hike would increase net collections of the USPS by \$640 million in 2017 and about \$8.4 billion over the 2017–2026 period. (Those collections are recorded as offsetting receipts in the budget.) We expect that the increase in net receipts would begin to decline in 2022 and thereafter because of falling mail volume and because some of the savings would probably be spent by the Postal Service or returned to mailers in the form of lower rates rather than accumulated as annual surpluses in the Postal Service Fund.

**Enhanced Security.** H.R. 5714 would require the Postal Service to improve security for parcels and packages that it transports by air by meeting certain federal standards for information security (Federal Information Processing Standards issued by the National Institute of Standards and Technology) or by requiring mailers to bring those items to post offices or other USPS retail sites and to verify their identity. In 2015 the Postal Service shipped nearly \$5 billion worth of parcels and packages by air. To meet the bill's requirements and maintain that revenue stream, the USPS would have to develop information technology systems and acquire new postage meters to replace most of the approximately 1 million meters currently used by the agency, commercial mailers, businesses, and other shippers. The Postal Service also would incur increased labor costs to verify the identities of customers who send packages and parcels from retail sites.

In addition, under the provisions of H.R. 5714, CBO estimates that because of the additional security measures, some customers that currently use the Postal Service to deliver parcels and packages would shift their business to other delivery providers. Thus, we expect that the USPS would lose revenue during 2017 and 2018 and possibly in subsequent years.

Based on information from the USPS and the costs of similar projects, we estimate that the forgone revenue and additional costs would increase net outlays of the Postal Service by \$3.2 billion over the 2017–2026 period. Costs would be higher in the first two years, mostly because of the need to acquire new postage meters. Annual spending of \$150 million after 2018 would mostly be for system maintenance and increased labor costs.

**Mail Delivery.** USPS delivers mail to the doors of customers, to sidewalk and curbside receptacles, and to centralized mail receptacles that serve multiple addresses. H.R. 5714 would require the Postal Service to convert most business (but not residential) ad-

dresses with door delivery to sidewalk, curbside, or centralized delivery.

In 2015, the Postal Service provided door delivery to about 6 million business addresses. Upon enactment of H.R. 5714, the USPS expects that it would change the means of delivery for about 500,000 addresses in 2017 and an additional 1 million addresses annually over the 2018–2022 period. We anticipate that nearly all the conversions would be to centralized delivery for the affected businesses.

Based on an analysis of information from the Postal Service about the savings per business address from implementing curbside and centralized delivery as compared to door delivery (about \$80 per address for centralized delivery and \$45 per address for curbside delivery), as well as the costs to install and maintain curbside and centralized mail receptacles (about \$70 to \$100 per business address for installation), CBO estimates that annual savings under H.R. 5714 would grow to \$350 million by 2024 and would total nearly \$2 billion over the 2017–2026 period. Beginning in 2025, we expect that annual savings would gradually decline as the Postal Service increased spending or shared savings with its customers in the form of lower rates.

**Other Provisions.** Several other provisions of H.R. 5714 could help the Postal Service in its efforts to lower its net costs; however, CBO has not estimated additional savings for those provisions because it is not clear that any savings would exceed what we expect will be achieved under current law or under other provisions of the legislation.

H.R. 5714 would authorize the Postal Service to establish a program to provide services for agencies of state, local, or tribal governments for a fee. Implementing this program would require the Postal Service to offer cost-effective alternatives for services to states or localities. This program might increase USPS revenues but also would add to its costs. CBO has no information that would allow us to predict the cost-effectiveness of such new ventures.

The bill also would reform certain Postal Service contracting practices. These changes might reduce USPS costs, but CBO expects that any net savings probably would be indistinguishable from savings that would result from the Postal Service's current efforts to improve procurement practices.

#### *Health benefits*

Many of the changes in H.R. 5714 would affect how health care is provided to all federal annuitants and employees. As shown in Table 4, those changes would affect direct spending (both on- and off-budget) as well as spending subject to appropriation. CBO estimates that enacting the bill would, on net, increase direct spending (in the unified budget) by \$4.7 billion over the 2017–2026 period to provide health care to postal and other federal employees and annuitants. In addition, implementing the bill would reduce discretionary spending by \$1.8 billion over the 2017–2026 period for providing health care to federal employees, assuming appropriation actions consistent with that estimate.

TABLE 4—CHANGES IN SPENDING FROM PROVISIONS OF H.R. 5714 THAT AFFECT HEALTH CARE SPENDING

	By fiscal year, outlays in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026
<b>INCREASES OR DECREASES (–) IN DIRECT SPENDING</b>												
<b>Medicare</b>												
Require Participation in Medicare (on-budget) .....	0	150	690	870	880	960	980	1,010	1,110	1,180	2,590	7,830
Medicare Part B Premiums Paid by USPS (off-budget) .....	0	20	60	50	10	0	0	0	0	0	140	140
Medicare Part B Premiums Paid by USPS (on-budget) .....	0	–20	–60	–50	–10	0	0	0	0	0	–140	–140
<b>Postal Service Health Benefits</b>												
Premiums for USPS Employees (off-budget) .....	0	–20	–80	–100	–100	–100	–100	–110	–110	–120	–300	–840
Premiums for USPS Annuitants (on-budget) .....	0	–20	–90	–110	–110	–110	–110	–120	–130	–140	–330	–940
Payments Based on Claims (on-budget) .....	0	–140	–580	–620	–670	–720	–770	–830	–880	–950	–2,010	–6,170
USPS Payments to OPM (off-budget) .....	0	140	580	620	670	720	770	830	880	950	2,010	6,170
<b>Federal Employee Health Benefits</b>												
Premiums for Nonpostal Annuitants (on-budget) .....	0	–20	–100	–140	–150	–160	–180	–190	–200	–220	–410	–1,360
Total Changes, Unified Budget .....	0	90	420	520	520	590	590	590	670	700	1,550	4,690
<b>DECREASES IN SPENDING SUBJECT TO APPROPRIATION</b>												
FEHB Premiums for Nonpostal Employees .....	0	–30	–140	–180	–200	–220	–230	–240	–260	–280	–550	–1,780

Notes: Budget authority equals outlays for all estimates; USPS = United States Postal Service; OPM = Office of Personnel Management; FEHB = Federal Employee Health Benefits.



Background. Under current law, USPS employees and annuitants receive health insurance benefits through the FEHB program, which also covers nonpostal civilian federal employees and annuitants. Insurance plans that participate in the FEHB program charge premiums that are the same for all participants, regardless of whether the participant is affiliated with the USPS or not, or is an employee or an annuitant. The Postal Service is obligated to contribute to the health insurance premiums of its current and retired employees who participate in the FEHB program. (Postal Service payments to FEHB are off-budget direct spending.) In 2016 the agency made direct payments for retirees' premiums to the FEHB fund totaling nearly \$3.5 billion.

Under current law, the Postal Service also was required to make a payment in 2016 to the Postal Service Retiree Health Benefits Fund (PSRHBF) to prefund the health obligations of its future retirees. (Such payments have no effect on the unified budget because the off-budget payments are offset exactly by the on-budget receipt of the payments.) However, because of the Postal Service's poor financial condition, it has not made those statutorily specified payments since 2010, including \$5.8 billion for 2016.

Starting in 2017, the Postal Service will no longer make payments directly to the FEHB fund for its annuitants. Rather, under current law, the Postal Service will be required to make payments to the PSRHBF to cover the future health care liabilities accruing to current employees (known as normal costs) and to eliminate the unfunded liability for retirees' health benefits (known as amortization payments). CBO estimates that required payments for normal costs and amortization payments will sum to nearly \$7 billion in fiscal year 2017. The PSRHBF will then have to make payments to the FEHB program in 2017 and thereafter for the Postal Service's share of premiums. Because of its poor financial condition, we expect that the Postal Service will not make any of those normal or amortization payments over the 2017–2026 period; nevertheless, CBO estimates that the PSRHBF will pay the required premiums through 2026. (If the Postal Service does not make those intragovernmental payments, CBO expects that it will spend that money on its current operations, including capital improvements, and thus increase federal outlays over the period.)

Postal Service Health Benefits Program. H.R. 5714 would change how the federal government provides health insurance for USPS employees and annuitants. The legislation would direct OPM to establish a new Postal Service Health Benefits (PSHB) program in 2018 (similar to the FEHB program), under which Postal Service employees and annuitants could enroll to receive health insurance from qualifying plans. Premiums in the PSHB program would be set based on the expected health care costs of only those USPS employees, annuitants, and dependents who participate in the program. (Premiums in the FEHB program would be set based on the expected health care costs of the nonpostal enrollees that remained in that program.) In addition, the bill would require all eligible postal annuitants who participate in the PSHB program to enroll in Medicare. Finally, PSHB plans would be required to participate in Medicare Part D and would thereby receive subsidies related to prescription drugs.

Postal Service employees and annuitants would be in the same risk pool, so premiums would be the same for both groups; however, H.R. 5714 would change the basis for providing funds to and making payments from the PSRHBF to cover the cost of health care claims of Postal Service annuitants. CBO expects that the cost of health care claims would be lower for annuitants than for USPS employees because the bill would effectively shift some spending to Medicare Parts B and D. Thus, that change would reduce both the amount that the USPS would have to pay into the PSRHBF and the amount that the PSRHBF would pay to PSHB plans.

*Medicare.* Because H.R. 5714 would require Medicare-eligible annuitants who had been employed by the Postal Service to participate in Medicare Part B, Medicare would become the primary payer for certain services. The PSHB plans would pay cost-sharing for those beneficiaries' health care services. In addition, the bill would require the USPS to contribute towards the Medicare Part B premiums of annuitants that newly enroll in Medicare under the legislation. The mechanism by which the Centers for Medicare and Medicaid Services (CMS) would collect those premium payments is not specified, but for purposes of this estimate, CBO assumes that the USPS would make the required payments for Medicare premiums and that CMS would collect the remaining premiums from USPS annuitants. Finally, H.R. 5714 would require PSHB plans to participate in Medicare Part D. As a result, Medicare Part D would make certain payments to those PSHB plans.

Based on an analysis of Medicare spending and an estimate of the number of annuitants who would gain Medicare coverage under the legislation, CBO estimates that enacting H.R. 5714 would:

- Increase on-budget direct spending for Medicare by about \$7.8 billion over the 2017–2026 period, net of Medicare Part B premiums that would be paid by postal annuitants;
- Increase off-budget direct spending by \$0.1 billion over the 2017–2026 period for the portion of Part B premiums that the USPS would pay under the bill; and
- Decrease on-budget direct spending by \$0.1 billion, reflecting receipts of Part B premiums paid by the USPS.

*PSHB.* CBO anticipates that shifting the primary responsibility for covering certain health care services from PSHB plans to the Medicare program would decrease costs to the Postal Service. As a result, CBO estimates that the PSHB premiums for postal employees and annuitants would be lower than the FEHB premiums those people will face under current law. The legislation is unclear whether PSHB plans would receive payments related to prescription drugs under the Retiree Drug Subsidy (RDS) program or the Employer Group Waiver Plan (EGWP) program. For purposes of this estimate, CBO assumes that plans would participate under the RDS program. Enacting H.R. 5714 would:

- Decrease net off-budget direct spending for the Postal Service by \$0.8 billion over the 2017–2026 period because of a reduction in premiums for current postal workers; and
- Decrease on-budget direct spending \$0.9 billion over the 2017–2026 period for payments from the PSRHBF because of a reduction in premiums for annuitants in the Postal Service.

Under the bill, Medicare would pay most of the health care costs for eligible beneficiaries and PSHB plans would pay for the cost

sharing (for example, copayments and deductibles) when those beneficiaries receive health care services. Consequently, the health claims paid by PSHB plans would be less for annuitants than for postal employees. Because premiums would be based on the expected claims for all people participating in PSHB plans (current USPS employees and annuitants), the premiums would be higher for annuitants and lower for employees than their expected health claims. As discussed previously, payments from the PSRHBFB would only cover the health claims of USPS annuitants; therefore, the total payments into the PSHB fund would not be sufficient to cover the required payments for premiums for annuitants. Insurance plans probably would not agree to participate in the PSHB program if premiums were not paid in full—consequently, CBO expects that the USPS would have to make additional payments to cover the difference. For purposes of this estimate, CBO assumes the USPS would make those payments to OPM, and that OPM would make premium payments to PSHB plans. Based on an analysis of FEHB premiums and the health care spending of USPS annuitants, CBO estimates that enacting the bill would:

- Decrease on-budget direct spending by \$6.2 billion over the 2017–2026 period, for payments from the PSRHBFB to PSHB plans; and
- Increase off-budget direct spending by the same amount—\$6.2 billion over the 2017–2026 period—for payments from the USPS to OPM.

*FEHB.* Creating two different groups of federal employees for the purpose of calculating health insurance premiums (FEHB and PSHB) would effectively lower the cost of providing insurance to the nonpostal enrollees who remained in the FEHB program. Premiums charged to nonpostal enrollees in the FEHB program would be based on expected health costs of the employees, annuitants, and dependents remaining in the FEHB program. Because nonpostal enrollees cost FEHB plans slightly less than postal enrollees, on average, CBO estimates that premiums in the FEHB program would be lower than under current law.

The estimated reduction in federal costs results from lower federal payments for the government's share of FEHB premiums. In 2015, the federal government contributions to the premiums of the nonpostal enrollees in the FEHB program averaged 71 percent of premiums. In total, CBO estimates that:

- Enacting the bill would reduce on-budget direct spending for the premiums of nonpostal annuitants by about \$1.4 billion over the 2017–2026 period. Premium payments for annuitants are classified as direct spending; and
- Implementing the bill would reduce federal outlays for health insurance premiums for nonpostal employees by about \$1.8 billion over the 2017–2026 period. The government's contributions for those premiums for active employees are subject to appropriation and thus classified as discretionary spending.

#### *Retirement benefits*

Enacting H.R. 5714 would affect the contributions for retirement benefits made by the Postal Service and other federal agencies (see Tables 2 and 3). In total, CBO estimates that enacting the bill would increase net direct spending for federal retirement benefits

(in the unified budget) by \$0.2 billion over the 2017–2026 period. Additionally, implementing the bill would increase discretionary costs related to retirement benefits by \$5.9 billion for increased contributions by federal agencies to the Civil Service Retirement and Disability Fund (CSRDF), subject to the availability of appropriations. (Those increased contributions would be recorded as offsetting receipts to the fund and would have no net budgetary impact.)

**Background.** H.R. 5714 would direct OPM to use economic and demographic factors specific to Postal Service employees, rather than government-wide data, to calculate annual contributions that the USPS is required to make to federal retirement accounts under the Federal Employees Retirement System (FERS).

For 2015, the Postal Service made about \$3.5 billion in contributions to the CSRDF for FERS employees and also was required to make an amortization payment of about \$240 million for those employees. The agency currently makes no contributions for employees in the Civil Service Retirement System (CSRS). Beginning in fiscal year 2017, the Postal Service is required to make annual payments, amortized over 27 years, to liquidate any unfunded liability as estimated by OPM for retirees' CSRS pension benefits. (The unfunded liability is the total liability accrued to date for retirees' pension benefits minus the balance of the CSRDF attributable to Postal Service contributions.)

Because of the Postal Service's poor financial condition, CBO expects that the USPS will not make the amortization payments for FERS or CSRS over the 2017–2026 period. We expect the Postal Service to continue to contribute to the CSRDF for FERS employees each year.

**CSRDF Payments.** Based on an analysis conducted by OPM in 2014, CBO estimates that enacting H.R. 5714 would lower the Postal Service's annual employer contribution for FERS employees by between 0.1 percent and 0.2 percent of salary because Postal Service employees tend to have lower salaries and higher mortality rates (when retired) compared with the averages for all federal employees. CBO estimates that enacting this provision would:

- Decrease off-budget direct spending for Postal Service contributions to the CSRDF by about \$420 million over the 2017–2026 period; and
- Increase on-budget direct spending by \$420 million over the 2017–2026 period because offsetting receipts in the CSRDF would decline by the same amount the Postal Service saved.

However, CBO expects that lowering retirement expenses for the USPS would lead the agency to modify its current efforts to reduce spending. In recent years, the agency has implemented severe measures such as curtailing capital spending, closing mail processing facilities, making major reductions in service standards, and either deferring or failing to make certain required payments to certain funds in the Treasury. CBO expects that enacting legislation to lower retirement expenses for the USPS would lead the agency to alter its cost-reduction program by cutting spending somewhat less severely than it would without the legislation. Thus, CBO estimates that under the proposal, the Postal Service would decrease off-budget spending by about half of the savings in retirement contributions—about \$210 million over the 2017–2026 period.

Payments by Federal Agencies. Because H.R. 5714 would require the use of postal-specific economic and demographic factors to calculate the employer contribution toward retirement that the USPS makes on behalf of its employees, the amount of employer contributions required from most other federal agencies would be increased. OPM expects that using economic and demographic factors that exclude postal workers from the calculation of the contributions required of other agencies would raise their contribution rates by about 0.3 percent of salary. Based on that assumption, CBO estimates that such an increase in contributions would increase spending subject to appropriation by about \$5.9 billion over the 2017–2026 period. (That cost would be offset by additional receipts to the CSRDF and thus would have no net effect on future deficits.) However, the basis of such a disparate effect on the change in contribution rates between the USPS and nonpostal agencies is unclear to CBO. OPM has noted that their assumptions could change upon an updated analysis and review of the USPS and nonpostal experience.

*USPS Office of Inspector General*

H.R. 5714 would merge the Office of Inspector General (OIG) of the USPS and the OIG of the Postal Regulatory Commission and would require the newly formed office to comply with certain hiring, employment, and contracting practices under Title 5 of the United States Code. This would increase costs for the administration of personnel benefits for about 1,200 employees. Based on an analysis of information from the OIG for the USPS, we estimate that total costs would be about \$3 million in 2017 and about \$5 million annually thereafter, assuming appropriation of the necessary amounts (see Table 3).

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

TABLE 5—CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 5714, THE POSTAL SERVICE REFORM ACT OF 2016, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM ON JULY 12, 2016

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–2021	2017–2026
NET INCREASE OR DECREASE (–) IN THE ON-BUDGET DEFICIT												
Statutory Pay-As-You-Go Impact .....	28	–13	–102	–10	–19	13	–35	–83	–61	–79	–116	–361

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: By increasing postal rates for public and private mailers, H.R. 5714 would impose intergovernmental and private-sector mandates as defined in UMRA. The bill also would impose mandates on some postal annu-

itants by requiring them to enroll in Medicare, if eligible. CBO estimates that the annual costs to public entities of complying with the mandate that increases postal rates would exceed the threshold established in UMRA for intergovernmental mandates (\$77 million in 2016, adjusted annually for inflation) in four of the first five years after the rate increase becomes effective. CBO estimates the aggregate annual costs of the mandates on private entities (including the rate increase) would exceed the threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation) in each of the first five years the mandates are in effect.

*Mandates on public and private mailers*

Section 207 of H.R. 5714 would make permanent an increase in postal rates for certain products, including those for which the Postal Service has a statutory monopoly, increasing the postage rate for first-class mail and other market dominant products by 1 cent. Because the USPS holds a statutory monopoly on first class mail, standard mail, and periodicals placed in USPS mail boxes, an increase in postal rates would constitute a mandate on public and private entities that mail those items through the USPS. The cost of the mandate would be the additional cost of mailing those items.

On the basis of projections of the amount of first class mail, standard mail, and periodicals that are expected to be sent at the increased rate, CBO estimates that the additional cost to public and private entities would total about \$620 million in 2017, increasing to about \$870 million annually through 2021 and falling thereafter. (Those figures exclude additional amounts paid for other postal services and amounts paid by the federal government for postal services.) Taking into account the size of state and local governments as a percentage of the economy, CBO estimates that the intergovernmental mandate would cost about \$70 million in 2017 and increase to about \$100 million annually over the next four years. For private mailers, CBO estimates that the increase in postal rates would total about \$550 million in 2017 and increase to about \$770 million annually over the next four years.

The bill also would impose a private-sector mandate on national and state political committees by repealing their current discount on postal rates for third-class letters (standard mail). Based on the information from political committees and the USPS, CBO estimates that the cost of the mandate would average about \$5 million annually.

*Mandate on postal annuitants*

The bill would require all postal annuitants enrolled in Postal Service health plans to enroll in Medicare, if they are eligible. Those postal annuitants would be required to pay new premiums associated with mandatory Medicare enrollment and additional amounts for health care services. However, Postal Service health plans pay a share of the cost of annuitants' health care services, and CBO estimates that the aggregate additional cost for those annuitants would be offset by those contributions.

Estimate prepared by: Federal costs: Paul Masi—Health care provisions; Amber Marcellino—Retirement (discretionary effect); Mark Grabowicz—All other. Impact on state, local, and tribal gov-

ernments: Zachary Byrum. Impact on the private sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 5, UNITED STATES CODE**

\* \* \* \* \*

**PART III—EMPLOYEES**

\* \* \* \* \*

**SUBPART G—INSURANCE AND ANNUITIES**

\* \* \* \* \*

**CHAPTER 83—RETIREMENT**

\* \* \* \* \*

**SUBCHAPTER III—CIVIL SERVICE RETIREMENT**

\* \* \* \* \*

**§ 8348. Civil Service Retirement and Disability Fund**

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter,

chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest on the obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service, less an amount determined by the Office to be appropriate to reflect the



value of the deposits made to the credit of the Fund under section 8334(j) of this title. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter.

(h)(1) In this subsection, the term “Postal surplus or supplemental liability” means the estimated difference, as determined by the Office, between—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 15, 2007, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2006. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2007.

[(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2007, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C). Beginning June 15, 2017, if the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.]

[(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.]

*(B) The Office shall redetermine the postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2015. Subject to subparagraph (C), beginning June 15, 2017, if the result is a surplus or a supple-*

*mental liability the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such surplus or liability to the Postal Service or the Fund (as the case may be) by September 30, 2043.*

*(C) No later than June 30, 2033, the Office shall determine, and thereafter redetermine as necessary, but not more frequently than once per year, the appropriate date to complete the liquidation of any remaining surplus or liability determined under this paragraph. The determination under this subparagraph shall be set in accordance with generally accepted actuarial practices and principles and shall not be longer than a period of 15 years from the date on which the determination is made.*

*(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.*

*(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.*

*(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.*

*(4) For the purpose of carrying out paragraph (1), for fiscal year 2013 and each fiscal year thereafter, the Office shall use—*

*(A) demographic factors specific to current and former employees of the United States Postal Service, unless such data cannot be generated; and*

*(B) economic assumptions regarding wage and salary growth that reflect the specific past, and likely future, pay for current employees of the United States Postal Service.*

*(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991.*

*(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office of Personnel Management. The Panama Canal Commission shall pay to the Fund from funds available to it for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.*

*(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.*

(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over (B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

(5) For purposes of this subsection and subsections (k) and (l) of this section—

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.

(1)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.

\* \* \* \* \*

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

\* \* \* \* \*

**SUBCHAPTER II—BASIC ANNUITY**

\* \* \* \* \*

**§ 8423. Government contributions**

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

- (A) the product of—
  - (i) the normal-cost percentage, as determined for employees (other than employees covered by [subparagraph (B)],] *subparagraph (B) or (C)*), multiplied by
  - (ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i) who are within such agency; [and]
- (B) the product of—
  - (i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act, multiplied by
  - (ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i) who are within such agency[.]; and
- (C) *the product of—*
  - (i) *the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)) of the United States Postal Service under paragraph (5), multiplied by*
  - (ii) *the aggregate amount of basic pay payable by the United States Postal Service, for the period involved, to employees of the United States Postal Service.*

(2)(A) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(B)(i) Subject to clauses (ii) and (iii), for purposes of any period in any year beginning after December 31, 2013, the normal-cost percentage under this subsection shall be determined and applied as if section 401(b) of the Bipartisan Budget Act of 2013 had not been enacted.

(ii) Any contributions under this subsection in excess of the amounts which (but for clause (i)) would otherwise have been payable shall be applied toward reducing the unfunded liability of the Civil Service Retirement System.

(iii) After the unfunded liability of the Civil Service Retirement System has been eliminated, as determined by the Office, Government contributions under this subsection shall be determined and made disregarding this subparagraph.

(iv) The preceding provisions of this subparagraph shall be disregarded for purposes of determining the contributions payable by the United States Postal Service and the Postal Regulatory Commission.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(5)(A) *In determining the normal-cost percentage for employees of the United States Postal Service for purposes of paragraph (1)(C), the Office shall use—*

*(i) demographic factors specific to such employees, unless such data cannot be generated; and*

*(ii) economic assumptions regarding wage and salary growth that reflect the specific past, and likely future, pay for such employees.*

*(B) The United States Postal Service shall provide any data or projections the Office requires in order to determine the normal-cost percentage for employees of the United States Postal Service, consistent with subparagraph (A).*

*(C) The Office shall review the determination of the normal-cost percentage for employees of the United States Postal Service and make such adjustments as the Office considers necessary—*

(i) upon request of the United States Postal Service, but not more frequently than once each fiscal year; and

(ii) at such other times as the Office considers appropriate.

(6) For the purpose of carrying out subsection (b)(1)(B), and consistent with paragraph (5), for fiscal year 2013, and each fiscal year thereafter, the Office shall use—

(A) demographic factors specific to current and former employees of the United States Postal Service, unless such data cannot be generated; and

(B) economic assumptions regarding wage and salary growth that reflect the specific past, and likely future, pay for current employees of the United States Postal Service.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Regulatory Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5)(A) In this paragraph, the term “postal funding surplus” means the amount by which the amount of the supplemental liability computed under paragraph (1)(B) is less than zero.

(B) If the amount of supplemental liability computed under paragraph (1)(B) as of the close of any fiscal year after the date of enactment of the Postal Service Reform Act of 2016 is less than zero, the Office shall establish an amortization schedule, including a series of equal annual installments that—

(i) provide for the liquidation of the postal funding surplus in 30 years, commencing on September 30 of the subsequent fiscal year; and

(ii) shall be transferred to the United States Postal Service Fund.

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

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

\* \* \* \* \*

**CHAPTER 89—HEALTH INSURANCE**

Sec.  
8901. Definitions.

\* \* \* \* \*

8903c. *Postal Service Health Benefits Program.*

\* \* \* \* \*

**§ 8903. Health benefits plans**

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) **SERVICE BENEFIT PLAN.**—One Government-wide plan, which may be underwritten by participating affiliates licensed in any number of States, offering [two levels of benefits] *2 levels of benefits for enrollees under this chapter generally and 2 levels of benefits for enrollees under the Postal Service Health Benefits Program established under section 8903c*, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

(2) **INDEMNITY BENEFIT PLAN.**—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) **EMPLOYEE ORGANIZATION PLANS.**—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee or-

ganizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) COMPREHENSIVE MEDICAL PLANS.—

(A) GROUP-PRACTICE PREPAYMENT PLANS.—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) INDIVIDUAL-PRACTICE PREPAYMENT PLANS.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) MIXED MODEL PREPAYMENT PLANS.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

\* \* \* \* \*

**SEC. 8903c. POSTAL SERVICE HEALTH BENEFITS PROGRAM.**

(a) DEFINITIONS.—*In this section—*

(1) the term “covered Medicare individual” means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), but excluding an individual who is eligible to enroll under such part under section 1818 or 1818A of the Social Security Act (42 U.S.C. 1395i-2, 1395i-2a);

(2) the term “initial contract year” means the contract year beginning in January of 2018;

(3) the term “initial participating carrier” means a carrier that enters into a contract with the Office to participate in the Postal Service Health Benefits Program during the initial contract year;

(4) the term “Office” means the Office of Personnel Management;

(5) the term “Postal Service” means the United States Postal Service;

(6) the term “Postal Service annuitant” means an annuitant enrolled in a health benefits plan under this chapter whose



Government contribution is paid pursuant to the requirements of section 8906(g)(2);

(7) the term “Postal Service employee” means an employee of the Postal Service enrolled in a health benefits plan under this chapter;

(8) the term “Postal Service Medicare covered annuitant” means an individual who—

(A) is a Postal Service annuitant; and

(B) is a covered Medicare individual;

(9) the term “Program” means the Postal Service Health Benefits Program established under subsection (c) within the Federal Employees Health Benefit Program; and

(10) the term “Program plan” means a health benefits plan offered under the Program.

(b) APPLICATION.—The requirements under this section shall—

(1) apply to the initial contract year and each contract year thereafter; and

(2) supersede any other provision of this chapter inconsistent with such requirements, as determined by the Office.

(c) ESTABLISHMENT OF THE POSTAL SERVICE HEALTH BENEFITS PROGRAM.—

(1) IN GENERAL.—The Office shall establish the Postal Service Health Benefits Program under which the Office contracts with carriers to offer health benefits plans as described under this section. Except as otherwise provided under this section, any such contract shall be consistent with the requirements of this chapter for contracts under section 8902 with carriers to offer health benefits plans other than under this section. The Program shall—

(A) to the greatest extent practicable, include plans offered by—

(i) each carrier for which the total enrollment in the plans provided under this chapter includes, in the contract year beginning in January 2017, 1,500 or more enrollees who are Postal Service employees or Postal Service annuitants; and

(ii) any other carrier determined appropriate by the Office;

(B) be available for participation by all Postal Service employees and Postal Service annuitants, in accordance with subsection (d);

(C) provide for enrollment in a plan as an individual, for self plus one, or for self and family; and

(D) not be available for participation by an individual who is not a Postal Service employee or Postal Service annuitant (except as a family member of such an employee or annuitant or as provided under paragraph (5)).

(2) SEPARATE POSTAL SERVICE RISK POOL.—The Office shall ensure that each Program plan includes rates that reasonably and equitably reflect the cost of benefits provided to a risk pool consisting solely of Postal Service employees and Postal Service annuitants (and covered family members of such employees and annuitants), taking into specific account the reduction in benefits cost for the Program plan due to the Medicare enrollment

requirements under subsection (e) and any savings or subsidies resulting from subsection (f)(1).

(3) **ACTUARIALLY EQUIVALENT COVERAGE.**—The Office shall ensure that each carrier participating in the Postal Service Health Benefits Program provides coverage under the Program plans offered by the carrier that is actuarially equivalent, as determined by the Office, to the coverage that the carrier provides under the health benefits plans offered by the carrier under this chapter that are not Program plans.

(4) **APPLICABILITY OF FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM REQUIREMENTS.**—Except as otherwise set forth in this section, all provisions of this chapter applicable to health benefits plans offered by the carrier under section 8903 or 8903a shall also apply to plans offered under the Program.

(5) **APPLICATION OF CONTINUATION COVERAGE.**—In accordance with rules established by the Office, section 8905a shall apply to health benefits plans offered under this section in the same manner as such section applies to other health benefits plans offered under this chapter.

(d) **ELECTION OF COVERAGE.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), each Postal Service employee and Postal Service annuitant who elects to receive health benefits coverage under this chapter—

(A) shall be subject to the requirements of this section; and

(B) may not enroll in any other health benefits plan offered under any other section of this chapter.

(2) **ANNUITANTS.**—

(A) **APPLICATION.**—A Postal Service annuitant shall not be subject to the requirements of this section if the Postal Service annuitant—

(i) is enrolled in a health benefits plan under this chapter for the contract year immediately preceding the initial contract year that is not a health benefits plan offered by an initial participating carrier, unless—

(I) the Postal Service annuitant voluntarily enrolls in a Program plan;

(II) the health benefits plan in which such annuitant is enrolled for such contract year ceases to be available; or

(III) the health benefits plan in which such annuitant is enrolled for such contract year becomes available as a Program plan; or

(ii) resides in a geographic area for which there is not a Program plan in which the Postal Service annuitant may enroll.

(B) **CHANGED ENROLLMENT.**—If a Postal Service annuitant changes enrollment to a health benefits plan under this chapter provided by a different carrier than the health benefits plan in which such annuitant is enrolled during the previous contract year, the Postal Service annuitant may only enroll in a Program plan.

(3) **EMPLOYEES.**—A Postal Service employee who is enrolled in a health benefits plan under this chapter for the contract

year immediately preceding the initial contract year that is not a health benefits plan offered by an initial participating carrier shall not be subject to the requirements of this section, except that—

(A) if the Postal Service employee changes enrollment to a different health benefits plan under this chapter during the open season for the initial contract year, or after the start of the initial contract year, the Postal Service employee may only enroll in a Program plan;

(B) if the health benefits plan in which such employee is enrolled for such contract year becomes available as a Program plan, the Postal Service employee may only enroll in a Program plan;

(C) upon becoming a Postal Service annuitant, if the Postal Service employee elects to continue coverage under this chapter, the Postal Service employee shall enroll in a Program plan during the open season that is—

(i) being held when the Postal Service employee becomes a Postal Service annuitant; or

(ii) if the date on which the Postal Service employee becomes a Postal Service annuitant falls outside of an open season, the first open season following that date; and

(D) subparagraphs (A), (B), and (C) shall not apply to an employee who resides in a geographic area for which there is not a Program plan in which the employee may enroll.

(e) **REQUIREMENT OF MEDICARE ENROLLMENT FOR ANNUITANTS AND THEIR FAMILY MEMBERS.—**

(1) **POSTAL SERVICE MEDICARE COVERED ANNUITANTS.—**A Postal Service Medicare covered annuitant subject to the requirements of this section may not obtain coverage under this chapter unless the annuitant is enrolled in part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.).

(2) **MEDICARE COVERED FAMILY MEMBERS.—**If a family member of a Postal Service annuitant who is subject to the requirements of this section is a covered Medicare individual, the family member may not be covered under the Program as a family member of the Postal Service annuitant unless the family member is enrolled in part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.).

(3) **PROCESS FOR COORDINATED ELECTION OF ENROLLMENT UNDER MEDICARE PART B.—**The Office shall establish a process under which—

(A) Postal Service annuitants and family members who are subject to the requirements of paragraph (1) or (2)—

(i) are informed, at the time of enrollment under this chapter, of such requirement; and

(ii) as a consequence of such enrollment are deemed to have elected to be enrolled under Medicare part B (under section 1837(m)(1) of the Social Security Act) in connection with the enrollment in a Program plan under this chapter; and

(B) the Office provides the Secretary of Health and Human Services and the Commissioner of Social Security in a timely manner with such information respecting such

annuitants and family members and such election as may be required to effect their enrollment and coverage under Medicare part B and this section in a timely manner.

(f) **MEDICARE COORDINATION.**—

(1) **IN GENERAL.**—The Office shall require each Program plan to provide benefits for covered Medicare individuals pursuant to the standard coordination of benefits method used under this chapter, rather than the exclusion method or the carve-out method.

(2) **MEDICARE PART D PRESCRIPTION DRUG BENEFITS.**—The Office shall require each Program plan to provide prescription drug benefits for Postal Service annuitants and family members who are eligible individuals (as defined in section 1860D–1(a)(3)(A) of the Social Security Act (42 U.S.C. 1395w–101(a)) in a form and manner that satisfies the requirements for a qualified retiree prescription drug plan under subsection (a)(2) of section 1860D–22 of the Social Security Act (42 U.S.C. 1395w–132)), for which plan a waiver or modification of requirements may have been applied pursuant to subsection (b) of such section. For purposes of such section, a Program plan shall then be deemed to be a qualified retiree prescription drug plan and the Federal Government, through the Office, shall be deemed the sponsor of such plan.

(g) **POSTAL SERVICE CONTRIBUTION.**—

(1) **IN GENERAL.**—Subject to subsection (i), for purposes of applying section 8906(b) to the Postal Service, the weighted average shall be calculated in accordance with paragraphs (2) and (3).

(2) **WEIGHTED AVERAGE CALCULATION.**—Not later than October 1 of each year (beginning with 2017), the Office shall determine the weighted average of the rates established pursuant to subsection (c)(2) for Program plans that will be in effect during the following contract year with respect to—

- (A) enrollments for self only;
- (B) enrollments for self plus one; and
- (C) enrollments for self and family.

(3) **WEIGHTING IN COMPUTING RATES FOR INITIAL CONTRACT YEAR.**—In determining such weighted average of the rates for the initial contract year, the Office shall take into account (for purposes of section 8906(a)(2)) the enrollment of Postal Service employees and annuitants in the health benefits plans offered by the initial participating carriers as of March 31, 2017.

(h) **RESERVES.**—

(1) **SEPARATE RESERVES.**—

(A) **IN GENERAL.**—The Office shall ensure that each Program plan maintains separate reserves (including a separate contingency reserve) with respect to the enrollees in the Program plan in accordance with section 8909.

(B) **REFERENCES.**—For purposes of the Program, each reference to “the Government” in section 8909 shall be deemed to be a reference to the Postal Service.

(C) **AMOUNTS TO BE CREDITED.**—The reserves (including the separate contingency reserve) maintained by each Program plan shall be credited with a proportionate amount

*of the funds in the reserves for health benefits plans offered by the carrier.*

*(2) DISCONTINUATION OF PROGRAM PLAN.—In applying section 8909(e) relating to a Program plan that is discontinued, the Office shall credit the separate Postal Service contingency reserve maintained under paragraph (1) for that plan only to the separate Postal Service contingency reserves of the Program plans continuing under this chapter.*

*(i) NO EFFECT ON EXISTING LAW.—Nothing in this section shall be construed as affecting section 1005(f) of title 39 regarding variations, additions, or substitutions to the provisions of this chapter.*

*(j) MEDICARE EDUCATION PROGRAM.—Not later than 180 days after the date of enactment of this section, the Postal Service shall establish a Medicare Education Program. Under the Program, the Postal Service shall—*

*(1) notify retirees and employees of the Postal Service about the Postal Service Health Benefits Program established under subsection (c)(1);*

*(2) provide information regarding the Postal Service Health Benefits to such retirees and employees, including a description of the health care options available under such Program, the requirement that retirees be enrolled in Medicare under subsection (e)(1), and the operation of the premium transition fund to be created under section 104 of the Postal Service Reform Act of 2016; and*

*(3) respond and provide answers to any inquiry from such employees and retirees about the Postal Service Health Benefits Program or Medicare enrollment.*

\* \* \* \* \*

#### **§ 8906. Contributions**

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

- (A) enrollments under this chapter for self alone;
- (B) enrollments under this chapter for self plus one; and
- (C) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term “enrollee” means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2) and (3), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1) (A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee’s first pay period of each year. For an annuitant, the adjustment begins on

the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(4) In the case of persons who are enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10, the Government contribution shall be subject to the limitation set forth in subsection (i) of that section.

(c) There shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1)(A) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office.

(B) During each pay period in which an enrollment continues under subparagraph (A)—

(i) employee and Government contributions required by this section shall be paid on a current basis; and

(ii) if necessary, the head of the employing agency shall approve advance payment, recoverable in the same manner as under section 5524a(c), of a portion of basic pay sufficient to pay current employee contributions.

(C) Each agency shall establish procedures for accepting direct payments of employee contributions for the purposes of this paragraph.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health bene-

fits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(3)(A) An employing agency may pay both the employee and Government contributions, and any additional administrative expenses otherwise chargeable to the employee, with respect to health care coverage for an employee described in subparagraph (B) and the family of such employee.

(B) An employee referred to in subparagraph (A) is an employee who—

- (i) is enrolled in a health benefits plan under this chapter;
- (ii) is a member of a reserve component of the armed forces;
- (iii) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);
- (iv) is placed on leave without pay or separated from service to perform active duty; and
- (v) serves on active duty for a period of more than 30 consecutive days.

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed 24 months.

(f) The Government contribution, and any additional payments under subsection (e)(3)(A), for health benefits for an employee shall be paid—

- (1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;
- (2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;
- (3) in the case of an employee of the legislative branch who is paid by the Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives; and
- (4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraphs (2) and (3), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A)(i) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971, while employed by the United States Postal Service, shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the

Fund, with any remaining amount paid by the United States Postal Service.] *shall be paid as provided in clause (ii).*

(ii) *With respect to the Government contributions required to be paid under clause (i)—*

*(I) the portion of the contributions that is equal to the amount of the net claims costs under the enrollment of the individuals described in clause (i) shall be paid from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund; and*

*(II) any remaining amount shall be paid by the United States Postal Service.*

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

(C) *For purposes of this paragraph, the amount of the net claims costs under the enrollment of an individual described in subparagraph (A)(i) shall be the amount, as determined by the Office over any particular period of time, equal to the difference between—*

*(i) the sum of—*

*(I) the costs incurred by a carrier in providing health services to, paying for health services provided to, or reimbursing expenses for health services provided to, the individual and any other person covered under the enrollment of the individual; and*

*(II) an amount of indirect expenses reasonably allocable to the provision, payment, or reimbursement described in subclause (I), as determined by the Office; and*

*(ii) the amount withheld from the annuity of the individual or otherwise paid by the individual under this section.*

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

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.

\* \* \* \* \*



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

(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

(c) The Secretary of the Treasury shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

(d)(1) Not later than June 30, 2007, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments **[required under section 8906(g)(2)(A)]** *required to be paid from the Postal Service Retiree Health Benefits Fund under section 8906(g)(2)(A)(ii)(I)* and attributable to the service of Postal Service employees during the most recently ended fiscal year.

**[(2)(A)** Not later than June 30, 2007, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

**[(i)** the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

**[(ii)(I)** the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

**[(II)** the net present value computed under paragraph (1).

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

*(2)(A) Not later than June 30, 2016, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute, a schedule including a series of annual installments which provide for the liquidation of the amount described under subparagraph (B) (regardless of whether the amount is a liability or surplus) by September 30, 2055, or within 15 years, whichever is later, including interest at the rate used in the computations under this subsection.*

*(B) The amount described in this subparagraph is the amount, as of the date on which the applicable computation or recomputation under subparagraph (A) is made, that is equal to the difference between—*

*(i) 100 percent of the Postal Service actuarial liability as of September 30 of the preceding fiscal year; and*

*(ii) the value of the assets of the Postal Service Retiree Health Benefits Fund as of September 30 of the preceding fiscal year.*

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

(i) \$5,400,000,000, not later than September 30, 2007;

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

(B) Not later than September 30, [2017] 2016, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

- (i) the net present value computed under [paragraph (1)] *paragraph (1), except to the extent the payment would cause the value of the assets in the Fund to exceed the Postal Service actuarial liability; and*
- (ii) any annual installment computed under [paragraph (2)(B).] *paragraph (2).*

[(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.]

(4) *Computations under this subsection shall be based on—*

(A) *economic and actuarial methods and assumptions consistent with the methods and assumptions used in determining the Postal surplus or supplemental liability under section 8348(h); and*

(B) *any other methods and assumptions, including a health care cost trend rate, that the Director of the Office determines to be appropriate.*

(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or re-determination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

(7) In this subsection, the term “Postal Service actuarial liability” means the difference between—

(A) the net present value of future payments required to be paid from the Postal Service Retiree Health Benefits Fund under section 8906(g)(2)(A)(i)(I) for current and future United States Postal Service annuitants; and

(B) the net present value as computed under paragraph (1) attributable to the future service of United States Postal Service employees.

(8) For purposes of computing an amount under paragraph (1) or (7)(A), section 8906(g)(2)(A)(i)(I) shall be applied as though “up to the amount contained in the Fund” were struck.

(e) Subsections (a) through (d) of this section shall be subject to section 102 of the Postal Service Reform Act of 2016.

\* \* \* \* \*

**SOCIAL SECURITY ACT**

\* \* \* \* \*

**TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED**

\* \* \* \* \*

**PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED**

\* \* \* \* \*

**ENROLLMENT PERIODS**

SEC. 1837. (a) An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

(c) In the case of individuals who first satisfy paragraph (1) or (2) of section 1836 before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after the date of enactment of this title and shall end on May 31, 1966. For purposes of this subsection and subsection (d), an individual who has attained age 65 and who satisfies paragraph (1) of section 1836 but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A.

(d) In the case of an individual who first satisfies paragraph (1) or (2) of section 1836 on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish

for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1838 as though he had attained such age at that time).

(e) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.

(f) Any individual—

(1) who is eligible under section 1836 to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) All of the provisions of this section shall apply to individuals satisfying subsection (f), except that—

(1) in the case of an individual who satisfies subsection (f) by reason of entitlement to disability insurance benefits described in section 226(b), his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1839(d)) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 202 or 223 on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 202 during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 202 on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1818 is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period de-

terminated on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

(i)(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is enrolled in a group health plan described in section 1862(b)(1)(A)(v) by reason of the individual's (or the individual's spouse's) current employment status, and

(B) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1836, is enrolled in a large group health plan (as that term is defined in section 1862(b)(1)(B)(iii)) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).

(2) In the case of an individual who—

(A)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(A);

(B) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1862(b)(1)(A)(v) by reason of the individual's (or individual's spouse's) current employment status; and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment status,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan (as that term is defined in section 1862(b)(1)(B)(iii)) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan by reason of the individual's current employment status (or the current employment status of a family member of the individual), there shall be a special enrollment period described in paragraph (3)(B).

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a group

health plan described in section 1862(b)(1)(A)(v) by reason of current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a large group health plan (as that term is defined in section 1862(b)(1)(B)(iii)) by reason of the individual's current employment status (or the current employment status of a family member of the individual) ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(4)(A) In the case of an individual who is entitled to benefits under part A pursuant to section 226(b) and—

(i) who at the time the individual first satisfies paragraph (1) of section 1836—

(I) is enrolled in a group health plan described in section 1862(b)(1)(A)(v) by reason of the individual's current or former employment or by reason of the current or former employment status of a member of the individual's family, and

(II) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; and

(ii) whose continuous enrollment under such group health plan is involuntarily terminated at a time when the enrollment under the plan is not by reason of the individual's current employment or by reason of the current employment of a member of the individual's family,

there shall be a special enrollment period described in subparagraph (B).

(B) The special enrollment period referred to in subparagraph (A) is the 6-month period beginning on the first day of the month which includes the date of the enrollment termination described in subparagraph (A)(ii).

(j) In applying this section in the case of an individual who is entitled to benefits under part A pursuant to the operation of section 226(h), the following special rules apply:

(1) The initial enrollment period under subsection (d) shall begin on the first day of the first month in which the individual satisfies the requirement of section 1836(1).

(2) In applying subsection (g)(1), the initial enrollment period shall begin on the first day of the first month of entitlement to disability insurance benefits referred to in such subsection.

(k)(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1836, is described in paragraph (3), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; or

(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3),

there shall be a special enrollment period described in paragraph (2).

(2) The special enrollment period described in this paragraph is the 6-month period beginning on the first day of the month which

includes the date that the individual is no longer described in paragraph (3).

(3) For purposes of paragraph (1), an individual described in this paragraph is an individual who—

(A) is serving as a volunteer outside of the United States through a program—

(i) that covers at least a 12-month period; and

(ii) that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(B) demonstrates health insurance coverage while serving in the program.

(1)(1) In the case of any individual who is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code) at the time the individual is entitled to part A under section 226(b) or section 226A and who is eligible to enroll but who has elected not to enroll (or to be deemed enrolled) during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (2).

(2) The special enrollment period described in this paragraph, with respect to an individual, is the 12-month period beginning on the day after the last day of the initial enrollment period of the individual or, if later, the 12-month period beginning with the month the individual is notified of enrollment under this section.

(3) In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under this part shall begin on the first day of the month in which the individual enrolls, or, at the option of the individual, the first month after the end of the individual's initial enrollment period.

(4) An individual may only enroll during the special enrollment period provided under paragraph (1) one time during the individual's lifetime.

(5) The Secretary shall ensure that the materials relating to coverage under this part that are provided to an individual described in paragraph (1) prior to the individual's initial enrollment period contain information concerning the impact of not enrolling under this part, including the impact on health care benefits under the TRICARE program under chapter 55 of title 10, United States Code.

(6) The Secretary of Defense shall collaborate with the Secretary of Health and Human Services and the Commissioner of Social Security to provide for the accurate identification of individuals described in paragraph (1). The Secretary of Defense shall provide such individuals with notification with respect to this subsection. The Secretary of Defense shall collaborate with the Secretary of Health and Human Services and the Commissioner of Social Security to ensure appropriate follow up pursuant to any notification provided under the preceding sentence.

*(m)(1) In the case of an individual who—*

*(A) is (i) a Postal Service Medicare covered annuitant, or (ii) an individual who is a family member of such an annuitant and is a covered Medicare individual;*

*(B) enrolls in a Program plan under section 8903c of title 5, United States Code; and*

*(C) is not enrolled under this part,*

*the individual is deemed, in accordance with section 8903c(e)(3) of such title, to have elected to be enrolled under this part.*

*(2) In the case of an individual who is deemed to be enrolled under paragraph (1), the coverage period under this part shall begin on the date that the individual first has coverage under the Program plan pursuant to the enrollment described in paragraph (1)(B).*

*(3) The definitions in section 8903c(a) of title 5, United States Code, shall apply for purposes of this subsection.*

\* \* \* \* \*

#### AMOUNTS OF PREMIUMS

SEC. 1839. (a)(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Subject to paragraphs (5) and (6), such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin. In applying this paragraph there shall not be taken into account additional payments under section 1848(o) and section 1853(l)(3) and the Government contribution under section 1844(a)(3).

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), (f), and (i), and to reflect any credit provided under section 1854(b)(1)(C)(ii)(III).

(3) The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that (except as provided in subsection (g)) is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year. Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium rate for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1).

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed



and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(5)(A) In applying this part (including subsection (i) and section 1833(b)), the monthly actuarial rate for enrollees age 65 and over for 2016 shall be determined as if subsection (f) did not apply.

(B) Subsection (f) shall continue to be applied to paragraph (6)(A) (during a repayment month, as described in paragraph (6)(B)) and without regard to the application of subparagraph (A).

(6)(A) With respect to a repayment month (as described in subparagraph (B)), the monthly premium otherwise established under paragraph (3) shall be increased by, subject to subparagraph (D), \$3.

(B) For purposes of this paragraph, a repayment month is a month during a year, beginning with 2016, for which a balance due amount is computed under subparagraph (C) as greater than zero.

(C) For purposes of this paragraph, the balance due amount computed under this subparagraph, with respect to a month, is the amount estimated by the Chief Actuary of the Centers for Medicare & Medicaid Services to be equal to—

(i) the amount transferred under section 1844(d)(1); plus

(ii) the amount that is equal to the aggregate reduction, for all individuals enrolled under this part, in the income related monthly adjustment amount as a result of the application of paragraph (5); minus

(iii) the amounts payable under this part as a result of the application of this paragraph for preceding months.

(D) If the balance due amount computed under subparagraph (C), without regard to this subparagraph, for December of a year would be less than zero, the Chief Actuary of the Centers for Medicare & Medicaid Services shall estimate, and the Secretary shall apply, a reduction to the dollar amount increase applied under subparagraph (A) for each month during such year in a manner such that the balance due amount for January of the subsequent year is equal to zero.

(b) In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837 or pursuant to subsection (m) of such section) and not pursuant to a special enrollment period under subsection (i)(4) or (l) of section 1837, the monthly premium determined under subsection (a) (without regard to any adjustment under subsection (i)) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1862(b)(1)(A)(v) by reason of

the individual's (or the individual's spouse's) current employment or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1862(b)(1)(B)(iii)) or months for which the individual can demonstrate that the individual was an individual described in section 1837(k)(3). Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have. No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.

(c) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) For purposes of subsection (b) (and section 1837(g)(1)), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1836 and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibility" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e)(1) Upon the request of a State (or any appropriate State or local governmental entity specified by the Secretary), the Secretary may enter into an agreement with the State (or such entity) under which the State (or such entity) agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

(3) In this subsection:

(A) The term "eligible individual" means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

(B) The term "part B late enrollment premium increase" means any increase in a premium as a result of the application of subsection (b).

(f) For any calendar year after 1988, if an individual is entitled to monthly benefits under section 202 or 223 or to a monthly annuity under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act of 1974 for November and December of the preceding year, if the

monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1840(a)(1) or section 1840(b)(1), and if the amount of the individual's premium is not adjusted for such January under subsection (i), the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to this subsection, to the extent that such increase would reduce the amount of benefits payable to that individual for that December below the amount of benefits payable to that individual for that November (after the deduction of the premium under this section). For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 202 or 223 or under the Railroad Retirement Act of 1974.

(g) In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3), the Secretary shall exclude an estimate of any benefits and administrative costs attributable to—

(1) the application of section 1861(v)(1)(L)(viii) or to the establishment under section 1861(v)(1)(L)(i)(V) of a per visit limit at 106 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this title is not being made under section 1895 (relating to prospective payment for home health services); and

(2) the medicare prescription drug discount card and transitional assistance program under section 1860D-31.

(h) POTENTIAL APPLICATION OF COMPARATIVE COST ADJUSTMENT IN CCA AREAS.—

(1) IN GENERAL.—Certain individuals who are residing in a CCA area under section 1860C-1 who are not enrolled in an MA plan under part C may be subject to a premium adjustment under subsection (f) of such section for months in which the CCA program under such section is in effect in such area.

(2) NO EFFECT ON LATE ENROLLMENT PENALTY OR INCOME-RELATED ADJUSTMENT IN SUBSIDIES.—Nothing in this subsection or section 1860C-1(f) shall be construed as affecting the amount of any premium adjustment under subsection (b) or (i). Subsection (f) shall be applied without regard to any premium adjustment referred to in paragraph (1).

(3) IMPLEMENTATION.—In order to carry out a premium adjustment under this subsection and section 1860C-1(f) (insofar as it is effected through the manner of collection of premiums under section 1840(a)), the Secretary shall transmit to the Commissioner of Social Security—

(A) at the beginning of each year, the name, social security account number, and the amount of the premium adjustment (if any) for each individual enrolled under this part for each month during the year; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(i) REDUCTION IN PREMIUM SUBSIDY BASED ON INCOME.—

(1) **IN GENERAL.**—In the case of an individual whose modified adjusted gross income exceeds the threshold amount under paragraph (2), the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2006 shall be reduced (and the monthly premium shall be increased) by the monthly adjustment amount specified in paragraph (3).

(2) **THRESHOLD AMOUNT.**—For purposes of this subsection, subject to paragraph (6), the threshold amount is—

(A) except as provided in subparagraph (B), \$80,000 (or, beginning with 2018, \$85,000), and

(B) in the case of a joint return, twice the amount applicable under subparagraph (A) for the calendar year.

(3) **MONTHLY ADJUSTMENT AMOUNT.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), the monthly adjustment amount specified in this paragraph for an individual for a month in a year is equal to the product of the following:

(i) **SLIDING SCALE PERCENTAGE.**—Subject to paragraph (6), the applicable percentage specified in the applicable table in subparagraph (C) for the individual minus 25 percentage points.

(ii) **UNSUBSIDIZED PART B PREMIUM AMOUNT.**—

(I) 200 percent of the monthly actuarial rate for enrollees age 65 and over (as determined under subsection (a)(1) for the year); plus

(II) 4 times the amount of the increase in the monthly premium under subsection (a)(6) for a month in the year.

(B) **3-YEAR PHASE IN.**—The monthly adjustment amount specified in this paragraph for an individual for a month in a year before 2009 is equal to the following percentage of the monthly adjustment amount specified in subparagraph (A):

- (i) For 2007, 33 percent.
- (ii) For 2008, 67 percent.

(C) **APPLICABLE PERCENTAGE.**—

(i) **IN GENERAL.**—

(I) Subject to paragraphs (5) and (6), for years before 2018:

<b>If the modified adjusted gross income is:</b>	<b>The applicable percentage is:</b>
More than \$80,000 but not more than \$100,000 .....	35 percent
More than \$100,000 but not more than \$150,000 .....	50 percent
More than \$150,000 but not more than \$200,000 .....	65 percent
More than \$200,000 .....	80 percent.

(II) Subject to paragraph (5), for years beginning with 2018:

<b>If the modified adjusted gross income is:</b>	<b>The applicable percentage is:</b>
More than \$85,000 but not more than \$107,000 .....	35 percent

More than \$107,000 but not more than \$133,500 .....	50 percent
More than \$133,500 but not more than \$160,000 .....	65 percent
More than \$160,000 .....	80 percent.

(ii) **JOINT RETURNS.**—In the case of a joint return, clause (i) shall be applied by substituting dollar amounts which are twice the dollar amounts otherwise applicable under clause (i) for the calendar year.

(iii) **MARRIED INDIVIDUALS FILING SEPARATE RETURNS.**—In the case of an individual who—

(I) is married as of the close of the taxable year (within the meaning of section 7703 of the Internal Revenue Code of 1986) but does not file a joint return for such year, and

(II) does not live apart from such individual's spouse at all times during the taxable year,

clause (i) shall be applied by reducing each of the dollar amounts otherwise applicable under such clause for the calendar year by the threshold amount for such year applicable to an unmarried individual.

(4) **MODIFIED ADJUSTED GROSS INCOME.**—

(A) **IN GENERAL.**—For purposes of this subsection, the term “modified adjusted gross income” means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

(i) determined without regard to sections 135, 911, 931, and 933 of such Code; and

(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax under such Code.

In the case of an individual filing a joint return, any reference in this subsection to the modified adjusted gross income of such individual shall be to such return's modified adjusted gross income.

(B) **TAXABLE YEAR TO BE USED IN DETERMINING MODIFIED ADJUSTED GROSS INCOME.**—

(i) **IN GENERAL.**—In applying this subsection for an individual's premiums in a month in a year, subject to clause (ii) and subparagraph (C), the individual's modified adjusted gross income shall be such income determined for the individual's last taxable year beginning in the second calendar year preceding the year involved.

(ii) **TEMPORARY USE OF OTHER DATA.**—If, as of October 15 before a calendar year, the Secretary of the Treasury does not have adequate data for an individual in appropriate electronic form for the taxable year referred to in clause (i), the individual's modified adjusted gross income shall be determined using the data in such form from the previous taxable year. Except as provided in regulations prescribed by the Commissioner of Social Security in consultation with the

Secretary, the preceding sentence shall cease to apply when adequate data in appropriate electronic form are available for the individual for the taxable year referred to in clause (i), and proper adjustments shall be made to the extent that the premium adjustments determined under the preceding sentence were inconsistent with those determined using such taxable year.

(iii) NON-FILERS.—In the case of individuals with respect to whom the Secretary of the Treasury does not have adequate data in appropriate electronic form for either taxable year referred to in clause (i) or clause (ii), the Commissioner of Social Security, in consultation with the Secretary, shall prescribe regulations which provide for the treatment of the premium adjustment with respect to such individual under this subsection, including regulations which provide for—

(I) the application of the highest applicable percentage under paragraph (3)(C) to such individual if the Commissioner has information which indicates that such individual's modified adjusted gross income might exceed the threshold amount for the taxable year referred to in clause (i), and

(II) proper adjustments in the case of the application of an applicable percentage under subclause (I) to such individual which is inconsistent with such individual's modified adjusted gross income for such taxable year.

(C) USE OF MORE RECENT TAXABLE YEAR.—

(i) IN GENERAL.—The Commissioner of Social Security in consultation with the Secretary of the Treasury shall establish a procedures under which an individual's modified adjusted gross income shall, at the request of such individual, be determined under this subsection—

(I) for a more recent taxable year than the taxable year otherwise used under subparagraph (B), or

(II) by such methodology as the Commissioner, in consultation with such Secretary, determines to be appropriate, which may include a methodology for aggregating or disaggregating information from tax returns in the case of marriage or divorce.

(ii) STANDARD FOR GRANTING REQUESTS.—A request under clause (i)(I) to use a more recent taxable year may be granted only if—

(I) the individual furnishes to such Commissioner with respect to such year such documentation, such as a copy of a filed Federal income tax return or an equivalent document, as the Commissioner specifies for purposes of determining the premium adjustment (if any) under this subsection; and

(II) the individual's modified adjusted gross income for such year is significantly less than such

income for the taxable year determined under subparagraph (B) by reason of the death of such individual's spouse, the marriage or divorce of such individual, or other major life changing events specified in regulations prescribed by the Commissioner in consultation with the Secretary.

(5) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year beginning after 2007 (other than 2018 and 2019), each dollar amount in paragraph (2) or (3) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2006 (or, in the case of a calendar year beginning with 2020, August 2018).

(B) ROUNDING.—If any dollar amount after being increased under subparagraph (A) is not a multiple of \$1,000, such dollar amount shall be rounded to the nearest multiple of \$1,000.

(6) TEMPORARY ADJUSTMENT TO INCOME THRESHOLDS.—Notwithstanding any other provision of this subsection, during the period beginning on January 1, 2011, and ending on December 31, 2017—

(A) the threshold amount otherwise applicable under paragraph (2) shall be equal to such amount for 2010; and

(B) the dollar amounts otherwise applicable under paragraph (3)(C)(i) shall be equal to such dollar amounts for 2010.

(7) JOINT RETURN DEFINED.—For purposes of this subsection, the term “joint return” has the meaning given to such term by section 7701(a)(38) of the Internal Revenue Code of 1986.

(j) *TRANSITION FOR NEWLY ENROLLING POSTAL SERVICE ANNUITANTS AND FAMILY MEMBERS.*—*With respect to each individual who is enrolled under this part pursuant to and during the open enrollment period established under section 1837(m) and who is not eligible for Medicare cost-sharing described in section 1905(p)(3)(A)(ii) under a State plan under title XIX, the premium otherwise established under this part (taking into account any adjustments, including those under subsections (b) and (i)) for a month—*

*(1) in the initial contract year (as defined in section 8903c(a) of title 5, United States Code), shall be reduced by 75 percent;*

*(2) in the succeeding year, shall be reduced by 50 percent; and*

*(3) in the second succeeding year, shall be reduced by 25 percent.*

\* \* \* \* \*

APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND  
CONTINGENCY RESERVE

SEC. 1844. (a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1839(a)(1) for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(a)(3), to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1839(a)(4) for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(a)(3), to

(ii) the dollar amount of the premium per enrollee for such month; minus

(C) the aggregate amount of additional premium payments attributable to the application of section 1839(i); plus

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited; plus

(3) a Government contribution equal to the amount of payment incentives payable under sections 1848(o) and 1853(l)(3).

In applying paragraph (1), the amounts transferred [under subsection (d)(1) with respect to enrollees described in subparagraphs (A) and (B) of such subsection] *under subsections (d)(1) and (d)(4) with respect to enrollees described in subparagraphs (A) and (B) of such respective subsection* shall be treated as premiums payable and deposited in the Trust Fund under subparagraphs (A) and (B), respectively, of paragraph (1).

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to pro-



vide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to \$18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

(c) The Secretary shall determine the Government contribution under subparagraphs (A) and (B) of subsection (a)(1) without regard to any premium reduction resulting from an election under section 1854(f)(1)(E) or any credits provided under section 1854(b)(1)(C)(iv) and without regard to any premium adjustment effected under section 1839(i).

(d)(1) For 2016, there shall be transferred from the General Fund to the Trust Fund an amount, as estimated by the Chief Actuary of the Centers for Medicare & Medicaid Services, equal to the reduction in aggregate premiums payable under this part for a month in such year (excluding any changes in amounts collected under section 1839(i)) that is attributable to the application of section 1839(a)(5)(A) with respect to—

- (A) enrollees age 65 and over; and
- (B) enrollees under age 65.

Such amounts shall be transferred from time to time as appropriate.

(2) Premium increases affected under section 1839(a)(6) shall not be taken into account in applying subsection (a).

(3) There shall be transferred from the Trust Fund to the General Fund of the Treasury amounts equivalent to the additional premiums payable as a result of the application of section 1839(a)(6), excluding the aggregate payments attributable to the application of section 1839(i)(3)(A)(ii)(II).

(4) *For each year, there shall be transferred from the Postal Service Fund to the Trust Fund an amount, as estimated by the Chief Actuary of the Centers for Medicare & Medicaid Services, equal to the reduction in aggregate premiums payable under this part for a month in such year that is attributable to the application of section 1839(j) with respect to—*

- (A) enrollees age 65 and over; and*
- (B) enrollees under age 65.*

*Such amounts shall be transferred from time to time as appropriate but, to the extent practicable, on an annual basis and in a manner that places the Trust Fund in the same actuarial status as if this paragraph and section 1839(j) did not apply.*

\* \* \* \* \*

PART E—MISCELLANEOUS PROVISIONS

\* \* \* \* \*

EXCLUSIONS FROM COVERAGE AND MEDICARE AS SECONDARY PAYER

SEC. 1862. (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1)(A) which, except for items and services described in a succeeding subparagraph or additional preventive services (as described in section 1861(ddd)(1)), are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Medicare Payment Advisory Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1886(e)(6),

(E) in the case of research conducted pursuant to section 1142, which is not reasonable and necessary to carry out the purposes of that section,

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1834(c)(2) or which is not conducted by a facility described in section 1834(c)(1)(B), in the case of screening pap smear and screening pelvic exam, which is performed more frequently than is provided under section 1861(nn), and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1861(uu),

(G) in the case of prostate cancer screening tests (as defined in section 1861(oo)), which are performed more frequently than is covered under such section,

(H) in the case of colorectal cancer screening tests, which are performed more frequently than is covered under section 1834(d),

(I) the frequency and duration of home health services which are in excess of normative guidelines that the Secretary shall establish by regulation,

(J) in the case of a drug or biological specified in section 1847A(c)(6)(C) for which payment is made under part B that is furnished in a competitive area under section 1847B, that is not furnished by an entity under a contract under such section,

(K) in the case of an initial preventive physical examination, which is performed more than 1 year after the date the individual's first coverage period begins under part B,

(L) in the case of cardiovascular screening blood tests (as defined in section 1861(xx)(1)), which are performed more frequently than is covered under section 1861(xx)(2),

(M) in the case of a diabetes screening test (as defined in section 1861(yy)(1)), which is performed more frequently than is covered under section 1861(yy)(3),

(N) in the case of ultrasound screening for abdominal aortic aneurysm which is performed more frequently than is provided for under section 1861(s)(2)(AA),

(O) in the case of kidney disease education services (as defined in paragraph (1) of section 1861(ggg)), which are fur-

nished in excess of the number of sessions covered under paragraph (4) of such section, and

(P) in the case of personalized prevention plan services (as defined in section 1861(hhh)(1)), which are performed more frequently than is covered under such section;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for, except in the case of Federally qualified health center services;

(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1861(aa)(1), in the case of Federally qualified health center services, as defined in section 1861(aa)(3), in the case of services for which payment may be made under section 1880(e), and in such other cases as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1814(f) and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this title, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(7) where such expenses are for routine physical checkups, eyeglasses (other than eyewear described in section 1861(s)(8)) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1861(s)(10) and subparagraph (B), (F), (G), (H), (K), or (P) of paragraph (1));

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet, other than shoes furnished pursuant to section 1861(s)(12);

(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care);

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1861(s)(2)(K), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or critical access hospital by an entity other than the hospital or critical access hospital, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the hospital or critical access hospital;

(15)(A) which are for services of an assistant at surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate quality improvement organization (under part B of title XI) or a carrier under section 1842 has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition, or

(B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies;

(16) in the case in which funds may not be used for such items and services under the Assisted Suicide Funding Restriction Act of 1997;

(17) where the expenses are for an item or service furnished in a competitive acquisition area (as established by the Secretary under section 1847(a)) by an entity other than an entity with which the Secretary has entered into a contract under section 1847(b) for the furnishing of such an item or service in that area, unless the Secretary finds that the expenses were incurred in a case of urgent need, or in other circumstances specified by the Secretary;

(18) which are covered skilled nursing facility services described in section 1888(e)(2)(A)(i) and which are furnished to an individual who is a resident of a skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1861(s)(2)(D), which are furnished to such an individual without regard to such period), by an entity other than the skilled nursing facility, unless the services are furnished under

arrangements (as defined in section 1861(w)(1)) with the entity made by the skilled nursing facility;

(19) which are for items or services which are furnished pursuant to a private contract described in section 1802(b);

(20) in the case of outpatient physical therapy services, outpatient speech-language pathology services, or outpatient occupational therapy services furnished as an incident to a physician's professional services (as described in section 1861(s)(2)(A)), that do not meet the standards and conditions (other than any licensing requirement specified by the Secretary) under the second sentence of section 1861(p) (or under such sentence through the operation of subsection (g) or (l)(2) of section 1861) as such standards and conditions would apply to such therapy services if furnished by a therapist;

(21) where such expenses are for home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who is under a plan of care of the home health agency if the claim for payment for such services is not submitted by the agency;

(22) subject to subsection (h), for which a claim is submitted other than in an electronic form specified by the Secretary;

(23) which are the technical component of advanced diagnostic imaging services described in section 1834(e)(1)(B) for which payment is made under the fee schedule established under section 1848(b) and that are furnished by a supplier (as defined in section 1861(d)), if such supplier is not accredited by an accreditation organization designated by the Secretary under section 1834(e)(2)(B);

(24) where such expenses are for renal dialysis services (as defined in subparagraph (B) of section 1881(b)(14)) for which payment is made under such section unless such payment is made under such section to a provider of services or a renal dialysis facility for such services; or

(25) not later than January 1, 2014, for which the payment is other than by electronic funds transfer (EFT) or an electronic remittance in a form as specified in ASC X12 835 Health Care Payment and Remittance Advice or subsequent standard.

Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B). In making a national coverage determination (as defined in paragraph (1)(B) of section 1869(f)) the Secretary shall ensure consistent with subsection (l) that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.

(b) MEDICARE AS SECONDARY PAYER.—

## (1) REQUIREMENTS OF GROUP HEALTH PLANS.—

## (A) WORKING AGED UNDER GROUP HEALTH PLANS.—

## (i) IN GENERAL.—A group health plan—

(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this title under section 226(a), and

(II) shall provide that any individual age 65 or older (and the spouse age 65 or older of any individual) who has current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.

(ii) EXCLUSION OF GROUP HEALTH PLAN OF A SMALL EMPLOYER.—Clause (i) shall not apply to a group health plan unless the plan is a plan of, or contributed to by, an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

(iii) EXCEPTION FOR SMALL EMPLOYERS IN MULTIEMPLOYER OR MULTIPLE EMPLOYER GROUP HEALTH PLANS.—Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

(iv) EXCEPTION FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.—Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 226) would upon application be, entitled to benefits under section 226A.

(v) GROUP HEALTH PLAN DEFINED.—In this subparagraph, and subparagraph (C), the term "group health plan" has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code

## (B) DISABLED INDIVIDUALS IN LARGE GROUP HEALTH PLANS.—

(i) IN GENERAL.—A large group health plan (as defined in clause (iii)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this title under section 226(b).

(ii) EXCEPTION FOR INDIVIDUALS WITH END STAGE RENAL DISEASE.—Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 226) would upon application be, entitled to benefits under section 226A.

(iii) LARGE GROUP HEALTH PLAN DEFINED.—In this subparagraph, the term “large group health plan” has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(C) INDIVIDUALS WITH END STAGE RENAL DISEASE.—A group health plan (as defined in subparagraph (A)(v))—

(i) may not take into account that an individual is entitled to or eligible for benefits under this title under section 226A during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A under the provisions of section 226A, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 226A if the individual had filed an application for such benefits; and

(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner;

except that clause (ii) shall not prohibit a plan from paying benefits secondary to this title when an individual is entitled to or eligible for benefits under this title under section 226A after the end of the 12-month period described in clause (i). Effective for items and services furnished on or after February 1, 1991, and before the date of enactment of the Balanced Budget Act of 1997 (with respect to periods beginning on or after February 1, 1990), this subparagraph shall be applied by substituting “18- month” for “12-month” each place it appears. Effective for items and services furnished on or after the date of enactment of the Balanced Budget Act of 1997, (with respect to periods beginning on or after the date that is 18 months prior to such date), clauses (i) and (ii) shall be applied by substituting “30-month” for “12-month” each place it appears.

(D) TREATMENT OF CERTAIN MEMBERS OF RELIGIOUS ORDERS.—In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.

(E) GENERAL PROVISIONS.—For purposes of this subsection:

(i) AGGREGATION RULES.—

(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.

(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.

(ii) CURRENT EMPLOYMENT STATUS DEFINED.—An individual has “current employment status” with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

(iii) TREATMENT OF SELF-EMPLOYED PERSONS AS EMPLOYERS.—The term “employer” includes a self-employed person.

(F) LIMITATION ON BENEFICIARY LIABILITY.—An individual who is entitled to benefits under this title and is furnished an item or service for which such benefits are incorrectly paid is not liable for repayment of such benefits under this paragraph unless payment of such benefits was made to the individual.

(2) MEDICARE SECONDARY PAYER.—

(A) IN GENERAL.—Payment under this title may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—

(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or

(ii) payment has been made or can reasonably be expected to be made under a workmen’s compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

In the subsection, the term “primary plan” means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen’s compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

(B) CONDITIONAL PAYMENT.—



(i) **AUTHORITY TO MAKE CONDITIONAL PAYMENT.**—The Secretary may make payment under this title with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

(ii) **REPAYMENT REQUIRED.**—Subject to paragraph (9), a primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this title with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) **ACTION BY UNITED STATES.**—In order to recover payment made under this title for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with

the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan. An action may not be brought by the United States under this clause with respect to payment owed unless the complaint is filed not later than 3 years after the date of the receipt of notice of a settlement, judgment, award, or other payment made pursuant to paragraph (8) relating to such payment owed.

(iv) SUBROGATION RIGHTS.—The United States shall be subrogated (to the extent of payment made under this title for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

(v) WAIVER OF RIGHTS.—The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this title.

(vi) CLAIMS-FILING PERIOD.—Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this subsection to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.

(vii) USE OF WEBSITE TO DETERMINE FINAL CONDITIONAL REIMBURSEMENT AMOUNT.—

(I) NOTICE TO SECRETARY OF EXPECTED DATE OF A SETTLEMENT, JUDGMENT, ETC.—In the case of a payment made by the Secretary pursuant to clause (i) for items and services provided to the claimant, the claimant or applicable plan (as defined in paragraph (8)(F)) may at any time beginning 120 days before the reasonably expected date of a settlement, judgment, award, or other payment, notify the Secretary that a payment is reasonably expected and the expected date of such payment.

(II) SECRETARIAL PROVIDING ACCESS TO CLAIMS INFORMATION THROUGH A WEBSITE.—The Secretary shall maintain and make available to individuals to whom items and services are furnished under this title (and to authorized family or other representatives recognized under regulations and to an applicable plan which has obtained the consent of the individual) access to information on the claims for such items and services (including payment amounts for such claims), including those claims that relate to a potential settlement, judg-

ment, award, or other payment. Such access shall be provided to an individual, representative, or plan through a website that requires a password to gain access to the information. The Secretary shall update the information on claims and payments on such website in as timely a manner as possible but not later than 15 days after the date that payment is made. Information related to claims and payments subject to the notice under subclause (I) shall be maintained and made available consistent with the following:

(aa) The information shall be as complete as possible and shall include provider or supplier name, diagnosis codes (if any), dates of service, and conditional payment amounts.

(bb) The information accurately identifies those claims and payments that are related to a potential settlement, judgment, award, or other payment to which the provisions of this subsection apply.

(cc) The website provides a method for the receipt of secure electronic communications with the individual, representative, or plan involved.

(dd) The website provides that information is transmitted from the website in a form that includes an official time and date that the information is transmitted.

(ee) The website shall permit the individual, representative, or plan to download a statement of reimbursement amounts (in this clause referred to as a “statement of reimbursement amount”) on payments for claims under this title relating to a potential settlement, judgment, award, or other payment.

(III) USE OF TIMELY WEB DOWNLOAD AS BASIS FOR FINAL CONDITIONAL AMOUNT.—If an individual (or other claimant or applicable plan with the consent of the individual) obtains a statement of reimbursement amount from the website during the protected period as defined in subclause (V) and the related settlement, judgment, award or other payment is made during such period, then the last statement of reimbursement amount that is downloaded during such period and within 3 business days before the date of the settlement, judgment, award, or other payment shall constitute the final conditional amount subject to recovery under clause (ii) related to such settlement, judgment, award, or other payment.

(IV) RESOLUTION OF DISCREPANCIES.—If the individual (or authorized representative) believes there is a discrepancy with the statement of reimbursement amount, the Secretary shall provide a timely process to resolve the discrepancy. Under

such process the individual (or representative) must provide documentation explaining the discrepancy and a proposal to resolve such discrepancy. Within 11 business days after the date of receipt of such documentation, the Secretary shall determine whether there is a reasonable basis to include or remove claims on the statement of reimbursement. If the Secretary does not make such determination within the 11 business-day period, then the proposal to resolve the discrepancy shall be accepted. If the Secretary determines within such period that there is not a reasonable basis to include or remove claims on the statement of reimbursement, the proposal shall be rejected. If the Secretary determines within such period that there is a reasonable basis to conclude there is a discrepancy, the Secretary must respond in a timely manner by agreeing to the proposal to resolve the discrepancy or by providing documentation showing with good cause why the Secretary is not agreeing to such proposal and establishing an alternate discrepancy resolution. In no case shall the process under this subclause be treated as an appeals process or as establishing a right of appeal for a statement of reimbursement amount and there shall be no administrative or judicial review of the Secretary's determinations under this subclause.

(V) PROTECTED PERIOD.—In subclause (III), the term “protected period” means, with respect to a settlement, judgment, award or other payment relating to an injury or incident, the portion (if any) of the period beginning on the date of notice under subclause (I) with respect to such settlement, judgment, award, or other payment that is after the end of a Secretarial response period beginning on the date of such notice to the Secretary. Such Secretarial response period shall be a period of 65 days, except that such period may be extended by the Secretary for a period of an additional 30 days if the Secretary determines that additional time is required to address claims for which payment has been made. Such Secretarial response period shall be extended and shall not include any days for any part of which the Secretary determines (in accordance with regulations) that there was a failure in the claims and payment posting system and the failure was justified due to exceptional circumstances (as defined in such regulations). Such regulations shall define exceptional circumstances in a manner so that not more than 1 percent of the repayment obligations under this subclause would qualify as exceptional circumstances.

(VI) EFFECTIVE DATE.—The Secretary shall promulgate final regulations to carry out this clause

not later than 9 months after the date of the enactment of this clause.

(VII) WEBSITE INCLUDING SUCCESSOR TECHNOLOGY.—In this clause, the term “website” includes any successor technology.

(viii) RIGHT OF APPEAL FOR SECONDARY PAYER DETERMINATIONS RELATING TO LIABILITY INSURANCE (INCLUDING SELF-INSURANCE), NO FAULT INSURANCE, AND WORKERS’ COMPENSATION LAWS AND PLANS.—The Secretary shall promulgate regulations establishing a right of appeal and appeals process, with respect to any determination under this subsection for a payment made under this title for an item or service for which the Secretary is seeking to recover conditional payments from an applicable plan (as defined in paragraph (8)(F)) that is a primary plan under subsection (A)(ii), under which the applicable plan involved, or an attorney, agent, or third party administrator on behalf of such plan, may appeal such determination. The individual furnished such an item or service shall be notified of the plan’s intent to appeal such determination

(C) TREATMENT OF QUESTIONNAIRES.—The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.

(3) ENFORCEMENT.—

(A) PRIVATE CAUSE OF ACTION.—There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

(B) REFERENCE TO EXCISE TAX WITH RESPECT TO NONCONFORMING GROUP HEALTH PLANS.—For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN OR A LARGE GROUP HEALTH PLAN.—It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this title not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)). Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed \$5,000 for each such violation. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(4) COORDINATION OF BENEFITS.—Where payment for an item or service by a primary plan is less than the amount of the

charge for such item or service and is not payment in full, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of such charge, but—

(A) payment under this title may not exceed an amount which would be payable under this title for such item or service if paragraph (2)(A) did not apply; and

(B) payment under this title, when combined with the amount payable under the primary plan, may not exceed—

(i) in the case of an item or service payment for which is determined under this title on the basis of reasonable cost (or other cost-related basis) or under section 1886, the amount which would be payable under this title on such basis, and

(ii) in the case of an item or service for which payment is authorized under this title on another basis—

(I) the amount which would be payable under the primary plan (without regard to deductibles and coinsurance under such plan), or

(II) the reasonable charge or other amount which would be payable under this title (without regard to deductibles and coinsurance under this title),

whichever is greater.

(5) IDENTIFICATION OF SECONDARY PAYER SITUATIONS.—

(A) REQUESTING MATCHING INFORMATION.—

(i) COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(l)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

(ii) ADMINISTRATOR.—The Administrator of the Centers for Medicare & Medicaid Services shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(l)(12) of the Internal Revenue Code of 1986.

(B) DISCLOSURE TO FISCAL INTERMEDIARIES AND CARRIERS.—In addition to any other information provided under this title to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under subparagraph (A) for purposes of carrying out this subsection.

(C) CONTACTING EMPLOYERS.—

(i) IN GENERAL.—With respect to each individual (in this subparagraph referred to as an “employee”) who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(l)(12)(E)(iii) of

such Code), as disclosed under subparagraph (B), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

(ii) EMPLOYER RESPONSE.—Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed \$1,000 for each individual with respect to which such an inquiry is made. The provision of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

(D) OBTAINING INFORMATION FROM BENEFICIARIES.—Before an individual applies for benefits under part A or enrolls under part B, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.

(E) END DATE.—The provisions of this paragraph shall not apply to information required to be provided on or after July 1, 2016.

(6) SCREENING REQUIREMENTS FOR PROVIDERS AND SUPPLIERS.—

(A) IN GENERAL.—Notwithstanding any other provision of this title, no payment may be made for any item or service furnished under part B unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

(B) PENALTIES.—An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed \$2,000 for each such incident. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

## (7) REQUIRED SUBMISSION OF INFORMATION BY GROUP HEALTH PLANS.—

(A) REQUIREMENT.—On and after the first day of the first calendar quarter beginning after the date that is 1 year after the date of the enactment of this paragraph, an entity serving as an insurer or third party administrator for a group health plan, as defined in paragraph (1)(A)(v), and, in the case of a group health plan that is self-insured and self-administered, a plan administrator or fiduciary, shall—

(i) secure from the plan sponsor and plan participants such information as the Secretary shall specify for the purpose of identifying situations where the group health plan is or has been a primary plan to the program under this title; and

(ii) submit such information to the Secretary in a form and manner (including frequency) specified by the Secretary.

## (B) ENFORCEMENT.—

(i) IN GENERAL.—An entity, a plan administrator, or a fiduciary described in subparagraph (A) that fails to comply with the requirements under such subparagraph shall be subject to a civil money penalty of \$1,000 for each day of noncompliance for each individual for which the information under such subparagraph should have been submitted. The provisions of subsections (e) and (k) of section 1128A shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this title with respect to an individual.

(ii) DEPOSIT OF AMOUNTS COLLECTED.—Any amounts collected pursuant to clause (i) shall be deposited in the Federal Hospital Insurance Trust Fund under section 1817.

(C) SHARING OF INFORMATION.—Notwithstanding any other provision of law, under terms and conditions established by the Secretary, the Secretary—

(i) shall share information on entitlement under Part A and enrollment under Part B under this title with entities, plan administrators, and fiduciaries described in subparagraph (A);

(ii) may share the entitlement and enrollment information described in clause (i) with entities and persons not described in such clause; and

(iii) may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits.

(D) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.



(8) REQUIRED SUBMISSION OF INFORMATION BY OR ON BEHALF OF LIABILITY INSURANCE (INCLUDING SELF-INSURANCE), NO FAULT INSURANCE, AND WORKERS' COMPENSATION LAWS AND PLANS.—

(A) REQUIREMENT.—On and after the first day of the first calendar quarter beginning after the date that is 18 months after the date of the enactment of this paragraph, an applicable plan shall—

(i) determine whether a claimant (including an individual whose claim is unresolved) is entitled to benefits under the program under this title on any basis; and

(ii) if the claimant is determined to be so entitled, submit the information described in subparagraph (B) with respect to the claimant to the Secretary in a form and manner (including frequency) specified by the Secretary.

(B) REQUIRED INFORMATION.—The information described in this subparagraph is—

(i) the identity of the claimant for which the determination under subparagraph (A) was made; and

(ii) such other information as the Secretary shall specify in order to enable the Secretary to make an appropriate determination concerning coordination of benefits, including any applicable recovery claim.

Not later than 18 months after the date of enactment of this sentence, the Secretary shall modify the reporting requirements under this paragraph so that an applicable plan in complying with such requirements is permitted but not required to access or report to the Secretary beneficiary social security account numbers or health identification claim numbers, except that the deadline for such modification shall be extended by one or more periods (specified by the Secretary) of up to 1 year each if the Secretary notifies the committees of jurisdiction of the House of Representatives and of the Senate that the prior deadline for such modification, without such extension, threatens patient privacy or the integrity of the secondary payer program under this subsection. Any such deadline extension notice shall include information on the progress being made in implementing such modification and the anticipated implementation date for such modification.

(C) TIMING.—Information shall be submitted under subparagraph (A)(ii) within a time specified by the Secretary after the claim is resolved through a settlement, judgment, award, or other payment (regardless of whether or not there is a determination or admission of liability).

(D) CLAIMANT.—For purposes of subparagraph (A), the term “claimant” includes—

(i) an individual filing a claim directly against the applicable plan; and

(ii) an individual filing a claim against an individual or entity insured or covered by the applicable plan.

(E) ENFORCEMENT.—

(i) IN GENERAL.—An applicable plan that fails to comply with the requirements under subparagraph (A) with respect to any claimant may be subject to a civil money penalty of up to \$1,000 for each day of non-compliance with respect to each claimant. The provisions of subsections (e) and (k) of section 1128A shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this title with respect to an individual.

(ii) DEPOSIT OF AMOUNTS COLLECTED.—Any amounts collected pursuant to clause (i) shall be deposited in the Federal Hospital Insurance Trust Fund.

(F) APPLICABLE PLAN.—In this paragraph, the term “applicable plan” means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan, or arrangement:

- (i) Liability insurance (including self-insurance).
- (ii) No fault insurance.
- (iii) Workers’ compensation laws or plans.

(G) SHARING OF INFORMATION.—The Secretary may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits.

(H) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.

(I) REGULATIONS.—Not later than 60 days after the date of the enactment of this subparagraph, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for the specification of practices for which sanctions will and will not be imposed under subparagraph (E), including not imposing sanctions for good faith efforts to identify a beneficiary pursuant to this paragraph under an applicable entity responsible for reporting information. After considering the proposals so submitted, the Secretary, in consultation with the Attorney General, shall publish in the Federal Register, including a 60-day period for comment, proposed specified practices for which such sanctions will and will not be imposed. After considering any public comments received during such period, the Secretary shall issue final rules specifying such practices.

(9) EXCEPTION.—

(A) IN GENERAL.—Clause (ii) of paragraph (2)(B) and any reporting required by paragraph (8) shall not apply with respect to any settlement, judgment, award, or other payment by an applicable plan arising from liability insurance (including self-insurance) and from alleged physical trauma-based incidents (excluding alleged ingestion, implantation, or exposure cases) constituting a total payment obligation to a claimant of not more than the single threshold

amount calculated by the Secretary under subparagraph (B) for the year involved.

(B) ANNUAL COMPUTATION OF THRESHOLD.—

(i) IN GENERAL.—Not later than November 15 before each year, the Secretary shall calculate and publish a single threshold amount for settlements, judgments, awards, or other payments for obligations arising from liability insurance (including self-insurance) and for alleged physical trauma-based incidents (excluding alleged ingestion, implantation, or exposure cases) subject to this section for that year. The annual single threshold amount for a year shall be set such that the estimated average amount to be credited to the Medicare trust funds of collections of conditional payments from such settlements, judgments, awards, or other payments arising from liability insurance (including self-insurance) and for such alleged incidents subject to this section shall equal the estimated cost of collection incurred by the United States (including payments made to contractors) for a conditional payment arising from liability insurance (including self-insurance) and for such alleged incidents subject to this section for the year. At the time of calculating, but before publishing, the single threshold amount for 2014, the Secretary shall inform, and seek review of, the Comptroller General of the United States with regard to such amount.

(ii) PUBLICATION.—The Secretary shall include, as part of such publication for a year—

(I) the estimated cost of collection incurred by the United States (including payments made to contractors) for a conditional payment arising from liability insurance (including self-insurance) and for such alleged incidents; and

(II) a summary of the methodology and data used by the Secretary in computing such threshold amount and such cost of collection.

(C) EXCLUSION OF ONGOING EXPENSES.—For purposes of this paragraph and with respect to a settlement, judgment, award, or other payment not otherwise addressed in clause (ii) of paragraph (2)(B) that includes ongoing responsibility for medical payments (excluding settlements, judgments, awards, or other payments made by a workers' compensation law or plan or no fault insurance), the amount utilized for calculation of the threshold described in subparagraph (A) shall include only the cumulative value of the medical payments made under this title.

(D) REPORT TO CONGRESS.—Not later than November 15 before each year, the Secretary shall submit to the Congress a report on the single threshold amount for settlements, judgments, awards, or other payments for conditional payment obligations arising from liability insurance (including self-insurance) and alleged incidents described in subparagraph (A) for that year and on the establishment and application of similar thresholds for such pay-

ments for conditional payment obligations arising from worker compensation cases and from no fault insurance cases subject to this section for the year. For each such report, the Secretary shall—

(i) calculate the threshold amount by using the methodology applicable to certain liability claims described in subparagraph (B); and

(ii) include a summary of the methodology and data used in calculating each threshold amount and the amount of estimated savings under this title achieved by the Secretary implementing each such threshold.

(10) *COORDINATION OF BENEFITS WITH POSTAL SERVICE HEALTH BENEFITS PLANS.*—*The previous provisions of this subsection are superseded to the extent the Secretary determines, in consultation with the Office of Personnel Management, them to be inconsistent with section 8903c(f) of title 5, United States Code.*

(c) No payment may be made under part B for any expenses incurred for—

(1) a drug product—

(A) which is described in section 107(c)(3) of the Drug Amendments of 1962,

(B) which may be dispensed only upon prescription,

(C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 505 of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and

(D) for which the Secretary has not determined there is a compelling justification for its medical need; and

(2) any other drug product—

(A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and

(B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.

(d) For purposes of subsection (a)(1)(A), in the case of any item or service that is required to be provided pursuant to section 1867 to an individual who is entitled to benefits under this title, determinations as to whether the item or service is reasonable and necessary shall be made on the basis of the information available to the treating physician or practitioner (including the patient's presenting symptoms or complaint) at the time the item or service was ordered or furnished by the physician or practitioner (and not on the patient's principal diagnosis). When making such determinations with respect to such an item or service, the Secretary shall not consider the frequency with which the item or service was provided to the patient before or after the time of the admission or visit.

(e)(1) No payment may be made under this title with respect to any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1128, 1128A, 1156 or 1842(j)(2) from participation in the program under this title; or

(B) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1128, 1128A, 1156 or 1842(j)(2) from participation in the program under this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(2) Where an individual eligible for benefits under this title submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this title, pursuant to section 1128, 1128A, 1156, 1160 (as in effect on September 2, 1982), 1842(j)(2), 1862(d) (as in effect on the date of the enactment of the Medicare and Medicaid Patient and Program Protection Act of 1987), or 1866, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this title, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.

(f) The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A) of subsection (a), under part A or part B for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.

(g) The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a), and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this title, enter into contracts with quality improvement organizations pursuant to part B of title XI of this Act.

(h)(1) The Secretary—

(A) shall waive the application of subsection (a)(22) in cases in which—

(i) there is no method available for the submission of claims in an electronic form; or

(ii) the entity submitting the claim is a small provider of services or supplier; and

(B) may waive the application of such subsection in such unusual cases as the Secretary finds appropriate.

(2) For purposes of this subsection, the term “small provider of services or supplier” means—

(A) a provider of services with fewer than 25 full-time equivalent employees; or

(B) a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

(i) In order to supplement the activities of the Medicare Payment Advisory Commission under section 1886(e) in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1886(e)(6)(E) with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(j)(1) Any advisory committee appointed to advise the Secretary on matters relating to the interpretation, application, or implementation of subsection (a)(1) shall assure the full participation of a nonvoting member in the deliberations of the advisory committee, and shall provide such nonvoting member access to all information and data made available to voting members of the advisory committee, other than information that—

(A) is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b)(4) of such section (relating to trade secrets); or

(B) the Secretary determines would present a conflict of interest relating to such nonvoting member.

(2) If an advisory committee described in paragraph (1) organizes into panels of experts according to types of items or services considered by the advisory committee, any such panel of experts may report any recommendation with respect to such items or services directly to the Secretary without the prior approval of the advisory committee or an executive committee thereof.

(k)(1) Subject to paragraph (2), a group health plan (as defined in subsection (a)(1)(A)(v)) providing supplemental or secondary coverage to individuals also entitled to services under this title shall not require a medicare claims determination under this title for dental benefits specifically excluded under subsection (a)(12) as a condition of making a claims determination for such benefits under the group health plan.

(2) A group health plan may require a claims determination under this title in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under this title pursuant to actions taken by the Secretary.

(1) NATIONAL AND LOCAL COVERAGE DETERMINATION PROCESS.—

(1) **FACTORS AND EVIDENCE USED IN MAKING NATIONAL COVERAGE DETERMINATIONS.**—The Secretary shall make available to the public the factors considered in making national coverage determinations of whether an item or service is reasonable and necessary. The Secretary shall develop guidance documents to carry out this paragraph in a manner similar to the development of guidance documents under section 701(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)).

(2) **TIMEFRAME FOR DECISIONS ON REQUESTS FOR NATIONAL COVERAGE DETERMINATIONS.**—In the case of a request for a national coverage determination that—

(A) does not require a technology assessment from an outside entity or deliberation from the Medicare Coverage Advisory Committee, the decision on the request shall be made not later than 6 months after the date of the request; or

(B) requires such an assessment or deliberation and in which a clinical trial is not requested, the decision on the request shall be made not later than 9 months after the date of the request.

(3) **PROCESS FOR PUBLIC COMMENT IN NATIONAL COVERAGE DETERMINATIONS.**—

(A) **PERIOD FOR PROPOSED DECISION.**—Not later than the end of the 6-month period (or 9-month period for requests described in paragraph (2)(B)) that begins on the date a request for a national coverage determination is made, the Secretary shall make a draft of proposed decision on the request available to the public through the Internet website of the Centers for Medicare & Medicaid Services or other appropriate means.

(B) **30-DAY PERIOD FOR PUBLIC COMMENT.**—Beginning on the date the Secretary makes a draft of the proposed decision available under subparagraph (A), the Secretary shall provide a 30-day period for public comment on such draft.

(C) **60-DAY PERIOD FOR FINAL DECISION.**—Not later than 60 days after the conclusion of the 30-day period referred to under subparagraph (B), the Secretary shall—

(i) make a final decision on the request;

(ii) include in such final decision summaries of the public comments received and responses to such comments;

(iii) make available to the public the clinical evidence and other data used in making such a decision when the decision differs from the recommendations of the Medicare Coverage Advisory Committee; and

(iv) in the case of a final decision under clause (i) to grant the request for the national coverage determination, the Secretary shall assign a temporary or permanent code (whether existing or unclassified) and implement the coding change.

(4) **CONSULTATION WITH OUTSIDE EXPERTS IN CERTAIN NATIONAL COVERAGE DETERMINATIONS.**—With respect to a request for a national coverage determination for which there is not a review by the Medicare Coverage Advisory Committee, the Secretary shall consult with appropriate outside clinical experts.

## (5) LOCAL COVERAGE DETERMINATION PROCESS.—

(A) PLAN TO PROMOTE CONSISTENCY OF COVERAGE DETERMINATIONS.—The Secretary shall develop a plan to evaluate new local coverage determinations to determine which determinations should be adopted nationally and to what extent greater consistency can be achieved among local coverage determinations.

(B) CONSULTATION.—The Secretary shall require the fiscal intermediaries or carriers providing services within the same area to consult on all new local coverage determinations within the area.

(C) DISSEMINATION OF INFORMATION.—The Secretary should serve as a center to disseminate information on local coverage determinations among fiscal intermediaries and carriers to reduce duplication of effort.

## (6) NATIONAL AND LOCAL COVERAGE DETERMINATION DEFINED.—For purposes of this subsection—

(A) NATIONAL COVERAGE DETERMINATION.—The term “national coverage determination” means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this title.

(B) LOCAL COVERAGE DETERMINATION.—The term “local coverage determination” has the meaning given that in section 1869(f)(2)(B).

## (m) COVERAGE OF ROUTINE COSTS ASSOCIATED WITH CERTAIN CLINICAL TRIALS OF CATEGORY A DEVICES.—

(1) IN GENERAL.—In the case of an individual entitled to benefits under part A, or enrolled under part B, or both who participates in a category A clinical trial, the Secretary shall not exclude under subsection (a)(1) payment for coverage of routine costs of care (as defined by the Secretary) furnished to such individual in the trial.

(2) CATEGORY A CLINICAL TRIAL.—For purposes of paragraph (1), a “category A clinical trial” means a trial of a medical device if—

(A) the trial is of an experimental/investigational (category A) medical device (as defined in regulations under section 405.201(b) of title 42, Code of Federal Regulations (as in effect as of September 1, 2003));

(B) the trial meets criteria established by the Secretary to ensure that the trial conforms to appropriate scientific and ethical standards; and

(C) in the case of a trial initiated before January 1, 2010, the device involved in the trial has been determined by the Secretary to be intended for use in the diagnosis, monitoring, or treatment of an immediately life-threatening disease or condition.

## (n) REQUIREMENT OF A SURETY BOND FOR CERTAIN PROVIDERS OF SERVICES AND SUPPLIERS.—

(1) IN GENERAL.—The Secretary may require a provider of services or supplier described in paragraph (2) to provide the Secretary on a continuing basis with a surety bond in a form specified by the Secretary in an amount (not less than \$50,000) that the Secretary determines is commensurate with the vol-



ume of the billing of the provider of services or supplier. The Secretary may waive the requirement of a bond under the preceding sentence in the case of a provider of services or supplier that provides a comparable surety bond under State law.

(2) PROVIDER OF SERVICES OR SUPPLIER DESCRIBED.—A provider of services or supplier described in this paragraph is a provider of services or supplier the Secretary determines appropriate based on the level of risk involved with respect to the provider of services or supplier, and consistent with the surety bond requirements under sections 1834(a)(16)(B) and 1861(o)(7)(C).

(o) SUSPENSION OF PAYMENTS PENDING INVESTIGATION OF CREDIBLE ALLEGATIONS OF FRAUD.—

(1) IN GENERAL.—The Secretary may suspend payments to a provider of services or supplier under this title pending an investigation of a credible allegation of fraud against the provider of services or supplier, unless the Secretary determines there is good cause not to suspend such payments.

(2) CONSULTATION.—The Secretary shall consult with the Inspector General of the Department of Health and Human Services in determining whether there is a credible allegation of fraud against a provider of services or supplier.

(3) PROMULGATION OF REGULATIONS.—The Secretary shall promulgate regulations to carry out this subsection and section 1903(i)(2)(C).

\* \* \* \* \*

**TITLE 39, UNITED STATES CODE**

\* \* \* \* \*

**PART I. GENERAL**

Chapter	Sec.
1. Postal Policy and Definitions .....	101
2. Organization .....	201
4. General Authority .....	401
5. Postal Regulatory Commission .....	501
6. Private Carriage of Letters .....	601
<b>7. Contracting Provisions .....</b>	<b>701</b>
* * * * *	

**PART I—GENERAL**

\* \* \* \* \*

**CHAPTER 1—POSTAL POLICY AND DEFINITIONS**

\* \* \* \* \*

**§ 102. Definitions**

As used in this title—

(1) “Postal Service” means the United States Postal Service established by section 201 of this title;

(2) “Board of Governors”, and “Board”, unless the context otherwise requires, mean the Board of Governors established under section 202 of this title;

(3) “Governors” means the **[9 members]** *5 members* of the Board of Governors appointed by the President, by and with the advice and consent of the Senate, under **[section 202(a)]** *section 202(b)(1)* of this title;

(4) “Inspector General” means **[the Inspector General appointed under section 202(e) of this title]** *the Inspector General of the Postal Community as described in section 8M of the Inspector General Act of 1978 (5 U.S.C. App.)*;

(5) “postal service” refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto;

(6) “product” means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied;

(7) “rates”, as used with respect to products, includes fees for postal services;

(8) “market-dominant product” or “product in the market-dominant category of mail” means a product subject to subchapter I of chapter 36;

(9) “competitive product” or “product in the competitive category of mail” means a product subject to subchapter II of chapter 36; and

(10) “year”, as used in chapter 36 (other than subchapters I and VI thereof), means a fiscal year.

\* \* \* \* \*

**CHAPTER 2—ORGANIZATION**

Sec.						
201. United States Postal Service.	*	*	*	*	*	*
<b>[203. Postmaster General; Deputy Postmaster General.]</b>						
203. <i>Postmaster General.</i>	*	*	*	*	*	*
209. <i>Chief Innovation Officer.</i>						
	*	*	*	*	*	*

**[§ 202. Board of Governors**

[(a)(1) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the field of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size; except that at least 4 of the Governors shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) that employ at least 50,000 employees. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause. Each Gov-

ernor shall receive a salary of \$30,000 a year plus \$300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

[(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.

[(b)(1) The terms of the 9 Governors shall be 7 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term. A Governor may continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year.

[(2) No person may serve more than 2 terms as a Governor.

[(c) The Governors shall appoint and shall have the power to remove the Postmaster General, who shall be a voting member of the Board. His pay and term of service shall be fixed by the Governors.

[(d) The Governors and the Postmaster General shall appoint and shall have the power to remove the Deputy Postmaster General, who shall be a voting member of the Board. His term of service shall be fixed by the Governors and the Postmaster General and his pay by the Governors.

[(e)(1) The Governors shall appoint and shall have the power to remove the Inspector General.

[(2) The Inspector General shall be appointed—

[(A) for a term of 7 years;

[(B) without regard to political affiliation; and

[(C) solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

[(3) The Inspector General may at any time be removed upon the written concurrence of at least 7 Governors, but only for cause. Nothing in this subsection shall be considered to exempt the Governors from the requirements of section 8G(e) of the Inspector General Act of 1978.

### **§ 203. Postmaster General; Deputy Postmaster General**

[The chief executive officer of the Postal Service is the Postmaster General appointed under section 202(c) of this title. The alternate chief executive officer of the Postal Service is the Deputy Postmaster General appointed under section 202(d) of this title.]

### **§ 202. Board of Governors**

(a) *IN GENERAL.*—*There is established in the Postal Service a Board of Governors composed of 5 Governors, a Postmaster General,*

and a Deputy Postmaster General, all of whom shall be appointed in accordance with this section. The Governors shall have the power to—

(1) exercise the powers of the Postal Service, consistent with section 203(c);

(2) appoint, fix the term of service of, and remove the Postmaster General;

(3) in consultation with the Postmaster General, appoint, fix the term of service of, and remove the Deputy Postmaster General;

(4) set the strategic direction of postal operations and approve the pricing and product strategy for the Postal Service;

(5) set the compensation of the Postmaster General and the Deputy Postmaster General in accordance with private sector best practices, as determined by the Governors pursuant to section 3686; and

(6) carry out any other duties specifically provided for in this title.

(b) APPOINTMENT; PAY.—

(1) *IN GENERAL.*—The Governors shall be appointed by the President, by and with the advice and consent of the Senate, not more than 3 of whom may be adherents of the same political party. The Governors shall elect a Chair from among their members. The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the field of public administration, law, or accounting, or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size, except that at least 3 of the Governors shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) that employ at least 10,000 employees. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause.

(2) *COMPENSATION.*—Each Governor shall receive a salary of \$30,000 a year plus \$300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

(3) *CONSULTATION.*—In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.

(c) TERMS OF GOVERNORS.—

(1) *IN GENERAL.*—The terms of the 5 Governors shall be 7 years, except that the terms of the 5 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, and 1 at the end of 5 years, following the appointment of the first of them. Any Governor appointed to fill a vacancy before the expiration of the term for which the Governor's predecessor was appointed shall

*serve for the remainder of such term. A Governor may continue to serve after the expiration of the Governor's term until his successor has qualified, but not to exceed one year.*

*(2) LIMITATION.—No individual may serve more than 2 terms as a Governor.*

*(d) STAFF.—The Chair of the Board of Governors shall ensure that the Board has appropriate independent staff to carry out the roles and responsibilities of the Board.*

### **§ 203. Postmaster General**

*(a) IN GENERAL.—The chief executive officer of the Postal Service is the Postmaster General, appointed pursuant to section 202(a)(1). The alternate chief executive officer of the Postal Service is the Deputy Postmaster General, appointed pursuant to section 202(a)(2) of this title.*

*(b) POWERS.—Consistent with the requirements of this title, the exercise of the power of the Postal Service shall be vested in the Governors and carried out by the Postmaster General in a manner consistent with the strategic direction and pricing and product strategy approved by the Governors. The Postmaster General shall consult with the Governors and the Deputy Postmaster General in carrying out such power.*

### **§ 204. General Counsel; Judicial Officer; Chief Postal Inspector**

There shall be within the Postal Service a General Counsel, such number of Assistant Postmasters General as [the Board] *the Postmaster General* shall consider appropriate, a Judicial Officer, and a Chief Postal Inspector. The General Counsel, the Assistant Postmasters General, the Judicial Officer, and the Chief Postal Inspector shall be appointed by, and serve at the pleasure of, the Postmaster General. The Judicial Officer shall perform such quasi-judicial duties, not inconsistent with chapter 36 of this title, as the Postmaster General may designate. The Judicial Officer shall be the agency for the purposes of the requirements of chapter 5 of title 5, to the extent that functions are delegated to him by the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify [the Governors and] both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for the removal or transfer.

### **§ 205. Procedures of the Board of Governors**

[(a) The Board shall direct and control the expenditures and review the practices and policies of the Postal Service, and perform other functions and duties prescribed by this title.

[(b) Vacancies in the Board, as long as there are sufficient members to form a quorum, shall not impair the powers of the Board under this title.

[(c) The Board shall act upon majority vote of those members who are present, and any 6 members present shall constitute a quorum for the transaction of business by the Board, except—

[(1) that in the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, a favorable vote of an absolute majority of the Governors in office shall be required;

[(2) that in the appointment or removal of the Deputy Postmaster General, a favorable vote of an absolute majority of the Governors in office and the member serving as Postmaster General shall be required; and

[(3) as otherwise provided in this title.

[(d) No officer or employee of the United States may serve concurrently as a Governor. A Governor may hold any other office or employment not inconsistent or in conflict with his duties, responsibilities, and powers as an officer of the Government of the United States in the Postal Service.]

**§ 205. Procedures of the Board of Governors**

(a) *VACANCIES.*—*Vacancies in the Board shall not impair the powers of the Board under this title.*

(b) *VOTE.*—*The Board shall act upon majority vote of those members who are present, subject to such quorum requirements as the Board may establish.*

(c) *LIMITATION.*—*No officer or employee of the United States may serve concurrently as a Governor. A Governor may hold any other office or employment not inconsistent or in conflict with the Governor’s duties, responsibilities, and powers as an officer of the Government of the United States in the Postal Service.*

\* \* \* \* \*

**§ 207. Seal**

The seal of the Postal Service shall be filed by [the Board] *the Postal Service* in the Office of the Secretary of State, judicially noticed, affixed to all commissions of officers of the Postal Service, and used to authenticate records of the Postal Service.

\* \* \* \* \*

**§ 209. Chief Innovation Officer**

(a) *IN GENERAL.*—*There is established within the Postal Service the position of Chief Innovation Officer, appointed by the Postmaster General, who shall manage the Postal Service’s development and implementation of innovative postal and nonpostal products and services.*

(b) *DUTIES.*—*The primary duties of the Chief Innovation Officer are as follows:*

(1) *Leading the development of innovative nonpostal products and services that will maximize revenue to the Postal Service.*

(2) *Developing innovative postal products and services, specifically those that utilize emerging information technologies, to maximize revenue to the Postal Service.*

(3) *Implementing the innovation strategy described under subsection (d).*

(4) *Monitoring the performance of innovative products and services and revising them as needed to meet changing market trends.*

(5) *Taking into consideration comments or advisory opinions, if applicable, issued by the Postal Regulatory Commission prior to the initial sale of innovative postal or nonpostal products and services.*

(c) **APPOINTMENT.**—

(1) **DEADLINE.**—*As soon as practicable after the date of enactment of the Postal Service Reform Act of 2016, but no later than 6 months after such date, the Postmaster General shall appoint a Chief Innovation Officer.*

(2) **REQUIREMENTS.**—*Any individual appointed to serve as the Chief Innovation Officer shall have proven expertise and a record of success in at least 1 of the following: postal and shipping industry; innovation product research and development; marketing brand strategy; emerging communications technology; or business process management.*

(3) **CURRENT OFFICER OR EMPLOYEE ELIGIBLE.**—*An officer or employee of the Postal Service may be appointed to the position of Chief Innovation Officer under this chapter. Upon appointment to such position, such officer or employee may not concurrently hold any other position in the Postal Service.*

(d) **INNOVATION STRATEGY.**—

(1) **IN GENERAL.**—*Not later than 12 months after the date on which the Chief Innovation Officer is appointed under subsection (c)(1), the Postmaster General shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Postal Regulatory Commission a comprehensive strategy for maximizing revenues through innovative postal and nonpostal products and services.*

(2) **MATTERS TO BE ADDRESSED.**—*The strategy submitted under paragraph (1) shall address—*

(A) *the specific innovative postal and nonpostal products and services to be developed and offered by the Postal Service, including the nature of the market to be filled by each product and service and the likely date by which each product and service will be introduced;*

(B) *the cost of developing and offering each product or service;*

(C) *the anticipated sales volume of each product and service;*

(D) *the anticipated revenues and profits expected to be generated by each product and service;*

(E) *the likelihood of success of each product and service as well as the risks associated with the development and sale of each product and service;*

(F) *the trends anticipated in market conditions that may affect the success of each product and service over the 5-year period beginning on the date such strategy or update is submitted;*

(G) *the metrics that will be utilized to assess the effectiveness of the innovation strategy; and*

(H) *the specific methods by which mailpiece design analysis may be improved to speed the approval process and promote the increased use of innovative mailpiece design.*

(3) *STRATEGY UPDATES.*—On January 1, 2018, and every 3 years thereafter, the Postal Service shall submit an update to the innovation strategy submitted under paragraph (1) to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Postal Regulatory Commission.

(e) *REPORT.*—

(1) *IN GENERAL.*—On the date of submission of the President’s annual budget under section 1105(a) of title 31, the Postmaster General shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Postal Regulatory Commission a report that details the Postal Service’s progress in implementing the innovation strategy described under subsection (d).

(2) *MATTERS TO BE ADDRESSED.*—The report required under paragraph (1) shall address—

(A) the revenue generated by each product and service developed through the innovation strategy and the costs of developing and offering each such product and service for the most recent fiscal year;

(B) the total sales volume and revenue generated by each product and service on a monthly basis for the preceding year;

(C) trends in the markets filled by each product and service;

(D) products and services identified in the innovation strategy that are to be discontinued, the date on which the discontinuance will occur, and the reasons for the discontinuance;

(E) alterations in products and services identified in the innovation strategy that will be made to meet changing market conditions, and an explanation of how these alterations will ensure the success of the products and services; and

(F) the performance of the innovation strategy according to the metrics identified in subsection (d)(2)(G).

(f) *COMPTROLLER GENERAL STUDY.*—

(1) *IN GENERAL.*—The Comptroller General shall conduct a study on the implementation of the innovation strategy described under subsection (d) not later than 4 years after the date of enactment of the Postal Service Reform Act of 2016.

(2) *CONTENTS.*—The study required under paragraph (1) shall assess the effectiveness of the Postal Service in identifying, developing, and selling innovative postal and nonpostal products and services. The study shall also include—

(A) an audit of the costs of developing each innovative postal and nonpostal product and service developed or offered by the Postal Service during the period beginning on the date of enactment of the Postal Service Reform Act of 2016 and ending 4 years after such date;

(B) the sales volume of each such product and service;

(C) the revenues and profits generated by each such product and service; and



*(D) the likelihood of continued success of each such product and service.*

*(3) SUBMISSION.—The results of the study required under this subsection shall be submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Postal Regulatory Commission.*

\* \* \* \* \*

**CHAPTER 4—GENERAL AUTHORITY**

\* \* \* \* \*

**§ 402. Delegation of authority**

**【**Except for those powers, duties, or obligations specifically vested in the Governors, as distinguished from the Board of Governors, the Board may delegate the authority vested in it to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it deems desirable. The Board may establish such committees of the Board, and delegate such powers to any committee, as the Board determines appropriate to carry out its functions and duties. Delegations to the Postmaster General or committees shall be consistent with other provisions of this title, shall not relieve the Board of full responsibility for the carrying out of its duties and functions, and shall be revocable by the Governors in their exclusive judgment.**】**

**§ 402. Delegation of authority**

*(a) POSTMASTER GENERAL.—The Postmaster General may delegate his or her authority under such terms, conditions, and limitations, including the power of redelegation, as he or she determines desirable. The Postmaster General may establish such committees of officers and employees of the Postal Service, and delegate such powers to any committee, as the Postmaster General determines appropriate to carry out his or her functions and duties. Delegations under this section shall be consistent with other provisions of this title, shall not relieve the Postmaster General of full responsibility for the carrying out the Postmaster General’s duties and functions, and shall be revocable by the Postmaster General.*

*(b) BOARD OF GOVERNORS.—The Board may establish such committees of the Board, and delegate such powers to any committee, as the Board determines appropriate to carry out its functions and duties. Delegations to committees shall be consistent with other provisions of this title, shall not relieve the Board of full responsibility for the carrying out of its duties and functions, and shall be revocable by the Board in its exclusive judgment.*

\* \* \* \* \*

**§ 404. Specific powers**

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

- (1) to provide for the collection, handling, transportation, delivery, forwarding, returning, and holding of mail, and for the disposition of undeliverable mail;

(2) to prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid;

(3) to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed;

(4) to provide and sell postage stamps and other stamped paper, cards, and envelopes and to provide such other evidences of payment of postage and fees as may be necessary or desirable;

(5) to provide philatelic services;

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

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

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

(b) Except as otherwise provided, the Governors are authorized to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage and fees for postal services in accordance with the provisions of chapter 36. Postal rates and fees shall be reasonable and equitable and sufficient to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

(c) The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.

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

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

*(A) provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to postal patrons served by such post office;*

(B) conduct a nonbinding survey on the proposed closing or consolidation to allow postal patrons served by such post office an opportunity to indicate their preference between or among—

- (i) the closing or consolidation; and
- (ii) 1 or more alternative options; and

(C) ensure that—

(i) should the closure or consolidation of a postal retail facility be deemed necessary, it shall be the policy of the Postal Service to provide alternative access to postal services to those served by the postal retail facility by the option chosen by the highest number of survey respondents under subparagraph (B)(ii); and

(ii) if the Postal Service is unable to provide alternative access through the option identified in clause (i), or if that option is cost prohibitive, the Postal Service may provide alternative access through a different means. Upon selection of an alternative access method other than the one identified by clause (i), the Postal Service must provide written notice to those patrons served by the postal retail facility identifying and explaining why the option identified by clause (i) was not possible or cost prohibitive.

(2) The Postal Service, in making a determination whether or not to close or consolidate a post office—

(A) shall consider—

【(i) the effect of such closing or consolidation on the community served by such post office;】

(i) the effect of such closing or consolidation on the community served by such post office, including through an analysis of—

(I) the distance (as measured by public roads) to the closest postal retail facility not proposed for closure or consolidation under such plan;

(II) the characteristics of such location, including weather and terrain;

(III) whether commercial mobile service (as defined in section 332 of the Communications Act of 1934) and commercial mobile data service (as defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012) are available in at least 80 percent of the total geographic area of the ZIP codes served by the postal retail facility proposed for closure or consolidation; and

(IV) whether fixed broadband Internet access service is available to households in at least 80 percent of such geographic area at speeds not less than those sufficient for service to be considered broadband for purposes of the most recent report of the Federal Communications Commission under section 706 of the Telecommunications Act of 1996;

(ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;

(iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section

101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;

(iv) the economic savings to the Postal Service resulting from such closing or consolidation; and

(v) such other factors as the Postal Service determines are necessary; and

(B) may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(3) Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such post office.

(4) The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.

(5) A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person under paragraph (3). The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than ~~120 days~~ *60 days, or a longer period for good cause shown but in no event longer than 120 days*, after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings, and conclusions found to be—

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

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

(C) unsupported by substantial evidence on the record.

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

(6) For purposes of paragraph (5), any appeal received by the Commission shall—

(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed; or

(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).

(7) *For purposes of this subsection, the term “post office” means a post office and any other facility described in section 2(2) of the Postal Service Reform Act of 2016.*

(e)(1) In this subsection, the term “nonpostal service” means any service that is not a postal service defined under section 102(5).

(2) Nothing in this section shall be considered to permit or require that the Postal Service provide any nonpostal service, except that the Postal Service may provide nonpostal services which were offered as of January 1, 2006, as provided under this subsection, *or any nonpostal products or services authorized by chapter 37.*

(3) Not later than 2 years after the date of enactment of the Postal Accountability and Enhancement Act, the Postal Regulatory Commission shall review each nonpostal service offered by the Postal Service on the date of enactment of that Act and determine whether that nonpostal service shall continue, taking into account—

(A) the public need for the service; and

(B) the ability of the private sector to meet the public need for the service.

(4) Any nonpostal service not determined to be continued by the Postal Regulatory Commission under paragraph (3) shall terminate.

(5) If the Postal Regulatory Commission authorizes the Postal Service to continue a nonpostal service under this subsection, the Postal Regulatory Commission shall designate whether the service shall be regulated under this title as a market dominant product, a competitive product, or an experimental product.

(6) *Licensing which, before the date of enactment of this paragraph, has been authorized by the Postal Regulatory Commission for continuation as a nonpostal service may not be used for any purpose other than—*

(A) *to continue to provide licensed mailing, shipping, or stationery supplies offered as of June 23, 2011; or*

(B) *to license other goods, products, or services, the primary purpose of which is to promote and enhance the image or brand of the Postal Service.*

(7) *Nothing in this section shall be considered to prevent the Postal Service from establishing nonpostal products and services that are expressly authorized by chapter 37.*

#### **§ 404a. Specific limitations**

(a) Except as specifically authorized by law, the Postal Service may not—

(1) establish any rule or regulation (including any standard) the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service;

(2) compel the disclosure, transfer, or licensing of intellectual property to any third party (such as patents, copyrights, trademarks, trade secrets, and proprietary information); **[or]**

(3) obtain information from a person that provides (or seeks to provide) any product, and then offer any postal service that uses or is based in whole or in part on such information, with-

out the consent of the person providing that information, unless substantially the same information is obtained (or obtainable) from an independent source or is otherwise obtained (or obtainable) **[.1]**; or

*(4) offer to the public any postage-evidencing product or service that does not comply with any rule or regulation that would be applicable to such product or service if the product or service were offered by a private company.*

(b) The Postal Regulatory Commission shall prescribe regulations to carry out this section.

(c) Any party (including an officer of the Commission representing the interests of the general public) who believes that the Postal Service has violated this section may bring a complaint in accordance with section 3662.

\* \* \* \* \*

#### **§ 407. International postal arrangements**

(a) It is the policy of the United States—

(1) to promote and encourage communications between peoples by efficient operation of international postal services and other international delivery services for cultural, social, and economic purposes;

(2) to promote and encourage unrestricted and undistorted competition in the provision of international postal services and other international delivery services, except where provision of such services by private companies may be prohibited by law of the United States;

(3) to promote and encourage a clear distinction between governmental and operational responsibilities with respect to the provision of international postal services and other international delivery services by the Government of the United States and by intergovernmental organizations of which the United States is a member; and

(4) to participate in multilateral and bilateral agreements with other countries to accomplish these objectives.

(b)(1) The Secretary of State shall be responsible for formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services and shall have the power to conclude postal treaties, conventions, and amendments related to international postal services and other international delivery services, except that the Secretary may not conclude any treaty, convention, or other international agreement (including those regulating international postal services) if such treaty, convention, or agreement would, with respect to any competitive product, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person.

(2) In carrying out the responsibilities specified in paragraph (1), the Secretary of State shall exercise primary authority for the conduct of foreign policy with respect to international postal services and international delivery services, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this authority, the Secretary—

(A) shall coordinate with other agencies as appropriate, and in particular, shall give full consideration to the authority vested by law or Executive order in the Postal Regulatory Commission, the Department of Commerce, the Department of Transportation, and the Office of the United States Trade Representative in this area;

(B) shall maintain continuing liaison with other executive branch agencies concerned with postal and delivery services;

(C) shall maintain continuing liaison with the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives;

(D) shall maintain appropriate liaison with both representatives of the Postal Service and representatives of users and private providers of international postal services and other international delivery services to keep informed of their interests and problems, and to provide such assistance as may be needed to ensure that matters of concern are promptly considered by the Department of State or (if applicable, and to the extent practicable) other executive branch agencies; and

(E) shall assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international postal services and international delivery services.

(3) The Secretary of State shall establish an advisory committee (within the meaning of the Federal Advisory Committee Act) to perform such functions as the Secretary considers appropriate in connection with carrying out subparagraphs (A) through (D) of paragraph (2).

(c)(1) Before concluding any treaty, convention, or amendment that establishes a rate or classification for a product subject to subchapter I of chapter 36, the Secretary of State shall request the Postal Regulatory Commission to submit its views on whether such rate or classification is consistent with the standards and criteria established by the Commission under section 3622.

(2) The Secretary shall ensure that each treaty, convention, or amendment concluded under subsection (b) is consistent with the views submitted by the Commission pursuant to paragraph (1), except if, or to the extent, the Secretary determines, in writing, that it is not in the foreign policy or national security interest of the United States to ensure consistency with the Commission's views. Such written determination shall be provided to the Commission together with a full explanation of the reasons thereof, provided that the Secretary may designate which portions of the determination or explanation shall be kept confidential for reasons of foreign policy or national security.

(d) Nothing in this section shall be considered to prevent the Postal Service from entering into such commercial or operational contracts related to providing international postal services and other international delivery services as it deems appropriate, except that—

(1) any such contract made with an agency of a foreign government (whether under authority of this subsection or other-

wise) shall be solely contractual in nature and may not purport to be international law; and

(2) a copy of each such contract between the Postal Service and an agency of a foreign government shall be transmitted to the Secretary of State and the Postal Regulatory Commission not later than the effective date of such contract.

(e)(1) In this subsection, the term “private company” means a private company substantially owned or controlled by persons who are citizens of the United States.

(2) With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

(3) In exercising the authority under subsection (b) to conclude new postal treaties and conventions related to international postal services and to renegotiate such treaties and conventions, the Secretary of State shall, to the maximum extent practicable, take such measures as are within the Secretary’s control to encourage the governments of other countries to make available to the Postal Service and private companies a range of nondiscriminatory customs procedures that will fully meet the needs of all types of American shippers. The Secretary of State shall consult with the United States Trade Representative and the Commissioner of U.S. Customs and Border Protection in carrying out this paragraph.

(4) The provisions of this subsection shall take effect 6 months after the date of enactment of this subsection or such earlier date as the Bureau of Customs and Border Protection of the Department of Homeland Security may determine in writing.

*(f) After submission to the Postal Regulatory Commission by the Department of State of the budget detailing the estimated costs of carrying out the activities under this section, and the Commission’s review and approval of such submission, the Postal Service shall transfer to the Department of State, from any funds available to the Postal Service, such sums as may be reasonable, documented, and auditable for the Department of State to carry out such activities.*

\* \* \* \* \*

**§ 411. Cooperation with other Government agencies**

Executive agencies within the meaning of section 105 of title 5 and the Government Publishing Office are authorized to furnish property, both real and personal, and personal and nonpersonal services to the Postal Service, and the Postal Service is authorized to furnish property and services to them. The furnishing of property and services under this section shall be under such terms and conditions, **[including reimbursability]** *including reimbursability within the limitations of chapter 37*, as the Postal Service and the head of the agency concerned shall deem appropriate.

\* \* \* \* \*



#### § 414. Special postage stamps

(a) In order to afford the public a convenient way to contribute to funding for breast cancer research, the Postal Service shall establish a special rate of postage for first-class mail under this section.

(b) The rate of postage established under this section—

(1) shall be equal to the regular first-class rate of postage, plus a differential of not less than 15 percent;

(2) shall be set by **the Governors** *the Postal Service* in accordance with such procedures as **the Governors** *the Postal Service* shall by regulation prescribe (in lieu of the procedures under chapter 36); and

(3) shall be offered as an alternative to the regular first-class rate of postage.

The use of the special rate of postage established under this section shall be voluntary on the part of postal patrons. The special rate of postage of an individual stamp under this section shall be an amount that is evenly divisible by 5.

(c)(1) Of the amounts becoming available for breast cancer research pursuant to this section, the Postal Service shall pay—

(A) 70 percent to the National Institutes of Health; and

(B) the remainder to the Department of Defense.

Payments under this paragraph to an agency shall be made under such arrangements as the Postal Service shall by mutual agreement with such agency establish in order to carry out the purposes of this section, except that, under those arrangements, payments to such agency shall be made at least twice a year. An agency that receives amounts from the Postal Service under this paragraph shall use the amounts for breast cancer research.

(2) For purposes of this section, the term “amounts becoming available for breast cancer research pursuant to this section” means—

(A) the total amounts received by the Postal Service that it would not have received but for the enactment of this section, reduced by

(B) an amount sufficient to cover reasonable costs incurred by the Postal Service in carrying out this section, including those attributable to the printing, sale, and distribution of stamps under this section, as determined by the Postal Service under regulations that it shall prescribe.

(d) It is the sense of the Congress that nothing in this section should—

(1) directly or indirectly cause a net decrease in total funds received by the National Institutes of Health, the Department of Defense, or any other agency of the Government (or any component or program thereof) below the level that would otherwise have been received but for the enactment of this section; or

(2) affect regular first-class rates of postage or any other regular rates of postage.

(e) Special postage stamps under this section shall be made available to the public beginning on such date as the Postal Service shall by regulation prescribe, but in no event later than 12 months after the date of the enactment of this section.

(f) The Postmaster General shall include in each report rendered under section 2402 with respect to any period during any portion of which this section is in effect information concerning the operation of this section, except that, at a minimum, each shall include—

(1) the total amount described in subsection (c)(2)(A) which was received by the Postal Service during the period covered by such report; and

(2) of the amount under paragraph (1), how much (in the aggregate and by category) was required for the purposes described in subsection (c)(2)(B).

(g) For purposes of section 416 (including any regulation prescribed under subsection (e)(1)(C) of that section), the special postage stamp issued under this section shall not apply to any limitation relating to whether more than 1 semipostal may be offered for sale at the same time.

(h) This section shall cease to be effective after December 31, 2019.

\* \* \* \* \*

#### § 416. Authority to issue semipostals

(a) DEFINITIONS.—For purposes of this section—

(1) the term “semipostal” means a postage stamp which is issued and sold by the Postal Service, at a premium, in order to help provide funding for a cause described in subsection (b); and

(2) the term “agency” means an Executive agency within the meaning of section 105 of title 5.

(b) DISCRETIONARY AUTHORITY.—The Postal Service is hereby authorized to issue and sell semipostals under this section in order to advance such causes as the Postal Service considers to be in the national public interest and appropriate.

(c) RATE OF POSTAGE.—The rate of postage on a semipostal issued under this section shall be established by **the Governors of the Postal Service**, in accordance with such procedures as **they** the Postal Service shall by regulation prescribe (in lieu of the procedures under chapter 36), except that—

(1) the rate established for a semipostal under this section shall be equal to the rate of postage that would otherwise regularly apply, plus a differential of not less than 15 percent; and

(2) no regular rates of postage or fees for postal services under chapter 36 shall be any different from what they otherwise would have been if this section had not been enacted.

The use of any semipostal issued under this section shall be voluntary on the part of postal patrons. The special rate of postage of an individual stamp under this section shall be an amount that is evenly divisible by 5.

(d) AMOUNTS BECOMING AVAILABLE.—

(1) IN GENERAL.—The amounts becoming available from the sale of a semipostal under this section shall be transferred to the appropriate agency or agencies under such arrangements as the Postal Service shall by mutual agreement with each such agency establish.

(2) IDENTIFICATION OF APPROPRIATE CAUSES AND AGENCIES.—Decisions concerning the identification of appropriate causes

and agencies to receive amounts becoming available from the sale of a semipostal under this section shall be made in accordance with applicable regulations under subsection (e).

(3) DETERMINATION OF AMOUNTS.—

(A) IN GENERAL.—The amounts becoming available from the sale of a semipostal under this section shall be determined in a manner similar to that provided for under section 414(c)(2) (as in effect on July 1, 2000).

(B) ADMINISTRATIVE COSTS.—Regulations under subsection (e) shall specifically address how the costs incurred by the Postal Service in carrying out this section shall be computed, recovered, and kept to a minimum.

(4) OTHER FUNDING NOT TO BE AFFECTED.—Amounts which have or may become available from the sale of a semipostal under this section shall not be taken into account in any decision relating to the level of appropriations or other Federal funding to be furnished to an agency in any year.

(5) RECOVERY OF COSTS.—Before transferring to an agency in accordance with paragraph (1) any amounts becoming available from the sale of a semipostal over any period, the Postal Service shall ensure that it has recovered the full costs incurred by the Postal Service in connection with such semipostal through the end of such period.

(e) REGULATIONS.—

(1) IN GENERAL.—Except as provided in subsection (c), the Postal Service shall prescribe any regulations necessary to carry out this section, including provisions relating to—

(A) which office or other authority within the Postal Service shall be responsible for making the decisions described in subsection (d)(2);

(B) what criteria and procedures shall be applied in making those decisions; and

(C) what limitations shall apply, if any, relating to the issuance of semipostals (such as whether more than one semipostal may be offered for sale at the same time).

(2) NOTICE AND COMMENT.—Before any regulation is issued under this section, a copy of the proposed regulation shall be published in the Federal Register, and an opportunity shall be provided for interested parties to present written and, where practicable, oral comment. All regulations necessary to carry out this section shall be issued not later than 30 days before the date on which semipostals are first made available to the public under this section.

(f) ANNUAL REPORTS.—

(1) IN GENERAL.—The Postmaster General shall include in each report rendered under section 2402, with respect to any period during any portion of which this section is in effect, information concerning the operation of any program established under this section.

(2) SPECIFIC REQUIREMENT.—If any semipostal ceases to be offered during the period covered by such a report, the information contained in that report shall also include—

(A) the commencement and termination dates for the sale of such semipostal;

(B) the total amount that became available from the sale of such semipostal; and

(C) of that total amount, how much was applied toward administrative costs.

For each year before the year in which a semipostal ceases to be offered, any report under this subsection shall include, with respect to that semipostal (for the year covered by such report), the information described in subparagraphs (B) and (C).

(g) TERMINATION.—This section shall cease to be effective at the end of the 10-year period beginning on the date on which semipostals are first made available to the public under this section.

\* \* \* \* \*

**CHAPTER 5—POSTAL REGULATORY COMMISSION**

\* \* \* \* \*

**§ 504. Administration**

(a) The Chairman of the Postal Regulatory Commission shall be the principal executive officer of the Commission. The Chairman shall exercise or direct the exercise of all the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment of personnel employed under the Commission, except that the appointment of heads of major administrative units under the Commission shall require the approval of a majority of the members of the Commission, (2) the supervision of the personnel employed under the Commission and the distribution of business among them and among the Commissioners, and (3) the use and expenditure of funds.

(b) In carrying out any of his functions under this section, the Chairman shall be governed by the general policies of the Commission.

(c) The Chairman may obtain such facilities and supplies as may be necessary to permit the Commission to carry out its functions. Any officer or employee appointed under this section shall be paid at rates of compensation and shall be entitled to programs offering employee benefits established under chapter 10 or chapter 12 of this title, as appropriate.

(d) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Postal Regulatory Commission. In requesting an appropriation under this subsection for a fiscal year, the Commission shall prepare and submit to the Congress under section 2009 a budget of the Commission's expenses, including expenses for facilities, supplies, compensation, and employee benefits.

(e) The provisions of section 410 and chapter 10 of this title shall apply to the Commission, as appropriate.

(f)(1) Any Commissioner of the Postal Regulatory Commission, any administrative law judge appointed by the Commission under section 3105 of title 5, and any employee of the Commission designated by the Commission may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge ap-

pointed by the Commission under section 3105 of title 5 may, with respect to any proceeding conducted by the Commission under this title or to obtain information to be used to prepare a report under this title—

(A) issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, any covered person; and

(B) order the taking of depositions and responses to written interrogatories by a covered person.

The written concurrence of a majority of the Commissioners then holding office shall, with respect to each subpoena under subparagraph (A), be required in advance of its issuance.

(3) In the case of contumacy or failure to obey a subpoena issued under this subsection, upon application by the Commission, the district court of the United States for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(4) For purposes of this subsection, the term “covered person” means an officer, employee, agent, or contractor of the Postal Service.

(g)(1) If the Postal Service determines that any document or other matter it provides to the Postal Regulatory Commission under a subpoena issued under subsection (f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under this title, contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission, in writing, of its determination (and the reasons therefor).

(2) Except as provided in paragraph (3), no officer or employee of the Commission may, with respect to any information as to which the Commission has been notified under paragraph (1)—

(A) use such information for purposes other than the purposes for which it is supplied; or

(B) permit anyone who is not an officer or employee of the Commission to have access to any such information.

(3)(A) Paragraph (2) shall not prohibit the Commission from publicly disclosing relevant information in furtherance of its duties under this title, provided that the Commission has adopted regulations under section 553 of title 5, that establish a procedure for according appropriate confidentiality to information identified by the Postal Service under paragraph (1). In determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service under paragraph (1), the Commission shall balance the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets.

(B) Paragraph (2) shall not prevent the Commission from requiring production of information in the course of any discovery procedure established in connection with a proceeding under this title. The Commission shall, by regulations based on

rule 26(c) of the Federal Rules of Civil Procedure, establish procedures for ensuring appropriate confidentiality for information furnished to any party.

[(h)(1) Notwithstanding any other provision of this title or of the Inspector General Act of 1978, the authority to select, appoint, and employ officers and employees of the Office of Inspector General of the Postal Regulatory Commission, and to obtain any temporary or intermittent services of experts or consultants (or an organization of experts or consultants) for such Office, shall reside with the Inspector General of the Postal Regulatory Commission.

[(2) Except as provided in paragraph (1), any exercise of authority under this subsection shall, to the extent practicable, be in conformance with the applicable laws and regulations that govern selections, appointments, and employment, and the obtaining of any such temporary or intermittent services, within the Postal Regulatory Commission.]

\* \* \* \* \*

## CHAPTER 7—CONTRACTING PROVISIONS

Sec.

701. *Definitions.*

702. *Delegation of contracting authority.*

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

704. *Review of ethical issues.*

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

### § 701. *Definitions*

*In this chapter—*

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

(2) *the term “covered postal entity” means—*

*(A) the Postal Service; or*

*(B) the Postal Regulatory Commission;*

(3) *the term “head of a covered postal entity” means—*

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

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

(4) *the term “postal contract” means—*

*(A) in the case of the Postal Service, any contract (including any agreement or memorandum of understanding) entered into by the Postal Service for the procurement of goods or services; or*

*(B) in the case of the Postal Regulatory Commission, any contract (including any agreement or memorandum of understanding) in an amount exceeding the simplified acquisition threshold (as defined in section 134 of title 41 and adjusted under section 1908 of such title) entered into by the Postal Regulatory Commission for the procurement of goods or services; and*

(5) *the term “senior procurement executive” means the senior procurement executive of a covered postal entity.*

**§ 702. Delegation of contracting authority**

(a) *IN GENERAL.*—

(1) *POLICY.*—Not later than 60 days after the date of enactment of this chapter, the head of each covered postal entity shall issue a policy on contracting officer delegations of authority for postal contracts for the covered postal entity.

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

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

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

(b) *POSTING OF DELEGATIONS.*—

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

(2) *EFFECTIVE DATE.*—This paragraph shall apply to any delegation of authority made on or after the date that is 30 days after the date of enactment of this chapter.

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

(a) *POSTING REQUIRED.*—

(1) *POSTAL REGULATORY COMMISSION.*—The Postal Regulatory Commission shall make the noncompetitive purchase request for any noncompetitive award for any contract (including any agreement or memorandum of understanding) entered into by the Postal Regulatory Commission for the procurement of goods and services, in an amount of \$20,000 or more, including the rationale supporting the noncompetitive award, publicly available on the Web site of the Postal Regulatory Commission—

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

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

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

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

or

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

(3) *ADJUSTMENTS TO THE POSTING THRESHOLD.*—

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

(i) review the applicable threshold established under paragraph (1) or (2); and

(ii) based on any change in the Consumer Price Index for All Urban Consumers of the Department of Labor, determine whether an adjustment to the threshold shall be made.

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

(4) *EFFECTIVE DATE.*—This subsection shall apply to any non-competitive contract awarded on or after the date that is 90 days after the date of enactment of this chapter.

(b) *PUBLIC AVAILABILITY.*—

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

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

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

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

(c) *WAIVERS.*—

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

(2) *FORM AND CONTENT OF WAIVER.*—

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

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

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

(ii) a statement that redaction of sensitive information in the noncompetitive purchase request would not



be sufficient to protect the Postal Service from being placed at a competitive disadvantage relative to a private sector competitor.

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

**§ 704. Review of ethical issues**

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

- (1) review the proposed contract; and
- (2) advise the contracting officer on the appropriate resolution of ethical issues.

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

(a) *DEFINITIONS.*—In this section—

(1) the term “covered employee” means—

- (A) a contracting officer; or
  - (B) any employee of a covered postal entity whose decisionmaking affects a postal contract as determined by regulations prescribed by the head of a covered postal entity;
- (2) the term “final conviction” means a conviction, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed; and
- (3) the term “covered relationship” means a covered relationship described in section 2635.502(b)(1) of title 5, Code of Federal Regulations, or any successor thereto.

(b) *IN GENERAL.*—

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

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

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

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

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

ical Conduct for Employees of the Executive Branch), or any successor thereto;

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

(D) under subsections (d) and (e) of section 2635.502 of title 5, Code of Federal Regulations, or any successor thereto, require the ethics counsel for a covered postal entity to—

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

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

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

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

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

(c) **CONTRACT VOIDANCE AND RECOVERY.**—

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

(A) void that contract; and

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

(2) **OBTAINING OR DISCLOSING PROCUREMENT INFORMATION.**—

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

(i) void that contract; and

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

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

(i) there is a final conviction for an offense punishable under section 2105 of title 41; or

(ii) the head of a covered postal entity determines, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under section 2105 of such title.

\* \* \* \* \*

**PART II—PERSONNEL**

\* \* \* \* \*

**CHAPTER 10—EMPLOYMENT WITHIN THE POSTAL SERVICE**

\* \* \* \* \*

**§ 1003. Employment policy**

(a) Except as provided under chapters 2 and 12 of this title, section 8G of the Inspector General Act of 1978, or other provision of law, the Postal Service shall classify and fix the compensation and benefits of all officers and employees in the Postal Service. It shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy. No officer or employee shall be paid compensation at a rate in excess of the rate for level I of the Executive Schedule under section 5312 of title 5.

(b) Compensation and benefits for all officers and employees serving in or under [the Office of Inspector General of the United States Postal Service] *the Office of Inspector General of the Postal Community* shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the respective Offices of Inspector General of the various establishments named in section 11(2) of the Inspector General Act of 1978.

(c) Compensation and benefits for all Postal Inspectors shall be maintained on a standard of comparability to the compensation and benefits paid for comparable levels of work in the executive branch of the Government outside of the Postal Service. As used in this subsection, the term “Postal Inspector” included any agent to whom any investigative powers are granted under section 3061 of title 18.

(d) The Postal Service shall follow an employment policy designed, without compromising the policy of section 101(a) of this title, to extend opportunity to the disadvantaged and the handicapped.

\* \* \* \* \*

**§ 1005. Applicability of laws relating to Federal employees**

(a)(1) Except as otherwise provided in this subsection, the provisions of chapter 75 of title 5 shall apply to officers and employees

of the Postal Service except to the extent of any inconsistency with—

(A) the provisions of any collective-bargaining agreement negotiated on behalf of and applicable to them; or

(B) procedures established by the Postal Service and approved by the Civil Service Commission.

(2) The provisions of title 5 relating to a preference eligible (as that term is defined under section 2108(3) of such title) shall apply to an applicant for appointment and any officer or employee of the Postal Service in the same manner and under the same conditions as if the applicant, officer, or employee were subject to the competitive service under such title. The provisions of this paragraph shall not be modified by any program developed under section 1004 of this title or any collective-bargaining agreement entered into under chapter 12 of this title.

(3) The provisions of this subsection shall not apply to those individuals appointed under sections 202, 204, and 1001(c) of this title.

(4)(A) Subchapter II of chapter 75 of title 5 shall apply—

(i) to any preference eligible in the Postal Service who is an employee within the meaning of section 7511(a)(1)(B) of such title; and

(ii) to any other individual who—

【(I) is in the position of a supervisor or a management employee in the Postal Service, or is an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity; and】

*(I) is an officer or employee of the Postal Service who—*

*(aa) is not represented by a bargaining representative recognized under section 1203; and*

*(bb) is in a supervisory, professional, technical, clerical, administrative, or managerial position covered by the Executive and Administrative Schedule; and*

(II) has completed 1 year of current continuous service in the same or similar positions.

(B)(i) The second sentence of paragraph (2) of this subsection applies with respect to the provisions of subparagraph (A) of this paragraph, to the extent that such provisions relate to preference eligibles.

(ii) The provisions of subparagraph (A) of this paragraph shall not, to the extent that such provisions relate to an individual under clause (ii) of such subparagraph, be modified by any program developed under section 1004 of this title.

(b)(1) Except as provided under paragraph (2), section 5941 of title 5 shall apply to the Postal Service. Except as provided under paragraph (2), for purposes of section 5941 of that title, the pay of officers and employees of the Postal Service shall be considered to be fixed by statute, and the basic pay of an employee shall be the pay (but not any allowance or benefit) of that officer or employee established in accordance with the provisions of this title.

(2) On and after the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009—

(A) the provisions of that Act and section 5941 of title 5 shall apply to officers and employees covered by section 1003 (b) and

(c) whose duty station is in a nonforeign area; and

(B) with respect to officers and employees of the Postal Service (other than those officers and employees described under subparagraph (A)) of section 1916(b)(2) of that Act shall apply.

(c) Officers and employees of the Postal Service shall be covered by subchapter I of chapter 81 of title 5, relating to compensation for work injuries.

(d)(1) Officers and employees of the Postal Service (other than the Governors) shall be covered by chapters 83 and 84 of title 5. The Postal Service shall withhold from pay and shall pay into the Civil Service Retirement and Disability Fund the amounts specified in or determined under such chapter 83 and subchapter II of such chapter 84, respectively. The Postal Service shall pay into the Federal Retirement Thrift Savings Fund the amounts specified in or determined under subchapters III and VII of such chapter 84.

(2) The provisions of subsections (i) and (m)(2) of section 8344 and subsections (f) and (j)(2) of section 8468 of title 5 shall apply with respect to the Postal Service. For purposes of so applying such provisions—

(A) any reference in such provisions to the head of an Executive agency shall be considered a reference to the Postmaster General; and

(B) any reference in such provisions to an employee shall be considered a reference to an officer or employee of the Postal Service.

(e) Sick and annual leave, and compensatory time of officers and employees of the Postal Service, whether accrued prior to or after commencement of operations of the Postal Service, shall be obligations of the Postal Service under the provisions of this chapter.

(f) Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the former Post Office Department or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Postal Service, until changed by the Postal Service in accordance with this chapter and chapter 12 of this title. Subject to the provisions of this chapter and chapter 12 of this title, the provisions of subchapter I of chapter 85 and chapters 87, 89, 89A, and 89B of title 5 shall apply to officers and employees of the Postal Service, unless varied, added to, or substituted for, under this subsection. No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees than fringe benefits in effect on the effective date of this section, and as to officers and employees for whom there is a collective-bargaining representative, no such variation, addition, or substitution shall be made except by agreement between the collective-bargaining representative and the Postal Service.

\* \* \* \* \*

**§ 1011. Oath of office**

Before entering upon their duties and before receiving any salary, all officers and employees of the Postal Service shall take and subscribe the following oath or affirmation:

“I, — — — — —, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States

against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.”

A person authorized to administer oaths by the laws of the United States, including section 2903 of title 5, or of a State or territory, or an officer, civil or military, holding a commission under the United States, or any officer or employee of the Postal Service designated by [the Board] *the Postal Service* may administer and certify the oath or affirmation.

\* \* \* \* \*

**PART III—MODERNIZATION AND FISCAL ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 20—FINANCE**

\* \* \* \* \*

**§ 2003. The Postal Service Fund**

(a) There is established in the Treasury of the United States a revolving fund to be called the Postal Service Fund which shall be available to the Postal Service without fiscal-year limitation to carry out the purposes, functions, and powers authorized by this title (other than any of the purposes, functions, or powers for which the Competitive Products Fund is available).

(b) Except as otherwise provided in section 2011, there shall be deposited in the Fund, subject to withdrawal by check by the Postal Service—

- (1) revenues from postal and nonpostal services rendered by the Postal Service;
- (2) amounts received from obligations issued by the Postal Service;
- (3) amounts appropriated for the use of the Postal Service;
- (4) interest which may be earned on investments of the Fund;
- (5) any other receipts of the Postal Service;
- (6) the balance in the Post Office Department Fund established under former section 2202 of title 39 as of the commencement of operations of the Postal Service;
- (7) amounts (including proceeds from the sale of forfeited items) from any civil forfeiture conducted by the Postal Service;
- (8) any transfers from the Secretary of the Treasury from the Department of the Treasury Forfeiture Fund which shall be available to the Postmaster General only for Federal law enforcement related purposes; and
- (9) any amounts collected under section 3018.

(c) If the Postal Service determines that the moneys of the Fund are in excess of current needs, it may request the investment of such amounts as it deems advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government

of the United States, and, with the approval of the Secretary, in such other obligations or securities as it deems appropriate.

(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

(e)(1) The Fund shall be available for the payment of (A) all expenses incurred by the Postal Service in carrying out its functions as provided by law, subject to the same limitation as set forth in the parenthetical matter under subsection (a); (B) all expenses of the Postal Regulatory Commission, subject to the availability of amounts appropriated under section 504(d); and (C) all expenses of [the Office of Inspector General, subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.] *the Office of Inspector General of the Postal Community* The Postmaster General shall transfer from the Fund to the Secretary of the Treasury for deposit in the Department of the Treasury Forfeiture Fund amounts appropriate to reflect the degree of participation of Department of the Treasury law enforcement organizations (described in section 9705(o) of title 31) in the law enforcement effort resulting in the forfeiture pursuant to laws enforced or administered by the Postal Service. Neither the Fund nor any of the funds credited to it shall be subject to apportionment under the provisions of subchapter II of chapter 15 of title 31.

(2) Funds appropriated to the Postal Service under section 2401 of this title shall be apportioned as provided in this paragraph. From the total amounts appropriated to the Postal Service for any fiscal year under the authorizations contained in section 2401 of this title, the Secretary of the Treasury shall make available to the Postal Service 25 percent of such amount at the beginning of each quarter of such fiscal year.

(f) Notwithstanding any other provision of this section, any amounts appropriated to the Postal Service under subsection (d) of section 2401 of this title and deposited into the Fund shall be expended by the Postal Service only for the purposes provided in such subsection.

(g) Notwithstanding any provision of section 8147 of title 5, whenever the Secretary of Labor furnishes a statement to the Postal Service indicating an amount due from the Postal Service under subsection (b) of that section, the Postal Service shall make the deposit required pursuant to that statement (and any additional payment under subsection (c) of that section, to the extent that it relates to the period covered by such statement) not later than 30 days after the date on which such statement is so furnished. Any deposit (and any additional payment) which is subject to the preceding sentence shall, once made, remain available without fiscal year limitation.

(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.

\* \* \* \* \*

### § 2009. Annual budget

The Postal Service shall cause to be prepared annually a budget program which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provision for emergencies and contingencies, in order that the Postal Service may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the Postal Service for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fiscal year. Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the Postal Service. Such statements shall include estimates of operations by major types of activities, together with estimates of administrative expenses and estimates of borrowings. The budget program shall also include separate statements of the amounts which (1) the Postal Service requests to be appropriated under subsections (b) and (c) of section 2401, (2) [the Office of Inspector General of the United States Postal Service requests to be appropriated, out of the Postal Service Fund, under section 8G(f) of the Inspector General Act of 1978, and] *the Office of Inspector General of the Postal Community requests to be appropriated out of the Postal Service Fund* (3) the Postal Regulatory Commission requests to be appropriated, out of the Postal Service Fund, under section 504(d) of this title. The President shall include these amounts, with his recommendations but without revision, in the budget transmitted to Congress under section 1105 of title 31.

\* \* \* \* \*

### § 2011. Provisions relating to competitive products

(a)(1) In this subsection, the term “costs attributable” has the meaning given such term by section 3631.

(2) There is established in the Treasury of the United States a revolving fund, to be called the Postal Service Competitive Products Fund, which shall be available to the Postal Service without fiscal year limitation for the payment of—

(A) costs attributable to competitive products; and

(B) all other costs incurred by the Postal Service, to the extent allocable to competitive products.

(b) There shall be deposited in the Competitive Products Fund, subject to withdrawal by the Postal Service—

(1) revenues from competitive products;

(2) amounts received from obligations issued by Postal Service under subsection (e);

(3) interest and dividends earned on investments of the Competitive Products Fund; and



(4) any other receipts of the Postal Service (including from the sale of assets), to the extent allocable to competitive products.

(c) If the Postal Service determines that the moneys of the Competitive Products Fund are in excess of current needs, the Postal Service may request the investment of such amounts as the Postal Service determines advisable by the Secretary of the Treasury in obligations of, or obligations guaranteed by, the Government of the United States, and, with the approval of the Secretary, in such other obligations or securities as the Postal Service determines appropriate.

(d) With the approval of the Secretary of the Treasury, the Postal Service may deposit moneys of the Competitive Products Fund in any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Postal Service and the Secretary may mutually agree.

(e)(1)(A) Subject to the limitations specified in section 2005(a), the Postal Service is authorized to borrow money and to issue and sell such obligations as the Postal Service determines necessary to provide for competitive products and deposit such amounts in the Competitive Products Fund.

(B) Subject to paragraph (5), any borrowings by the Postal Service under subparagraph (A) shall be supported and serviced by—

(i) the revenues and receipts from competitive products and the assets related to the provision of competitive products (as determined under subsection (h)); or

(ii) for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available from the Postal Service, including the audited statements required by section 2008(e).

(2) The Postal Service may enter into binding covenants with the holders of such obligations, and with any trustee under any agreement entered into in connection with the issuance of such obligations with respect to—

(A) the establishment of reserve, sinking, and other funds;

(B) application and use of revenues and receipts of the Competitive Products Fund;

(C) stipulations concerning the subsequent issuance of obligations or the execution of leases or lease purchases relating to properties of the Postal Service; and

(D) such other matters as the Postal Service considers necessary or desirable to enhance the marketability of such obligations.

(3) Obligations issued by the Postal Service under this subsection—

(A) shall be in such forms and denominations;

(B) shall be sold at such times and in such amounts;

(C) shall mature at such time or times;

(D) shall be sold at such prices;

(E) shall bear such rates of interest;

(F) may be redeemable before maturity in such manner, at such times, and at such redemption premiums;

(G) may be entitled to such relative priorities of claim on the assets of the Postal Service with respect to principal and interest payments; and

(H) shall be subject to such other terms and conditions, as the Postal Service determines.

(4) Obligations issued by the Postal Service under this subsection—

(A) shall be negotiable or nonnegotiable and bearer or registered instruments, as specified therein and in any indenture or covenant relating thereto;

(B) shall contain a recital that such obligations are issued under this section, and such recital shall be conclusive evidence of the regularity of the issuance and sale of such obligations and of their validity;

(C) shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the Government of the United States, and the Secretary of the Treasury or any other officer or agency having authority over or control of any such fiduciary, trust, or public funds, may at any time sell any of the obligations of the Postal Service acquired under this section;

(D) shall not be exempt either as to principal or interest from any taxation now or hereafter imposed by any State or local taxing authority; and

(E) except as provided in section 2006(c), shall not be obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the Government of the United States, and the obligations shall so plainly state.

(5) The Postal Service shall make payments of principal, or interest, or both on obligations issued under this section out of revenues and receipts from competitive products and assets related to the provision of competitive products (as determined under subsection (h)), or for purposes of any period before accounting practices and principles under subsection (h) have been established and applied, the best information available, including the audited statements required by section 2008(e). For purposes of this subsection, the total assets of the Competitive Products Fund shall be the greater of—

(A) the assets related to the provision of competitive products as calculated under subsection (h); or

(B) the percentage of total Postal Service revenues and receipts from competitive products times the total assets of the Postal Service.

(f) The receipts and disbursements of the Competitive Products Fund shall be accorded the same budgetary treatment as is accorded to receipts and disbursements of the Postal Service Fund under section 2009a.

(g) A judgment (or settlement of a claim) against the Postal Service or the Government of the United States shall be paid out of the Competitive Products Fund to the extent that the judgment or claim arises out of activities of the Postal Service in the provision of competitive products.

(h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—

(i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—

(I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and

(II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and

(ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).

(B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

(2)(A) Upon receiving the recommendations of the Secretary of the Treasury under paragraph (1), the Commission shall give interested parties, including the Postal Service, users of the mails, and an officer of the Commission who shall be required to represent the interests of the general public, an opportunity to present their views on those recommendations through submission of written data, views, or arguments with or without opportunity for oral presentation, or in such other manner as the Commission considers appropriate.

(B)(i) After due consideration of the views and other information received under subparagraph (A), the Commission shall by rule—

(I) provide for the establishment and application of the accounting practices and principles which shall be followed by the Postal Service;

(II) provide for the establishment and application of the substantive and procedural rules described under paragraph (1)(A)(ii); and

(III) provide for the submission by the Postal Service to the Postal Regulatory Commission of annual and other periodic reports setting forth such information as the Commission may require.

(ii) Final rules under this subparagraph shall be issued not later than 12 months after the date on which recommendations are submitted under paragraph (1) (or by such later date on which the Commission and the Postal Service may agree). The Commission is authorized to promulgate regulations revising such rules.

(C)(i) Reports described under subparagraph (B)(i)(III) shall be submitted at such time and in such form, and shall include such information, as the Commission by rule requires.

(ii) The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with such rules as the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service information under subparagraph (B)(i)(III) whenever it shall appear that—

(I) the quality of the information furnished in those reports has become significantly inaccurate or can be significantly improved; or

(II) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(D) A copy of each report described under subparagraph (B)(i)(III) shall be submitted by the Postal Service to the Secretary of the Treasury and [the Inspector General of the United States Postal Service] *the Inspector General of the Postal Community*.

(i)(1) The Postal Service shall submit an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. The report shall address such matters as risk limitations, reserve balances, allocation or distribution of moneys, liquidity requirements, and measures to safeguard against losses.

(2) A copy of the most recent report submitted under paragraph (1) shall be included in the annual report submitted by the Postal Regulatory Commission under section 3652(g).

\* \* \* \* \*

**CHAPTER 24—APPROPRIATIONS AND ANNUAL REPORT**

\* \* \* \* \*

**§ 2402. Annual report**

[The Postmaster General shall render an annual report to the Board concerning the operations of the Postal Service under this title. Upon approval thereof, or after making such changes as it considers appropriate, the Board shall transmit such reports to the President and the Congress.]

**§ 2402. Annual report**

*The Postmaster General shall render an annual report concerning the operations of the Postal Service under this title to the President and Congress.*

\* \* \* \* \*

**PART IV—MAIL MATTER**

Chap.		Sec.
<b>30.</b>	<b>Nonmailable Matter</b> .....	<b>3001</b>
	* * * * *	
<b>37.</b>	<b>Nonpostal services</b> .....	<b>3701</b>
	* * * * *	

**CHAPTER 36—POSTAL RATES, CLASSES, AND SERVICES**

SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

Sec.	
3621.	Applicability; definitions.
	* * * * *

SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

	* * * * *
<b>[3632. Action of the Governors.]</b>	
3632.	<i>Establishment of rates and classes of competitive products.</i>
	* * * * *

## SUBCHAPTER VII—MODERN SERVICE STANDARDS

\* \* \* \* \*

3692. *Delivery-point modernization.*

## SUBCHAPTER I—PROVISIONS RELATING TO MARKET-DOMINANT PRODUCTS

\* \* \* \* \*

**§ 3622. Modern rate regulation**

(a) **AUTHORITY GENERALLY.**—The Postal Regulatory Commission shall [ , within 18 months after the date of enactment of this section, ] by regulation establish (and may from time to time thereafter by regulation revise) a modern system for regulating rates and classes for market-dominant products.

(b) **OBJECTIVES.**—Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

(1) To maximize incentives to reduce costs and increase efficiency.

(2) To create *and ensure* predictability and stability in rates.

(3) To maintain *and meet* high quality service standards established under section 3691, *with a focus on achieving predictable and consistent delivery.*

(4) To allow the Postal Service pricing flexibility.

(5) To assure adequate revenues, including retained earnings, to *establish and maintain* financial stability.

(6) To reduce the administrative burden and increase the transparency of the ratemaking [process] *and cost allocation processes.*

(7) To enhance mail security and deter terrorism.

(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.

(9) To allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products *(and to ensure appropriate levels of transparency).*

[(c) **FACTORS.**—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

[(1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

[(2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

[(3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

[(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

[(5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

[(6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

[(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

[(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

[(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

[(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—

[(A) either—

[(i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

[(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

[(B) do not cause unreasonable harm to the marketplace.

[(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

[(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services;

[(13) the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail; and

[(14) the policies of this title as well as such other factors as the Commission determines appropriate.]

(c) *FACTORS.—In establishing or revising such system, the Postal Regulatory Commission shall take into account the following factors:*

(1) *The effect of rate increases upon the general public and business mail users.*

(2) *The available alternative means of sending and receiving written communications, information, and letters and other mail matter at reasonable costs.*

(3) *The reliability of delivery timelines and the extent to which the Postal Service is meeting its service standard obligations.*

(4) *The need to ensure that the Postal Service has adequate revenues and has taken appropriate cost-cutting measures to maintain financial stability and meet all legal obligations.*

(5) *The extent to which the Postal Service has taken actions to increase its efficiency and reduce its costs.*

(6) *The value of the mail service actually provided by each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery.*

(7) *The requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type.*

(8) *The degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon improving efficiency and reducing costs to the Postal Service.*

(9) *Simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services.*

(10) *The importance of pricing flexibility to encourage increased mail volume and operational efficiency.*

(11) *The relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail.*

(12) *The importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery.*

(13) *The desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including agreements between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—*

(A) *improve the net financial position of the Postal Service by reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; and*

(B) *do not cause—*

(i) *unfair competitive advantage for the Postal Service or postal users eligible for the agreements; or*

(ii) *unreasonable disruption to the volume or revenues of other postal users.*

(14) *The educational, cultural, scientific, and informational value to the recipient of mail matter.*

(15) *The need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services.*

(16) *The value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail.*

(17) *The importance of stability and predictability of rates to ratepayers.*

(18) *The policies of this title as well as such other factors as the Commission determines appropriate.*

(d) REQUIREMENTS.—

(1) IN GENERAL.—The system for regulating rates and classes for market-dominant products shall—

(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to the change in the Consumer

Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

*(B) establish postal rates for each group of functionally equivalent agreements between the Postal Service and users of the mail that—*

*(i) cover attributable cost;*

*(ii) improve the net financial position of the Postal Service; and*

*(iii) do not cause unreasonable disruption in the marketplace, consistent with subsection (c)(13)(B);*

*for purposes of this subparagraph, a group of functionally equivalent agreements shall consist of all service agreements that are functionally equivalent to each other within the same market-dominant product, but shall not include agreements within an experimental product;*

**[(B)]** *(C) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;*

**[(C)]** *(D) not later than 45 days before the implementation of any adjustment in rates under this section, including adjustments made under subsection [(c)(10)] (c)(H)—*

*(i) require the Postal Service to provide public notice of the adjustment;*

*(ii) provide an opportunity for review by the Postal Regulatory Commission;*

*(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and*

*(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);*

**[(D)]** *(E) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A); and*

**[(E)]** *(F) notwithstanding any limitation set under [subparagraphs (A) and (C)] subparagraphs (A) and (D), and provided there is not sufficient unused rate authority under paragraph (2)(C), establish procedures whereby rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, provided that the Commission determines, after notice and opportunity for a public hearing and comment, and within 90 days after any request by the Postal Service, that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.*

**(2) LIMITATIONS.—**

**(A) CLASSES OF MAIL.—**Except as provided under subparagraph (C), the annual limitations under paragraph



(1)(A) shall apply to a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the Postal Accountability and Enhancement Act.

(B) ROUNDING OF RATES AND FEES.—Nothing in this subsection shall preclude the Postal Service from rounding rates and fees to the nearest whole integer, if the effect of such rounding does not cause the overall rate increase for any class to exceed the Consumer Price Index for All Urban Consumers.

(C) USE OF UNUSED RATE AUTHORITY.—

(i) DEFINITION.—In this subparagraph, the term “unused rate adjustment authority” means the difference between—

(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

(II) the amount of the rate adjustment the Postal Service actually makes in that year.

(ii) AUTHORITY.—Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

(iii) LIMITATIONS.—In exercising the authority under clause (ii) in any year, the Postal Service—

(I) may use unused rate adjustment authority from more than 1 year;

(II) may use any part of the unused rate adjustment authority from any year;

(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

(3) REVIEW.—Ten years after the date of enactment of the Postal Accountability and Enhancement Act and as appropriate thereafter, the Commission shall review the system for regulating rates and classes for market-dominant products established under this section to determine if the system is achieving the objectives in subsection (b), taking into account the factors in subsection (c). If the Commission determines, after notice and opportunity for public comment, that the system is not achieving the objectives in subsection (b), taking into account the factors in subsection (c), the Commission may, by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives.

(e) WORKSHARE DISCOUNTS.—

(1) DEFINITION.—In this subsection, the term “workshare discount” refers to rate discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail, as further defined by the Postal Regulatory Commission under subsection (a).

(2) SCOPE.—The Postal Regulatory Commission shall ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity, unless—

(A) the discount is—

(i) associated with a new postal service, a change to an existing postal service, or with a new work share initiative related to an existing postal service; and

(ii) necessary to induce mailer behavior that furthers the economically efficient operation of the Postal Service and the portion of the discount in excess of the cost that the Postal Service avoids as a result of the workshare activity will be phased out over a limited period of time;

(B) the amount of the discount above costs avoided—

(i) is necessary to mitigate rate shock; and

(ii) will be phased out over time;

(C) the discount is provided in connection with subclasses of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value; or

(D) reduction or elimination of the discount would impede the efficient operation of the Postal Service.

(3) LIMITATION.—Nothing in this subsection shall require that a work share discount be reduced or eliminated if the reduction or elimination of the discount would—

(A) lead to a loss of volume in the affected category or subclass of mail and reduce the aggregate contribution to the institutional costs of the Postal Service from the category or subclass subject to the discount below what it otherwise would have been if the discount had not been reduced or eliminated; or

(B) result in a further increase in the rates paid by mailers not able to take advantage of the discount.

(4) REPORT.—Whenever the Postal Service establishes a workshare discount rate, the Postal Service shall, at the time it publishes the workshare discount rate, submit to the Postal Regulatory Commission a detailed report that—

(A) explains the Postal Service's reasons for establishing the rate;

(B) sets forth the data, economic analyses, and other information relied on by the Postal Service to justify the rate; and

(C) certifies that the discount will not adversely affect rates or services provided to users of postal services who do not take advantage of the discount rate.

(f) TRANSITION RULE.—For the 1-year period beginning on the date of enactment of this section, rates and classes for market-dominant products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were last in effect before the date of enactment of this section. Proceedings initiated to consider a request for a recommended decision filed by the Postal Service during that 1-year period shall be completed in accordance with subchapter II of chapter 36 of this title and implementing regulations, as in effect before the date of enactment of this section.

\* \* \* \* \*

**§ 3626. Reduced rates**

(a)(1) Except as otherwise provided in this section, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with section 3622.

(2) For the purpose of this subsection, the term “regular-rate category” means any class of mail or kind of mailer, other than a class or kind referred to in section

(3) Rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title shall be established so that postage on each mailing of such mail reflects its preferred status as compared to the postage for the most closely corresponding regular-rate category mailing.

(4)(A) Except as specified in subparagraph (B), rates of postage for a class of mail or kind of mailer under former section 4358 (d) or (e) of this title shall be established so that postage on each mailing of such mail shall be as nearly as practicable 5 percent lower than the postage for a corresponding regular-rate category mailing.

(B) With respect to the postage for the advertising pound portion of any mail matter under former section 4358 (d) or (e) of this title, the 5-percent discount specified in subparagraph (A) shall not apply if the advertising portion exceeds 10 percent of the publication involved.

(5) The rates for any advertising under former section 4358(f) of this title shall be equal to 75 percent of the rates for advertising contained in the most closely corresponding regular-rate category of mail.

(6) The rates for mail matter under former sections 4452 (b) and (c) of this title shall be established as follows:

(A) The estimated average revenue per piece to be received by the Postal Service from each subclass of mail under former sections 4452 (b) and (c) of this title shall be equal, as nearly as practicable, to 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail.

(B) For purposes of subparagraph (A), the estimated average revenue per piece of each regular-rate subclass shall be calculated on the basis of expected volumes and mix of mail for such subclass at current rates in the test year of the proceeding.

(C) Rate differentials within each subclass of mail matter under former sections 4452 (b) and (c) shall reflect the policies of this title, including the factors set forth in section 3622(b) of this title.

(7) The rates for mail matter under former sections 4554 (b) and (c) of this title shall be established so that postage on each mailing of such mail shall be as nearly as practicable 5 percent lower than the postage for a corresponding regular-rate mailing.

(b)(1) For the purposes of this title, the term “periodical publications”, as used in former section 4351 of this title, includes (A) any catalog or other course listing, including mail announcements of legal texts which are part of post-bar admission education issued by any institution of higher education or by a nonprofit organization engaged in continuing legal education; and (B) any looseleaf page or report (including any index, instruction for filing, table, or

sectional identifier which is an integral part of such report) which is designed as part of a looseleaf reporting service concerning developments in the law or public policy.

(2) Any material described in paragraph (1) of this subsection shall qualify to be entered and mailed as second class mail in accordance with the applicable provisions of former section 4352 through former section 4357 of this title.

(3) For purposes of this subsection, the term “institution of higher education” has the meaning given it by section 101 of the Higher Education Act of 1965, and includes a nonprofit organization that coordinates a network of college-level courses that is sponsored primarily by nonprofit educational institutions for an older adult constituency.

(c) In the administration of this section, one conservation publication published by an agency of a State which is responsible for management and conservation of the fish or wildlife resources of such State shall be considered a publication of a qualified nonprofit organization which qualifies for rates of postage under former section 4358(d) of this title.

(d)(1) For purposes of this title, the term “agricultural”, as used in former sections 4358(j)(2), 4452(d), and 4554(b)(1)(B) of this title, includes the art or science of cultivating land, harvesting crops or marine resources, or raising of livestock.

(2) In the administration of this section, and for purposes of former sections 4358(j)(2), 4452(d), and 4554(b)(1)(B) of this title, agricultural organizations or associations shall include any organization or association which collects and disseminates information or materials relating to agricultural pursuits.

[(e)(1) In the administration of this section, the rates for third-class mail matter mailed by a qualified political committee shall be the rates currently in effect under former section 4452 of this title for third-class mail matter mailed by a qualified nonprofit organization.

[(2) For purposes of this subsection—

[(A) the term “qualified political committee” means a national or State committee of a political party, the Republican and Democratic Senatorial Campaign Committees, the Democratic National Congressional Committee, and the National Republican Congressional Committee;

[(B) the term “national committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level; and

[(C) the term “State committee” means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level.]

(f) In the administration of this chapter, the rates for mail under former section 4358(g) of this title shall be established without regard to either the provisions of such former section 4358(g) or the provisions of this section.

(g)(1) In the administration of this section, the rates for mail under subsections (a), (b), and (c) of former section 4358 of this title shall not apply to an issue of a publication if the number of copies of such issue distributed within the county of publication is less

than the number equal to the sum of 50 percent of the total paid circulation of such issue plus one.

(2) Paragraph (1) of this subsection shall not apply to an issue of a publication if the total paid circulation of such issue is less than 10,000 copies.

(3) For purposes of this section and former section 4358(a) through (c) of this title, those copies of an issue of a publication entered within the county in which it is published, but distributed outside such county on postal carrier routes originating in the county of publication, shall be treated as if they were distributed within the county of publication.

(4)(A) In the case of an issue of a publication, any number of copies of which are mailed at the rates of postage for a class of mail or kind of mailer under former section 4358(a) through (c) of this title, any copies of such issue which are distributed outside the county of publication (excluding any copies subject to paragraph (3)) shall be subject to rates of postage provided for under this paragraph.

(B) The rates of postage applicable to mail under this paragraph shall be established in accordance with section 3622.

(C) This paragraph shall not apply with respect to an issue of a publication unless the total paid circulation of such issue outside the county of publication (not counting recipients of copies subject to paragraph (3)) is less than 5,000.

(h) In the administration of this section, the number of copies of a subscription publication mailed to nonsubscribers during a calendar year at rates under subsections (a), (b), and (c) of former section 4358 of this title may not exceed 10 percent of the number of copies of such publication mailed at such rates to subscribers.

(j)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail which advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of—

(A) any credit, debit, or charge card, or similar financial instrument or account, provided by or through an arrangement with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

(B) any insurance policy, unless the organization which promotes the purchase of such policy is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization, and the coverage provided by the policy is not generally otherwise commercially available;

(C) any travel arrangement, unless the organization which promotes the arrangement is authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title, the travel contributes substantially (aside from the cultivation of members, donors, or supporters, or the acquisition of income or funds) to one or more of the purposes which constitutes the basis for the organization's authorization to mail at such rates, and the arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of the organization; or

(D) any product or service (other than any to which subparagraph (A), (B), or (C) relates), if—

(i) the sale of such product or the providing of such service is not substantially related (aside from the need, on the part of the organization promoting such product or service, for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates; or

(ii) the mail matter involved is part of a cooperative mailing (as defined under regulations of the Postal Service) with any person or organization not authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title;

except that—

(I) any determination under clause (i) that a product or service is not substantially related to a particular purpose shall be made under regulations which shall be prescribed by the Postal Service and which shall be consistent with standards established by the Internal Revenue Service and the courts with respect to subsections (a) and (c) of section 513 of the Internal Revenue Code of 1986; and

(II) clause (i) shall not apply if the product involved is a periodical publication described in subsection (m)(2) (including a subscription to receive any such publication); and

(III) clause (i) shall not apply to space advertising in mail matter that otherwise qualifies for rates under former section 4452(b) or 4452(c) of this title, and satisfies the content requirements established by the Postal Service for periodical publications: Provided, That such changes in law shall take effect immediately and shall stay in effect hereafter unless the Congress enacts legislation on this matter prior to October 1, 1995.

(2) Matter shall not be excluded from being mail at the rates for mail under former section 4452(b) or 4452(c) of this title, by an organization authorized to mail at those rates solely because—

(A) such matter contains, but is not primarily devoted to, acknowledgements of organizations or individuals who have made donations to the authorized organization; or

(B) such matter contains, but is not primarily devoted to, references to and a response card or other instructions for making inquiries concerning services or benefits available as a result of membership in the authorized organization: Provided, That advertising, promotional, or application materials specifically concerning such services or benefits are not included.

(3)(A) Upon request, an organization authorized to mail at the rates for mail under former section 4452(b) or 4452(c) of this title shall furnish evidence to the Postal Service concerning the eligibility of any of its mail matter or mailings to be sent at those rates.

(B) The Postal Service shall establish procedures to carry out this paragraph, including procedures for mailer certification of compliance with the conditions specified in paragraph (1)(D) or subsection (m), as applicable, and verification of such compliance.

(k)(1) No person or organization shall mail, or cause to be mailed by contractual agreement or otherwise, at the rates for mail under

former section 4452(b) or 4452(c) of this title, any matter to which those rates do not apply.

(2) The Postal Service may assess a postage deficiency in the amount of the unpaid postage against any person or organization which violates paragraph (1) of this subsection. This assessment shall be deemed the final decision of the Postal Service, unless the party against whom the deficiency is assessed appeals it in writing within thirty days to the postmaster of the office where the mailing was entered. Such an appeal shall be considered by an official designated by the Postal Service, other than the postmaster of the office where the mailing was entered, who shall issue a decision as soon as practicable. This decision shall be deemed final unless the party against whom the deficiency was assessed appeals it in writing within thirty days to a further reviewing official designated by the Postal Service, who shall issue the final decision on the matter.

(3) The Postal Service shall maintain procedures for the prompt collection of postage deficiencies arising from the violation of paragraph (1) of this subsection, and may in its discretion, follow the issuance of a final decision regarding a deficiency under paragraph (2) of this subsection deduct the amount of that deficiency incurred during the previous 12 months from any postage accounts or other monies of the violator in its possession.

(1) In the administration of this section, the term “advertising”, as used in former section 4358(j)(2) of this title, does not include the publisher’s own advertising in a publication published by the official highway or development agency of a State.

(m)(1) In the administration of this section, the rates for mail under former section 4452(b) or 4452(c) of this title shall not apply to mail consisting of products, unless such products—

(A) were received by the organization as gifts or contributions; or

(B) are low cost articles (as defined by section 513(h)(2) of the Internal Revenue Code of 1986).

(2) Paragraph (1) shall not apply with respect to a periodical publication of a qualified nonprofit organization.

(n) In the administration of this section, matter that satisfies the circulation standards for requester publications shall not be excluded from being mailed at the rates for mail under former section 4358 solely because such matter is designed primarily for free circulation or for circulation at nominal rates, or fails to meet the requirements of former section 4354(a)(5).

\* \* \* \* \*

SUBCHAPTER II—PROVISIONS RELATING TO COMPETITIVE PRODUCTS

\* \* \* \* \*

**§ 3632. [Action of the Governors] *Establishment of rates and classes of competitive products***

[(a) **AUTHORITY TO ESTABLISH RATES AND CLASSES.**—The Governors, with the concurrence of a majority of all of the Governors then holding office, shall establish rates and classes for products in the competitive category of mail in accordance with the require-

ments of this subchapter and regulations promulgated under section 3633.]

[(b)] (a) PROCEDURES.—

(1) IN GENERAL.—Rates and classes shall be established in writing, complete with a statement of explanation and justification, and the date as of which each such rate or class takes effect.

(2) RATES OR CLASSES OF GENERAL APPLICABILITY.—In the case of rates or classes of general applicability in the Nation as a whole or in any substantial region of the Nation, [the Governors] *the Postal Service* shall cause each rate and class decision under this section [and the record of the Governors' proceedings in connection with such decision] to be published in the Federal Register at least 30 days before the effective date of any new rates or classes.

(3) RATES OR CLASSES NOT OF GENERAL APPLICABILITY.—In the case of rates or classes not of general applicability in the Nation as a whole or in any substantial region of the Nation, [the Governors] *the Postal Service* shall cause each rate and class decision under this section [and the record of the proceedings in connection with such decision] to be filed with the Postal Regulatory Commission by such date before the effective date of any new rates or classes as [the Governors consider] *the Postal Service considers* appropriate, but in no case less than 15 days.

(4) RATES FOR STREAMLINED REVIEW.—*In the case of rates not of general applicability for competitive products that the Postmaster General considers eligible for streamlined review under section 3633(c), the Postmaster General shall cause the agreement to be filed with the Postal Regulatory Commission by a date that is on or before the effective date of any new rate established under the agreement, as the Postmaster General considers appropriate.*

[(4)] (5) CRITERIA.—As part of the regulations required under section 3633, the Postal Regulatory Commission shall establish criteria for determining when a rate or class established under this subchapter is or is not of general applicability in the Nation as a whole or in any substantial region of the Nation.

[(c)] (b) TRANSITION RULE.—Until regulations under section 3633 first take effect, rates and classes for competitive products shall remain subject to modification in accordance with the provisions of this chapter and section 407, as such provisions were as last in effect before the date of enactment of this section.

**§ 3633. Provisions applicable to rates for competitive products**

(a) IN GENERAL.—The Postal Regulatory Commission shall, within 18 months after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—

(1) prohibit the subsidization of competitive products by market-dominant products;

(2) ensure that each competitive product covers its costs attributable; and



(3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.

(b) REVIEW OF MINIMUM CONTRIBUTION.—Five years after the date of enactment of this section, and every 5 years thereafter, the Postal Regulatory Commission shall conduct a review to determine whether the institutional costs contribution requirement under subsection (a)(3) should be retained in its current form, modified, or eliminated. In making its determination, the Commission shall consider all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products.

(c) STREAMLINED REVIEW.—Not later than 90 days after the date of enactment of this subsection, after notice and opportunity for comment, the Postal Regulatory Commission shall promulgate (and may from time to time thereafter revise) regulations for streamlined after-the-fact review of newly proposed agreements between the Postal Service and users of the mail that provide rates not of general applicability for competitive products. Streamlined review shall apply only if agreements are functionally equivalent to existing agreements that have collectively covered attributable costs and collectively improved the net financial position of the Postal Service. The regulations issued under this subsection shall provide that streamlined review shall be concluded not later than 5 business days after the date on which the agreement is filed with the Commission and shall be limited to approval or disapproval of the agreement as a whole based on the Commission’s determination of its functional equivalence. Agreements not approved may be resubmitted without prejudice under section 3632.

\* \* \* \* \*

SUBCHAPTER IV—REPORTING REQUIREMENTS AND RELATED PROVISIONS

\* \* \* \* \*

**§ 3652. Annual reports to the Commission**

(a) COSTS, REVENUES, RATES, AND SERVICE.—Except as provided in subsection (c), the Postal Service shall, no later than 90 days after the end of each year, prepare and submit to the Postal Regulatory Commission a report (together with such nonpublic annex to the report as the Commission may require under subsection (e))—

(1) which shall analyze costs, revenues, rates, and quality of service, using such methodologies as the Commission shall by regulation prescribe, and in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title; **[and]**

(2) which shall, for each market-dominant product provided in such year, provide—

(A) product information, including mail volumes; and

(B) measures of the quality of service afforded by the Postal Service in connection with such product, including—

(i) the level of service (described in terms of speed of delivery and reliability) provided; and

(ii) the degree of customer satisfaction with the service provided<sup>1</sup>; and

(3) which shall provide the overall change in Postal Service productivity and the resulting effect of such change on overall Postal Service costs during such year, using such methodologies as the Commission shall by regulation prescribe, if necessary.

The Inspector General shall regularly audit the data collection systems and procedures utilized in collecting information and preparing such report (including any annex thereto and the information required under subsection (b)). The results of any such audit shall be submitted to the Postal Service and the Postal Regulatory Commission.

(b) INFORMATION RELATING TO WORKSHARE DISCOUNTS.—The Postal Service shall include, in each report under subsection (a), the following information with respect to each market-dominant product for which a workshare discount was in effect during the period covered by such report:

(1) The per-item cost avoided by the Postal Service by virtue of such discount.

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents.

(3) The per-item contribution made to institutional costs.

(c) MARKET TESTS.—In carrying out subsections (a) and (b) with respect to experimental products offered through market tests under section 3641 in a year, the Postal Service shall—

(1) report data on the costs, revenues, and quality of service by market test, which may be reported in summary form; and

(2) report such data as the Postal Regulatory Commission requires.

(d) SUPPORTING MATTER.—The Postal Regulatory Commission shall have access, in accordance with such regulations as the Commission shall prescribe, to the working papers and any other supporting matter of the Postal Service and the Inspector General in connection with any information submitted under this section.

(e) CONTENT AND FORM OF REPORTS.—

(1) IN GENERAL.—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the public reports (and any nonpublic annex and supporting matter relating to the report) to be provided by the Postal Service under this section. In carrying out this subsection, the Commission shall give due consideration to—

(A) providing the public with timely, adequate information to assess the lawfulness of rates charged;

(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

(C) protecting the confidentiality of commercially sensitive information.

(2) REVISED REQUIREMENTS.—The Commission may, on its own motion or on request of an interested party, initiate proceedings (to be conducted in accordance with regulations that the Commission shall prescribe) to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection whenever it shall appear that—

(A) the attribution of costs or revenues to products has become significantly inaccurate or can be significantly improved;

(B) the quality of service data has become significantly inaccurate or can be significantly improved; or

(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(f) CONFIDENTIAL INFORMATION.—

(1) IN GENERAL.—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section or under subsection (d) contains information which is described in section 410(c) of this title, or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

(2) TREATMENT.—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

(g) OTHER REPORTS.—The Postal Service shall submit to the Postal Regulatory Commission, together with any other submission that the Postal Service is required to make under this section in a year, copies of its then most recent—

- (1) comprehensive statement under section 2401(e);
- (2) performance plan under section 2803; and
- (3) program performance reports under section 2804.

### § 3653. Annual determination of compliance

(a) OPPORTUNITY FOR PUBLIC COMMENT.—After receiving the reports required under section 3652 for any year, the Postal Regulatory Commission shall promptly provide an opportunity for comment on such reports by users of the mails, affected parties, and an officer of the Commission who shall be required to represent the interests of the general public.

(b) DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.—Not later than 90 days after receiving the submissions required under section 3652 with respect to a year, the Postal Regulatory Commission shall make a written determination as to—

- (1) whether any rates or fees in effect during such year (for products individually or collectively) were not in compliance with applicable provisions of this chapter (or regulations promulgated thereunder); or
- (2) whether any service standards in effect during such year were not met.

If, with respect to a year, no instance of noncompliance is found under this subsection to have occurred in such year, the written determination shall be to that effect.

(c) WRITTEN DETERMINATION.—*Each annual written determination of the Commission under this section shall include the following:*

(1) *REQUIREMENTS.*—For each group of functionally equivalent agreements between the Postal Service and users of the mail, whether such group fulfilled requirements to—

(A) cover costs attributable; and

(B) improve the net financial position of the Postal Service.

(2) *NONCOMPLIANCE.*—Any group of functionally equivalent agreements not meeting subparagraphs (A) and (B) of paragraph (1) shall be determined to be in noncompliance under this subsection.

(3) *DEFINITION.*—For purposes of this subsection, a group of functionally equivalent agreements shall consist of 1 or more service agreements that are functionally equivalent to each other within the same market-dominant or competitive product, but shall not include agreements within an experimental product.

[(c)] (d) *NONCOMPLIANCE WITH REGARD TO RATES OR SERVICES.*—If, for a year, a timely written determination of noncompliance is made under subsection (b), the Postal Regulatory Commission shall take appropriate action in accordance with [subsections (c) and (e)] subsections (c) and (d) of section 3662 (as if a complaint averring such noncompliance had been duly filed and found under such section to be justified).

[(d)] (e) *REVIEW OF PERFORMANCE GOALS.*—The Postal Regulatory Commission shall also evaluate annually whether the Postal Service has met the goals established under sections 2803 and 2804, and may provide recommendations to the Postal Service related to the protection or promotion of public policy objectives set out in this title.

[(e)] (f) *REBUTTABLE PRESUMPTION.*—A timely written determination described in the last sentence of subsection (b) shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service (with regard to the matters described under paragraphs (1) and (2) of subsection (b)) during the year to which such determination relates.

\* \* \* \* \*

## SUBCHAPTER V—POSTAL SERVICES, COMPLAINTS, AND JUDICIAL REVIEW

### § 3661. Postal services

(a) The Postal Service shall develop and promote adequate and efficient postal services.

(b) When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

(c) The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public. The opinion shall be in writing and shall include a certification by each Commis-

sioner agreeing with the opinion that in his judgment the opinion conforms to the policies established under this title.

(d)(1) *The Commission shall issue its opinion within 90 days, or a longer period for good cause shown but in no event longer than 120 days, after the receipt of any proposal (as referred to in subsection (b)) concerning an identical or substantially identical proposal on which the Commission has issued an opinion within the preceding 5 years.*

(2) *If necessary in order to comply with the 90-day requirement under paragraph (1), the Commission may apply expedited procedures which the Commission shall by regulation prescribe.*

\* \* \* \* \*

SUBCHAPTER VII—MODERN SERVICE STANDARDS

\* \* \* \* \*

**§ 3692. Delivery-point modernization**

(a) *DEFINITIONS.—For purposes of this section—*

(1) *the term “delivery point” means a mailbox or other receptacle to which mail is delivered;*

(2) *the term “primary mode of mail delivery” means the typical method by which the Postal Service delivers letter mail to the delivery point of a postal patron;*

(3) *the term “door delivery” means a primary mode of mail delivery whereby mail is placed into a slot or receptacle at or near the postal patron’s door or is hand delivered to a postal patron, but does not include centralized delivery, curbside delivery, or sidewalk delivery;*

(4) *the term “centralized delivery” means a primary mode of mail delivery whereby mail receptacles of a number of delivery points are grouped or clustered at a single location;*

(5) *the term “curbside delivery” means a primary mode of mail delivery whereby a mail receptacle is situated at the edge of a sidewalk abutting a road or curb, at a road, or at a curb, and can be served by a letter carrier from a motorized vehicle; and*

(6) *the term “sidewalk delivery” means a primary mode of mail delivery whereby a mail receptacle is situated at the edge of a sidewalk and can be served by a letter carrier from the sidewalk.*

(b) *POLICY.—It shall be the policy of the Postal Service—*

(1) *to provide access to secure, convenient mail and package delivery receptacles to the greatest number of postal patrons feasible; and*

(2) *to use the most cost-effective primary mode of mail delivery feasible for postal patrons.*

(c) *PHASEOUT OF DOOR DELIVERY FOR NEW ADDRESSES.—For any new delivery point established after December 31, 2016, the Postal Service shall provide a primary mode of mail delivery other than door delivery, with a preference for secure, centralized delivery.*

(d) *BUSINESS ADDRESS CONVERSION.—*

(1) *IDENTIFICATION.—Not later than 1 year after the date of the Postal Service Reform Act of 2016, each Postal Service district office shall identify the business delivery points within its*

*service area that are appropriate candidates for conversion from door delivery to centralized delivery, curbside delivery, or sidewalk delivery.*

(2) *CONVERSION REQUIREMENT.—Beginning not later than October 1, 2017, the Postal Service shall implement a program to convert delivery points identified under paragraph (1) to centralized delivery, curbside delivery, or sidewalk delivery at a rate sufficient to ensure that—*

*(A) not less than 20 percent of such delivery points are converted by September 30, 2018;*

*(B) not less than 40 percent of such delivery points are converted by September 30, 2019;*

*(C) not less than 60 percent of such delivery points are converted by September 30, 2020;*

*(D) not less than 80 percent of such delivery points are converted by September 30, 2021; and*

*(E) all such delivery points are converted by September 30, 2022.*

(3) *NOTIFICATION.—In carrying out conversions under paragraph (2), the Postal Service shall provide written notice at least 60 days in advance of the implementation date of a change in primary mode of mail delivery to postal customers served by an applicable delivery point.*

(e) *RESIDENTIAL ADDRESS CONVERSION.—*

(1) *IDENTIFICATION.—Not later than 1 year after the date of the enactment of the Postal Service Reform Act of 2016, each Postal Service district office shall identify the residential delivery points within its service area that are appropriate candidates for conversion from door delivery to centralized delivery, curbside delivery, or sidewalk delivery.*

(2) *VOLUNTARY CONVERSION.—Not later than October 1, 2017, the Postal Service shall commence a program to convert delivery points identified under paragraph (1) to centralized delivery, curbside delivery, or sidewalk delivery. Such program shall operate as follows:*

*(A) Not later than 3 months after the identification of the delivery points under paragraph (1), the Postal Service shall divide such delivery points into geographically based address units (such as street blocks or other similar reasonably segregable units) not to exceed 50 delivery points per unit.*

*(B) Not later than 6 months after such identification, the Postal Service shall provide written notification to postal patrons served by each identified delivery point containing the following:*

*(i) Notice that the delivery point has been proposed for conversion to a more efficient primary mode of mail delivery to more economically provide universal postal service and improve service.*

*(ii) A description of the new primary mode of delivery proposed by the Postal Service and a visual example of such mode.*

*(iii) A conversion consent form and notice that conversion for residential addresses is on a voluntary basis.*

(iv) A description of benefits of conversion to the postal patron, including access to secure mail and package delivery, and benefits of conversion to the Postal Service, including a smaller environmental impact for delivery.

(v) A description of how the conversion process would work, and the monetary costs (if any) to the postal patron.

(vi) Any other information the Postal Service considers necessary.

(C) No delivery point may be converted under this subsection unless prior written consent is provided to the Postal Service by a postal patron served by such delivery point who is at least 18 years old. Prior to the conversion of a delivery point under this section, any written consent so provided may be withdrawn by such patron or by any other postal patron served by such delivery point who is at least 18 years old upon written notification to the Postal Service. The Postal Service shall place on the Postal Service's public Web site an option to request that a consent form or consent-withdrawal form be delivered to any delivery point identified for conversion under this subsection.

(D) Upon the receipt of written consent applicable to at least 40 percent of the delivery points within an address unit described under subparagraph (A), the Postal Service shall—

(i) not later than 30 days after the date that the requisite percentage is reached, provide written notice to each delivery point within such unit stating that the conversion threshold has been reached and that—

(I) with respect to any delivery point for which a consent for conversion was received, that the primary mode of mail delivery for such address will be converted; and

(II) with respect to any delivery point for which a consent for conversion was not received, that—

(aa) a postal patron served by such delivery point may elect, by written consent, at any time to convert the primary mode of mail delivery to the same form of delivery as the converted delivery points in such unit; and

(bb) if such a patron provides such consent, the primary mode of mail delivery shall be converted not later than 30 days after the date of such consent or, in any case where the conversion of delivery points has not yet occurred, upon implementation of that conversion;

(ii) not later than 90 days after the date that the requisite percentage is reached, but not less than 30 days following the written notice under clause (i), convert the delivery points for which consent was received to the applicable new primary mode of mail delivery; and

(iii) following the conversion of an address unit, ensure that the primary mode of mail delivery for any new residents to the address unit is the converted pri-

mary mode of mail, regardless of the primary mode of mail delivery for the previous occupant.

(f) *CONSIDERATIONS.*—In making a determination to convert the primary mode of mail delivery under this section, the Postal Service shall consider—

(1) *the impact of weather conditions, physical barriers, or any other factor that may impact the feasibility of providing a primary mode of mail delivery other than door delivery (such as a factor that may significantly reduce the potential cost savings associated with providing centralized delivery or curbside delivery);*

(2) *whether the address is in a registered historic district (as that term is defined in section 47(c)(3)(B) of the Internal Revenue Code of 1986), is listed on the National Register of Historic Places, is designated as a National Historic Landmark, or is of historic value; and*

(3) *population density and the concentration of poverty.*

(g) *WAIVER FOR PHYSICAL HARDSHIP.*—

(1) *IN GENERAL.*—The Postal Service shall establish and maintain a waiver program under which, upon application, door delivery may be continued, or provided, for a delivery point identified under subsection (d)(1) or (e)(1) at no cost to the applicant in any case in which—

(A) *centralized delivery, curbside delivery, or sidewalk delivery would, but for this paragraph, otherwise be the primary mode of mail delivery; and*

(B) *door delivery is necessary in order to avoid causing significant physical hardship or physical safety risks to a postal patron.*

(2) *TREATMENT OF WAIVER.*—An address receiving door delivery pursuant to a waiver under this subsection—

(A) *shall be counted, for purposes of the reporting requirement under subsection (j), as an address that receives the primary mode of mail delivery which the address would be subject to if not for the waiver; and*

(B) *shall, not later than 60 days after ceasing to meet the requirements of paragraph (1), be converted to the primary mode of mail delivery which is otherwise applicable.*

(h) *PROCEDURES.*—In carrying out conversions under this section, the Postal Service shall establish procedures to—

(1) *solicit, consider, and respond to input from the general public, postal patrons, State and local governments, local associations, and property owners;*

(2) *calculate and make publicly accessible the cost or savings of the conversion to the Postal Service as well as the average conversion cost or savings to each postal patron and any cost or savings to the State and local government; and*

(3) *place centralized delivery points in locations that maximize delivery efficiency, ease of use for postal patrons, and respect for private property rights.*

(i) *VOUCHER PROGRAM.*—The Postal Service shall provide for a voucher program under which, upon application, the Postal Service may defray all or any portion of the costs associated with conversion from door delivery under this section which would otherwise be borne by postal patrons.



(j) *ANNUAL REPORT.*—Not later than 60 days after the end of each of fiscal years 2017 through 2023, the Postal Service shall submit to Congress and the Inspector General a report on the implementation of this section during the most recently completed fiscal year. Each such report shall include—

- (1) the number of residential and business addresses that—
  - (A) receive door delivery as of the end of the fiscal year preceding the most recently completed fiscal year;
  - (B) receive door delivery as of the end of the most recently completed fiscal year; and
  - (C) during the most recently completed fiscal year, were converted from door delivery to—
    - (i) centralized delivery;
    - (ii) curbside delivery; and
    - (iii) any other primary mode of mail delivery;

(2) the estimated cost savings from the conversions described in paragraph (1)(C);

(3) a description of the progress made by the Postal Service toward meeting the requirements of the phaseout under subsection (c); and

(4) any other information which the Postal Service considers appropriate.

(k) *INSPECTOR GENERAL AUDIT.*—The Inspector General shall issue an annual audit report on the implementation of this section not later than 90 days after the date on which the Postal Service releases its annual report under subsection (j). Such report shall include—

(1) an audit of the data contained in the Postal Service’s report under subsection (j); and

(2) an evaluation of the Postal Service’s implementation of the voucher program under subsection (i).

(l) *REVIEW.*—Subchapters IV and V shall not apply with respect to any action taken by the Postal Service under this section.

## **CHAPTER 37—NONPOSTAL SERVICES**

Sec.

3701. Purpose.

3702. Definitions.

3703. Postal service program for State governments.

3704. Postal service program for other government agencies.

3705. Transparency and accountability for nonpostal services.

### **§ 3701. Purpose**

The purpose of this chapter is to enable the Postal Service to increase its net revenues through specific nonpostal products and services that are expressly authorized by this chapter. Postal Service revenues and expenses under this chapter shall be funded through the Postal Service Fund.

### **§ 3702. Definitions**

In this chapter—

(1) the term “nonpostal services” is limited to services offered by the Postal Service that are expressly authorized by this chapter and are not postal products or services;

(2) the term “attributable costs” has the meaning given such term in section 3631; and

(3) the term “year” means a fiscal year.

**§ 3703. Postal service program for State governments**

(a) *IN GENERAL.*—Notwithstanding any other provision of this title, the Postal Service may establish a program to enter into agreements with an agency of any State government, local government, or tribal government to provide property and services on behalf of such agencies for non-commercial products and services at Postal Service facilities within the United States, but only if such property and services—

(1) provide enhanced value to the public, such as by lowering the cost or raising the quality of such services or by making such services more accessible;

(2) do not interfere with or detract from the value of postal services, including—

(A) the cost and efficiency of postal services; and

(B) unreasonably restricting access to postal retail service, such as customer waiting time and access to parking; and

(3) provide a reasonable contribution to the institutional costs of the Postal Service, defined as reimbursement that covers at least 100 percent of attributable costs of all property and services provided under each relevant agreement in each year.

(b) *PUBLIC NOTICE.*—At least 90 days before offering a service under the program, the Postal Service shall make available to the public on its Web site—

(1) the agreement with the agency regarding such service; and

(2) a business plan that describes the specific service to be provided, the enhanced value to the public, terms of reimbursement, the estimated annual reimbursement to the Postal Service, and the estimated percentage of attributable Postal Service costs that will be covered by reimbursement (with documentation to support the estimates).

(c) *PUBLIC COMMENT.*—Before offering a service under the program, the Postal Service shall provide for a public comment period of at least 30 days that allows the public to post comments relating to the provision of such services on the Postal Service Web site. The Postal Service shall make reasonable efforts to provide written responses to the comments on such Web site at least 30 days before offering such services.

(d) *APPROVAL REQUIRED.*—The Postal Service may not establish the program under subsection (a) unless the Governors of the Postal Service approve such program by a recorded vote that is publicly disclosed on the Postal Service Web site with a majority of the total Governors voting for approval.

(e) *APPLICATION OF REPORTING REQUIREMENTS.*—For purposes of the reporting requirements under section 3705, the Postal Service shall submit a separate report for each agreement with an agency entered into under subsection (a) analyzing the costs, revenues, rates, and quality of service for the provision of all services under such agreement, including information demonstrating that the agreement satisfies the requirements of paragraphs (1) through (3) of subsection (a).

(f) *REGULATIONS REQUIRED.*—*The Postal Regulatory Commission shall issue such regulations as are necessary to carry out this section.*

(g) *DEFINITIONS.*—*For the purpose of this section—*

(1) *the term “local government” means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, or regional or interstate government entity;*

(2) *the term “State government” includes the government of the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States;*

(3) *the term “tribal government” means the government of an Indian tribe, as that term is defined in section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e)); and*

(4) *the term “United States”, when used in a geographical sense, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.*

**§ 3704. Postal service program for other government agencies**

(a) *IN GENERAL.*—*The Postal Service may establish a program to provide property and services to other Government agencies within the meaning of section 411, but only if such program provides a reasonable contribution to the institutional costs of the Postal Service, defined as reimbursement by each agency that covers at least 100 percent of the attributable costs of all property and service provided by the Postal Service in each year to such agency.*

(b) *APPLICATION OF REPORTING REQUIREMENTS.*—*For purposes of the reporting requirements under section 3705, the Postal Service shall submit a separate report for each agreement with an agency entered into under subsection (a) analyzing the costs, revenues, rates, and quality of service for the provision of all services under such agreement, including information demonstrating that the agreement satisfies the requirements of subsection (a).*

**§ 3705. Transparency and accountability for nonpostal services**

(a) *ANNUAL REPORT TO THE COMMISSION.*—

(1) *IN GENERAL.*—*Not later than 90 days after the last day of each year, the Postal Service shall submit to the Postal Regulatory Commission a report that analyzes costs, revenues, rates, and quality of service for each agreement for the provision of property and services under this chapter, using such methodologies as the Commission may prescribe, and in sufficient detail to demonstrate compliance with the requirements of this chapter.*

(2) *SUPPORTING MATTER.*—*A report submitted under paragraph (1) shall include any nonpublic annex, the working papers, and any other supporting matter of the Postal Service and the Inspector General related to the information submitted in such report.*

(b) *CONTENT AND FORM OF REPORT.*—

(1) *IN GENERAL.*—The Postal Regulatory Commission shall, by regulation, prescribe the content and form of the report required under subsection (a). In prescribing such regulations, the Commission shall give due consideration to—

(A) providing the public with timely, adequate information to assess compliance;

(B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and

(C) protecting the confidentiality of information that is commercially sensitive or is exempt from public disclosure under section 552(b) of title 5.

(2) *REVISED REQUIREMENTS.*—The Commission may, on its own motion or on request of any interested party, initiate proceedings to improve the quality, accuracy, or completeness of Postal Service data required by the Commission if—

(A) the attribution of costs or revenues to property or services under this chapter has become significantly inaccurate or can be significantly improved;

(B) the quality of service data provided to the Commission for a report under this chapter has become significantly inaccurate or can be significantly improved; or

(C) such revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

(c) *AUDITS.*—The Inspector General shall regularly audit the data collection systems and procedures used in collecting information and preparing the report required under subsection (a). The results of any such audit shall be submitted to the Postal Service and the Postal Regulatory Commission.

(d) *CONFIDENTIAL INFORMATION.*—

(1) *IN GENERAL.*—If the Postal Service determines that any document or portion of a document, or other matter, which it provides to the Postal Regulatory Commission in a nonpublic annex under this section contains information described in section 410(c), or exempt from public disclosure under section 552(b) of title 5, the Postal Service shall, at the time of providing such matter to the Commission, notify the Commission of its determination, in writing, and describe with particularity the documents (or portions of documents) or other matter for which confidentiality is sought and the reasons therefor.

(2) *TREATMENT.*—Any information or other matter described in paragraph (1) to which the Commission gains access under this section shall be subject to paragraphs (2) and (3) of section 504(g) in the same way as if the Commission had received notification with respect to such matter under section 504(g)(1).

(e) *ANNUAL COMPLIANCE DETERMINATION.*—

(1) *OPPORTUNITY FOR PUBLIC COMMENT.*—Upon receiving a report required under subsection (a), the Postal Regulatory Commission shall promptly—

(A) provide an opportunity for comment on such report by any interested party; and

(B) appoint an officer of the Commission to represent the interests of the general public.

(2) *DETERMINATION OF COMPLIANCE OR NONCOMPLIANCE.*—Not later than 90 days after receiving a report required under

*subsection (a), the Postal Regulatory Commission shall make a written determination as to whether the nonpostal activities carried out during the applicable year were or were not in compliance with the provisions of this chapter. For purposes of this paragraph, any case in which the requirements for coverage of attributable costs have not been met shall be considered to be a case of noncompliance. If, with respect to a year, no instance of noncompliance is found to have occurred, the determination shall be to that effect. Such determination of noncompliance shall be included with the annual compliance determination required under section 3653.*

*(3) NONCOMPLIANCE.—If a timely written determination of noncompliance is made under paragraph (2), the Postal Regulatory Commission shall take the following appropriate action. If the requirements for coverage of attributable costs specified by this chapter are not met, the Commission shall, within 60 days after the determination, prescribe remedial action to restore compliance as soon as practicable, including the full restoration of revenue shortfalls during the following year. The Commission may order the Postal Service to discontinue a nonpostal service under section 3703 that persistently fails to meet cost coverage requirements.*

*(4) DELIBERATE NONCOMPLIANCE.—In the case of deliberate noncompliance by the Postal Service with the requirements of this chapter, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of such noncompliance. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury.*

*(f) REGULATIONS REQUIRED.—The Postal Regulatory Commission shall issue such regulations as are necessary to carry out this section.*

\* \* \* \* \*

**PART V—TRANSPORTATION OF MAIL**

\* \* \* \* \*

**CHAPTER 54—TRANSPORTATION OF MAIL BY AIR**

Sec.  
5401. Authorization.

\* \* \* \* \*

5404. Aviation security for parcels.

**§ 5401. Authorization**

(a) The Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft.

(b) Except as otherwise provided in section 5402 or 5404 of this title, the Postal Service may make such rules, regulations, and orders consistent with part A of subtitle VII of title 49, or any order,

rule, or regulation made by the Secretary of Transportation thereunder, as may be necessary for such transportation.

\* \* \* \* \*

**§ 5404. Aviation security for parcels**

*A parcel carried by an air carrier or foreign air carrier (as those terms are defined in section 40102(a) of title 49) shall—*

- (1) use postage that has been generated by a postage evidencing system that has been validated under level 4 of the 140 series of the Federal Information Processing Standards; or*
- (2) be entered with in person sender verification.*

\* \* \* \* \*

**SECTION 633 OF THE TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1999**

SEC. 633. (a) INTERNATIONAL POSTAL ARRANGEMENTS.—[Omitted—amends other Act]

(b) SENSE OF CONGRESS.—It is the sense of Congress that any treaty, convention or amendment entered into under the authority of section 407 of title 39 of the United States Code, as amended by this section, should not grant any undue or unreasonable preference to the Postal Service, a private provider of postal services, or any other person.

(c) TRADE-IN-SERVICE PROGRAMS.—[Omitted—amends other Act]

[(d) TRANSFER OF FUNDS.—In fiscal year 1999 and each fiscal year hereafter, the Postal Service shall allocate to the Department of State from any funds available to the Postal Service such sums as may be reasonable, documented and auditable for the Department of State to carry out the activities of Section 407 of title 39 of the United States Code.]

**INSPECTOR GENERAL ACT OF 1978**

\* \* \* \* \*

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 12 of this Act, as used in this section—

(1) the term “Federal entity” means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

- (A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;
- (B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;
- (C) the Executive Office of the President;
- (D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection, the Board for International Broadcasting, the Committee for Purchase From People Who Are Blind or Severely Disabled, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Defense Intelligence Agency, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Geospatial-Intelligence Agency, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, **the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service** and *the United States International Trade Commission*;

(3) the term “head of the Federal entity” means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to **subsection (h)(1)** *subsection (g)(1)* of this section;

(4) the term “head of the designated Federal entity” means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to **subsection (h)(1)** *subsection (g)(1)* of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

**[(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);]**

**[(C) (B) with respect to the Federal Labor Relations Authority, such term means the members of the Authority**

(described under section 7104 of title 5, United States Code);

**[(D)]** *(C)* with respect to the Committee for Purchase From People Who Are Blind or Severely Disabled, such term means the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled;

**[(E)]** *(D)* with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

**[(F)]** *(E)* with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

**[(G)]** *(F)* with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

**[(H)]** *(G)* with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

**[(I)]** *(H)* with respect to the Peace Corps, such term means the Director of the Peace Corps;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) **[(Except as provided under subsection (f) of this section, the)]** *The* Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.

(d)(1) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. Except as



provided in paragraph (2), the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(2)(A) The Secretary of Defense, in consultation with the Director of National Intelligence, may prohibit the inspector general of an element of the intelligence community specified in subparagraph (D) from initiating, carrying out, or completing any audit or investigation if the Secretary determines that the prohibition is necessary to protect vital national security interests of the United States.

(B) If the Secretary exercises the authority under subparagraph (A), the Secretary shall submit to the committees of Congress specified in subparagraph (E) an appropriately classified statement of the reasons for the exercise of such authority not later than 7 days after the exercise of such authority.

(C) At the same time the Secretary submits under subparagraph (B) a statement on the exercise of the authority in subparagraph (A) to the committees of Congress specified in subparagraph (E), the Secretary shall notify the inspector general of such element of the submittal of such statement and, to the extent consistent with the protection of intelligence sources and methods, provide such inspector general with a copy of such statement. Such inspector general may submit to such committees of Congress any comments on a notice or statement received by the inspector general under this subparagraph that the inspector general considers appropriate.

(D) The elements of the intelligence community specified in this subparagraph are as follows:

- (i) The Defense Intelligence Agency.
- (ii) The National Geospatial-Intelligence Agency.
- (iii) The National Reconnaissance Office.
- (iv) The National Security Agency.

(E) The committees of Congress specified in this subparagraph are—

- (i) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and
- (ii) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e)(1) In the case of a designated Federal entity for which a board, chairman of a committee, or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a  $\frac{2}{3}$  majority of the board, committee, or commission.”

(2) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

[(f)(1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

[(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the “Inspector General”) shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

[(3)(A)(i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

[(I) ongoing civil or criminal investigations or proceedings;

[(II) undercover operations;

[(III) the identity of confidential sources, including protected witnesses;

[(IV) intelligence or counterintelligence matters; or

[(V) other matters the disclosure of which would constitute a serious threat to national security.

[(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

[(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

[(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

[(i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and

[(ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

[(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

[(4) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under

chapter 12 of title 39, United States Code, the National Labor Relations Act, any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

[(5) As used in this subsection, the term “Governors” has the meaning given such term by section 102(3) of title 39, United States Code.

[(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.]

[(g)] (f)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) “designated Federal entity” for “establishment”; and

(B) “head of the designated Federal entity” for “head of the establishment”.

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(4) Each Inspector General shall—

(A) in accordance with applicable laws and regulations governing appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

[(h)] (g)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and if the designated Federal entity is not a board or commission, include the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

\* \* \* \* \*

RULE OF CONSTRUCTION OF SPECIAL PROVISIONS

SEC. 8J. **[The special provisions under section 8, 8A, 8B, 8C, 8D, 8E or 8F of this Act]** *The special provisions under section 8, 8A, 8B, 8C, 8D, 8E, 8F, 8H, 8I, or 8M of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8G(a).*

\* \* \* \* \*

**SEC. 8M. SPECIAL PROVISIONS CONCERNING THE UNITED STATES POSTAL SERVICE AND POSTAL REGULATORY COMMISSION.**

(a) **OFFICE OF INSPECTOR GENERAL OF THE POSTAL COMMUNITY.**—*The Inspector General for the United States Postal Service and the Postal Regulatory Commission shall be referred to as the “Inspector General of the Postal Community”.*

(b) **RESPONSIBILITIES.**—*In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Postal Community shall have equal responsibility over the United States Postal Service and the Postal Regulatory Commission.*

(c) **APPLICABLE HEAD OF THE ESTABLISHMENT.**—*For purposes of the applicability of this Act to the Inspector General of the Postal Community—*

(1) *the “head of the establishment” shall mean the Postmaster General of the United States for activities by the Office related to the United States Postal Service; and*

(2) *the “head of the establishment” shall mean the Chairman of the Postal Regulatory Commission for activities by the Office related to the Postal Regulatory Commission.*

(d) *APPLICABILITY OF ESTABLISHMENT FOR REPORTS.*—In carrying out the duties and responsibilities under section 5—

(1) the term “establishment” shall include as separate establishments—

(A) the United States Postal Service; and

(B) the Postal Regulatory Commission; and

(2) the Inspector General of the Postal Community shall prepare separate semiannual reports for the United States Postal Service and the Postal Regulatory Commission.

(e) *OFFICE SPACE.*—In carrying out the duties and responsibilities under section 6(c), the heads of the establishments for the United States Postal Service and the Postal Regulatory Commission shall work jointly with one another and in consultation with the Inspector General of the Postal Community to ensure adequate and appropriate provision to the Office of the Inspector General of the Postal Community under section 6(c).

(f) *BUDGET.*—In carrying out the duties and responsibilities under section 6(f)—

(1) the “head of the establishment” shall mean the Postmaster General of the United States; and

(2) designation of the Postmaster General of the United States as “head of the establishment” under this subsection shall not be construed as granting any authorities to the Postmaster General of the United States with regard to the Postal Regulatory Commission.

(g) *GENERAL DUTIES AND RESPONSIBILITIES.*—In carrying out the duties and responsibilities specified in this Act—

(1) the Inspector General of the Postal Community shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service;

(2) the Inspector General of the Postal Community shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation; and

(3) the Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to the Inspector General of the Postal Community.

(h) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the Postal Community.

\* \* \* \* \*

#### DEFINITIONS

SEC. 12. As used in this Act—

(1) the term “head of the establishment” means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, Homeland Security, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of

the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive officer of the Resolution Trust Corporation; the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; the Director of the Federal Housing Finance Agency; the Board of Directors of the Tennessee Valley Authority; the President of the Export-Import Bank; *the Postmaster General of the United States; the Chairman of the Postal Regulatory Commission*; the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Director of the National Security Agency; or the Director of the National Reconnaissance Office; as the case may be;

(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, or the Veterans’ Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export-Import Bank, *the United States Postal Service, the Postal Regulatory Commission*, the Commissions established under section 15301 of title 40, United States Code, the National Security Agency, or the National Reconnaissance Office, as the case may be;

(3) the term “Inspector General” means the Inspector General of an establishment;

(4) the term “Office” means the Office of Inspector General of an establishment; and

(5) the term “Federal agency” means an agency as defined in section 552(f) of title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

\* \* \* \* \*

---

**TITLE 41, UNITED STATES CODE**

\* \* \* \* \*

## SUBTITLE III—CONTRACT DISPUTES

\* \* \* \* \*

### CHAPTER 71—CONTRACT DISPUTES

#### § 7101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator for Federal Procurement Policy appointed pursuant to section 1102 of this title.

(2) AGENCY BOARD OR AGENCY BOARD OF CONTRACT APPEALS.—The term “agency board” or “agency board of contract appeals” means—

(A) the Armed Services Board;

(B) the Civilian Board;

(C) the board of contract appeals of the Tennessee Valley Authority; or

(D) the Postal Service Board established under section 7105(d)(1) of this title.

(3) AGENCY HEAD.—The term “agency head” means the head and any assistant head of an executive agency. The term may include the chief official of a principal division of an executive agency if the head of the executive agency so designates that chief official.

(4) ARMED SERVICES BOARD.—The term “Armed Services Board” means the Armed Services Board of Contract Appeals established under section 7105(a)(1) of this title.

(5) CIVILIAN BOARD.—The term “Civilian Board” means the Civilian Board of Contract Appeals established under section 7105(b)(1) of this title.

(6) CONTRACTING OFFICER.—The term “contracting officer”—

(A) means an individual who, by appointment in accordance with applicable regulations, has the authority to make and administer contracts and to make determinations and findings with respect to contracts; and

(B) includes an authorized representative of the contracting officer, acting within the limits of the representative’s authority.

(7) CONTRACTOR.—The term “contractor” means a party to a Federal Government contract other than the Federal Government.

(8) EXECUTIVE AGENCY.—The term “executive agency” means—

(A) an executive department as defined in section 101 of title 5;

(B) a military department as defined in section 102 of title 5;

(C) an independent establishment as defined in section 104 of title 5, except that the term does not include the Government Accountability Office; **[and]**

(D) a wholly owned Government corporation as defined in section 9101(3) of title 31**[.]**; and

(E) the United States Postal Service and the Postal Regulatory Commission.

(9) MISREPRESENTATION OF FACT.—The term “misrepresentation of fact” means a false statement of substantive fact, or conduct that leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

\* \* \* \* \*

