



## CRS Report for Congress

# The Postal Accountability and Enhancement Act

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### Summary

President George W. Bush signed the Postal Enhancement and Accountability Act (P.L. 109-435) on December 20, 2006. This report briefly describes Congress's pursuit of postal reform, summarizes the major provisions of the new postal reform law, and identifies possible P.L. 109-435 oversight issues for Congress.

### Pursuit of Postal Reform

A number of factors encouraged the movement for postal reform, which culminated in the enactment of the Postal Accountability and Enhancement Act (P.L. 109-435). Among these factors, perhaps foremost were the financial challenges of the U.S. Postal Service (USPS).<sup>1</sup> Use of the mails has declined in recent years as alternatives like e-mail, facsimiles, and online bill paying have been substituted for hard-copy letters. Yet USPS costs — more than 76% of which are labor — have risen with the addition of 2 million addresses each year and mounting obligations for retiree health benefits.<sup>2</sup>

Additionally, USPS, its board of governors, the Government Accountability Office, mailers' organizations, postal labor unions, and most recently a presidential commission have said that the Postal Reorganization Act of 1970 no longer provided a viable business model.<sup>3</sup> The rate-setting process was criticized for preventing USPS from responding

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<sup>1</sup> CRS Report RL31069, *Postal Service Financial Problems and Stakeholder Proposals*, by Nye Stevens. On the postal reform movement, see CRS Report RL33618, *Postal Reform*, by Kevin R. Kosar.

<sup>2</sup> Michael Schuyler, "The Postal Wage Premium: No Wonder the Postal Service Loses Money," IRET Congressional Advisory no. 131, Institute for Research on the Economics of Taxation (Washington: July 24, 2002).

<sup>3</sup> U.S. General Accounting Office, *U.S. Postal Service: Financial Outlook and Transformation Challenges*, GAO Testimony 01-733T, May 15, 2001; U.S. Congress, House Committee on (continued...)

flexibly to an increasingly competitive marketplace. Critics also argued that long-standing political and statutory restrictions impeded efforts to modernize the mail processing network and close unneeded facilities.

Finally, passage of the Postal Civil Service Retirement System Funding Reform Act of 2003 (P.L. 108-18; 117 Stat. 624) helped sow the seeds for reform by imposing significant costs on USPS that would require USPS to raise postage rates. P.L. 108-18 required USPS to set up an escrow account and contribute to it approximately \$5 billion each year. The law did not, though, dedicate the escrow fund to any particular use (e.g., worker benefits).<sup>4</sup> Hence, it imposed a major cost on USPS but provided no financial or operational benefits. P.L. 108-18 also required USPS to pay \$27 billion to cover the pension benefits for the military service of USPS employees.

## Major Provisions of the New Postal Law

According to a CRS analysis using CQ.com's "Legislative Impact" tool, P.L. 109-435 makes more than 150 changes to current federal law.<sup>5</sup> The law's major changes include the following:

- **Definition of the term "Postal Service."** Section 101 of the law defines "postal service" to mean "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto." This provision is significant because previously the law did not define "postal service," an omission, critics have contended, that permitted USPS to undertake nonpostal activities to the detriment of private sector firms.<sup>6</sup>
- **Repeal of the Escrow.** Section 804 of the law abolished the escrow account established by P.L. 108-18. The escrow was replaced with a Postal Service Retiree Health Benefits Fund, to which USPS must contribute each year.

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<sup>3</sup> (...continued)

Government Reform, *The Postal Service's Uncertain Financial Outlook*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., Part I, Apr. 4, 2001, Part II, May 16, 2001 (Washington: GPO, 2001); Senate Committee on Governmental Affairs, *Financial Outlook of the United States Postal Service*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., May 15, 2001 (Washington: GPO, 2002); and President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service: Report of the President's Commission on the United States Postal Service* (Washington: GPO, July 31, 2003). The recommendations of the President's Commission are discussed in CRS Report RS21640, *The Legislative Recommendations of the President's Commission on the United States Postal Service: An Overview*, by Kevin R. Kosar.

<sup>4</sup> The escrow was established to hold USPS overpayments on its pension obligations.

<sup>5</sup> CQ.com's Legislative Impact Tool is accessible at [<http://www.cq.com/legimpact.do>].

<sup>6</sup> U.S. General Accounting Office, *Postal Service: Development and Inventory of New Products*, GAO/GGD99-15 (Washington: GAO, 1998).

- **Return of Military Obligations to the Treasury.** Section 802 of the law relieves USPS of the \$27 billion cost of paying postal worker pension costs attributable to military service.
- **Separation of Product Types and Product Pricing.** Title II of the law divides USPS products into “market-dominant” and “competitive” classes. Market-dominant products include those products and services that USPS need not compete with the private sector to provide.<sup>7</sup> Market-dominant products include (1) first-class mail letters and sealed parcels, (2) first-class mail cards, (3) periodicals, (4) standard mail, (5) single-piece parcel post, (6) media mail, (7) bound printed matter, (8) library mail, (9) special services, and (10) single-piece international mail. Competitive products include those for which a competitive market exists.<sup>8</sup> They include (1) priority mail, (2) expedited mail, (3) bulk parcel post, (4) bulk international mail, and (5) mailgrams. This separation of products into two types is significant because critics have said that USPS has used revenues from market-dominant products (e.g., first class mail) to cross-subsidize competitive products (e.g., overnight package delivery). This, they contend, is unfair competition. Under P.L. 109-435, prices of products in the market-dominant class may be increased by USPS no more than the Consumer Price Index for All Urban Consumers. Prices of products in the competitive class must be based on market-type factors, such as “costs attributable,” which Sec. 202 of the statute defines as “the direct and indirect postal costs attributable to such products through reliably identified causal relationships.”
- **A Stronger Regulator.** Title VI of the law replaces the Postal Rate Commission with the Postal Regulatory Commission (PRC). The new regulator has subpoena power and a broader scope for the regulation of USPS and the examination of USPS activities.
- **Reform of International Mail Regulation.** Section 407 of the law clarifies the authority of the Secretary of State to set international postal policy and enter agreements, and would require him/her to apply customs laws equally to private shipments and “shipments of international mail that are competitive products.”
- **New Qualifications and Lengths of Terms in Office for USPS Governors.** Section 501 of the law requires that members of the Board of Governors of USPS “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.” Of the nine governors, at least four would have to “be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private

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<sup>7</sup> E.g., USPS possesses a legal monopoly over the delivery of first-class mail (18 U.S.C. 1693-1999 and 39 U.S.C. 601).

<sup>8</sup> E.g., USPS must compete with UPS and other private firms in the package delivery business.

sector) that employ at least 50,000 employees.” Governors’ terms are reduced from nine to seven years.

- **Increased USPS Transparency.** Section 204 requires USPS to release more details on its finances and operations. In its financial reporting, USPS must provide the same information that private firms provide under Section 4 of the Sarbanes-Oxley Act.<sup>9</sup>

## Possible P.L. 109-435 Oversight Issues for Congress

### Determining What the Law Means

The inherent complexity of lawmaking and the execution thereof invites inter-branch disagreement over what a law means. Should agencies interpret a statute based upon the text of the statute alone? Should they consider Congress’s intent or try to ascertain the “original understanding” of the statute?<sup>10</sup> The legislative and executive — to say nothing of the judicial — branches’ difficulty in coming to a shared understanding of what a law requires indicates a need for active congressional oversight of agency activities to ensure compliance. Due to the act’s length — more than 20,000 words — and complexity, disagreements may arise over just what the various provisions of P.L. 109-435 mean and how they are to be executed.

### New Rules and a New Regulator

New rules will have to be produced to define and implement the law’s many requirements.<sup>11</sup> As noted above, P.L. 109-435 establishes a new regulator, the Postal Regulatory Commission, which has greater powers than its predecessor, the Postal Rate Commission. The statute requires the PRC to undertake numerous tasks, including the following:

- establishing “a modern system for regulating rates and classes for market-dominant products”;
- “further defining” the term “workshare discount,” which refers to postage discounts provided to mailers for the presorting, prebarcoding, handling, or transportation of mail;
- “promulgat[ing] regulations to...prohibit the subsidization of competitive products by market-dominant products”; and

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<sup>9</sup> On Section 4 of the Sarbanes-Oxley Act, see CRS Report RS22482, *Section 404 of the Sarbanes-Oxley Act of 2002 (Management Assessment of Internal Controls): Current Regulation and Congressional Concerns*, by Michael V. Seitzinger.

<sup>10</sup> For just two of the many different views on statutory interpretation, see Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton: Princeton University Press, 1997); and Paul Brest, “The Misconceived Quest for the Original Understanding,” 60 *Boston University Law Review* (1980), pp. 204-238.

<sup>11</sup> For an introduction to the rulemaking process, see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*, by Curtis W. Copeland.

- “by regulation, prescrib[ing] the content and form” of the annual reports USPS must issue.<sup>12</sup>

Not only are these activities inherently complex and, hence, open to disagreement, but they also are likely to be contested by interested stakeholders because any regulations issued or rules made tend to impose benefits or costs on certain groups. For example, how the PRC defines the term “workshare discount” may affect USPS’s freedom to offer discounts to mailers. USPS has tended to favor giving such discounts because it believes they generate higher mail volumes; mailers favor the discounts because they lower per piece postage costs. Some postal employee unions, however, have criticized workshare discounts, arguing that they outsource work to the private sector that should be done by USPS employees.

## Executive Branch Concerns

In its efforts to ensure compliance with the law, Congress also may face a direct challenge from the executive branch. Upon signing the law, President George W. Bush issued a signing statement that appears to express concerns about the constitutionality of aspects of the law. These concerns include the following:<sup>13</sup>

- P.L. 109-435 permits “any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public)” to “lodge a complaint” with the PRC. The statement says the executive branch shall construe this portion of the statute “not to authorize an officer or agency within the executive branch to institute proceedings in Federal court against the Postal Regulatory Commission.”
- 39 U.S.C. 409(h), as established by Section 404 of the law, limits the circumstances under which the Department of Justice may represent the Postal Service in legal cases. The signing statement declares that the executive branch “shall construe subsection 409(h) of title 39...which relates to legal representation for an element of the executive branch, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and to take care that the laws be faithfully executed.”
- Section 405 of the statute amends 39 U.S.C. 407 so that 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 Section 405 places certain limitations on the Secretary’s powers to conclude treaties. Section 405 also places requirements upon the Secretary (e.g., the Secretary must “coordinate with other agencies as appropriate” in carrying out his or her responsibilities). The signing statement declares that the executive branch shall construe this portion of the statute “in a manner consistent with the President’s constitutional authority to conduct the Nation’s

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<sup>12</sup> Respectively, Secs. 201, 201, 202, and 204.

<sup>13</sup> George W. Bush, “President’s Statement on H.R. 6407, the ‘Postal Accountability and Enhancement Act’,” Dec. 20, 2006, available at [<http://www.whitehouse.gov/news/releases/2006/12/20061220-6.html>].

foreign affairs, including the authority to determine which officers shall negotiate for the United States and toward what objectives, to make treaties by and with the advice and consent of the Senate, and to supervise the unitary executive branch.”

- Subsections 202(a) and 502(a) of Title 39, as enacted by subsections 501(a) and 601(a) of P.L. 109-435, establish the aforementioned qualification requirements for members of the Board of Governors. The signing statement declares that this “purport[s] to limit the qualifications of the pool of persons from whom the President may select appointees.” The executive branch, it continues, shall interpret this portion of the statute “in a manner consistent with the Appointments Clause of the Constitution.”
- Subsection 605(c) requires the appointment of an inspector general within 180 days of the enactment of the statute. The signing statement declares that the “executive branch shall also construe as advisory the purported deadline in subsection 605(c) ... as is consistent with the Appointments Clause.”
- 39 U.S.C. 404(c), as enacted by subsection 1010(e) of P.L. 109-435, requires USPS to “maintain one or more classes of mail for the transmission of letters sealed against inspection.” It prohibits the opening of such mail “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.” The signing statement declares that the executive branch will interpret this prohibition “in a manner consistent ... with the need to conduct searches in exigent circumstances ... and the need for physical searches specifically authorized by law for foreign intelligence collection.” On January 10, 2007, S.Res. 22 was introduced in the Senate. It would resolve that the act “does not grant Federal law enforcement officials any new authority to open domestic mail” and that “the Senate reaffirms the constitutional and statutory protections accorded sealed domestic mail.”
- Subsection 504(d) and Section 2009 of Title 39, as amended by Section 603 of the act, and Sections 701(a)(2), 702(b), 703(b), 708(b), and 709(b)(2) of the statute, require the PRC to provide budget requests and assorted reports to Congress. The signing statement declares that the executive branch shall construe the “provisions ... that call for executive branch officials to submit legislative recommendations to the Congress in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and to recommend for congressional consideration such measures as the President shall judge necessary and expedient.”