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Congressional Mail: History of the Franking Privilege and Options for Change

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Summary

The congressional franking privilege allows Members of Congress to send official mail at government expense. This report provides a history of official congressional mail sent at government expense (franking privilege), a description of its costs, distribution of franking funds, criticism and defense of franking, past franking reforms, and considerations for possible future franking reform. This report will be updated as legislative actions warrant. See CRS Report RS20671, *Official Congressional Mail Costs*, and CRS Report RS20700, *Congressional Franking Privilege: An Overview*, by John Pontius.

The franking privilege, which allows Members of Congress to send official mail at government expense,¹ dates from 1660, when it was first instituted by the British House of Commons. In the United States, the First Continental Congress passed legislation in 1775 giving its legislators mailing privileges to better inform their constituents.

The franking practice continues in the modern Congress due to the perceived public interest in facilitating official communications between elected officials and the citizens they represent. Proponents of the franking privilege argue that without the privilege most Members could not afford to send important information to their constituents, thereby curtailing the delivery of ideas, reports, assistance, and services.

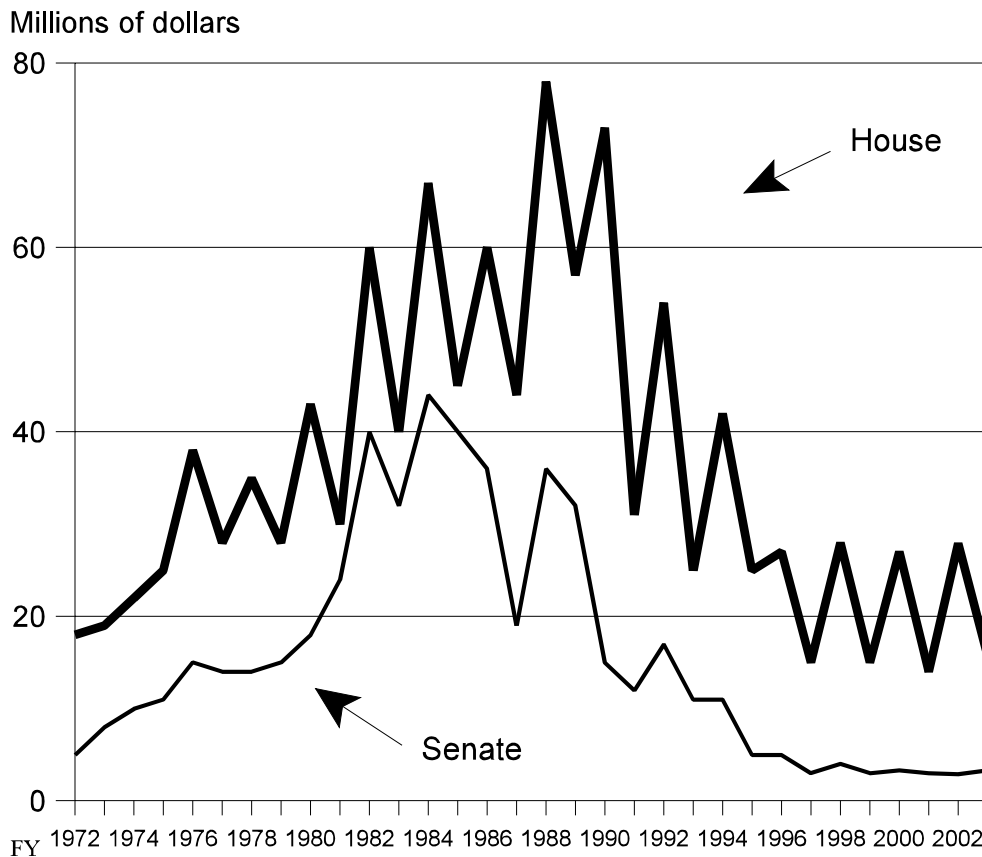
Use of the frank, however, is limited. It may not be used to solicit money or votes. Letters related to political campaigns, political parties, or personal business or friendships are not permitted. For example, a legislator may not use the frank on a holiday greeting,

¹ The Member's signature, called the "frank," appears in place of a postage stamp or a metered mail mark in the upper right-hand corner of the envelope containing official mail from that Member. This signature is recognized by the U. S. Postal Service as the equivalent cost of a postage stamp for that piece and rate of mail. John Pontius, "Franking," in *The Encyclopedia of the United States Congress*, 4 vols. (New York: Simon and Schuster, 1995), vol. 2, pp. 883-888.

a message of sympathy, an invitation to a party fund raising event, or a request for political support.

Cost of Franking. Although the word “frank” is derived from the medieval Latin word *francus* and means the right to send mail without paying postage, franking is not free. During the last 15 years, Congress spent from a high of \$113.4 million in FY1988 to a low of \$16.7 million in FY2001 to send official mail. One of the major reasons the cost of official mail increased in the 1980s was the increased use of computer generated mail and mass mailings (newsletters, questionnaires, town meeting notices, and other mailings of 500 or more pieces that are of substantially identical content). **Figure 1** depicts in graphic form changes in official mail costs between FY1972 and FY2003.

Figure 1. Official Mail Costs, by Chamber, House of Representatives and Senate, Fiscal Years 1972 - 2003
(in current dollars)



Source is U.S. Postal Service

The decrease in postal expenditures in the 1990s was primarily due to congressional reforms enacted in 1989, 1990, and subsequent years, which dramatically reduced franking costs. Congress historically has spent more for official mail costs in election years than in non-election years. For example, the House spent \$28 million in FY2002, an election year, and \$15.7 million in FY2003, a non-election year. Comparably, the Senate spent \$2.9 million in FY2002 and \$3.3 million in FY2003. Although Members

are prohibited from sending mass mailings for specific periods (90 days in the House and 60 days in the Senate) prior to a primary, run-off, or general election in which they are a candidate, they do send a considerably higher volume of mail in the months immediately preceding the prohibition period. The \$19 million spent on franking in FY2003 was slightly less than 1% of the \$3.36 billion budget for the entire legislative branch for FY2003.

Appropriations and Allocations to Individual Members. Congress pays the U.S. Postal Service for franked mail through annual appropriations for the legislative branch. The House and Senate Appropriations Committees, and subsequently the respective chambers, determine the amount to be appropriated for each of the two bodies. Each Chamber makes an allotment to each Member from these appropriations. In the Senate, the allowance is administered by the Committee on Rules and Administration; in the House, by the Committee on House Administration.²

Representatives and Senators are authorized a specific dollar allotment for franked mail, according to a formula based on the number of addresses in their districts/states. In the Senate, the mail allowance is one of three allowances that comprise each Senator's "personnel and office expenses account." The other two provide funds for office staff and office expenses. The combined funds may be used without limitation in any one allocation category. The franked mail allocation is subject to law and Senate regulations.

Since January 3, 1999, in the House, the funds for each Representative's franked mail component have been combined with his or her two allowances for office staff and office expenses. The combined funds ("Members Representational Allowance") may be used without limitation in any one allocation category. The franked mail allocation is subject to law and House regulations.

Criticism of the Franking Privilege. In recent years, the franking privilege has come under press scrutiny and public criticism. Opponents call for franking restrictions, an outright ban either totally or only in election years, or free mailing privileges for electoral challengers.

Notwithstanding the use of the frank to keep constituents better informed, critics allege that the vast majority of franked mail is unsolicited mail. According to former Senate Rules and Administration Committee chairman Charles McC. Mathias, Jr., "In 1981 and 1982, mass-mail constituted about 92 percent of all Senate mail with newsletters accounting for 69 percent. By contrast, letters sent in response to incoming mail were only 4 percent of the total."³

A decade earlier, pre-election mailings reached such proportions that Common Cause filed a lawsuit in 1973 in response to alleged franking abuses by Congress during

² Appropriations for official mail costs may not be supplemented by funds from any source, public or private (P.L. 101-520, 104 Stat. 2279, Sec. 311(c), Legislative Branch Appropriations Act, FY1991).

³ Sen. Charles Mathias, "Senatorial Newsletters," remarks in the Senate, *Congressional Record*, vol. 128 (Dec. 20, 1982), pp. 32737-32738.

the 1972 election campaign. Common Cause contended that the frank was unconstitutional and gave incumbents an unfair advantage over challengers.

Within 2 months, anxious to set its own rules before the courts could interfere, Congress passed a new law setting guidelines for use of the frank.⁴ It included tighter definitions of the types of mail eligible for the frank, and a prohibition on mass mailings 28 days before primary and general elections. To oversee use of the franking privilege, the House set up the Commission on Congressional Mailing Standards and the Senate gave its Select Ethics Committee the responsibility to make routine decisions regarding the frankability of mail.

In the Common Cause lawsuit, the Federal District Court found that the franking rules Congress adopted made a reasonable attempt to distinguish between official material and political material which could not be sent under the frank.⁵ In 1983, the Supreme Court declined to reconsider a lower court opinion in the lawsuit initiated by Common Cause. The franking issue reemerged in the late 1980s as the press, taxpayers groups, and Members of Congress argued for further franking reform.

Franking Reform. The franking privilege has carried an element of controversy since the earliest days of the Continental Congress. While few would quarrel with the intent behind the frank — to help Members of Congress better communicate with their constituents — the privilege has, on occasion, been subject to alleged abuse. Misuse was such a problem in the latter part of the 19th century that Congress repealed the franking law for one year (1873), and then reenacted it. Subsequently, Members of Congress relied on the courts and Post Office Department for interpretive rulings and advisory opinions on the frankability of materials under an “official business” test. These rulings and opinions were the only guidelines on use of the frank, and they were not enforced by the Post Office. In fact, in December 1968, the Post Office stopped giving advisory opinions on use of the frank.

The reforms begun by Congress in 1973, mentioned earlier, continued in 1977, when the House and Senate amended their respective codes of ethics. The amendments banned the use of private and political funds to print and prepare franked mass mailings, and extended the preelection cutoff of mass mailings before primary and general elections from 28 to 60 days.⁶

Changes in the House ethics code also required that the costs of franked mail be paid only from funds in an appropriation bill, a restriction not made applicable to Senators. However, Congress later statutorily required both Representatives and Senators to pay the costs of franked mail from funds specifically appropriated for that purpose, and prohibited

⁴ P.L. 93-191, 87 Stat. 737, *To Amend Title 39 United States Code, To Clarify the Proper Use of the Franking Privilege of Members of Congress.*

⁵ *Common Cause v. Bolger*, 512 F. Supp. 26, 32 (D.D.C. 1980).

⁶ H.Res. 287, Mar. 2, 1977, and S.Res. 110, Apr. 1, 1977. In 1996, the House extended the preelection cutoff from 60 to 90 days (P.L. 104-197, 110 Stat. 2401, Sec. 102, Legislative Branch Appropriations Act, FY1997).

the use of supplemental funds from private and public sources.⁷ The House also required that newsletters and other postal patron mailings be sent at the least costly postal rate. Postal patron mailings are delivered to every stop on a postal delivery route, but not to a specifically named recipient.

During the 1980s and 1990s, Congress took several significant steps to reduce the costs of franking and ensure better public accountability. This occurred during a time when first class mail rates increased 48% from 25 cents in 1989 to 37 cents in 2002. In 1986, the Senate established a franking allowance for each Senator and for the first time required public disclosure of expenditures. The House established a separate franking allowance and required public disclosure in 1990.⁸

In 1989, Congress established separate franking appropriations accounts for the House and Senate, providing more control to each house of its franking budget.⁹ Previously, funds for both houses were combined in a single appropriation account “Official Mail Costs.” In 1990, Congress required that the costs of each Representative’s use of the frank be included in the quarterly report of the Clerk of the House on House expenditures.¹⁰ The Act also required the Postmaster General to (1) monitor use of the frank by each Representative and Senator; (2) notify each Member on a monthly basis of the amount of his or her franking allowance used; and (3) prohibit the delivery of franked mail in excess of a Member’s allowance.¹¹ Since October 1992, Members have been prohibited from sending mass mailings outside their districts.¹² This action followed a U.S. Court of Appeals ruling that it was unconstitutional for Members to send mass mailings outside their districts.¹³

Since October 1994, Senators have been allowed to use official office expense funds for mass mailings that do not exceed \$50,000. Senators may not use the frank for mass mailings above that amount nor pay for mailings with official office expense funds. Exempt from the Senate mass mailing limitation are direct responses to a communication from an individual; mailings to communications to other Members of Congress or to a federal, state or local government official; news releases to communications media; and town meeting notices. Senators are prohibited from mailing town meeting notices fewer than 60 days before the day of any primary or general election.¹⁴

In 1995, the House consolidated Members’ allowances for clerk-hire, official office expenses, and mail costs used into one allowance, “Members’ Representational

⁷ P.L. 101-520, 104 Stat. 2279, Sec. 311(c), Legislative Branch Appropriations Act, FY1991.

⁸ *Ibid.*, Sec. 311.

⁹ P.L. 101-163, 103 Stat. 1052, Legislative Branch Appropriations Act, FY1990.

¹⁰ Since Oct. 1, 1995, the costs of each Representative’s frank usage are published in the *Statement of Disbursements by the House*, compiled by the House Chief Administrative Officer.

¹¹ P.L. 101-520, Sec. 311(b).

¹² P.L. 102-392, 106 Stat. 1722, Sec. 309, Legislative Branch Appropriations Act, FY1993.

¹³ *Coalition to End the Permanent Congress v. Marvin T. Runyon, et al*, 979 F.2d 219 (D.C. Cir. 1992).

¹⁴ P.L. 103-283, 108 Stat. 1427-1428, Sec. 5-6, Legislative Branch Appropriations Act, FY1995.

Allowances” that allows greater flexibility in use of the frank.¹⁵ In 1996, three important franking provisions were approved by Congress. The first extended the prohibition on unsolicited mass mailings by a House member from 60 to 90 days prior to primary and general elections. The second required that each mass mailing contain the statement, “This mailing was prepared, published, and mailed at taxpayer expense.” The third required that the quarterly *Statement of Disbursements of the House*, contain a summary tabulation setting for each House member in the period, the total number of mass mail pieces sent, the number of mass mail pieces per address, the total postage costs of mass mailings, and the mass mail postage cost per address.¹⁶ In 2003, the 90 day pre-election cutoff in the House did not apply to solicited e-mail.

Considerations for Possible Future Franking Reform. Critics of franking privilege have offered a number of suggestions that Congress may wish to consider concerning further reductions in congressional mail costs. Several of these ideas have been incorporated as bills in the 108th Congress or earlier Congresses. Among these ideas are the following proposals.

- Abolish the franking privilege and establish a postage allowance. Allow challengers the same postage allowance as Members of Congress.
- Publicly disclose all indirect costs of franking — costs of printing and acquiring mail lists, salary of all congressional staff who compose mass mailings, salary and expenses of handling, folding and processing mail.
- Prohibit all mass mailings (including newsletters, questionnaires, and targeted mail), or reduce the number of pieces that comprise a mass mailing (500 or more pieces of mail identical in content).
- Limit the use of the frank to responses to direct constituent requests for assistance. Prohibit non-solicited mail, except for press releases and correspondence with government agencies.
- Disclose individual House Member franking costs quarterly in the *Congressional Record*, as is the Senate practice for its Members.

Critics of the frank argue that these reforms would reduce the use and costs of the frank and put challengers on a more equal footing with incumbents regarding postage.

Defense of Franking Privilege. Against these possible proposals to reduce franking costs, it is argued that further dollar or volume limits on the use of the frank may impair the ability of Members of Congress to keep in touch with their constituents. Franking limits may also reduce the effectiveness of Members who represent diverse constituencies who write frequently not only from the Member’s district/state but from other parts of the nation as well.

Unlike the President, who can rely on mass media coverage to get his message to the public, Members of Congress continue to rely primarily on franked mail to communicate to their constituents. Opponents of further franking limits argue that additional limits could put Congress at an institutional disadvantage when compared with the resources and facilities that the President and the executive branch are able to command.

¹⁵ P.L. 104-53, 109 Stat. 519, Legislative Branch Appropriations Act, FY1996.

¹⁶ P.L. 104-197, 110 Stat. 2414-2415, Sec. 311, Legislative Branch Appropriations Act, FY1997.