



OFFICE OF **INSPECTOR GENERAL**

UNITED STATES POSTAL SERVICE

Governance of the U.S. Postal Service

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Executive Summary

The U.S. Postal Service's Board of Governors is at a crossroads. The governing body was established by the Postal Reorganization Act of 1970 to provide the Postal Service with independent, businesslike direction. In important ways, this has been a success, and the Postal Service is less politicized and far more businesslike than the Post Office Department it replaced. However, since reorganization, the Board has sometimes struggled against impressions that it is not as active and relevant as it could be. Additionally, it has often not been fully staffed to provide strategic value to the Postal Service. For example, only one of the nine governor positions was filled as of October 2016. Unless new nominees are confirmed before this governor's time on the Board expires in December 2016, USPS will be without the legal authority to complete a wide variety of actions, including appointing the Postmaster General, introducing or altering products, or changing prices.

The concerns about the Postal Service's governance model and the potential confirmation of a new slate of governors make this an opportune time to explore the history of the Board, its rationale, and barriers to effective operation. A close reading of this history sheds important light on the Board's role and the challenges the Board has faced in the past.

The Board of Governors' statutory role is to provide independent strategic guidance to the Postal Service while ensuring that it fulfills its mission to the American people. These responsibilities are vital to the Postal Service's success. In addition, the Constitution requires that executive branch entities, including the

Highlights

The Board of Governors provides the Postal Service with strategic guidance, similar to a corporate board of directors.

While it has broad responsibilities, some argue that the Board lacks the authority to fulfill its duties.

As of October 2016, only one of the nine governor positions was filled. In December 2016, there will be no remaining governors, unless more are confirmed. This unprecedented situation could have broad ramifications for the Postal Service.

There are several opportunities to change the governance model, including pending legislation in Congress.

Postal Service, be run by presidential appointees. Together, these factors demonstrate the need for a strong, independent Board with a diversity of knowledge and experience.

The Board of Governors faces a wide range of challenges, including a fundamental mismatch between its significant responsibility and limited authority, a crowded field of stakeholders, and profound changes to the Postal Service's business environment. Governors must weigh all these issues and determine what course of action best represents the public interest.

The Postal Service functions in a politicized and public environment, and few of its actions will meet with the approval of all of its stakeholders. As is standard practice in the corporate governance world, the governors rarely debate controversial topics or discuss strategic issues in public meetings. Unfortunately, this can make it difficult for the public to see how the governors are exercising their authority. Recently, there has been a debate about whether the role of the Board is necessary at all, and Congress is now considering a variety of alternative governance models.

To help inform the ongoing debate, this paper gives an overview of the findings of many studies and commissions on the topic, including a list of corporate governance best practices recently issued by a highly respected group of business executives. This research, informed by the last 5 decades of postal history, could help policymakers and a reconstituted Board ensure that the Postal Service meets the many challenges facing it today and in the future.

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Observations

Discussions about USPS' governance model and the appropriate role of the Board of Governors have been ongoing for 5 decades.

Introduction

The Postal Reorganization Act (PRA) of 1970 created the Board of Governors as a buffer between the political establishment and the U.S. Postal Service to enable the Postal Service to act in a less politicized, more businesslike manner. In important ways, the separation of the Postal Service from the cabinet has been a success. The Postal Service is far less politicized and far more businesslike than the Post Office Department it replaced. However, the Board has not been widely credited with achieving the central authoritative role envisioned for it. The legislative restrictions on the Postal Service's actions and the need to share power with other centers of influence have constrained the Board's power to act and overshadowed its authority. Thus, a problem with the Postal Service's governance model is the mismatch between the Board's significant responsibility and its limited authority.

Although the divergence between the Board's authority and responsibility existed from its beginning, the Postal Accountability and Enhancement Act of 2006 (PAEA) ushered in a period of change and provided new challenges. Ten years after its enactment, further change is on the horizon. Because all but one of the Governor seats on the Board are vacant, it faces a period of reconstitution. Congress is once again considering adjustments to the governance model of the Postal Service, providing an opportunity for both the Board and other stakeholders to reflect on changes that may be needed.

The Board of Governors' statutory role of providing strategic vision while ensuring that the Postal Service fulfills its mission to the American people is critical to USPS' long-term success. If these responsibilities are delegated, diffused, or diluted, it makes it all the more difficult to navigate the challenging operational, economic, regulatory, and political landscape in which the Postal Service operates. The governors also fulfill an important constitutional requirement that executive branch entities be run by presidential appointees. Together, these factors demonstrate the need for a strong, independent Board with a diversity of knowledge and experience.

A Brief History

The former Post Office Department continually ran deficits and was subsidized by appropriations.¹ Management had little flexibility: both postal rates and wages were set by statute. The Postmaster General and eight other top postal officials were presidential appointees. Rural carriers and postmasters were appointed by members of Congress and other elected officials.² Amid turmoil in the Post Office Department, the 1968 report by the Kappel Commission envisioned a new, nonpolitical post office.³ The commission called for an independent, self-sustaining government corporation run in the manner of a business by a board of directors. The Board would be vested with "full management responsibility and authority."⁴

Legislative progress on reorganization was slow until the March 1970 postal strike, when postal workers in cities across the country illegally walked off the job. Following the strike, the administration and the major postal unions negotiated a deal that provided an outline for new legislation. A key component of the agreement, which was included in the final legislation, was the introduction of collective bargaining with binding arbitration to resolve labor impasses.⁵ This provision was one of the legislation's significant deviations from the Kappel Commission's original vision. Another was the creation of an independent Postal Rate Commission to review pricing. Both gave substantial authority over the Postal Service to external parties, raising questions about the ultimate authority of the postal Board of Governors.

In the 46 years since, there have been periodic controversies over the role of the Board, and debate over the effectiveness of the Postal Service's governance provisions has never really subsided. In 2002, amid calls for postal reform and concerns about the Postal Service's long-term fiscal health, President George W. Bush appointed the President's Commission on the U.S.

¹ For a more detailed history of postal governance covering the period between 1968 and today, please see [Appendix A](#).

² The President's Commission on Postal Organization, *Towards Postal Excellence: The Report of the President's Commission on Postal Organization*, June 1968, <http://www.prc.gov/prcarchive/viewpdf.aspx?docid=508284663>, pp. 40-42.

³ *Ibid.*, p. 3.

⁴ *Ibid.*, p. 55.

⁵ Prior to the strike, President Nixon's administration had forged an agreement with the President of the National Association of Letter Carriers, James H. Rademacher. This agreement caused tension between members of the Nixon administration and Postmaster General Winton M. Blount. Source: Letter from Charles W. Colson to Murray Chotiner, March 6, 1970.

As the terms of Board members have expired, replacements have not been confirmed. As of October 2016, there was only one governor serving of the nine authorized and contemplated by law.

Postal Service (PCUSPS) to evaluate the organization. The PCUSPS said that the Postal Service’s governance model was outdated and inconsistent with the organization’s mission in modern times. The commission envisioned a board based on the best practices of the private sector with full control over the goals and strategies of the organization. Paired with this board would be a new, more influential postal regulator charged with refining many broad public policies associated with the postal system.

The tension in the PCUSPS’s vision between the role of the Board and the role of the regulator attracted some criticism. The legislation that became PAEA raised additional concerns. The Board of Governors argued that “the bills provide neither the requisite flexibility nor the authority to accomplish our mission.”⁶ Seven of the nine former members of the 2003 PCUSPS took the unusual step of expressing their objections to the legislation in a letter to relevant members of Congress. Their letter objected to the broader authority given to the postal regulator. They concluded that, “This is a governance model that simply won’t work.”⁷ Despite these concerns, PAEA became law on December 20, 2006.

The subsequent decade has been extremely difficult for the Postal Service and the Board. USPS has faced significant declines in mail volume brought on by the digital age and the Great Recession. In addition, PAEA introduced an accelerated schedule of retiree health benefit payments, a price cap that limited the Board’s authority to set rates in a way that covers USPS’ costs, and gave new broad powers to the Postal Regulatory Commission (PRC). Also, as the terms of governors have expired, replacements have not been confirmed. When membership fell below the six required for a quorum, the Board created the Temporary Emergency Committee consisting of the Postmaster General, Deputy Postmaster General, and the remaining independent governors.⁸ Effective November 2014, the committee allowed the Board to continue exercising those powers that are “necessary to provide for continuity of operations.” At the same time, the Governors, who have distinct powers from the larger Board, also issued a legal opinion. It declared that, in the absence of a quorum, the governors then in office could still exercise the powers that are reserved for the presidentially appointed Governors with one exception: they could not remove the Inspector General.⁹ The powers reserved for the Governors are discussed in more detail in the “Things Only the Governors Can Do” section.

As of October 2016, there was only one governor serving of the nine authorized by law. That lone governor, James Bilbray, publicly expressed at a November 2015 Board meeting his frustration at the unprecedented state of the Board: “I have the help of my Deputy Postmaster General and my Postmaster General, but I cannot effectively run the United States Post Office by myself.”¹⁰ He added: “We are shocked that somebody out there doesn’t hear us, doesn’t hear how badly we are off. [We are down to] one governor: me.” Bilbray’s term expired in December 2015. After an allowed hold over year, the governor must leave his post in December 2016. At that point there will be no independent governors on the Board — unless new members are confirmed. This would have serious ramifications for the Postal Service, which will be discussed later in this report.

If and when the Board is reconstituted with new members, it will have an opportunity to examine and possibly revise the way it operates. Furthermore, the reconstituted Board must also face the prospect that governance will once again be on the congressional agenda. A bill approved by the House Committee on Oversight and Government Reform on July 12, 2016, would reduce the number of governors from nine to five, and would also authorize the chairman of the Board to “ensure that the Board has appropriate independent staff” to carry out its responsibilities. Such a technical staff could provide the Board with valuable, independent advice and support, while making substantial progress on matters for the Board between its monthly meetings.

6 Letter from U.S. Postal Service Board Members to Senator Susan M. Collins, September 13, 2005. (An identical letter was sent to U.S. Senators Joseph Lieberman and Thomas Carper and U.S. Representatives Tom Davis, Henry Waxman, John McHugh, and Danny Davis.)

7 Letter from Harry J. Pearce and six other members of the President’s Commission on the Postal Service to U.S. Senators Bill Frist, Harry Reid, Susan Collins, and Joseph Lieberman and U.S. Representatives John Boehner, Tom Davis, Dennis Hastert, Nancy Pelosi, and Henry Waxman, February 7, 2006.

8 “Exercise of Powers Reserved to the Governors and the Board of Governors,” *Federal Register*, 79 FR 74780, December 16, 2014, pp. 74780-74782, <https://federalregister.gov/a/2014-29344>.

9 Ibid.

10 James H. Bilbray, “U.S. Postal Service Board of Governors Open Sessions,” Nov. 11, 2015, <http://a248.e.akamai.net/f/248/60653/1d/usps.download.akamai.com/60653/streaming/vod/BOG111315.mp4>.

The Board's legal role is to ensure that USPS carries out its mission.

The Board's Authority and Power

The statement of Postal Service policy in U.S. Code Title 39 gives perhaps the clearest explanation of the Postal Service's mission: the Postal Service is to be operated as a "basic and fundamental service," and "have as its basic function the obligation to provide Postal Services to bind the Nation together through the personal, educational, literary, and business correspondence of the people."¹¹

The role of the Board of Governors under current law is to ensure the Postal Service carries out this mission. To this end, the Postal Service's foundational law in Title 39 entrusts the Board with broad responsibilities. As drafted, the law also helps shield the governors from political pressure and involvement by providing fixed terms, bipartisan membership, and independence from budgetary controls and executive branch direction.¹² The statute empowers the Board of Governors to direct "the exercise of the power of the Postal Service" and requires it to "direct and control the expenditures and review the practices and policies of the Postal Service" as well as to perform other duties.¹³ In its bylaws, the Board has stated that it "accomplishes its purposes by monitoring the operations and performance of the Postal Service, and by establishing basic objectives, broad policies, and long-range goals for the Postal Service."¹⁴

National Infrastructure, National Interest

The Board's role is complicated by the public nature of the Postal Service's mission. The Postal Service is part of the government, entrusted to carry out a public mission in a businesslike manner. In a country that relies far more than most on the private sector to deliver commonly-used services, no legislative proposal to privatize the Postal Service has ever been enacted.

The Postal Service's network, in fact, is a critical component of the national infrastructure, and the Postal Service is a partial custodian of that infrastructure. For example, it developed and maintains the national ZIP Code system, a widely used socio-economic tool with an annual value to the economy approaching \$10 billion.¹⁵ Postal Service carriers have been trained to deliver medications in the event of a national emergency, and the Postal Inspection Service and U.S. Postal Service Office of Inspector General (OIG) cooperate with other agencies as part of the national law enforcement establishment. More generally, the Postal Service is required to provide universal service even when it is not cost-effective.¹⁶

On the whole, the Postal Service has been successful in its national role, regularly voted the most trusted government agency.¹⁷ Nonetheless, such a role necessarily and rightly attracts the scrutiny of the public and its elected representatives. Congress will always have an important interest in the Postal Service's operations, as the Postal Service remains an arm of the federal government, and the U.S. Constitution gives Congress particular responsibility for the provision of Postal Services.¹⁸

11 Title 39 § 101(a) states, "The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide Postal Services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render Postal Services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people."

12 See page 20 for an account of how the Board successfully stood up in court to counter a threat of removal by the Bush Administration in 1993.

13 39 U.S.C. § 202 and § 205.

14 39 CFR. § 3.1.

15 U.S. Postal Service Office of Inspector General, *The Untold Story of the ZIP Code*, Report No. RARC-WP-13-005, April 1, 2013, https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-13-006_0.pdf, p. iii.

16 The OIG conducted research on the universal service obligation. For more information, please see OIG, *Guiding Principles for a New Universal Service Obligation*, Report No. RARC-WP-15-001, November 15, 2014, https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-15-001_0.pdf and U.S. Postal Service Office of Inspector General, *Funding the Universal Service Obligation*, Report No. RARC-WP-16-005, March 21, 2016, <https://www.uspsoig.gov/sites/default/files/document-library-files/2016/RARC-WP-16-005.pdf>.

17 Pew Research Center, *Beyond Distrust: How Americans View Their Government*, November 23, 2015, <http://www.people-press.org/2015/11/23/beyond-distrust-how-americans-view-their-government/>.

18 "The Congress shall have power...to establish post offices and post roads." U.S. Constitution, Article I, Section 8.

Unlike a private sector board of directors that aims to maximize shareholder returns, the Board of Governors serves the public interest.

Whom Does the Board Represent?

In discussions of governance, the Postal Service is frequently compared to private-sector corporations, because both are headed by boards. The Postal Service differs from a corporation, though, in several important respects. Most directly, the Postal Service's primary goal is to serve the public interest, rather than to maximize profits for shareholders.

The governors of the Postal Service must represent the public interest generally and not any particular group.¹⁹ Yet determining the public's interest and how best to serve it can be difficult, even in the broadest sense. Some argue it lies in consistent and universally accessible consumer mail services; others in a vibrant commercial mail sector; still others in preserving the dissemination of cultural and civic discourse. When interests conflict, as in the controversies over service levels, network consolidation, and prices, balancing the public's needs is the classic democratic conundrum. Each governor must decide for himself or herself what serving the public interest means. A broad variety of stakeholders have claims on the governors' attention:

- **The American people:** The Postal Service is part of the national infrastructure and part of the government. What does the Board owe the public when directing its Postal Service? Can the public's interest as articulated by the Board differ from the government's interest as expressed through elected officials and political channels?
- **Mailers:** Mailers pay for the Postal Service and are generally interested in lower prices and improved service performance. But mailers frequently differ in priorities and sometimes take opposing sides on postal policy issues. In addition, mailers' short-term focus on keeping prices low may conflict with their long-term interest in a healthy, efficient, financially stable Postal Service.
- **Recipients:** The Postal Service exists because mailers want to reach recipients — and mailers, not recipients, are the ones paying for the service. To what degree, and how, should the Board solicit and consider the interests of the recipients of the mail?
- **The Postal Service:** The Postal Service as an institution also has distinct interests which the Board must protect and defend.
- **Other stakeholders:** The Board must also consider a myriad of other interests, such as those of suppliers, competitors, and employees, including labor unions and management associations.

The Board's Responsibilities and Limitations

The Board and the independent governors' current responsibilities can be separated into four categories: selecting the Postmaster General and the Inspector General, strategic decision making, oversight of the Postal Service, and helping determine its direction.²⁰ This authority, however, is often limited by law and by the roles of other entities. For example, restrictions in the postal law that distinguish the Board of Governors from fully-empowered boards include a limit on governors' compensation that is far below that of corporate boards and a limitation on the number of days the Board can be paid for meeting.²¹ [Table 1](#) illustrates the competition for each category of responsibility. The arrow is lightest in categories for which there is little competition and grows darker in those categories for which the competition is greater and the Board's freedom of action more restricted.

¹⁹ Under 39 U.S.C. § 202(a), "The Governors shall represent the public interest generally....The Governors shall not be representatives of specific interests using the Postal Service."

²⁰ The Board of Governors, which includes the Postmaster General and Deputy Postmaster General, has distinct powers from the presidentially appointed governors. For more details, see 39 C.F.R. § 3.4.

²¹ Limits to governors' compensation may discourage some candidates from accepting nominations to the Board. While governors are paid \$30,000, the median compensation for non-executive corporate directors of S&P 500 companies in 2015 was \$255,000 per year. Source: Theo Francis and Joann S. Lublin, "Corporate Directors' Pay Ratchets Higher as Risk Grows," *The Wall Street Journal*, February 24, 2016, <http://www.wsj.com/articles/corporate-directors-pay-ratchets-higher-as-risks-grow-1456279452>.

Table 1: Competition for the Governors' Responsibilities

Board Responsibilities	Law	Congress	Postal Regulatory Commission	Arbitrator	Government Accountability Office	Other Federal Agencies
Select PMG and IG						
<ul style="list-style-type: none"> • Appoint and remove the PMG (G) and DPMG (G and PMG). • Appoint the IG for a term of 7 years (G). 						
Approve						
<ul style="list-style-type: none"> • Approve the budget, financial statements, certain capital spending, long-term borrowing, and the issuance of debt. • Approve major policy positions and reports to Congress. • Determine the number of officers and approve compensation. 	Debt limited: \$3 billion per fiscal year and \$15 billion total. Large payments to Retiree Health Fund required. Compensation limited.					Treasury manages issuance of Postal Service debt.
Oversee						
<ul style="list-style-type: none"> • Review the practices and policies of the Postal Service. • Monitor the operations and performance of the Postal Service. • Select an independent public accounting firm to certify the financial statements (G). 		Congress conducts oversight hearings.	PRC monitors costs, rates, revenue, service, and general compliance. PRC sets system of regulation.		GAO (and OIG) provide detailed oversight and analysis for Congress.	
Direct						
<ul style="list-style-type: none"> • Direct the exercise of the powers of the Postal Service. • Direct and control the expenditures of the Postal Service. • Establish basic objectives, broad policies, and long-range goals for the Postal Service. • Delegate authority to Board committees or to management. • Establish rates and classes for competitive products (G). 	Large payments to Retiree Health Fund required. Market-dominant rate increases limited by price cap. Law prevents a reduction in the benefits that prevailed in 1970. FECA under Labor Dept. control.	Congress intervenes when it deems it necessary. Appropriation riders forbid certain service changes and post office closings.	PRC determines whether market dominant increases are in compliance with the law and whether competitive products adequately cover costs. PRC is consulted on service standards, determines treatment of competitive products.	Wage costs and work rules determined by binding arbitration if labor negotiations fail.	GAO ordered to report on the Postal Service's future business model and make recommendations.	OPM - benefits. Labor - FECA payments. Treasury - competitive product accounting. FTC - laws re USPS competitors. State - intl. policy DOT - military, overseas, Alaska.

A (G) indicates the responsibility is reserved for the Governors; FECA — Federal Employees Compensation Act; PMG — Postmaster General; DPMG — Deputy Postmaster General; IG — Inspector General; OPM — Office of Personnel Management; FTC — Federal Trade Commission; DOT — Department of Transportation.

The Board is one of several entities that oversee the Postal Service.

Selecting the Postmaster General and the Inspector General

The Governors have full authority to appoint and remove the Postmaster General at their pleasure and, with the Postmaster General, to appoint and remove the Deputy Postmaster General. The Governors also appoint the Inspector General for a term of 7 years. These appointments are generally not subject to overt outside influence. In the private sector, appointing, compensating, and dismissing the CEO is considered one of the most important roles of the board. Since a board can never know an organization as well as its management, replacing a CEO provides directors with their best opportunity to redirect a company's course. Selecting a Postmaster General can have a profound effect on the Postal Service's strategic direction and operational priorities.

Approvals for Strategic Decisions

The Board regularly approves many actions by the Postal Service such as its budget and financial statements, its capital investment plan, and the issuance of debt. It also determines the number of officers and approves the level of compensation for officers in the Postal Career Executive Service Level II. There are some limitations on the Board's ability to approve Postal Service actions. Though PAEA significantly increased flexibility, the ability to set compensation for the Postmaster General and other officers must be consistent with the compensation limits in federal law. Long-term borrowing and capital spending are also restricted by the Postal Service's debt limits: \$3 billion per fiscal year and \$15 billion total.

Oversight

The Board is responsible for overseeing management's actions in the manner of corporate or other boards. For example, the Governors are responsible for selecting an independent public accounting firm to opine on the accuracy of the Postal Service's financial statements. However, many other bodies also provide oversight to the Postal Service. Congressional subcommittees in the House and the Senate conduct oversight hearings on the Postal Service. The Government Accountability Office (GAO) has a statutory right of access to Postal Service records and personnel, and regularly initiates reviews of postal operations, usually at congressional initiative. Reporting both to the Governors and to Congress, the OIG also conducts audits and investigations, answers congressional inquiries, and issues public reports on Postal Service operations.

PAEA significantly enhanced the oversight authority of the renamed Postal Regulatory Commission. The PRC gained subpoena power and responsibility for annually determining whether the Postal Service's rates and services are in compliance with the Act. It can investigate a wide range of complaints, and in the event of deliberate noncompliance, can even fine the Postal Service.

The Board's ability to monitor the Postal Service is not limited by these other actors, but in this crowded field, the Board's role as the Postal Service's preeminent oversight body is not always apparent. Given that the vast majority of the governors' advice and strategic input is provided behind closed doors, it can be difficult for outside observers to see how the Board exercises its authority. This is not to suggest that the Board should begin airing sensitive matters publicly, as doing so could have an inadvertent chilling effect on governors' candor and independence.

Direction

The Board is in charge of directing many of the Postal Service's larger actions. It helps establish the framework for the Postal Service's strategic direction by establishing basic objectives, broad policies, and long-range goals. The Board also must direct and control the Postal Service's expenditures. In addition, PAEA gave the Governors the authority to establish the rates for competitive products, and the Governors have regularly used this authority. Yet despite the Board's statutory responsibility for directing the Postal Service, the Board's authority to act is diluted most strongly in this area by the existence of rival power centers.

Congress has the ultimate say over the Postal Service. It has generally accorded to the Board legal authority to guide the Postal Service, yet Congress becomes involved when it believes it is necessary. While Congress determines the scope of authority for executive branch agencies as well, in their case congressional influence is mitigated by the countervailing influence of the president. In the case of the Postal Service, presidential administrations typically exercise little direct authority over the organization. Congress has unquestioned constitutional power to change postal law whenever it chooses, and Title 39 of the U.S. Code specifically states that “Congress reserves the power to alter, amend, or repeal any or all of the sections of this title.”²² Congressional decisions can have sweeping effects, such as the provision requiring the Postal Service to prepay retiree health benefits on an accelerated schedule. Having a more powerful authority watching over its every action can make Postal Service governance very difficult. Such a structure could also encourage overly cautious behavior.

Other federal entities also influence the direction of the Postal Service. The Office of Personnel Management (OPM) administers personnel benefit programs for the federal government (including the Postal Service Retiree Health Benefits Fund established by PAEA), and its decisions can have major implications for the Postal Service’s bottom line. For example, OPM uses government-wide assumptions to calculate the Postal Service’s pension and retiree health liability rather than postal specific assumptions — even though the postal employee population often has different characteristics that could impact these liabilities.²³ The Department of Labor (DOL), which administers the Federal Employees Compensation Act, controls the expenditure of \$1.4 billion in postal funds annually. DOL not only determines employee compensation awards that may last a lifetime, but also charges the Postal Service for all awards, plus an administrative fee not charged to regular federal agencies.²⁴

Still other federal entities retain the ability to influence the actions of the Postal Service. In addition to its oversight role, GAO was given significant reporting responsibilities in PAEA and continues to critically examine a variety of postal issues, either on its own initiative or at congressional direction.²⁵ The Department of Transportation regulates the air carriage of mail, parcels, and Alaska Bypass freight within Alaska.²⁶ In addition, PAEA placed the Department of State firmly in charge of international postal policy.

PAEA also introduced the Federal Trade Commission (FTC) as a new actor by asking it to weigh in on whether the Postal Service enjoys competitive advantages or disadvantages from its governmental status. The FTC was also asked for recommendations to ameliorate differences between the way state and federal laws treat the Postal Service and its competitors relating to the competitive category of mail.²⁷ It is notable that the FTC concluded in its December 2007 report that the unique legal status of the Postal Service, as a regulated government monopoly, puts it at a net comparative disadvantage to its private sector competitors when all costs and implicit subsidies are totaled.²⁸

The Department of the Treasury sponsored the PCUSPS and negotiated PAEA with Congress on behalf of the Administration. PAEA gave the Treasury added responsibility for making recommendations to the PRC with regard to the Postal Service’s accounting practices, asset values, prevention of cross subsidization, and calculation of proxy income tax on competitive products.

22 39 U.S.C. § 208.

23 OIG, *Using U.S. Postal Service-Specific Assumptions for Calculating the Retiree Health Care Liability*, Report Number FT-MA-13-022, September 27, 2013, <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/ft-ma-13-022.pdf>, highlights.

24 Congressional Research Service, *Federal Employees’ Compensation Act (FECA): Workers’ Compensation for Federal Employees*, Report No. R42107, March 18, 2016, <https://www.fas.org/sgp/crs/misc/R42107.pdf>, p. 1.

25 For example, see U.S. Government Accountability Office, *U.S. Postal Service: Strategies and Options to Facilitate Progress toward Financial Viability*, Report No. GAO-10-455, April 12, 2010, <http://www.gao.gov/assets/310/303027.pdf>.

26 OIG, *Alaska Bypass: Beyond Its Original Purpose*, Report No. RARC-WP-12-005, November 28, 2011, https://www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-12-005_0.pdf, p. 3.

27 Federal Trade Commission, *Accounting for Laws That Apply Differently to the United States Postal Service and its Private Competitors*, December 2007, <https://www.ftc.gov/sites/default/files/documents/reports/accounting-laws-apply-differently-united-states-postal-service-and-its-private-competitors-report/080116postal.pdf>, p. 1.

28 *Ibid.*, p. 8.

***If no new governors
are confirmed by
December 8, 2016, USPS
will be without the legal
authority to complete a
wide variety of actions.***

Critics of the governance provisions of PAEA focused on the broadening of the PRC's powers as the feature of the act that led most directly to the charge of unworkability. While freeing the PRC from the responsibility of reviewing and recommending specific rate changes, the 2006 law gave the PRC additional powers. For example, the law delegated to it broad authority to determine the nature of regulation and removed most restraints on its access to Postal Service information. The PRC can recommend changes in universal service and the monopoly and determine which existing non-postal services the Postal Service can continue offering. While most regulatory bodies generally oversee all participants in a given industry, the PRC is focused solely on the Postal Service.

Things Only the Governors Can Do

While the Board of Governors can delegate many things to the Postmaster General, there are items that, by law, only the presidentially appointed Governors can do.²⁹ These include, but are not limited to

- Appointment, compensation, term of service, and removal of the Postmaster General
- Compensation of the Deputy Postmaster General³⁰
- Establishment of rates and classes for competitive postal products
- Authorization of rate and fee changes for market dominant postal products
- Authorization of a request to the PRC to add, remove, or reclassify products
- Authorization of a notice to the PRC of substantive changes to product descriptions in the Mail Classification Schedule
- Appointment and removal of the Inspector General³¹
- Transmission of the OIG's Semi-Annual Report to Congress
- Selection of a firm to conduct required USPS financial audits

These tasks cannot be legally performed if there are no sitting independent governors to authorize them — and this will happen on December 8, 2016, unless new governors are confirmed or the law is changed.³² This would mean that the Postmaster General's and Deputy Postmaster General's compensation would freeze and they could not be removed or replaced, all postal rates/fees and product classifications would freeze, no products could be introduced or substantively changed, a new inspector general could not be appointed, the OIG's Semi-Annual Report to Congress could not be issued, and USPS could not hire a new auditor to conduct the required financial audits. If someone at the Postal Service were to act on these matters, it would be done without statutory authority and subject to legal challenge.

Additionally, the absence of governors could raise larger issues. As part of the executive branch, the Appointments Clause of the Constitution requires the Postal Service to be led by principal officers who are appointed by the president with the advice

²⁹ U.S. Government Publishing Office, *39 CFR 3 - Board of Governors (Article III)*, July 1, 2013, <https://www.gpo.gov/fdsys/pkg/CFR-2013-title39-vol1/pdf/CFR-2013-title39-vol1-chapl-subchapA.pdf>, p. 12.

³⁰ While the Deputy Postmaster General's compensation is determined by the Governors alone, his/her appointment, term of service, and removal is decided in consultation with the Postmaster General.

³¹ Inspector General David Williams retired effective February 28, 2016, and his replacement had not yet been named as of October 2016.

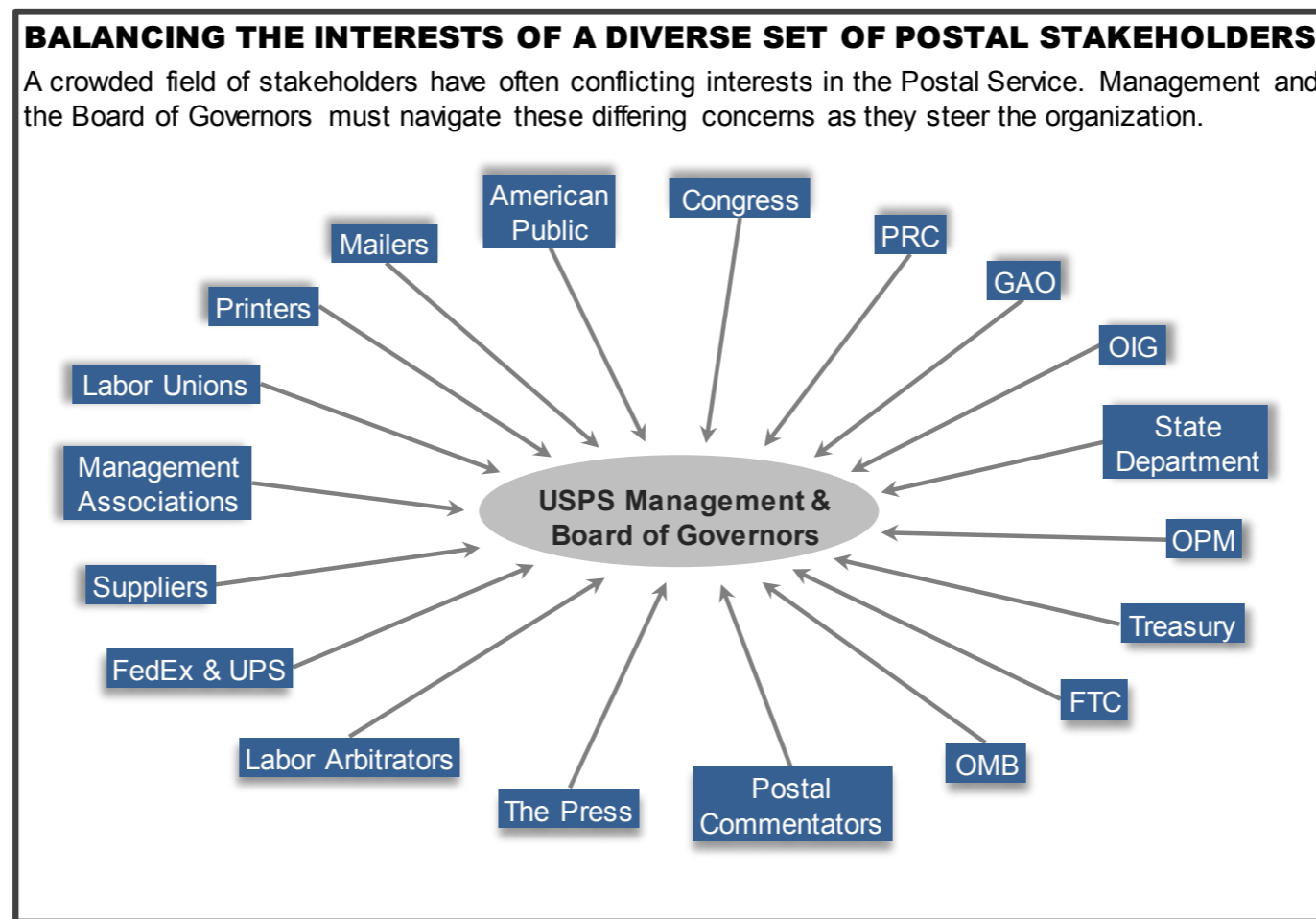
³² According to a legal analysis by the OIG's General Counsel's Office.

and consent of the Senate.³³ The Governors fulfill that role, as was confirmed by the Ninth Circuit U.S. Court of Appeals.³⁴ With no sitting governors, the Postal Service's constitutional authority to take certain actions could be in question. This would be an unprecedented situation.

Stakeholders: A Crowded Field with Conflicting Demands

In addition to those entities that compete with the Board of Governors for authority over the Postal Service, the Postal Service interacts with a broad range of other stakeholders. Figure 1 is a simplified representation of the field of stakeholders who have an interest in the Postal Service. While in theory the Board of Governors is the body principally charged with determining the public's interest from the competing and conflicting demands of stakeholders, their ways of carrying out this role are rarely on display. The Board has no regular procedures for interaction with the public or other players interested in Postal Service actions outside of its open meetings.³⁵

Figure 1: The Crowded Field of Postal Stakeholders



Most stakeholders seem to gravitate toward more accessible parties than the Board of Governors when they seek to influence postal policy or operations. The Postal Service maintains close contact with mailers and customers, but the Board has minimal capacity to receive inputs in an open forum. Mailers' desire for an outside forum to hear their cases led to the establishment of the Postal Rate Commission in 1971. This was contrary to the Kappel Commission's recommendation for a small group of technically qualified rate commissioners serving under the Board. Unions and management have the ability to go to binding arbitration when labor

negotiations break down and to Congress for these and other disputes. Small towns appeal to their member of Congress when a post office is threatened with closure. Over the years, postal suppliers and landlords have actively lobbied Congress on behalf of their own unique interests.

³³ Congressional Research Service, *The Constitution of the United States of America: Analysis of Cases Decided by the Supreme Court of the United States to June 28, 2002*, Johnny H. Killian, et. al., <https://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002.pdf>, p. 537.

³⁴ *Silver v. United States Postal Service*, 951 F.2d 1033 (1991).

³⁵ In the absence of a quorum, the Board currently holds far fewer of these public meetings than it has in the past.

The sheer size and scope of the Postal Service also makes it difficult to identify and balance the needs of stakeholders. The Postal Service touches nearly every household 6 days per week. It also is the linchpin of the broader mailing industry, which generates some \$1.4 trillion in annual revenue.³⁶ Detailed knowledge is required to understand the Postal Service fully, yet nearly every American interacts with the Postal Service and has an opinion on how it should operate. The Postal Service functions in a politicized and public environment, and few of its actions meet with the approval of everyone with a stake in the enterprise. This complexity is daunting. However, there are some best practices from private sector boards of directors that could help the Board of Governors function most effectively.

Corporate Governance Best Practices

In July 2016, a dozen prominent corporate executives and finance professionals, including Berkshire Hathaway CEO Warren Buffett and JPMorgan Chase CEO Jamie Dimon, released a set of “Commonsense Principles of Corporate Governance.”³⁷ The group developed the best practices for boards of directors with the aim of improving the health of the nation’s public companies and promoting trust between corporations and the millions of shareholders who own them. The Postal Service is mandated to operate like a business. Yet — as mentioned earlier — the Board of Governors is different from a corporate board of directors in that it represents the American people, rather than shareholders. Nonetheless, many of the corporate governance best practices outlined by the group of executives still apply. The guidelines below are adapted from those principles, and are included as a summary of good governance practices. We did not evaluate past Postal Service boards against these guidelines and are not suggesting a lack of compliance with them.

- **Independence:** The board should be committed to representing the interests of its stakeholders and must not be beholden to the company’s management.
- **Relevant experience:** A portion of the board should have professional experience related to the company’s business. For USPS, that could include a background in the delivery/logistics industry or expertise in relevant functional areas such as human resources or technology.
- **Complementary skills:** Board members should have a diverse and complementary set of skills, backgrounds, and experiences.
- **Time and energy:** It takes a substantial amount of time and energy to be an engaged board member. The board should be comprised of members who are not so burdened by other professional commitments that they cannot devote the time necessary to their role.
- **Focus on big picture issues:** The board should spend its time on significant strategic issues while delegating other matters to management.
- **Fair compensation:** Members should be fairly and equitably paid for their work on the board. The chairman and committee chairs may receive higher compensation than other governors.
- **Orientation for new members:** New board members should go through a robust onboarding program that includes industry background as well as briefings on the company’s operations and its legal and regulatory matters.

³⁶ Envelope Manufacturers Association, *2015 EMA Mailing Industry Job Study*, December 15, 2015, http://www.envelope.org/ipsdocuments?ecp_v=dd&ecp_dp=Postal+Transformation%2FJob+Studies%2F2015+Jobs+Study, pp.3-5.

³⁷ Andrew Ross Sorkin, “CEOs Meet in Secret Over the Sorry State of Public Companies,” *The New York Times*, July 21, 2016, <http://www.nytimes.com/2016/07/21/business/dealbook/ceos-meet-in-secret-over-sorry-state-of-public-companies.html> and Tim Armour, et al, “Commonsense Principles of Corporate Governance,” July 21, 2016, <http://www.governanceprinciples.org/>.

- **Clear and transparent committee structures:** The board's committees should be clearly defined and disclosed.
- **Rotating leadership:** The board should consider rotating the chairman and committee chair roles periodically, while balancing the benefits of rotation with the needs for continuity, experience, and expertise.
- **Self-evaluation:** The board should regularly evaluate itself through a robust process that is led by a non-executive chairman or relevant committee chairs.
- **Communicate the board's thinking:** The board should communicate its thinking to its constituents, particularly on key governance issues such as CEO compensation.
- **Continuous education:** The board should constantly educate itself about the company and its industry. If helpful, outside experts can be utilized.
- **Access to management:** The board should have unfettered access to executives, including those who do not report directly to the CEO. At the Postal Service, that could include vice presidents who oversee high profile projects.
- **Meet without the CEO:** To ensure open discussion, independent board members should hold a session without the CEO and other executive members as a part of every board meeting.
- **Transparency:** As appropriate, the board should disclose the company's long-term strategic goals and explain to stakeholders how material decisions are furthering those goals.
- **Incentivize management to drive long-term success:** The board should consider tying a substantial portion of the CEO's compensation to the future performance of the company. In the context of the Postal Service, this could include both financial and service-related metrics.
- **Setting the agenda:** Over the course of a year, the board's agenda should include the following items:
 - A forward-looking, robust discussion of the company's business.
 - Assessing CEO and executive leadership team performance and succession planning. If the CEO is not the right person to lead the company, the board should act promptly to remedy the situation.
 - Review key strategic issues including major capital commitments, long-range strategies, financial and operational plans, qualitative and quantitative performance indicators, and revenue growth.
 - Analyze significant risks without being reflexively risk-averse.
 - Scrutinize standards of performance as well as the company's culture and values.
 - A review of management compensation within the context of individual and company performance.

Principles such as these could be used to help ensure that a reconstituted Board of Governors is compatible with basic corporate governance best practices.

The Road Ahead on Governance

Today the Postal Service is facing profound strategic, operational, and financial challenges. Now more than ever, it needs a governing body that has sufficient authority to meet its responsibilities and that can attract highly qualified members with a diversity of skills and experience. Because the Board has only a single standing governor as of October 2016 and is facing a period of reconstitution, policymakers have a timely opportunity to bolster the Postal Service's governance framework. Significant changes to the postal governance model have been approved by the House Committee on Oversight and Government Reform as part of pending postal reform legislation.³⁸ As of October 2016, a Senate reform bill also is pending before the Homeland Security and Governmental Affairs Committee.³⁹

As postal governance changes are considered and debated, policymakers may benefit from the broad body of knowledge on this important topic. Five decades of history and studies on postal governance are summarized in [Appendix A](#). In addition, the best practices for private sector boards of directors discussed above could help inform the debate.

The Postal Service's organizational structure and current law require it to have a Board of Governors. In the absence of governors, the Postal Service would be in violation of the constitutional requirement that it report to Presidential appointees. It also would be without the legal authority to complete a wide variety of important actions. The impending hardships this would cause for the Postal Service, its customers, and other postal stakeholders could be avoided if new members are confirmed before the last remaining governor's time on the Board expires in December 2016. With a reconstituted membership and an enhanced Postal Service governance structure that better aligns the Board's authority with its responsibilities, the governors could claim their rightful place in guiding this essential public institution, ensuring that the Postal Service fulfills its constitutionally-mandated public service obligations to the American people.

³⁸ Rep. Jason Chaffetz, 114th Congress, "H.R.5714 – Postal Service Reform Act of 2016," <https://www.congress.gov/bill/114th-congress/house-bill/5714>.

³⁹ Sen. Thomas Carper, 114th Congress, "S.2051 – Improving Postal Operations, Service, and Transparency Act of 2015," <https://www.congress.gov/bill/114th-congress/senate-bill/2051>.

Appendices

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Appendix A: History of Postal Governance

The Kappel Commission viewed a strong board as the “essential element” for the Postal Service’s success.

The former Post Office Department was a cabinet-level agency, and the President often selected a close political supporter to be Postmaster General. The Post Office Department ran chronic deficits. Rates were set by Congress, where the majority party appointed postmasters and rural carriers. The transition in 1971 to a less-politicized Postal Service at arms-length from Congress and the administration was a major change. The presence of a Board of Governors was a sign of the Postal Service’s independence, but there was no clear agreement on what the Board’s role should be. There have been many studies of the Postal Service and its governance model over the past 5 decades, four of which are summarized in Figure 2.

Figure 2: Postal Research and Recommendations

FOUR MAJOR STUDIES OF THE POSTAL SERVICE’S GOVERNANCE MODEL				
Since 1968, four significant studies of the Postal Service and its governance model have yielded valuable insights that could help policymakers as they consider changes to USPS’ governance framework. Relevant highlights from each report are summarized below.				
Study	Kappel Commission (1968)	Commission on Postal Service (1977)	GAO Postal Governance Report (1997)	President’s Commission on USPS (2003)
Overview	This 10-member presidential commission chaired by former AT&T Chairman Frederick Kappel outlined much of the framework for how the Post Office Dept. would be reorganized into the U.S. Postal Service. Some of the key recommendations are below.	This commission was created to identify USPS’ key problems and suggest solutions. It criticized past performance of the Board of Governors, but argued that the Board should be retained. Its key governance recommendations are below.	The GAO interviewed 15 former members of the Board about their concerns. There were no recommendations or broad consensus among interviewees, though most agreed on several areas they thought warranted legislative attention.	The commission’s report focused on how to modernize the Postal Service and its governance model for the then current environment. Select recommendations are below.
Relevant Governance Highlights	<ul style="list-style-type: none"> The Board should be vested with “full management responsibility and authority” to manage the Postal Service Governors should be well-seasoned corporate executives — like most of the Commission members themselves The Board should appoint full-time rate commissioners who would provide specific pricing recommendations The Board should set top management salaries at competitive levels Board duties should include hiring top executives and approving items of major importance 	<ul style="list-style-type: none"> Reduce board from nine to seven members, with terms reduced to 7 years. No more than four governors should be from one political party The appointment of the Postmaster General should remain with the Board, not the president The Board should “represent the public interest” and more actively advise management on major policy issues, including labor relations and postal involvement in digital communications Board should have its own staff who “have complete authority to represent the Governors in examining all aspects of postal operations” 	<ul style="list-style-type: none"> The Board’s inability to set postage rates inhibits USPS’ ability to compete in a fast-moving environment Governors should have more specific qualification requirements to ensure they have the experience needed to oversee USPS The Postmaster General’s pay should be more comparable to private sector Governors should remain part-time The hiring of support staff for the Board should remain an internal issue, not a legislative one 	<ul style="list-style-type: none"> Board should include the Postmaster General, three presidential appointees, and eight independent directors selected by the Board All directors should have 3-year terms and a mandatory retirement age of 70 Governors should be required to have business acumen and experience with large organizations The Board should have broad authority to oversee USPS and determine its vision and mission USPS executive pay should be similar to private sector

Source: OIG analysis of published reports.

The Kappel Commission of 1968

While the Postal Reorganization Act of 1970 is often cited as the source of governance principles for the modern Postal Service, the analytical groundwork can in fact be traced to the June 1968 report of the President's Commission on Postal Organization. The 10-member commission was chaired by the renowned former Chairman of AT&T, Frederick R. Kappel, and also included the dean of the Harvard Business School, the presidents of General Electric, Campbell Soup Co., Bank of America, and the AFL-CIO, as well as the chairman of Federated Department Stores and the vice president of the Ford Foundation.⁴⁰

The Kappel Commission recommended that the Post Office Department be reconstituted as a government corporation, "owned entirely by the Federal Government [and] chartered by Congress to operate the Postal Service of the United States on a self-sustaining basis."⁴¹ The Commission regarded a Board of Directors, which would be vested with "full management responsibility and authority," as the linchpin of its design for sweeping reform of postal governance and the "essential element" for the new organization's success.⁴² The Kappel Commission contemplated that the board would be composed of well-seasoned corporate executives like most of the commission members themselves. It specifically stated that appointment of board members should be made on a non-political basis.

To set rates, the commission proposed that the board appoint a full-time group of rate commissioners, to recommend what action the board should take in response to management's rate proposals. Their rate decisions would be subject to veto by an up-or-down joint resolution of Congress. The Kappel Commission rejected the idea that an independent federal body should be empowered to review postal rate proposals. "Regulation of a Government-owned Postal Corporation by such an agency would be anomalous: one Government body would be regulating another."⁴³ While the commission contemplated an expanded role for collective bargaining on wages and working conditions, it recommended that in the case of an impasse, the dispute be referred to the president for resolution. The commission also noted in passing that the existing ban on strikes by federal employees would still apply.

The Postal Reorganization Act of 1970

Congress was considering reorganization legislation when in March 1970 groups of postal workers, concerned about pay and working conditions, illegally went on strike in New York City. The strike soon spread to other cities, and President Richard Nixon was forced to call out the military to deliver the mail.⁴⁴ Subsequent negotiations between the administration and postal unions led to a deal in which the unions agreed to support postal reorganization in return for a pay increase, a new wage schedule, and a promise the new legislation would include collective bargaining with binding arbitration.⁴⁵

When the PRA was signed into law by President Nixon on August 12, 1970, the agreement with the unions and influence by postal stakeholders had resulted in some critical modifications to the Kappel Commission's vision of governance. The underlying principle that the Board of Directors (or Board of Governors as the law named it) would have full authority to run the enterprise was altered in several ways. In a distinct departure from the Kappel Commission's recommendations, large mailers successfully urged the creation of a separate rate commission. Previously, they had lobbied Congress on rates and wanted a forum independent of the Postal Service to hear their case. According to Murray Comarow, Executive Director of the Kappel Commission and long-time postal commentator, they argued that because the Postal Service is a monopoly, it would naturally need outside regulation,

40 President's Commission on Postal Reorganization, *Towards Postal Excellence, The Report of the President's Commission on Postal Organization*, p. ii.

41 *Ibid.*, p. 2.

42 *Ibid.*, p. 55.

43 *Ibid.*, p. 61.

44 National Postal Museum, *The 1970 Postal Strike*, March 17, 2010, <http://postalmuseumblog.si.edu/2010/03/the-1970-postal-strike.html>.

45 U.S. Postal Service, *Postal Reorganization Act*, https://about.usps.com/publications/pub100/pub100_035.htm.

The PRA created a weaker board than the one envisioned by the Kappel Commission.

ignoring the distinction between profit-seeking monopolies in the private sector and a breakeven monopoly in the public sector. This key change greatly limited the Board's authority and ensured the Postal Service would have a different relationship with its customers than it would have had without an independent rate commission.

A second major deviation was the provision of a system of binding arbitration for labor disputes. As a result, yet another independent entity — an arbitrator — can make important decisions about how employees are managed and compensated, and the Postal Service is legally bound to implement the arbitrator's decision. Together, the rate review process and binding arbitration left the Board without full authority to decide the prices of its products or the costs of its labor. As a result, the Postal Service's financial position was not fully within its control.

The new Postal Service officially began operations on July 1, 1971. The Board was originally made up of governors with similar experience as those on the President's Commission, including Frederick Kappel himself. The PRA, however, was not an immediate success. Within a few years, Postal Service deficits were mounting because of a combination of high inflation, stagnating volumes, and the length of time it took to complete rate cases at the Postal Rate Commission.⁴⁶ (Initially, there was no statutory timetable for rate cases, and the first two rate cases took 17 and 23 months, respectively.)⁴⁷ Service problems and the threat of a large-scale closure of small post offices created widespread public discontent. There were calls for the Board of Governors to be eliminated and the Postal Service returned to Congressional control or at least for the Postmaster General and Deputy Postmaster General to become presidential appointees again. In 1976 Congress enacted amendments to the PRA addressing some of these concerns.⁴⁸ The amendments provided \$1 billion in appropriations to the Postal Service over a 2-year period, created the 10-month deadline for rate cases, allowed for the appeal of small post-office closings to the Postal Rate Commission, and created another commission to study the Postal Service's problems and recommend solutions.⁴⁹

The 1977 Commission on the Postal Service

The seven members of the commission established by the 1976 amendments had backgrounds in business, labor, and politics.⁵⁰ Unlike the Kappel Commission's members, some were postal stakeholders. The 1977 Commission issued its report in April 1977.⁵¹ With one dissent, it recommended retaining the Board of Governors and the Governors' authority to appoint the Postmaster General and Deputy Postmaster General.⁵² The commission rejected the view that making the Postmaster General a political appointee would improve financial support from the administration. The commission, however, criticized the past performance of the Board, arguing that it "failed to exercise initiative on vital matters affecting the Postal Service, including collective bargaining agreements, costly capital investment projects, and the potential for Postal Service involvement in the field of electronic communications."⁵³

The Commission recommended reducing the number of governors to seven and the term-length to 7 years, and requiring the Board to meet at least twice a year with an advisory council representing postal stakeholders and the general public. It also suggested the

⁴⁶ There was a recession starting in third quarter of 1973 that likely affected volume growth.

⁴⁷ Comptroller General of the United States, *The Role of the Postal Rate Commission Should Be Clarified*, Report No. GGD-77-20, April 7, 1977, <http://www.gao.gov/assets/120/117304.pdf>, p. 4.

⁴⁸ P.L. 94-421.

⁴⁹ The amendments also made several other changes such as the Senate confirmation of Postal Rate Commissioners and adding as a ratemaking criterion the educational, cultural, scientific, and informational value to the recipient.

⁵⁰ In addition, the Postmaster General and Chairman of the Postal Rate Commission were named non-voting members.

⁵¹ Commission on Postal Service, *Report of the Commission on the Postal Service*, April 18, 1977.

⁵² Some of the Commission's other recommendations included increasing the public service subsidy, setting rate criteria so that factors other than cost causation could be used to distribute a significant portion of postal costs, and reducing delivery to 5 days a week. The Commission was charged with looking at the feasibility of linking price increases to the CPI but came out against the proposal. It argued that such a system would limit the ability of rate setters to take into account social and cultural concerns. Also, a CPI-linked system would result in deficits as postal costs were not likely to rise in line with CPI.

⁵³ Commission on Postal Service, *Report of the Commission on the Postal Service*, p. 76.

Board retain a small staff of three to five employees to monitor postal operations and attend executive committee meetings. While the Board should have complete authority to supervise the Postal Service, the Commission recommended the PRC be given final authority to set rates. Despite the Commission's recommendation to retain the Board, efforts to place the Postal Service under the administration's control continued. The resulting legislation to move the Postal Service eventually failed. Meanwhile, the Postal Service's financial performance began to improve.

A More Active Board in the 1980s

The Board became much more active in the 1980s and created several additional committees to monitor postal affairs.⁵⁴ In 1986 the Governors dismissed Postmaster General Paul Carlin after only 1 year, and *The New York Times* noted the change from the old "rubber stamp" Board.⁵⁵ In a few months, however, scandal rocked the Board as one member pled guilty to accepting bribes to steer an automation contract to a particular vendor. There were accusations that Carlin had been dismissed because he stood in the way of the contract. Congress accused the Board of undue interference. The Chairman of the Board promised to disband five of the six committees removing "any vestige of micromanaging."⁵⁶ As is noted in the Corporate Governance Best Practices section of this report, it is most appropriate for boards to focus on high-level, strategic matters while delegating other items to management.

Conflicts with the Bush Administration — 1992 to 1993

Although the Board may have taken a more passive role towards management, its actions to preserve the Postal Service's independence embroiled it in two disputes with President George H.W. Bush's Administration. In May 1992, the Governors appointed Marvin Runyon as Postmaster General. Runyon came in with a mandate to make the Postal Service more businesslike. To save costs on refinancing the Postal Service's debt, he pursued an idea proposed under the previous Postmaster General: issuing Postal Service bonds on the open market. (The PRA gave the Postal Service the authority to issue its own debt.) As it had the previous year, the Treasury opposed the Postal Service's plan, but the Board approved the sale anyway. The Treasury threatened legal action. Ultimately, the two sides reached agreement, and the Treasury refinanced half of the Postal Service's debt at a lower rate.

At the same time, a dispute between the Postal Service and the Justice Department arose over appeals of the R90-1 rate case. The Justice Department supported the Postal Rate Commission's position in the appeals and refused to grant the Postal Service consent to represent itself in the litigation. The Postal Service then requested permission directly from the U.S. Court of Appeals to appear on its own behalf. President Bush wrote to the Postmaster General directing him and the Board of Governors to withdraw the filings. When the Chairman of the Board replied that most of the governors believed the Postal Service was authorized to represent itself, President Bush threatened the governors with removal. It was the most serious threat to the Postal Service's autonomy since reorganization. Concerned the governors would lose their ability to decide when to appeal rate case decisions, seven of the 11 Board members voted against complying and petitioned the Court of Appeals for protection from removal.⁵⁷ The court granted them a preliminary injunction. President Bush then attempted to make a recess appointment to replace a governor whose term had ended, but the court also blocked that appointment. The independence of the Postal Service's governors from the administration was confirmed. In the end the court upheld the Postal Service's right to represent itself in rate litigation.⁵⁸

⁵⁴ John T. Tierney, *The U.S. Postal Service: Status and Prospects of a Public Enterprise* (New York: Auburn House, 1988), p. 222.

⁵⁵ Kenneth B. Noble, "Postal Service; Hear Those Rubber Stamps Roar," *The New York Times*, January 10, 1986, <http://www.nytimes.com/1986/01/10/us/postal-service-hear-those-rubber-stamps-roar.html>.

⁵⁶ Kenneth B. Noble, "Postal Services; Just As Things Seemed To Be Looking Up....," *The New York Times*, July 22, 1986, <http://www.nytimes.com/1986/07/22/us/postal-services-just-as-things-seemed-to-be-looking-up.html>.

⁵⁷ The members who voted against complying included the Postmaster General and Deputy Postmaster General.

⁵⁸ *Mail Order Association of America v. U.S. Postal Service*, 986 F.2d 509 (D.C. Cir. 1993).

GAO 1997 Report on Governance

As a result of Postmaster General Runyon's efforts, Congress again began to consider postal reform in 1996. The Chairman of the House Subcommittee on the Postal Service asked GAO to review the governance structure of the Postal Service. The request indicated some concern that the role of the Board of Governors itself needed attention in any reform agenda. GAO's report drew largely from interviews with 15 current and past members of the Board.⁵⁹ The major areas of concern documented in GAO's report were (1) limitations on the Board's authority, particularly over postal rates; (2) its inability to pay the Postmaster General and other top postal managers more than top government officials; (3) the governors' own lack of pay comparability; and (4) "qualification requirements that are too general to ensure that Board appointees possess the kind of experience necessary to oversee a major government business."

Two points stand out in GAO's report. First, GAO was able to elicit comments from current and past governors that qualifications were lacking. A slim majority felt that the law should be revised to more precisely define qualification requirements. As GAO delicately put it, the majority believed that "historically, appointments to the Board have not always been based on an individual's demonstrated ability to govern large corporations like the Postal Service." In response to a GAO question, all of the interviewees agreed hiring additional staff was within the Board's purview.

The President's Commission in 2003

In December 2002, President George W. Bush appointed the PCUSPS to review and evaluate the status of the organization and report back in 7 months.⁶⁰ Similar to the Kappel Commission, its membership was mostly drawn from the corporate world, without direct representatives of specific Postal Service stakeholder groups. The PCUSPS's basic view was that the Postal Service's governance model, like the business model, was broken. Specifically, it claimed that "the legacy governance structure is increasingly at odds with the Service's mission in the modern environment."⁶¹ It called this structure a "distinctly public-sector leadership hierarchy" that moved too slowly.⁶²

The President's Commission argued that given its challenges and central role in American society, the Postal Service deserved one of the "world's most capable and experienced boards" based on the best practices in the private sector.⁶³ Like the Kappel Commission, the PCUSPS envisioned a body that would determine the goals, strategies, and ultimately, the successes or failures, of the organization it governed. In contrast to the 1968 Commission, however, the PCUSPS foresaw that the Postal Service would share authority with a new, more powerful regulatory commission in charge of refining policies associated with the postal system such as the monopoly, the standard of comparability of postal wages to the private sector, the universal service obligation, and the scope of the Postal Service's charter.

Overall, the PCUSPS recommended the Postal Service's Board "assume the same general responsibilities as leading private-sector boards" and outlined seven general Board responsibilities.⁶⁴ These seven include such standard items as considering stakeholder input, evaluating external opportunities and threats, determining strategic financial direction, providing feedback to postal management, ensuring appropriate controls, and demanding a sound organizational structure. However, the first responsibility is both the most important and the one that gets to the heart of the governance problems at the Postal Service. It says the Board is charged with determining the Postal Service's "vision and mission" *within the boundaries set by statute and the*

59 U.S. General Accounting Office, *Issues Related to the Governance of the Postal Service*, Report No. GAO/GGD-97-141, August 14, 1997, <http://www.gao.gov/assets/230/224323.pdf> p. 5.

60 President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, 2003, https://www.treasury.gov/press-center/press-releases/documents/pcusps_report.pdf.

61 *Ibid.*, p. 37.

62 *Ibid.*, p. 38.

63 *Ibid.*, p. 47.

64 *Ibid.*, p. 40.

regulator.⁶⁵ This means that, unlike governing boards in the public or private sector, the vision and mission of the organization would actually be limited by others. Thus, while emphasizing the importance of applying the best practices of strong corporate boards, some of the suggestions could be seen as favoring a weaker and more constrained Board. Finally, the Commission made a number of specific recommendations for changes in such items as term length (3 years), maximum age (70), and the Board's structure and organization that it suggested would lessen politics and advance independence. For example, only three of the governors would be selected by the President and confirmed by the Senate. They in turn would name eight independent members, who would constitute a supermajority, ensuring that the Board "enjoys the maximum level of political independence consistent with the Constitution."⁶⁶

Reaction to the President's Commission's Report

Governor David Fineman, the longest serving Board member at the time, responded to the PCUSPS proposals on governance in his April 7, 2004, testimony before the Senate Committee on Governmental Affairs.⁶⁷ He criticized the commission's recommendations and argued the true effect of the new structure would be to *increase* politicization and make the Board *less* independent. He thought the terms were too short to be practical and that the maximum retirement age was too low. He did not dispute the need for enhanced qualifications for Board members, but suggested members of the newly empowered regulator (PRC) should also have specific qualifications. He suggested the proposed governance structure was not clear and that distinction was needed between the roles of 1) the managerial and oversight function of the Board, 2) the regulatory function of the PRC, and 3) the public policy function determined by Congress. For example, the commission recommended the regulator be in charge of determining the scope of the monopoly as well as universal service standards. While these may be some combination of management or public policy issues, he stated unequivocally, "they are not regulatory issues."

Reform Legislation

The legislation that became PAEA raised even greater governance concerns than the PCUSPS recommendations had. Major new powers were given to the renamed Postal Regulatory Commission, but in a switch from the PCUSPS recommendations, the powers were not over broad policy issues, but rather increased the regulation of the Postal Service. The proposed bill set up the PRC as a much broader oversight mechanism, with powers that some saw as threatening to overshadow those of the Board.

Once the postal reform bill (H.R. 22) passed the House on July 26, 2005, a number of individuals prominent in postal affairs made strong statements directly criticizing its governance provisions. The Postal Service Board of Governors unanimously signed a six-page letter to House and Senate leaders decrying the governance model contained in H.R. 22.⁶⁸ The letter went into detail explaining the governance problems in the bill. It concluded by saying that "the bills provide neither the requisite flexibility nor the authority to accomplish our mission." Additionally, seven of the nine members of the PCUSPS took the unusual step of coming together to write a letter to House and Senate leaders.⁶⁹ That letter criticized the proposed governance structure saying the proposed legislation "goes too far in transforming the regulator" and describing the potential problems. Its succinct summary: "This is a governance model that simply won't work."

⁶⁵ Ibid.

⁶⁶ Ibid., pp. 42-43. The Secretary of the Treasury would concur with the selections and have the ability to remove a member.

⁶⁷ U.S. Government Printing Office, *Hearing before the Committee on Governmental Affairs United States Senate*, 94-202, April 7, 2004, <http://www.kevinrkosar.com/Postal-Reform-Hearing.pdf>, pp. 72-77.

⁶⁸ Letter from U.S. Postal Service Board Members to Senator Susan M. Collins, September 13, 2005. (An identical letter was sent to U.S. Senators Joseph Lieberman and Thomas Carper and U.S. Representatives Tom Davis, Henry Waxman, John McHugh, and Danny Davis.)

⁶⁹ Letter from Harry J. Pearce and six other members of the President's Commission on the Postal Service to U.S. Senators Bill Frist, Harry Reid, Susan Collins, and Joseph Lieberman and U.S. Representatives John Boehner, Tom Davis, Dennis Hastert, Nancy Pelosi, and Henry Waxman, February 7, 2006.

Finally, in March 2006, Murray Comarow wrote an article titled “How Not to Reform Government.”⁷⁰ He referenced both the letter from the seven PCUSPS members and the earlier letter from the Postal Service Board of Governors. Mr. Comarow reiterated and expanded on the comments of both and described the potentially debilitating effects were these bills to pass. He concluded his article by saying “Congress cannot responsibly ignore the alarming conclusions of the Board of Governors and The Seven [PCUSPS members].”⁷¹

The Postal Accountability and Enhancement Act of 2006

Despite the numerous pleas and criticisms, PAEA was signed into law without changes to many of the governance features which had aroused so much concern. The Board’s composition, nomination process, age limits, structure, and compensation were all untouched by PAEA, but it did reduce governors’ terms from 9 to 7 years and included specific experience qualification requirements for prospective governors. Governors must have demonstrated management ability or direct experience in the fields of public service, law, or accounting. Moreover, four or more Board members must have experience managing organizations of at least 50,000 people. President Bush, however, said in his signing statement that the requirement would “limit the qualifications of the pool of persons from whom the president may select appointees in a manner that rules out a large portion of those persons best qualified by experience and knowledge to fill the positions” and that he would interpret the requirement “in a manner consistent with the Appointments Clause of the Constitution.”⁷² It is unclear how much impact these requirements have had.

PAEA gave the Board new powers to compensate the Postmaster General and other senior postal executives at rates higher than Level 1 of the Executive Schedule. These changes in some measure address long-term concerns that executive compensation was not comparable to that offered by foreign posts or the private sector.

PAEA also gave the Governors new rate-setting authority, particularly for “competitive” products. However, the PRC, a body of appointed regulatory commissioners without responsibility for running the Postal Service or postal system, became the ultimate arbiter and interpreter of precisely how the rules would be applied. Additionally, PAEA removed the authority of the Governors to override PRC decisions and raise prices unilaterally with a unanimous vote of all members.

⁷⁰ Murray B. Comarow, “How Not to Reform Government,” National Academy of Public Administration, March 2006. Mr. Comarow had been executive director of the Kappel Commission.

⁷¹ *Ibid.*, p. 5.

⁷² The White House, *President’s Statement on H.R. 6407, the “Postal Accountability and Enhancement Act,”* December 20, 2006, <http://georgewbush-whitehouse.archives.gov/news/releases/2006/12/20061220-6.html>.

Appendix B: Management's Comments

THOMAS J. MARSHALL
GENERAL COUNSEL
AND EXECUTIVE VICE PRESIDENT



November 7, 2016

RENEE SHEEHY
DIRECTOR, RARC CENTRAL

SUBJECT: Final Review Draft – Governance of the U.S. Postal Service
(Project Number 2016RARC013)

The Postal Service has reviewed the white paper entitled *Governance of the U.S. Postal Service*. The paper presents a useful historical overview of the Board of Governors. We also strongly agree with the paper's primary conclusion that the presence of diverse Governors with a broad range of perspectives and experience is vital to the Postal Service's ability to effectively achieve our statutory mission of providing universal service to the American people in a self-sufficient, business-like fashion.

As the head of the Postal Service, the Governors not only select senior management, but also direct the exercise of the powers of the Postal Service, by approving overall expenditures (including our capital investment plan), reviewing practices, conducting long-range planning, and setting policy on all postal matters, including service standards and postal prices and products, in accordance with the policies set forth by Congress in statute. These are essential oversight and decision-making functions that are necessary on a regular basis, and which are best performed as the result of ongoing informed discussions among well-qualified Governors with diverse perspectives that can ensure representation of the public interest generally. Over the course of its existence, it has been demonstrated that a fully constituted Board of Governors has been highly capable of determining and representing the public interest generally, at least within the limits of the Board's statutory authority.

Furthermore, as the paper accurately notes, the presence of the Governors, and their central role in the administration of the Postal Service, ensures that the Postal Service's governance structure adheres to constitutional requirements. See *Silver v. United States Postal Service*, 951 F.2d 1033 (9th Cir. 1991). As principal officers of the United States appointed by the President and confirmed by the Senate, and ultimately accountable to the President, the Governors have been vested with the responsibility for directing and overseeing the exercise of executive authority by the Postal Service, including by a Postmaster General (PMG) selected by and accountable to the Governors. *Id.* at 1039 (noting that "Congress carefully vested ultimate control and authority of the Postal Service in the Governors," in part because of their unfettered discretion to select and remove the Postmaster General). In addition to selecting and removing the PMG, certain other significant powers are reserved to the Governors under the statute, including making changes to the Postal Service's prices and products.

Despite their centrality to the Postal Service's ability to function both under the statute and the Constitution, the Senate has not confirmed a single Governor nominee since 2010. The lack of a sufficient number of Governors on the Board has already meant that the Board can no longer exercise its full powers: the law requires six Board members to constitute a quorum for the

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transaction of business by the Board. 39 U.S.C. § 205(c). The Temporary Emergency Committee can only exercise those powers reserved to the Board necessary for operational continuity. Having no Governors at all would greatly exacerbate the Postal Service's challenges, which are already significant enough due to the massive decline in mail volumes experienced over the past decade. Although the inability of the Board to constitute a quorum does not inhibit or affect the authority of the Governors in office from exercising those powers vested solely in the Governors, those powers cannot be delegated. It is therefore not apparent how those powers could be exercised without having received approval from at least one Governor. The lack of Governors would mean that certain significant powers may not be able to be exercised going forward, and would otherwise lead to considerable legal uncertainties and possibly to the Postal Service's inability to fulfill its functions. It is therefore essential that the Senate act to confirm the pending nominees prior to the expiration of Governor Bilbray's holdover year.

We also agree with the white paper's conclusion that a fundamental limitation of current law is that there is a "mismatch between the Board's significant responsibility and its limited authority." As the paper rightfully notes, the primary drivers of this mismatch is due to the authority given to external parties over significant aspects of the Postal Service's revenues and expenses, particularly the PRC and interest arbitrators; another source of the mismatch are statutory limitations imposed by Congress. However, neither of the pending bills noted in the paper would fundamentally change this situation. The Postal Service believes that the best path forward regarding postal reform legislation at present, given political realities, is to focus on key provisions that can attract broad support among postal stakeholders, the most important of which is properly integrating our retiree health benefits program with Medicare. Therefore, it must be recognized that, as a practical matter, the Postal Service will very much need external assistance in order to fulfill its universal service mission moving forward.

Finally, there is one section of the document which we find to be potentially misleading. The white paper suggests that when the Board is reconstituted, "it will have an opportunity to examine and possibly revise the way it operates"; the paper then notes a perception that the Board is not as accessible as entities like Congress and the PRC, and lists a number of corporate governance best practices. While the paper states that listing the best practices in no way suggests that the Board has not followed them, it should be noted that the Board has in fact sought to adhere to corporate governance best practices in virtually all material respects that it is legally authorized to adopt. This is reflected in the Board's by-laws, which require the Board to approve a wide variety of matters regarding the strategic direction of the Postal Service. 39 C.F.R. § 3.3 *et seq.* Furthermore, to ensure that the PMG and the rest of management is properly incentivized, the Governors approve performance standards and set compensation policy based on the achievement of service, financial, and employee-related goals. In addition, the Board has established a defined committee structure and engages in self-evaluation. Of course, in some ways the Board's ability to achieve all of the best practices cited in the paper is constrained by statutory requirements: for instance, the limitations on Board compensation, and the fact that only the President can choose whom to appoint to the Board. 39 U.S.C. § 202(a). In addition, it is likely inevitable that the Board, as a part-time body, will be seen as less accessible than either of the entities cited in the paper. However, as part of its continuous self-evaluation process, the Board will certainly consider going forward ways to counteract that perception.

That being said, to the extent the white paper implies that the shortcomings of the current governance structure could be corrected by any changes or improvements to the current Board processes or procedures for decision-making, that implication is simply erroneous. Any best practices suggested by the Office of the Inspector General that the Board has not already adopted (and that it could legally adopt) will not solve the most significant obstacle impacting the optimal operation of the Board. As the Inspector General has acknowledged, that obstacle is that the Board lacks sufficient authority to fulfill its responsibilities.

We do not believe any portion of this draft report may be exempt from disclosure to the public under the Freedom of Information Act (FOIA).

Thank you for the opportunity to comment. Please let us know if you have any questions or concerns.



Thomas J. Marshall

cc: Mr. Adra
Mr. Crum
Ms. Glass
CARM
E-FOIA



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