



AMERICAN POSTAL WORKERS UNION

Cliff Guffey
President

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Before The

Senate Committee on Homeland Security and Governmental Affairs

“Outside the Box: Reforming and renewing the Postal Service

Part 1 – Maintaining Services, reducing Costs, and Increasing Revenue Through
Innovation and Modernization”

Testimony of Cliff Guffey, President

American Postal Workers Union, AFL-CIO

CONGRESSIONAL TESTIMONY

Cliff Guffey
President
American Postal Workers Union



Cliff Guffey is President of the American Postal Workers Union, which represents 250,000 employees in the clerk, maintenance and motor vehicle crafts.

Prior to assuming the APWU's highest elected office in November 2010, Guffey served as Executive Vice President for nine years. He was Director of the union's Clerk Division from 1999 to 2001, and Assistant Director of the Clerk Division from 1986 to 1999. Throughout his career, Guffey has relentlessly fought for job security for postal workers, whose jobs are threatened by a changing work environment and subcontracting.

Guffey began his postal career in 1971 as a Letter Carrier in Oklahoma City, and transferred to the Clerk Craft in 1972, where he worked as a Letter Sorting Machine operator. He also served a brief tenure at a neighborhood post office.

In his first foray into elective office in 1979, Guffey won the presidency of the Oklahoma City Area Local APWU. He served two terms before running for national office.

Prior to his work at the Postal Service, he served in the United States Marine Corps from 1968 to 1970 as a rifleman in the 2nd Battalion, 3rd Marine Division in Viet Nam.

Guffey was born in Shawnee, OK. His father was a career pilot in the United States Navy and was stationed around the world. The family moved frequently, living in Hawaii, California, Alabama, and Naples, Italy, among other locations.

Guffey and his wife, Donna, have two daughters and four grandsons.

TESTIMONY OF CLIFF GUFFEY
ON BEHALF OF
THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Good morning Chairman Carper and members of the Committee. I am Cliff Guffey, President of the American Postal Workers Union. Thank you for this opportunity to testify on behalf of the APWU.

The APWU opposes passage of S. 1486 as it is presently written. As I have said elsewhere, the bill is fatally flawed. Instead of correcting the financial problems caused by the 2006 passage of the PAEA, it would penalize the working men and women of the United States Postal Service for those problems by threatening their jobs and undermining their compensation; it would slash service to the American people; and instead of protecting the Postal Service from impending financial disaster it would result in the dismantling of our nation's postal service.

To our utter dismay, S. 1486 would remove a cornerstone of the 1970 law that created the Postal Service, by making it possible for the Postal Service to attack and try to slash the retirement and health benefits of postal workers. Those benefits are part of the federal law that created the Postal Service. By attacking those benefits, Congress would be undermining the ability of postal workers to live in security and dignity both as active workers and after they retire. We oppose any change that could lead to a cut in our health or retirement benefits.

In this testimony, we make the following points:

- The retiree health benefits pre-funding requirement must be repealed.
- USPS contributions to federal retirement accounts must be calculated on the basis of postal employee demographics and USPS overpayments into these funds must be returned to the Postal Service with no strings attached.
- The APWU vehemently opposes legislation that would interfere with the right of postal

employees and retirees to continue to participate as they do now in the Federal Employees Health Benefits Program (FEHBP) and federal retirement programs.

- The APWU will never agree to cut its members benefits, and we strongly object to this bill which would give the right to cut our benefits to a third-party arbitrator.
- The Postal Service is recklessly destroying its own mail processing network and violating mandatory delivery standards.
- Network consolidation is delaying First Class Mail and periodicals by two or three days in many places.
- Any reform bill must protect service and must preserve delivery standards and the mail processing network.
- Retail services and rural post offices must be preserved and protected.
- The cap on rates based on the Consumer Price Index (CPI) in the current law must be repealed.
- The Postal Service must be permitted to increase its revenue and use its facilities to provide non-postal services.
- Title V of the Bill, which would cut benefits for injured workers is wrong; we oppose it, and it must be removed from this bill.

Any discussion of the financial condition of the Postal Service has to begin with the fundamental cause of the USPS financial crisis, the pre-funding requirement for retiree health benefits. The pre-funding requirement not only creates most postal debt, it saps the ability of the Postal Service to provide services and prevents it from innovating and modernizing. The pre-funding mandate should be repealed in its entirety.

Similarly, it is past time for the federal government to stop holding onto excess Postal Service funds that have been deposited in federal retirement programs. Postal ratepayers have for many years been subsidizing the federal government through substantial overpayments into federal accounts. This always has been unfair to ratepayers, but now it is more than unfair, it is unsustainable. Several steps must be taken: Postal obligations to the Civil Service Retirement

System (CSRS) and the Federal Employees Retirement System (FERS) must be re-calculated on the basis of postal employee demographics; all overfunding in those accounts must be repaid to the Postal Service; there should be no restriction on how the repaid funds may be used by the Postal Service, and USPS funding obligations going forward should continue to be calculated on the basis of postal employee demographics.

Financial pressures caused by the pre-funding requirement have wreaked havoc on service. The Postal Service has closed mail processing facilities, closed post offices, lowered its service standards, and reduced hours at post offices, particularly in rural areas and small communities. The Postal Service has cut its mail processing network so deeply and so recklessly that it is now violating the standards mandated by law, standards that the Senate sought to protect when it passed S. 1789 last year. We urge this Committee, the Senate, and the Congress to insist that service standards be maintained.

We strongly oppose legislation that would permit the Postal Service, either through collective bargaining or otherwise, to begin dismantling the Federal Employees Health Benefits Program (FEHBP). Although the Postal Service claims that it can devise a lower-cost health benefits plan, that is not true. Impartial observers have examined those claims and rejected them. A leading expert on the FEHBP has testified that the Postal Service plan would “massively disrupt or destroy the FEHBP” and breach statutory promises made to millions of federal retirees. What the Postal Service wants to do is to shift costs from itself to employees, to retirees and to Medicare. This is not acceptable. It is a desperate and ill-considered attempt to deal indirectly with what should be dealt with directly – the retiree health benefits pre-funding requirement.

As this Committee has recognized, it is necessary to repeal the restrictions on the Postal Service providing non-postal services. There are many ways in which the Postal Service can use its

mail processing, retail, transportation, and digital networks to provide useful new services that will enhance the Postal Service's performance, aid our communities and small businesses and help to sustain the Postal Service.

We appreciate the fact that the Chairman and Ranking Minority Member of the Committee have addressed the issue of postal revenues and the CPI cap on rates. This is a difficult issue but, with all due respect to postal ratepayers, the CPI cap is unsustainable. To preserve universal service, a better balance must be found between rates and service.

Repeal The Retiree Health Benefits Pre-Funding Requirement

The most important postal-related task facing the United States Congress is the urgent need to repeal the requirement that employee retirement health benefits be pre-funded. Seldom has there been such universal consensus in the postal community on any issue. The pre-funding burden is unbearable. It is also wrong and unfair to postal customers. As we have pointed out in testimony here and elsewhere, no other enterprise, either public or private, is required to pre-fund its retiree health benefits liability. Without this burden which was imposed on the Postal Service and postal customers beginning in 2006, the Postal Service would today be in reasonably sound condition. Although S. 1486 addresses the issue of pre-funding, it does not go nearly far enough. It still would impose an unfair and unrealistic 80 percent funding requirement that would leave the Postal Service starved for money it desperately needs to modernize and improve its services.

Virtually the entire current debt of the Postal Service has been caused by the pre-funding requirement. Pre-funding payments already paid into the federal treasury have grown to nearly \$50 billion. That is more than enough. Large companies that have voluntarily chosen to pre-fund for retiree health benefits typically do not fund to a level of more than 30 percent. The pre-funding requirement should be repealed effective immediately.

There also is virtually universal agreement that Postal Service overpayments into CSRS and FERS should be made available for the use of the Postal Service. It is critically important, in addition, that the amount of those overpayments be calculated on the basis of Postal Service and postal employee actuarial data.

The APWU has made a concerted effort over the past two years to inform the American public that the Postal Service does not receive any government subsidy. It is self-sustaining on the basis of income from postal ratepayers. In fairness to postal ratepayers, Postal Service costs, including in particular the cost of funding its employees' retirement benefits, should be calculated on the basis of an accurate measurement of the real cost of postal employees' benefits. This is not only necessary to be fair to postal ratepayers and the Postal Service, it is also the most appropriate and businesslike approach to an important financial and public policy issue. So, as an initial step in preserving the Postal Service for the American people, Postal Service overfunding must be returned to the Postal Service for its use; and that overfunding should be calculated on the basis of actual Postal Service costs. Actual Postal Service costs also should be used as the basis for calculating future Postal Service contributions to its retirement funds.

For the same reasons, we oppose restrictions on how the overpayments to be returned to the Postal Service may be used. Postal management has the obligation to manage the Postal Service. It should be left to postal management, with the policy guidance of the Board of Governors to determine how to utilize available funds.

Maintain Service Standards and Preserve the Mail Processing Network

We urge the Committee to give immediate attention to the need to preserve the Postal Service mail processing network. Failure to do so will lead to a significant degradation of service that will undermine the ability of the Postal Service to survive. The value of postal services should

be protected so the Postal Service can improve its competitive position and increase its revenues.

In May 2012, the Postal Service announced plans to close more than 60 percent of its mail processing facilities. To accomplish this reduction in the mail processing network, the USPS said it would have to eliminate 20 percent of the overnight delivery of First Class Mail and periodicals. The Postal Service stated that under its new service standard regulation effective July 1, 2012,, it could expand its nightly processing window, thereby reducing the number of processing locations needed in the network. The Postal Service plan called for closing or consolidating 229 plants in two phases. Phase 1 would include the closing of approximately 140 plants to be completed by February 2013. Phase 2 was to require the closing of approximately 90 more plants beginning in February 2014. As part of Phase 2 of the plan, the Postal Service planned to virtually eliminate the overnight delivery of First Class Mail and periodicals in early 2014.

This Postal Service plan was never a good one. Evidence presented to the Postal Regulatory Commission showed that potential cost savings would be offset by very substantial loss of postal revenue that would result from the lowering of service standards. The Commission concluded that the net savings from these substantial cuts in service could be as little as seven tenths of one percent (.007) of postal revenues (about \$46 million annually). Advisory Opinion in PRC Case No. N2012-1, at 2.

The devastating effects of these closings and consolidations on postal services can and should be avoided by legislation that requires the Postal Service to maintain an overnight delivery standard for first-class mail and periodicals.

Information we have received from our locals around the country, and the many complaints we have heard and read from mailers, have made it clear that the Postal Service is failing to provide required services. This is happening in part because postal management has closed necessary mail

processing facilities. The consequence of this destructive policy of excessive facility closures is that the Postal Service is now violating mandatory service standard regulations. Unquestionably, network consolidation is having a very negative effect on postal customers. It is delaying mail not just one day but as much as two or three days.

Exhibit A to this testimony is a Postal Regulatory Commission complaint filed by the APWU in which we protest the fact that the Postal Service is violating its Service Standard Regulations. As you will see, we have specific examples of violations from our locals in

- Tyler, Texas
- Brooklyn, New York
- Colorado Springs, Colorado
- Kilmer, New Jersey
- Saginaw, Michigan
- Williamsport, Pennsylvania
- Salem, Oregon
- LaCrosse, Wisconsin
- Carbondale, Illinois and
- Cape Girardeau, Missouri

As a consequence of these violations, the Postal Service is depriving individuals and business mailers of the service to which they are entitled by law under service standard regulations in violation of Section 3691(d) of the PRA as amended by the PAEA. 39 U.S.C. § 3691(d)

The Postal Service is discriminating against individuals, small businesses, and organizational mailers in the provision of postal services by failing to comply with its regulations providing for the delivery of First-Class Mail and other mail, particularly to those in rural areas, because the effects of service standard violations are more frequently found there. These discriminatory actions by the Postal Service violate Section 403(c) of the PRA as amended by the PAEA. 39 U.S.C. § 403(c).

In the many cases where mail processing facilities have been closed due to network consolidation, the mail must be transported from stations, branches and Associate Offices in the vicinity of the closed facility to a more-distant mail processing facility. Several things then happen that prevent overnight delivery of the mail. One is that mail that is transported longer distances may not arrive in time for overnight processing and redistribution. In an effort to solve this problem, the Postal Service typically requires that mail be collected at an earlier time in the area of the closed facility so that it can be transported to the more distant facility for processing. This means that the mail of businesses and individual mailers who deposit their mail after the earlier collection time, and all mail picked up by letter carriers that day, will not be counted as mail received on that day for the purpose of determining delivery standards. All that mail is being delayed a day because it must wait for processing until the next day. It is being delayed an entire day but that delay does not show up in Postal Service on-time statistics.

In the case of large mailing businesses with their own separate mail pickup arrangements, or that deposit their own mail at a local facility, the effect of this sort of change is to require that they prepare their mailing for pickup earlier in the day or transport it longer distances for mailing. These requirements are imposed by the Postal Service through changing its business practices. In this case, it changes the Critical Entry Time (CET) after which mail cannot receive the service it would have received. Typically when the Postal Service changes a pickup time, a box closure time, or a Critical Entry Time, the Postal Service does not acknowledge that it is not meeting its service standards. Therefore, while the customer experiences a substantial cut in service, the Postal Service does not acknowledge that fact and reports that it is still meeting its service standards.

The other thing that happens when local mail processing facilities are closed is that mail sent to a distant facility for processing, although it may be processed overnight if it can be transported to

the more distant facility in time for that to occur, may not be transported back to the original facility or to the Associate Offices, stations and branches surrounding the original facility in time to be sent out with the letter carriers for delivery the next day. Mail that arrives too late either delays the carrier in leaving to deliver a route or it is left in the carrier station for delivery the following day. At times, this results in idle time while the carrier waits for mail or overtime due to carriers having to work an extended day. And it is unsafe for carriers and annoying to the public to have carriers delivering mail after dark.

The unintended delays due to closings and consolidations compound the effects of the Postal Service's formal change of delivery standards. Where the Postal Service may intend that overnight mail delivery continue, or that it be changed from one-day service to two-day service, the actual effect is greater. Substantial amounts of mail are being delayed two or even three days. This means that mail that should have been delivered on Wednesday may not be delivered until Friday. Mail intended for delivery late in the week is not being delivered until the following week.

In the case of time-sensitive mailings this means that mailers must plan and complete their mailing preparations days in advance. These problems no doubt explain why research on the effects of network consolidation and service standards changes has shown that the Postal Service will lose a substantial amount of business by delaying the processing of mail.

The unwarranted and reckless closing of mail processing facilities threatens to further weaken the Postal Service's competitive position in the critical parcel market. Studies have shown that the parcel mailing industry is one that is strong and growing, and that will continue to grow. The Postal Service is well-positioned to provide competitive low-cost services to the American public in this area. It would be very counterproductive to permit the Postal Service to so deplete its network that its ability to provide these services cannot be maintained.

The dismantling of the essential Postal Service mail processing network is tragic and unnecessary. The evidence is very clear that cost savings and efficiencies can be obtained, and many have been obtained, through less drastic closing and consolidation actions that preserve essential services.

It also is important to recognize the impact these unnecessary facility closings have on our communities and on postal workers. Where mail processing plants are closed, communities suffer economic hardship, and postal employees' lives are disrupted. Postal workers are extremely dedicated and have continued to perform at the highest levels to provide postal services. It is wrong for the Postal Service to demand sacrifices from its workers where, as in the case of these excessive facility closures and consolidations, these actions cannot be justified by net financial benefit to the Postal Service.

We urge the Committee in the strongest possible terms to amend S. 1486 by adding a provision to require the Postal Service to maintain delivery standards for First Class Mail and periodicals. We also urge the Committee to add a provision to strengthen the procedures the Postal Service must follow before closing a mail processing facility and to give the Postal Regulatory Commission authority to delay, stop, or reverse facility closing decisions.

Preserve and Strengthen Retail Services and Rural Services

As in the case of its mail processing network, the Postal Service is taking actions that are harmful to communities by closing or consolidating post offices. These actions cannot be justified by the relatively small cost savings to be gotten from them. Again, the Postal Service seems to have been stampeded into taking actions that it knows, or should know, will be counterproductive in the long run.

We support legislation that would prevent the closure of post offices and require the Postal

Service to establish retail service standards. The Postal Service should be required to conduct a detailed review and provide full disclosure of its findings at least 90 days in advance of a post office closing. The public should be given a full and adequate opportunity to oppose the closure, and the Postal Regulatory Commission should be given the authority to provide a thorough de novo review of a post office closing decision and to suspend or reverse that decision.

Legislation that would require reliance on Contract Postal Units (CPUs) would be inefficient and counterproductive. Too often today there are CPUs that are unnecessary because they duplicate postal services available from nearby post offices. This expensive duplication of postal retail outlets is inefficient; and such duplication should be eliminated. This is not to say that the APWU opposes the provision of postal services in alternative ways. We are available to work with the Postal Service in finding creative ways to extend the official Postal Service presence into non-traditional outlets.

Non-Postal Services Must Be Authorized

The need for authorization of non-postal services to be provided by the Postal Service is also extremely urgent. The subject is closely related to the subject of the Postal Service retail network. By offering non--postal services through its retail facilities, the Postal Service can strengthen its network, maintain more facilities, and provide important public services – both postal services and non-postal services. Authorized non-Postal Service and should include:

- Government services including *e*-Government services
- Micro-banking
- Check cashing
- New technology and media services
- Warehousing and logistics
- Facility leasing, and
- Public internet access services
- Driver licensing
- Vehicle registration

- Hunting and fishing licenses
- Notary services, and
- Voter registration
- Security and authentication tools including receipt and storage of confidential files and communications.
- Hybrid mail services (digital text to hard copy mail and the reverse as well as digital communication and services related to hard copy mail.
- Digital and other services related to e-commerce (for example, delivery and pickup options and payment options)

Wherever necessary, the Postal Service must be authorized to enter into cooperative arrangements with other federal agencies, state and local governments, and private enterprises.

A full discussion of these services, how they should be provided, and their importance to the communities served by the Postal Service is beyond the scope of this testimony. However, the APWU will be more than happy to provide information and assistance to the committee and its staff to facilitate legislation to authorize these services.

APWU Opposes Changes to Federal Health Benefits or Retirement Benefits

The APWU vehemently opposes legislation that would interfere with the right of postal employees and retirees to continue to participate as they do now in the Federal Employees Health Benefits Program (FEHBP). The FEHBP is a very successful and very efficient program. The Postal Service claim that it can improve on the FEHBP with its own separate plan is, quite simply, false. The effect of the sort of separate plan the Postal Service wants would be to shift costs to employees, to retirees and to Medicare.

Furthermore, the statutory right for postal workers and postal retirees to continue to participate in FEHBP is one of the cornerstones of the Postal Reorganization Act of 1970. The APWU opposes any effort to weaken the right of employees and retirees to maintain their FEHBP benefits. By making FEHBP rights subject to collective bargaining, the draft legislation would require postal unions to place their member's rights to FEHBP benefits in the hands of an interest

arbitrator. That is not acceptable to the APWU. FEHBP is an efficient, low-cost, health benefits program. Postal workers and postal retirees deserve no less.

This is equally true of retirement benefits for postal employees. No worker who gives a lifetime of service to the American public as a postal worker should be asked to live in poverty while they work or after they retire. This was a fundamental premise of the Postal Reorganization Act of 1970. The APWU cannot accept any change that would deprive employees or retirees of their right to participate fully in federal health and retirement benefit programs.

APWU Opposes the Proposed Changes in Interest Arbitration

S. 1486 would create an unfair imbalance in interest arbitration by adding a requirement that an interest arbitrator must consider the financial condition of the Postal Service. By singling out this factor among many that interest arbitrators must consider, the legislation could lead an arbitrator to place too much emphasis on one factor. This is particularly true because the present financial predicament of the Postal Service is not the fault of postal workers. Postal workers do not deserve to be punished because the 2006 law imposed the insuperable burden of pre-funding retiree health benefits on the Postal Service.

By shortening the interest arbitration process to 45 days, the legislation threatens to give postal workers the “bum’s rush” out of the middle class. Labor negotiations in the Postal Service take months. It is not possible for any interest arbitrator to comprehend and fully consider the numerous and complex issues that must be resolved in such negotiations in just 45 days from the date of their appointment. Mandating such a short period for interest arbitration would turn that process into a farcical charade instead of meaningful interest arbitration.

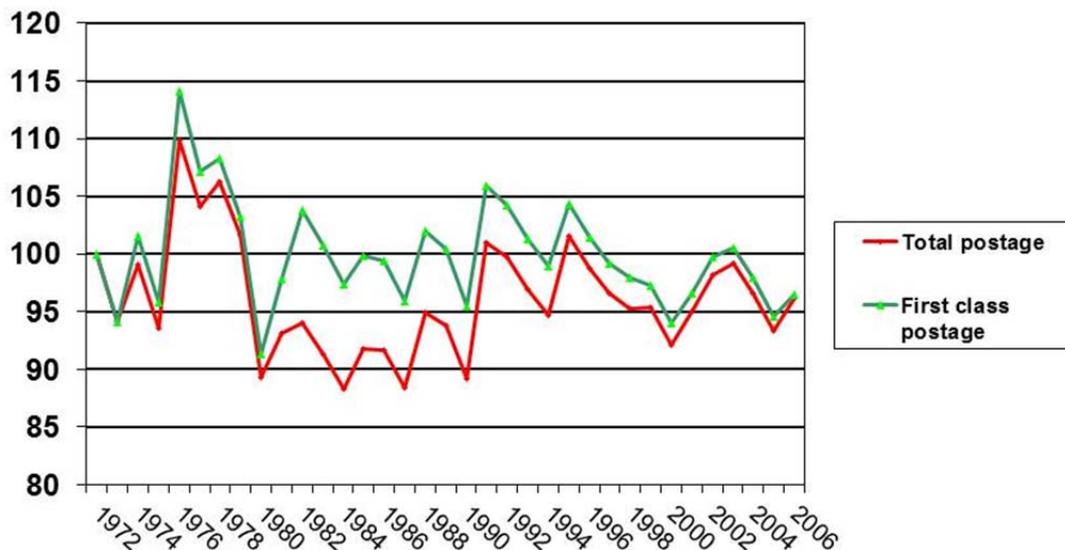
APWU Opposes Proposed Changes in the Federal Employees Compensation Act

The cuts that would be made in workers compensation benefits for all injured federal workers are unfair and have no place in postal reform legislation. Controversial and complex provisions such as those reducing benefits for injured workers when they become eligible for retirement, reducing benefits for dependents, changing the conditions for scheduled compensation benefits, to mention only some of the important provisions in Title V of the Bill, should be the focal point of separate legislation and separate hearings if they are to be considered at all. Title V of S. 1486 should be removed from the Bill.

The CPI Cap Should be Repealed

The issue of repealing the CPI cap on postal rates should be considered by looking at how postal rates changed when there was no CPI cap. As Table I shows, rates increased overall at approximately the same pace as the CPI during the 35 years the postal reorganization act permitted rates to be set to cover postal costs instead of strictly limiting them to changes in the CPI. By restricting rate increases to CPI changes and confining increases to separate classes of mail, the 2006 legislation in effect took a system that was not broken and fixed it in a way that has made it too confining and unworkable.

In Real Terms (Adjusted for Inflation) Postage Costs Were Below 1972 Levels in 2006
 Levels in 2006
 (1972=100)



Source: Bureau of Labor Statistics-Producer Price Indexes for USPS and CPI-W

When the 2006 law was passed, Congress recognized that there is a relationship between service and rates. The Postal Service and the Postal Regulatory Commission were required to establish service standards to provide service to the American public at fair and reasonable rates. That service includes providing universal First Class service to the American public at a uniform rate. Because of changes made due to the lack of funds, it is clear that we are now at a point where mail is being delayed and postal facilities are being closed, and the American public is no longer receiving the service it deserves from the United States Postal Service. These circumstances require that Congress reconsider the statutory CPI cap on postal rates.

There are sound policy reasons for repealing the CPI cap. It is no longer possible to argue that first-class letter mail is a monopoly that requires protection against excessive rates being

exacted from mailers. Quite the opposite is true. The postal service monopoly on letter mail is necessary to protect and preserve the postal network and to continue providing universal service to the American public. But there is a lot of competition with the Postal Service, and there is no economic reason to deny the Postal Service the right to set rates that are better-aligned to the amount of demand in the marketplace for postal services.

Comparison of postal rates in the United States to postal rates in other industrialized economies shows that our postal rates are unusually low. Table I at the end of this testimony compares postal rates in this country to rates in other countries on a basis that provides a fair economic comparison.¹ These comparisons further support our point that the CPI cap is too restrictive. It has damaged the Postal Service and must be repealed.

APWU members have borne the brunt of the drastic changes made by the Postal Service in the past seven years. They have been penalized unfairly for financial problems they did not create and could not control. The APWU cannot accept efforts to impose further sacrifices on postal workers.

¹ Table I provides a comparison from 2011. An updated comparison will be provided for the record.

Comparative First Class Letter Mail Rates for
Different Countries

Country		Cost in US\$
United States	Up to 1 oz. (28.3 grams)	\$0.44
Canada	Up to 30 grams (1.08 ozs.)	\$0.61
Australia	Up to 250 grams (9 ozs.)	\$0.62
Japan Post	Up to 25 grams (0.9 ozs.)	\$0.71
German Post	Up to 20 grams (0.7 ozs.)	\$0.78
France	Up to 250 grams (9 ozs.)	\$1.07
Royal Mail (UK)	Up to 100 grams (3.5 ozs.)	\$0.74
Source: Various Posts, April 4, 2011 exchange rates		
Cost is for sending a letter to a domestic destination that weighs approximately 1 ounce		

TABLE 1

Postal Regulatory Commission
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO Docket No. C2013-10

COMPLAINT OF AMERICAN POSTAL WORKERS UNION, AFL-CIO
REGARDING VIOLATIONS OF 39 U.S.C. 3661 and 3691

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COMPLAINT

I. Background

1. Under Section 3691 of the Postal Reorganization Act of 1970 (the PRA), as amended by the Postal Accountability and Enhancement Act of 2006 (the PAEA), the Postal Service was required to promulgate regulations establishing service standards for market dominant products, including First Class Mail, within 12 months after the enactment of the PAEA. 39 U.S.C. § 3691(a). Section 3691(b) lists four objectives the Postal Service must seek to achieve, and eight factors it must consider, when it promulgates or amends service standard regulations. 39 U.S.C. § 3691(b). Under Section 3691(a), the Postal Service “may from time to time thereafter by regulation revise” service standards for market dominant products. 39 U.S.C. § 3691(a).

2. On September 21, 2011, the Postal Service published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register to solicit public comment on a proposal to revise service standards for market-dominant products. 76 Fed.Reg. No. 183, at 58443 (Sept. 21, 2011). The Postal Service gave as a reason for the proposed rulemaking that mail volume was falling and the resulting excess capacity in the Postal Service's mail processing network necessitated a major consolidation of that network. *Id.* at 58434. The Postal Service stated that the major consolidation of the mail processing network was "contingent on revisions to service standards, particularly the overnight standard for First-Class Mail." See Introduction to Revised Standards for Market-Dominant Products, 39 CFR Part 121, 77 Fed.Reg. No. 102, at 31191 (May 25, 2012).

3. Among other things, the proposed changes to service standards would extend expected delivery times for various classes of mail such as eliminating any expectation of one day delivery for First Class Mail and changing the expectation as to the percentage of First Class mail delivered within two days from 26.6 percent to 50.6 percent and changing the expectation as to the percentage of First Class mail delivered within three days from 31.6 percent to 49.1 percent. Delivery times for periodicals would also be extended.
4. The September 21, 2011 ANPR stated that by ending overnight delivery for First Class mail, the USPS could change times during which it processes mail, which is currently done between 12:30 am and 7:00 am, to 12:00pm to 4:00am the next day. The changed processing times would require mailers to deliver mail to the USPS by 8:00 am each day rather than in the evening before the start of processing at 12:30am. The ANPR further stated that as a result of the proposed service standard changes, the USPS would be able to reduce the number of its mail processing facilities from over 500 locations to fewer than 200 locations because of the longer processing windows.
5. The ANPR solicited comments on its proposal, especially comments from senders and recipients of mail concerning the potential effects of the proposed change, and specifically on how they might change their mailing practices and reliance on the mail.
6. The ANPR advised that if the USPS decided to move ahead with the proposed change, it would publish a proposed rule in the Federal Register and would request an advisory opinion from the Commission under 39 U.S.C. §3661(b).

7. On December 5, 2011, USPS filed a request for an advisory opinion under 39 U.S.C. §3661 ("Request") concerning its proposals for changes in its service standards consistent with those set forth in the ANPR. The Request said the proposed changes would "eliminate the expectation of overnight service for significant portions of First Class Mail and Periodicals"; additionally, "the two-day delivery range would be modified to include 3 digit zip code origin destination pairs that are currently overnight, and the three day delivery range would also be expanded". PRC Case No. N2012-1

8. The December 5 Request said that "[t]he service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service, and are likely to affect most of them". The Request acknowledged that "[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis, it is required by section 3661(b) to request that the Postal Regulatory Commission issue an advisory opinion on the service change, and to submit a request within a reasonable time prior to the effective date of the proposed service change". The Request further stated that there should be no doubt that the service changes described in the Request "will be nationwide within the meaning of Section 3661(b)". *Id.*

9. On December 15, 2011, the Postal Service published a Notice of Proposed Rule (NPR) proposing revisions to the service standards for market-dominant mail products, stating that "the most significant revision would largely eliminate overnight service for First-Class Mail." 76 Fed.Reg. No. 241, at 77942 (December 15, 2011). The Supplementary Information published with the Proposed Rule explained that "Service Standards are comprised of two components: (1) A delivery range within which all mail

in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the 3-Digit ZIP Code prefixes associated with the piece's point of entry into the mail stream and its delivery address." *Id.*, at 77944.

10. Under the proposed Service Standards, "[t]he most significant effect of [the proposed] changes [would] be to drastically reduce the amount of First-Class Mail that qualifies for an overnight service standard. Under the [then] current First-Class Mail overnight business rule, intra-Sectional Center Facility (SCF) mail [was] subject to overnight delivery if it [was] entered before the applicable day zero CET." *Id.* (footnote omitted). Under the proposed revisions to the First-Class Mail overnight business rule, overnight service would be accorded only to intra--SCF Presort First-Class Mail that [was] entered at the SCF prior to the CET." *Id.*, at 77945 (footnote omitted).

11. Mail is "intra-SCF" if its destination is within its designated SCF's delivery area. Under the proposed revisions to the First-Class Mail overnight business rule, overnight service was to be "accorded only to intra-SCF Presort First-Class Mail that [was] entered at the SCF prior to the CET." *Id.*, at 77945 (Footnote omitted).

12. The NPR affirmed that the proposed changes would result in alterations of the prescribed delivery times for First Class Mail and that, as a practical matter, delivery times for other classes of mail would change as well, that the USPS would close many facilities and would change the work hours for most employees at its processing facilities. The NPR noted that the USPS had requested an Advisory Opinion from the Commission in accordance with Section 3661(b) and it cited and incorporated by

reference information it had provided in docket no. N2012-1.

13. On May 25, 2012, the Postal Service published a final rule revising the service standards for market dominant mail products, amending 39 C.F.R. § 121.1 First-Class Mail, Effective July 1, 2012. 77 Fed.Reg. No. 102, at 31190 (May 25, 2012). Under the new regulation:

(a)(1) Until February 1, 2014, a 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic First-Class Mail pieces properly accepted before the day-zero Critical Entry Times (CET),

(2) and after February 1, 2014, a 1-day (overnight) service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the date-zero CET...

Id. at 31196. (Exceptions are made for Puerto Rico, the US Virgin Islands, American Samoa and parts of Alaska). *Id.*

14. Under the new regulation:

(b)(1) Until February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin Processing & Distribution Center or Facility (P&DC/F) and the destination Area Distribution Center (ADC) is 6 hours or less...

(2) On and after February 1, 2014, a 2-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted for the day-zero CET if the drive time between the origin PDC/F and destination SCF is 6 hours or less...

Id. at 31196. (Exceptions are made for Puerto Rico, the US Virgin Islands, American Samoa and parts of Alaska). *Id.*

15. The USPS stated that under the New Rule, it could expand its nightly processing window, thereby reducing the number of processing locations needed in the network.

"Presently, the Postal Service's delivery point sequencing (DPS) operations are generally run for six and one-half hours per day, from 12:30 a.m. to 7 a.m. Once

implementation of Phase One [under the interim version of the New Rule] is complete, the DPS window will expand to up to ten hours, from 8 p.m. to 6 a.m. This change will facilitate the consolidation of the mail processing operations of approximately 140 facilities. Then, once implementation of Phase Two [the final version of the New Rule] is complete, the DPS window will expand to up to sixteen hours, from 12 p.m. to 4 a.m. This will make possible the consolidation of the mail processing operations of approximately 230 facilities (inclusive of the approximately 140 consolidated in Phase One).” 77 Fed.Reg. No. 102, at 31192.

16. The Postal Service explained its decision to conduct a phased implementation as follows:

From the outset, the Postal Service has understood that implementation of Network Rationalization will require more than one year. The phased application of the new rules accommodates this reality and also provides the Postal Service with enough flexibility that, should subsequent events or changed circumstances so warrant, the Postal Service will be able to revisit the final version before February 1, 2014, and amend or withdraw it, as appropriate, through a new notice-and-comment rulemaking...

77 Fed.Reg. No. 102, at 31191-31192; and it reiterated that explanation:

As noted above, the Postal Service recognizes the possibility that subsequent events or changed circumstances could cause it at a future date to revisit the final version of the new rules that will apply beginning on February 1, 2014, and to alter or withdraw those rules through a new notice-and-comment rulemaking....

77 Fed.Reg. No. 102, at 31192.

17. On September 28, 2012, the Postal Regulatory Commission (PRC) issued its Advisory Opinion on Mail Processing Network Rationalization (MPNR) Service Changes. PRC Docket No. N2012-1. The Executive Summary of those recommendations made the following three observations among others:

(1) “Interim service standards were adopted that preserve overnight First-Class Mail service through January 31, 2014, with the exception of First-Class Mail that is handled by more than one processing facility.” *Id.* at 1.

(2) “The Commission estimates that MPNR cost savings may be as low as \$46 million annually assuming mail processing productivities remain at current levels, or as high as \$2 billion annually if all proposed assumptions prove correct. Cost savings may be offset by reduced contribution to the bottom line from volume loss by mailers who no longer believe the level of service provided meets their postal needs.” *Id.* at 2.

(3) “The advice provided by the Commission in this docket can be succinctly summarized. The Commission views positively the network rationalization actions planned by the Postal Service through January 31, 2014, and recommends that the Postal Service take into account the considerations outlined in this Advisory Opinion before proceeding further. Specifically, the Commission encourages the Postal Service to make every attempt to retain overnight delivery in keeping with the analysis presented in the subsequent chapters [of the Commission’s Advisory Opinion].” *Id.* at 5-6.

18. The Commission in its order, however, cautioned the Postal Service that the Postal Service’s assumption of a systemwide increase in productivity of more than 20 percent was “remarkably ambitious and involve[d] some risk.” *Id.* at 2.

19. In response to direct questions from the Chairman of the PRC, the Postal Service assured the Commission that care would be taken to ensure that intra-SCF First-Class Mail service would be maintained until February 1, 2014, and that the decision to move forward with Phase 2 would be made very deliberately. The Postal Service stated:

“... The Phase I network reflects a judgment reached by Headquarters after consultations with Area and District operations and transportation experts to

determine a subset of feasible consolidations that could permit the preservation of intra-SCF overnight First-Class Mail service. Additional review may lead to adjustments to ensure that Phase I operations support applicable service standards.” PRC Case No. N2012-1, Responses of United States Postal Service Witness Emily Rosenberg to Commission Information Request No. 1 (Question 8(a)(i)).

* * * * *

“I am informed that any decision by senior postal management regarding “whether to retain phase one service standards or to proceed with implementation of phase two” will be influenced by whether a legislative enactment prohibits the Postal Service from implementing Phase II. The Postal Service also will review the advisory opinion issued in this case.” *Id.* (Question 9(b)).

20. There is legislation pending in the United States Congress that would, if enacted, require the Postal Service to maintain Phase I delivery standards for First-Class Mail and periodicals.

II. Summary of Complaint

21. In this case, Complainant the American Postal Workers Union, AFL-CIO (the APWU), which together with its locals and its health plan mails millions of pieces of mail each year, complains that the Postal Service is regularly failing to comply with the Service Standards set by its regulations in violation of Section 3691(b)(1)(B) of the PRA as amended by the PAEA, which requires the Postal Service to “preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.” 39 U.S.C. § 3691(b)(1)(B).

22. As a consequence of these violations, the Postal Service is depriving individuals

and business mailers, including the APWU and its locals, of the service to which they are entitled by law under service standard regulations in violation of Section 3691(d) of the PRA as amended by the PAEA. 39 U.S.C. § 3691(d)

23. The Postal Service unreasonably discriminates against individuals, small businesses, and organizational mailers in the provision of postal services by failing to comply with its regulations providing for the delivery of First-Class Mail and other mail, particularly those in rural areas, because the effects of service standard violations are more frequently found there. These discriminatory actions by the Postal Service violate Section 403(c) of the PRA as amended by the PAEA. 39 U.S.C. § 403(c).

24. In addition, the APWU complains that this failure by the Postal Service to comply with the law and regulations providing for postal services is the result of a decision made either by the postal Board of Governors or by postal management to implement in 2013 mail processing facility closures the Postal Service had not planned to make until after the effective date of regulation changes to take effect February 1, 2014, even though the Postal Service knew or should have known that those closures would result in the regular and systematic violation of First-Class Mail service standard regulations,

25. The APWU also complains that the Postal Service has information that it has not made public that will show the violations described above; and that information also will show that the closures planned for 2014 but implemented in 2013 have generally affected service on a nationwide or substantially nationwide basis.

26. As a remedy for these violations, the Complainant requests (1) that the Postal Service be instructed to take necessary steps to come promptly into compliance with Service Standard regulations; (2) that the Postal Service be ordered to cease and desist

from making changes in its mail processing network that will cause it to violate service standards; and (3) that the APWU and its locals be provided an appropriate remedy for any adverse impact on them due to the delay of their mail.

III. Jurisdiction

27. The APWU is an unincorporated labor organization with its offices at 1300 L Street, N.W., Washington, D.C. 20005. APWU is a party to multiple collective bargaining agreements with the United States Postal Service, and represents approximately 200,000 employees of the Postal Service. The APWU, its locals and the APWU Health Plan collectively mail millions of pieces of mail each year. The APWU maintains offices and conducts business throughout the United States and has Local affiliates in every state and territory of the United States; APWU and its locals send First Class Mail and other classes of mail into, and receives mail from, rural and urban districts in every U.S. State and territory. APWU locals send and receive First Class Mail and other mail pertaining to APWU business that originates and destines in the same Sectional Center Facility (SCF). The APWU brings this Complaint as an interested person under Section 3662 of the Act.

28. Under Section 3662(a) of the PRA as amended by the PAEA (39 U.S.C. § 3662(a)) the Commission has jurisdiction to hear these complaints of violations of Sections 403(c), 3661, 3691(b) and 3691(d) of the Act and of Regulations promulgated thereunder.

29. In accordance with the Commission's Rule 3030.10(9), counsel for the APWU communicated with the office of the general counsel of the Postal Service by telephone and e-mail on Wednesday, September 4, 2013, in an effort to resolve its complaint

without the necessity of filing this action. Despite good faith consideration by both parties, further efforts to resolve this matter without the filing of this Complaint would be futile..

IV. THE POSTAL SERVICE IS VIOLATING SERVICE STANDARDS ON A NATIONWIDE OR SUBSTANTIALLY NATIONWIDE BASIS

Tyler, Texas

30. Deactivation of the East Texas P&DC was scheduled to occur after the February 1, 2014 change in delivery standards. It was re-scheduled and implemented in May and June 2013.

31. As a result of the deactivation of the East Texas P&DC, the Postal Service is consistently failing to meet the one-day service standard for First-Class Mail.

32. As a result of the deactivation of the East Texas P&DC, First-Class Mail that used to be picked up on Saturday is not picked up until Monday and then is transported for processing.

33. As a result of the deactivation of the East Texas P&DC, mail that has been processed for delivery consistently arrives late at the Area Offices. This significantly delays letter carriers' departure to make deliveries. As a result, postal patrons receive their mail hours later than they did before the consolidation. For small businesses, mail that should have been received during the business day is not received until the next business day.

Brooklyn, New York

34. As a result of recent network consolidations, both originating and destinating mail processing has been moved from Brooklyn to the Morgan P&DC in Manhattan, New York.

35. As a result of the change described in the paragraph above, a substantial percentage of First-Class Mail is not receiving one-day delivery service within the SCF where it both originates and destيناتes (intra-SCF mail). This is in violation of service standards.

36. The use of mail placards in the mail processing operation in Brooklyn has become irregular and no longer serves as a reliable means of determining whether mail is meeting delivery standards.

Colorado Springs, Colorado

37. The outgoing mail processing operation was moved from Colorado Springs to Denver, Colorado on June 1, 2013. As a result, cut-off times at stations and collection boxes were changed to one hour earlier. All mail dropped in those boxes after the new earlier cutoff time is delayed by one day. A substantial percentage of the mail is failing to meet delivery standards.

38. Mail that used to be processed and delivered overnight in Colorado Springs now takes two to three days for delivery.

Kilmer, New Jersey

39. The Kilmer, New Jersey, postal facility no longer processes its own originating or destinating mail. This was not scheduled to occur under the Postal Service's Network Consolidation Plan until 2014.

40. As a result of Network Consolidation affecting Kilmer, its residents receive mail that does not comply with service standards.

41. Processed mail routinely arrives at the Kilmer P&DC at 10 a.m. instead of 7 a.m. as it did before consolidation. This significantly delays letter carriers' departure to make deliveries. As a result, postal patrons receive their mail hours later than they did before the consolidation. In the case of small businesses, mail that should have been received during the business day is not received until the next business day.

Saginaw, Michigan

42. Mail originating and destinating in Saginaw, Michigan, is now transported to Pontiac, Michigan for destinating processing due to a change in mail processing that was not scheduled to occur until 2014 under the Postal Service Network Consolidation Plan but was made in 2013.

43. As a result of the elimination of mail processing operations in Saginaw, mail destinating in Saginaw is regularly being delayed, and service standards are being violated.

Williamsport, Pennsylvania

44. As a result of the closure of the Williamsport, Pennsylvania, destinating mail processing operation in 2013, a change which was not scheduled to occur until 2014 under the Network Consolidation Plan, mail is being delayed and is being delivered in violation of service standards in the Williamsport area.

45. A weekly magazine called Sports Illustrated is being delivered five days late.

46. Wall Street Journals were delivered 36 hours late for more than a month.

47. Numerous complaints have been received from small businesses about delayed

payments from customers in the Williamsport community.

48. As a result of the late arrival of trucks carrying processed mail, letter carriers are delayed and regularly must deliver mail until after 8 p.m. As a result, postal patrons receive their mail hours later than they did before the consolidation. In the case of small businesses, mail that should have been received during the business day is not received until the next business day.

Salem, Oregon

49. As a result of a consolidation that was scheduled for 2014 being carried out in 2013, mail is being delayed in the Salem, Oregon, area, and service standards are not being met. For example, a test mailing of a First Class Mail parcel sent certified mail was due to be delivered on June 22, 2013, under applicable service standards. It was not received until June 24, 2013.

50. Mailers complaining of delayed mail in Salem include Doneth Wealth Management, First Pacific Corporation, the Oregon Department of Motor Vehicles, and the U.S. Department of Justice. Complaints have included delays in First-Class Mail and parcel mail.

51. Because of the consolidation, collection times from postal mail boxes have been moved to earlier times throughout the area, and dispatch times from coastal Oregon are as early as 1:30 p.m. Mail deposited after earlier collection times or arriving at a facility after an earlier dispatch time is delayed by one full day in addition to mail processing delays caused by the consolidation.

LaCrosse, Wisconsin

52. As a result of a mail processing consolidation that had been scheduled to be done in 2014, mail in the LaCrosse, Wisconsin, area is being delayed. For example, the Vernon County Broadcaster, a weekly newspaper, reports that many of its newspapers are not being received until days or even a week late as a result of mail being transported to Minnesota for processing.

Carbondale, Illinois

53. The Carbondale, Illinois, mail processing center recently shut down and now its mail is sent to St. Louis, Missouri, for processing.

54. An official Postal Service announcement about this change stated that the fact that the mail is now being processed in St. Louis “may add a day or two to the normal delivery timeframe.”

55. If the postal spokesperson quoted in the paragraph above is correct, the Postal Service is violating delivery standards in the Carbondale area due to the elimination of mail processing in Carbondale.

Cape Girardeau, Missouri

56. Mail delivered to Cape Girardeau, Missouri and the surrounding area is first processed in St. Louis, but it is regularly delayed by nearly three and a half hours before it is delivered to the Cape Girardeau P&DC for sorting. The St. Louis processing center is overwhelmed by the volume of mail, resulting in large delays and service standards not being met.

57. These delays have actual and, in some instances, detrimental consequences in Cape Girardeau and the rural communities around it. Residents in Cape Girardeau are

receiving newspapers two days after their publication, while residents in nearby Gideon, Missouri, have received water shut-off notices in the mail two days after their water was shut off.

Service Adversely Affected on a Nationwide or Substantially Nationwide Basis

58. Altogether, the Postal Service has decided to close down 55 mail processing operations in 2013 that had been originally scheduled to be included in Phase II of its Network Consolidation Plan in 2014.

59. Approximately 90 facilities were scheduled for closure in 2014 instead of in 2013 for two reasons: (1) Closure of these facilities would require elimination of one-day First-Class Mail service within SCFs for individuals and small businesses, and correspondingly slower service for all other types of mail; and (2) The service standard changes necessary to permit the slower delivery standards are not scheduled to take effect until February 1, 2014.

60. The decision to close 53 or 55 of the mail processing operations in 2013, that were originally scheduled for closure in 2014, was made by the Board of Governors or by postal management despite the likelihood that mail would be delayed in violation of applicable service standards.

61. Despite postal management's best efforts, it has been impossible and will remain impossible for the Postal Service to meet its delivery standards in areas where 2014 closures have been carried out in 2013.

REQUEST FOR RELIEF

For the reasons stated above, the APWU respectfully requests that the Commission:

A. Hold that the Postal Service has violated its Service Standard Regulations as described in the Complaint above;

B. Hold that the Postal Service has violated Section 403(c) of the Act by making undue and unreasonable discrimination among users of the mails, specifically individuals, small businesses, and organizations, including the APWU and its locals;

C. Hold that the Postal Service has violated Section 3661(a) and (b) of the Act by changing to a generally less adequate and effective nationwide system without seeking an advisory opinion from the Postal Regulatory Commission;

D. Order the Postal Service to take necessary steps to come promptly into compliance with its Service Standard regulations;

E. Order the Postal Service to cease and desist from making changes in its mail processing network that will cause it to violate service standards; and

F. Order the Postal Service to provide the APWU and its locals an appropriate remedy for any adverse impact on them due to the delay of their mail.

Respectfully submitted,

/s/

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American Postal Workers Union, AFL-CIO

September 5, 2013

CERTIFICATIONS REQUIRED BY RULE 3030.10(9) and (10)

I hereby certify that a copy of this complaint is being simultaneously served on the Postal Service at PRCCOMPLAINTS@usps.gov in accordance with Rule 3030.11.

I hereby certify that counsel for the APWU conferred with the Postal Service's general counsel in an attempt to resolve or settle this complaint, and that, despite good faith consideration by both parties, additional efforts to settle or resolve this complaint would be unsuccessful at this time.

/s/

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