

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

PERIODIC REPORTING

Docket No. RM2010-3

PETITION OF THE UNITED STATES POSTAL SERVICE REQUESTING
AUTHORIZATION TO UTILIZE PRO FORMA ACCOUNTING DATA
IN PERIODIC REPORTING (Proposal Twenty-One)
(October 20, 2009)

In order to avoid the potential for misleading regulatory reports, the Postal Service hereby requests authorization from the Commission to utilize alternative accounting data relating to a recent amendment of the law in all of its regulatory reporting to the Commission. Specifically, the Postal Service seeks the Commission's authorization to rely on *pro forma* portions of audited financial statements which are consistent with the retroactivity provision in the new law, both for purposes of preparing FY 2009 and FY 2010 periodic reports, and for purposes of preparing filings in other dockets which need to rely on those *pro forma* statements. The circumstances created by enactment of the new law create questions of first impression, and this petition is intended to expeditiously resolve any uncertainty and to permit the Postal Service to report relevant financial information in a fashion consistent with the Congressional intent to provide financial relief to the Postal Service in FY2009 for its obligation to prefund future retiree health benefits.

As background, in section 103 of the PAEA as originally enacted in 2006, the Postal Service's required payment into the Postal Service Retiree Health Benefits Fund for FY 2009 was set at \$5.4 billion. Public Law 109-435, 120 Stat. 3251 (Dec. 20,

2006). As widely reported this year in the press and in public statements by postal management, the dramatic deterioration in the Postal Service's financial position in FY 2009 put severe pressure on the Postal Service's ability to make this payment. In response, Congress included a provision in the 2010 Continuing Appropriations Resolution which reduced the FY 2009 payment to \$1.4 billion, and made the revision retroactive to the date of enactment of the PAEA. Section 164, Division B, Legislative Branch Appropriations Act, 2010 (set forth at 155 Congressional Record H9932, Sept. 24, 2009, and enacted as Public Law 111-068). A copy of the relevant section of the new law is appended as Attachment One.

Clearly, Congress made the revision in the FY 2009 payment amount retroactive to the date of enactment of the PAEA, and thus expected that the revision would be fully reflected in the Postal Service's financial statements for FY 2009, leading to a reduction of \$4 billion in the Postal Service's projected multi-billion dollar loss for FY 2009. The change in law was unequivocally and explicitly intended to revise the amount of the *FY 2009* payment. Alternative proposals were discussed earlier which could have made revisions in amounts for years *beyond* FY 2009. Those proposals, however, were not incorporated into the final bill. Of course, some type of similar revision to the FY 2010 payment amount conceivably could still prove to be necessary, and Congress could still take responsive action later in FY 2010. What appears beyond cavil, though, is the intent of Congress to limit its action in this particular piece of legislation to FY 2009.

Unfortunately, although the bill was passed by the House on September 25th, passed by the Senate on September 30th, and presented to the President on September 30th, the bill was not signed by the President until October 1, 2009. Since

FY 2009 ended at midnight on September 30, 2009, questions have arisen regarding the appropriate accounting treatment of this substantial reduction in the Postal Service's liability to the Retiree Health Benefits Fund. Specifically, should the \$4 billion improvement in financial position be booked in FY 2009, or in FY 2010? The answer, obviously, affects financial reporting for both years, as the amount can only be booked in one year or the other.

It would appear that, regardless of the intent of Congress to make the change retroactive to the passage date of the PAEA, generally accepted accounting principles (GAAP) focus on circumstances as they existed on the stroke of midnight on September 30, 2009, the close of Fiscal Year 2009. Under that standard, since the new law had not yet been enacted (i.e., had not yet been signed by the President), the required payment for FY 2009 at that time was still \$5.4 billion. The entire \$5.4 billion amount would thus be included in expenses on the FY 2009 income statement. Conversely, with the enactment of the new law on the first day of FY 2010, the \$4.0 billion improvement in financial position would get booked in the first quarter of FY 2010. Overall, application of this interpretation of GAAP would thus appear to produce results directly contrary to the deliberate intent of Congress to limit the effects of the legislation to FY 2009.

If booking the adjustment in FY 2010 is necessary to maintain conformance to GAAP, however, it then likewise would be appropriate to acknowledge the passage of the law as a subsequent event relevant to full disclosure of material information. See Financial Accounting Standards Board Statement of Financial Accounting Standards No. 165, Subsequent Events, May 2009, at ¶¶ 13-14. The most visible practical

consequences of this would be an additional column on the financial statements included in the Postal Service's FY 2009 10-K annual report. There would be two columns for FY 2009. The first column, intended to be consistent with GAAP, would present the FY 2009 results in accordance with the payment schedule as it stood at midnight on September 30, 2009, while a second column (labeled as "*pro forma*") would show the results as they would have appeared had the effect of the new law been booked in FY 2009. Similarly, for the FY 2010 income statement, the first 2010 column would reflect the \$4 billion adjustment as if it occurred in FY 2010, while the *pro forma* 2010 column would once again be premised on booking the adjustment in FY 2009. In other words, for both years, the *pro forma* column would present financial results which would be entirely congruent with the retroactivity subsection of the new law.

Assuming that the Postal Service's audited financial statements for FY 2009 and FY 2010 were to utilize this *pro forma* presentation of the effects of the new law, the Postal Service is now seeking from the Commission a ruling that, for regulatory purposes, all periodic reporting (and any subsequent dockets relying on data included in the periodic reports) should rely on the *pro forma* columns of the FY 2009 and FY 2010 results. Thus, for example, in filing the FY 2009 Annual Compliance Report (ACR), the Postal Service would prepare the report (and all underlying documentation, including the CRA) to match the *pro forma* column in the FY 2009 financial statements. In this fashion, the FY 2009 Retiree Health Benefits Fund expense underlying the Commission's FY 2009 Annual Compliance Determination (ACD) would equal the payment amount specified in the new law. A similar result would apply to the FY 2010

ACD. The expectation of Congress of a \$4 billion improvement in the Postal Service's bottom line for FY 2009, and no effect on FY 2010, would be achieved.

Given the totality of circumstances, including the very explicit expression of Congressional intent in the retroactivity provision, the Postal Service submits that such a ruling by the Commission is the most reasonable and practical way to bridge a potential gap between broader accounting principles, and the very narrow and specific issues raised by passage of the new law. As long as the Commission can successfully guide postal regulatory reporting for the next few years along the pathway chosen by Congress, there is no need to attempt to wrestle with issues potentially raised by more long-standing and global accounting principles developed primarily to protect investors in publicly-traded private sector firms. An appropriate ruling by the Commission can effectuate the clear intent of Congress, without damaging any relevant interests across the range of stakeholders. It would also move postal regulatory reporting in the direction of matching what the Postal Service understands will be the treatment of the \$4 billion shift in payment amounts by OPM and OMB for purposes of the broader federal budget accounting.

The Postal Service needs such a ruling, however, with some expedition. Given other (non-Commission) reporting requirements (which require submissions consistent with what will ultimately be reported to the Commission in the FY 2009 ACR), the Postal Service needs guidance in early November. For example, in accordance with Treasury Financial Manual 4700, the Postal Service will have to submit all of its FY 2009 financial results to the Government Financial Reporting System by November 16, 2009, and a fair amount of lead time is necessary for final preparation of those materials. While

such a timeline may be challenging, the burden of meeting that challenge is substantially mitigated by the extremely narrow issue presented (essentially, is rational and transparent regulatory reporting better achieved by treating the change as booked in FY 2009, or in FY 2010?), and the rather extraordinary indication of how Congress would resolve that exact issue, as manifested in the retroactivity provision.

To aid in the Commission's consideration of this request, the Postal Service is appending as Attachment Two a draft supplemental provision for Part § 3050 – Periodic Reporting. The Commission, of course, may determine that some other vehicle is more appropriate to achieve these desired objectives. The objectives of the Postal Service, however, are essentially encapsulated in the attached draft rule. The Postal Service respectfully requests that the Commission respond to this petition as expeditiously as possible.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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ATTACHMENT ONE

New Law:

Section 164, Division B, H.R. 2918, Public Law 111-68.

H.R.2918

Making appropriations for the Legislative Branch for the fiscal year ending September 30, 2010, and for other purposes. (Enrolled as Agreed to or Passed by Both House and Senate)

Sec. 164. (a) Clause (iii) of section 8909a(d)(3)(A) of title 5, United States Code, is amended to read as follows:

“(iii) \$1,400,000,000, not later than September 30, 2009;”.

(b) The amendment made by subsection (a) shall take effect as if included in the enactment of section 803(a)(1)(B) of the Postal Accountability and Enhancement Act (Public Law 109-435; 120 Stat. 3251).

ATTACHMENT TWO

Draft Proposed Rule:

§ 3050.xx Regulatory Accounting Treatment for FY 2009 and FY 2010 of Payments to the Postal Service Retiree Health Benefit Fund

For purposes of all periodic reports submitted under Part § 3050 (Periodic Reporting) of the Rules of Practice and Procedure, when choosing between alternative versions of financial statements which are based on recognition of a reduction (from \$5,400,000,000 to \$1,400,000,000) in the Postal Service's FY 2009 liability to the Postal Service Retiree Health Benefit Fund under clause (iii) of section 8909a(d)(3)(A) of title 5, United States Code as occurring in either FY 2010 or before FY 2010, the Postal Service shall select the version recognizing the change in liability as occurring before FY 2010. Notwithstanding whether this treatment of the change is in accordance with generally accepted accounting principles, this treatment is in accordance with Section 164 of Division B of the Legislative Branch Appropriations Act, 2010 (set forth at 155 Congressional Record H9932, Sept. 24, 2009), subsection (b) of which specifically states that the revision of the required FY 2009 payment amount (from \$5,400,000,000 to \$1,400,000,000) should take effect as if included in the original enactment of the Postal Accountability and Enhancement Act. For purposes of any Commission proceedings or filings which subsequently rely on data filed in periodic reports, or on data which are being prepared to be filed in periodic reports, data filed in those proceedings shall likewise rely on the version of the financial statements using \$1,400,000,000 as the amount of the FY 2009 liability, and treating the change as if it occurred before FY 2010.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice and Procedure.

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