



## CRS Report for Congress

# Congressional Franking Privilege: Background and Current Legislation

Matthew E. Glassman  
Analyst on the Congress  
Government and Finance Division

### Summary

The congressional franking privilege, which dates from 1775, allows Members of Congress to transmit mail matter under their signature without postage. Congress, through legislative branch appropriations, reimburses the U.S. Postal Service for the franked mail it handles. Use of the frank is regulated by federal law, House and Senate rules, and committee regulations. Reform efforts during the past 20 years have reduced overall franking expenditures in both election and non-election years. Even-numbered-year franking expenditures have been reduced by almost 70% from \$113.4 million in FY1988 to \$34.3 million in FY2006, while odd-numbered-year franking expenditures have been reduced by over 80% from \$89.5 million in FY1989 to \$17.5 million in FY2007.

During the 110<sup>th</sup> Congress, five pieces of legislation have been introduced to alter the franking privilege for Members. H.R. 2788 would require that all pieces of mail sent in a mass mailing include a statement indicating the cost of producing and mailing the mass mailing. H.R. 2687 would prohibit mass mailings in the form of newsletters, questionnaires, or congratulatory notices. H.R. 1614, S. 936, and S. 1285 would prohibit Senators and Representatives from sending mass mailings during a period starting 90 days prior to a primary and ending on the day of the general election for any election in which the Member is a candidate for reelection. This report will be updated as legislative action warrants. See CRS Report RS34085, *Election Year Restrictions on Mass Mailings by Members of Congress: How H.R. 1614/ S. 936 / S. 1285 Would Change Current Law*; CRS Report RL34188, *Congressional Official Mail Costs*; and CRS Report RL34274, *Franking Privilege: Historical Development and Options for Change*.

### Background

The franking privilege, which allows Members of Congress to transmit mail matter under their signature without postage, has its roots in 17<sup>th</sup> century Great Britain. The British House of Commons instituted it in 1660 and free mail was available to many

officials under the colonial postal system.<sup>1</sup> In 1775, the First Continental Congress passed legislation giving Members mailing privileges so they could communicate with their constituents, as well as giving free mailing privileges to soldiers.<sup>2</sup> Congress continues to use the franking privilege to satisfy an articulated public interest in facilitating official communications from elected officials to the citizens whom they represent. The communications may include letters in response to constituent requests for information, newsletters regarding legislation and Member votes, press releases about official Member activities, copies of the *Congressional Record* and government reports, and notices about upcoming town meetings organized by Members.

## Member Mail Allowances

Congress pays the U.S. Postal Service for franked mail through annual appropriations for the legislative branch. Each chamber uses a formula to allocate funds to Members from these appropriations. In the Senate, the allocation process is administered by the Committee on Rules and Administration; in the House, by the Committee on House Administration.

In the Senate, each Senator's franked mail postage allowance is determined by a formula that gives a maximum allowance equal to the cost of one first-class mailing to every address in the Senator's state. If the total Senate appropriation for official mail is less than the amount required for the maximum allowance, each Senator's allowance is proportionally reduced.<sup>3</sup> A Senate office that exceeds its allowance may supplement the allowance with official office account funds. Senators are, however, limited to \$50,000 for mass mailings (defined as 500 or more identical pieces of unsolicited mail) in any fiscal year.<sup>4</sup>

In the House, the franked mail postage allowance is based on the number of addresses in each Member's district.<sup>5</sup> Each Representative's mail allowance is combined with allowances for office staff and official office expenses to form a Member's Representational Allowance (MRA). Members may spend any portion of their MRA on franked mail, subject to law and House regulations.<sup>6</sup> Within the limits of their MRA, House Members are not restricted as to the total amount they may spend on mass mailings.

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<sup>1</sup> Post Office Act, 12 Charles II (1660); Carl H. Scheele, *A Short History of the Mail Service* (Washington: Smithsonian Institution Press, 1970), pp. 47-55.

<sup>2</sup> *Journals of the Continental Congress, 1774-1789*, 34 vols., ed. Worthington C. Ford et al. (New York: Johnson Reprint Corp., 1968), vol. 3, p. 342 (Nov. 8, 1775).

<sup>3</sup> "Regulations governing official mail," adopted Oct. 30, 1997, amended Sep. 30, 1998, *Congressional Record*, vol. 144, part 16 (Oct. 2, 1998), pp. 23105-23108.

<sup>4</sup> Legislative Branch Appropriations Act, FY1995, P.L. 103-283, sec. 5, 108 Stat. 1423, 1427.

<sup>5</sup> Legislative Branch Appropriations Act, FY1991, P.L. 101-520, sec. 311, 104 Stat. 2254, 2279.

<sup>6</sup> Committee Order No. 42, U.S. Congress, Committee on House Oversight, *Report on the Activities of the Committee on House Oversight During the 105<sup>th</sup> Congress*, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 105-850 (Washington: GPO, 1999), p. 16; Legislative Branch Appropriations Act, FY2000, P.L. 106-57, sec. 103, 113 Stat. 408, 416.

## Regulation

The franking privilege is regulated by federal law, House and Senate rules, orders of the Committee on House Administration and Senate Rules and Administration Committee, and regulations of the Senate Select Committee on Ethics and the House Commission on Congressional Mailing Standards.

The franking privilege may only be used for matters of public concern or public service.<sup>7</sup> It may not be used to solicit votes or contributions, to send mail regarding political campaigns or political parties, or to mail autobiographical or holiday greeting materials. Both House and Senate regulations specify limitations on the size and formatting of franked mail. Official funds must be used in the preparation of materials sent under the frank; no private funds may supplement printing, production, or other costs.<sup>8</sup>

Mass mailings are further restricted by law and chamber rules and regulations.<sup>9</sup> Each mass mailing sent by a Member of Congress must bear the following notice: “Prepared, Published, and Mailed at Taxpayer Expense.”<sup>10</sup> Senators are prohibited from sending mass mailings fewer than 60 days prior to any primary election in which they are a candidate, as well as 60 days prior to any general election, regardless of whether or not they are a candidate.<sup>11</sup> House Members are prohibited from sending mass mailings fewer than 90 days prior to any general or primary election in which they are a candidate,<sup>12</sup> and are prohibited from sending unsolicited mass mailings outside their district.<sup>13</sup>

Franking regulations also require disclosure of individual Members’ mass mailings costs. In the House, costs are printed quarterly in the *Statement of Disbursements of the House*. Senate costs appear in the biannual *Report of the Secretary of the Senate*.

## Costs

During FY2007, Congress spent \$17.5 million on official mail according to the U.S. Postal Service, representing approximately 4½ tenths of one percent of the \$3.85 billion

<sup>7</sup> 39 U.S.C. § 3210(3)(a).

<sup>8</sup> Legislative Branch Appropriations Act, FY1991, P.L. 101-520, sec. 311(c), 104 Stat. 2254, 2279.

<sup>9</sup> A mass mailing is defined at 39 U.S.C. 3210(6)(e) as “any mailing of newsletters or other pieces of mail with substantially identical content (whether such mail is deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces” in one session of Congress. Direct responses, correspondence with government officials, and releases to the media are exempt.

<sup>10</sup> Legislative Branch Appropriations Act, FY1997, P.L. 104-197, sec. 311(a), 110 Stat. 2394, 2414.

<sup>11</sup> 39 U.S.C. § 3210(6)(a); “Regulations governing official mail,” adopted Oct. 30, 1997, amended Sep. 30, 1998, *Congressional Record*, vol. 144, part 16 (Oct. 2, 1998), pp. 23105-23108.

<sup>12</sup> 39 U.S.C. § 3210(6)(a).

<sup>13</sup> Legislative Branch Appropriations Act, FY1993, P.L. 102-392, sec. 309, 106 Stat. 1703, 1722.

budget for the entire legislative branch for FY2007.<sup>14</sup> House official mail costs (\$14.2 million) were 81.1% of the total, whereas Senate official mail costs (\$3.3 million) were 18.9% of the total. During FY2006, Congress spent \$34.3 million on official mail. House official mail costs (\$30.7 million) were 89.3% of the total, whereas Senate official mail costs (\$3.6 million) were 10.7% of the total.

These expenditures continue a historical pattern of Congress spending less on official mail costs during non-election years than during election years. However, analysis of monthly data on official mail costs indicates that, due to the structure of the fiscal year calendar, comparisons of election-year and non-election-year mailing data tend to overstate the effect of pre-election increases in mail costs, because it also captures the effect of a large spike in mail costs from December of the previous calendar year.<sup>15</sup>

During the past 20 years, franking reform efforts reduced franking expenditures in both even-numbered and odd-numbered years. Even-numbered-year franking expenditures have been reduced by almost 70% from \$113.4 million in FY1988 to \$34.3 million in FY2006, while odd-numbered-year franking expenditures have been reduced by over 80% from \$89.5 million in FY1989 to \$17.5 million in FY2007. House mail costs have decreased from a high of \$77.9 million in FY1988 to \$14.2 million in FY2007. The Senate has dramatically reduced its costs, from \$43.6 million in FY1984 to \$3.3 million in FY2007.

## Legislation in the 110<sup>th</sup> Congress

Despite contemporary restrictions on mass mailings and overall reduced costs, the frank continues to generate controversy. Opponents, concerned about incumbent electoral advantages and mail costs, have called for additional franking restrictions, including prohibitions on the use of the frank in election years, bans on unsolicited mass mailings, and free mailings for electoral challengers. Proponents of franking argue that the privilege serves an important informational role in a democratic society and that without the privilege most Members could not afford to send important information to their constituents.

Five bills introduced in the 110<sup>th</sup> Congress — H.R. 1614, H.R. 2687, H.R. 2788, S. 936, and S. 1285 — would alter the congressional franking privilege. Provisions of the five bills are discussed here.

**Prohibiting Member Mass Mailings.** H.R. 2687 would effectively prohibit Representatives from mass mailing newsletters, questionnaires, or congratulatory notices. The prohibition would not cover certain other types of mass mailings made by Members, including federal documents (such as the *Congressional Record*) or voter registration information. The legislation would apply only to Representatives; it would not affect mass mailings made by Senators.

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<sup>14</sup> Throughout this report, cost figures are based on U.S. Postal Service data found in the *Annual Report of the Postmaster General*, additional data provided by the Postal Service, and mass mailing information contained in the *Statement of Disbursements of the House* and the *Report of the Secretary of the Senate*.

<sup>15</sup> See CRS Report RL34188, *Congressional Official Mail Costs*, by Matthew Glassman.

Current law allows Members to send mass mailings in various forms (newsletters, questionnaires, press releases, notices) on a variety of topics, including but not limited to the impact of laws and decisions, public and official actions taken by Members of Congress, proposed or pending legislation or governmental actions, the positions of the Members of Congress on legislation or other public issues, and other related matters of public concern or public service.<sup>16</sup>

H.R. 2687 was introduced June 12, 2007, by Representative Ray LaHood, and was referred to the Committee on House Administration and the Committee on Oversight and Government Reform. No further action has been taken. Previously, Representative LaHood introduced similar legislation (H.R. 3121, 109<sup>th</sup> Congress), which was referred to the Committee on House Administration and the Committee on Government Reform. No further action was taken.

**Cost Labeling for Mass Mailings.** H.R. 2788 would require that each individual piece of franked mail contained in a mass mailing made by a Member of the House contain a statement indicating the aggregate cost of producing and mailing the mass mailing. Each piece of franked mail would contain the statement, “The aggregate cost of this mailing to the taxpayer is \_\_\_\_\_,” with the blank space containing the total cost of producing and franking the mass mailing. The legislation would not affect mass mailings made by Senators.

Current law requires each mass mailing sent by a Member of Congress to bear the following notice: “Prepared, Published, and Mailed at Taxpayer Expense.”<sup>17</sup> H.R. 2788 does not amend the current law; if enacted, mass mailings made by Members of the House would contain both statements.

H.R. 2788 was introduced on June 20, 2007, by Representative Jeff Flake, and was referred to the Committee on House Administration. No further action has been taken.

**Amending Pre-Election Mass Mail Restrictions.** H.R. 1614, S. 936, and S. 1285 would amend election-year mass-mailing restrictions by altering the period of time during which Members are prohibited from franking any mass mailing and the statutory conditions under which the prohibition applies. If enacted, Members of both the House and Senate would be prohibited from mailing any mass mailing during the period starting 90 days prior to a primary election in which such Member is a candidate for reelection to any federal office and ending on the day of the general election.<sup>18</sup>

Current law and chamber rules provide that a mass mailing may not be franked by a Senator fewer than 60 days, or by a House Member fewer than 90 days, immediately before the date of any primary or general election (whether regular, special, or runoff) in

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<sup>16</sup> 39 U.S.C. § 3210(a)(3).

<sup>17</sup> Legislative Branch Appropriations Act, FY1997, P.L. 104-197, sec. 311(a), 110 Stat. 2394, 2414.

<sup>18</sup> For further information on H.R. 1614, S. 936, and S. 1285, see CRS Report RL34085, *Election Year Restrictions on Mass Mailings by Members of Congress: How H.R. 1614, S. 936, and S. 1285 Would Change Current Law*, by Matthew E. Glassman.

which such Member is a candidate for any public office.<sup>19</sup> Senate rules further state that no Senator may frank mass mailings in the 60 days prior to the general election, regardless of whether or not he or she is a candidate for election.<sup>20</sup>

H.R. 1614, S. 936, and S. 1285 would also prohibit a congressional committee or subcommittee from mailing any mass mailing during the same period individual Members are prohibited from franking any mass mailing, if either the chair or ranking member of the committee or subcommittee is a candidate for reelection to any federal office. Current law does not prohibit congressional committees and subcommittees from sending mass mailings during the election-year period in which individual Members are restricted from franking any mass mailing.

H.R. 1614 and S. 936 were both introduced March 20, 2007. H.R. 1614, introduced by Representative John Tierney, was referred to the Committees on House Administration, Energy and Commerce, Ways and Means, and Oversight and Government Reform. No further action has been taken. S. 936, introduced by Senator Richard Durbin, was referred to the Committee on Finance. No further action has been taken. S. 1285 was introduced by Senator Durbin May 3, 2007, and was referred to the Committee on Rules and Administration. The committee held a hearing on S. 1285 on June 20, 2007. No further action has been taken.

Previously, Representative Tierney introduced similar legislation (H.R. 3099, 109<sup>th</sup> Congress). Had the legislation been enacted, it would have amended the election year mass mailing restrictions on Members by extending the period during which mass mailings were prohibited. H.R. 3099 did not contain provisions restricting committee mass mailings. The bill was referred to the House Committees on House Administration, Energy and Commerce, and Government Reform. No further action was taken.

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<sup>19</sup> 39 U.S.C. § 3210(6)(a).

<sup>20</sup> *U.S. Senate Handbook*, Appendix I-D, p. I-116, available from Senate computers at [<http://webster/rules/rules.cfm?page=handbook>], visited 12/4/07; *Senate Ethics Manual*, p. 171, available at [<http://ethics.senate.gov/downloads/pdf/manual.pdf>], visited 12/4/07.