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Report to Congressional Requesters

May 2020

U.S. POSTAL SERVICE

Congressional Action Is Essential to Enable a Sustainable Business Model

Accessible Version

GAO-20-385

GAO Highlights

Highlights of GAO-20-385, a report to congressional requesters

May 2020

U.S. POSTAL SERVICE

Congressional Action Is Essential to Enable a Sustainable Business Model

Why GAO Did This Study

An independent establishment of the executive branch, USPS is required to provide prompt, reliable, and efficient services to the public. While USPS is to be self-sustaining, it lost about $78 billion from fiscal years 2007 through 2019 due primarily to declining mail volumes and increased costs. Given USPS's poor financial condition, in 2009 GAO identified USPS's financial viability as a high-risk area, a designation it retains today.

GAO was asked to explore issues related the transformation of USPS and potential implications for stakeholders. This report (1) examines major challenges facing USPS, (2) identifies how selected domestic businesses and foreign posts reportedly have addressed serious challenges, (3) examines critical foundational elements of USPS's current business model, and (4) identifies key previously issued GAO matters for congressional consideration regarding USPS and actions taken in response.

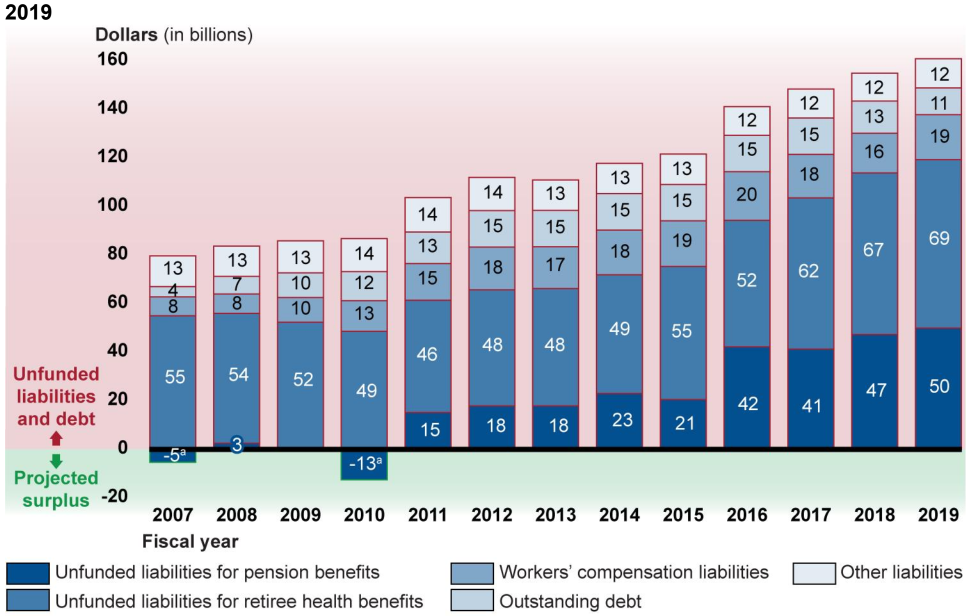
GAO reviewed its prior reports and related matters for congressional consideration, analyzed laws and regulations, and assessed USPS documents on financial and operational performance. It also reviewed reports by the USPS Office of Inspector General, the Postal Regulatory Commission, and other selected groups such as the 2018 Task Force on the United States Postal Service.

View GAO-20-385. For more information, contact Lori Rectanus at (202) 512-2834 or rectanusl@gao.gov.

What GAO Found

Since GAO's 2009 high-risk designation, the U.S. Postal Service's (USPS) financial viability has progressively worsened due to declining mail volume, increased employee compensation and benefit costs, and increased unfunded liabilities and debt. First-Class Mail volume has declined 44 percent since fiscal year 2006. Additionally, employee compensation and benefits costs have been increasing. Although USPS's work force declined from about 786,000 in fiscal year 2007 to about 617,000 in fiscal year 2013, USPS's work force increased to about 630,000 in fiscal year 2019. Finally, total unfunded liabilities and debt continue their steady upward trend (see figure).

Total U.S. Postal Service's (USPS) Unfunded Liabilities and Debt, Fiscal Years 2007 through 2019



Source: U.S. Postal Service 10-K reports | GAO-20-385

Note: Negative unfunded liabilities for pension benefits in fiscal years 2007 and 2010 represent projected funding surpluses.

To address these challenges, USPS has taken a variety of actions such as providing increased self-service options and reducing facility hours. Statutory requirements, however, limit USPS's ability to make changes in areas such as certain service offerings, pricing, and its employee compensation and benefits.

In confronting similar types of challenges that are facing USPS, GAO selected large domestic businesses (companies) and foreign postal entities (widely known as "foreign posts") that have seen significant change in foundational elements of their business models. Specifically, according to GAO's analysis of publicly available reports and interviews of cognizant officials, these organizations have had major changes in services and products, financial self-sustainment, and institutional structure:

To identify how domestic businesses and foreign posts addressed similar serious challenges, GAO selected for review (1) six domestic organizations in the airline, automobile, and railroad industries and (2) five foreign posts in five countries—Australia, France, Germany, New Zealand, and the United Kingdom. The businesses and countries had characteristics similar to USPS, such as large unionized work forces, and had reportedly made significant changes to their business models. For each of these businesses and countries, GAO analyzed public reports on financial and operational performance, as well as institutional structure and requirements. GAO also interviewed government and postal officials from three selected countries and officials from the National Audit Offices of two of the selected countries. Because questions were raised regarding the application of the U.S. Bankruptcy Code to USPS, GAO also requested the National Bankruptcy Conference to assess whether USPS could use bankruptcy or other restructuring processes.

To examine critical USPS business model elements, GAO reviewed its prior reports and reports from numerous other organizations, and obtained the views of stakeholders.

What GAO Recommends

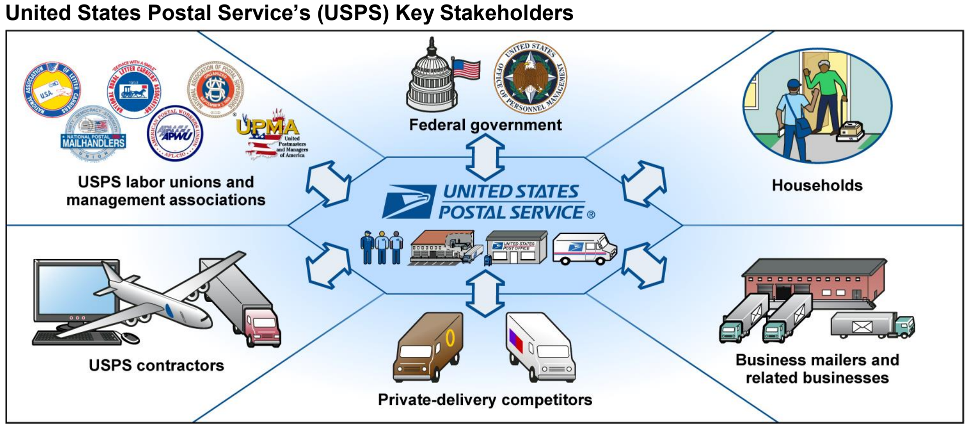
Congress should consider reassessing and determining the (1) level of postal services the nation requires, (2) extent to which USPS should be financially self-sustaining, and (3) appropriate institutional structure for USPS. Both USPS and the Postal Regulatory Commission (PRC) generally concurred with the matters.

- Companies and foreign posts have modified services and products to focus on profitable offerings, and two countries' posts reduced postal service levels. For example, New Zealand Post reduced its mail delivery's frequency from 5 to 3 days per week in urban areas.
- Companies have reduced their workforce, infrastructure, and operational costs, and some accepted government financial assistance to help remain financially viable. Cost reduction has also been a priority for all countries' posts, especially in compensation and benefits, while three countries' governments provided financial assistance to their posts.
- Four of the selected companies declared bankruptcy leading to restructured corporations; some merged with other companies to increase their revenues. Two countries privatized their posts, and three others restructured their posts from government departments into government-owned corporations.

Regarding USPS, reassessing its business model should start with the level of required postal services. For example, delivery is USPS's most costly operation; USPS officials estimate annual savings of $1.4 billion to $1.8 billion if delivery of mail were reduced to 5 days rather than 6 days per week. Second, USPS is to function as a financially self-sustaining entity; however, it does not. A reassessment could include determining whether some of USPS's costs and liabilities should be borne by taxpayers. Third, alternative institutional structures for USPS range from a federal agency to a private company. A bankruptcy proceeding is not an effective or appropriate means to address the issues associated with a potential USPS restructuring, according to the National Bankruptcy Conference.

Prior GAO reports have included suggestions for Congress to address USPS's financial viability. For example, GAO's 2010 report identified strategies to reduce compensation, benefits, and operational costs. GAO stated that Congress, among other things, consider all options available to reduce costs. While bills in this area were introduced and in some cases passed congressional committees, legislation was not enacted. In 2018, GAO reported that the financial outlook for the Postal Service Retiree Health Benefits Fund was poor—the Office of Personnel Management forecasted the fund would be depleted by 2030 if USPS continued not making payments into it. Legislation has not been enacted to place postal retiree health benefits on a more sustainable financial footing. Postal reform legislation has not taken place in part because of the difficulty in obtaining compromise among various stakeholders with divergent views (see figure below). However, since GAO's 2010 report, USPS's financial condition has significantly worsened raising fundamental questions about key elements of USPS's business model. Such questions warrant congressional action.

United States Postal Service's (USPS) Key Stakeholders



Source: GAO. | GAO-20-385

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Abbreviations

Code	U.S. Bankruptcy Code
CRS	Congressional Research Service
CSRS	Civil Service Retirement System
FEHBP	Federal Employees Health Benefits Program
EU	European Union
FERS	Federal Employees Retirement System
GM	General Motors
NBC	National Bankruptcy Conference
Ofcom	United Kingdom's Office of Communications
OIG	U.S. Postal Service's Office of Inspector General
OPM	Office of Personnel Management
PAEA	Postal Accountability and Enhancement Act
PBGC	Pension Benefit Guaranty Corporation
PRA	Postal Reorganization Act
PRC	Postal Regulatory Commission
SEC	Securities and Exchange Commission
TFP	total factor productivity
UPS	United Parcel Service
UAW	International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
USPS	U.S. Postal Service
VEBA	voluntary employee beneficiary association

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
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May 7, 2020

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
House of Representatives

The U.S. Postal Service (USPS) plays a critical role in the nation's communications and commerce. USPS is the largest postal service in the world, delivering an estimated 47 percent of all mail sent globally. USPS's financial viability, however, has been on GAO's High Risk List since 2009 due to USPS's poor financial condition, which has worsened in recent years due to declining mail volumes and rising costs. For example, USPS's net losses totaled approximately $78 billion from fiscal years 2007 through 2019, and its productivity has declined in recent years—a trend that has contributed to its cost pressures.[1]

USPS has been unable to make broad changes to address its financial and other challenges because Congress, the Administration, USPS and USPS's stakeholders—including labor unions, mailers, and competitors—have been unable to agree on how to do so. As a result, while major postal reform legislation was enacted in 2006, further postal reform legislation has not been enacted.

You asked us to explore issues related to the transformation of USPS and their potential implications for stakeholders. For purposes of this report, we use the term "business model" to refer to three key aspects of postal service operations: "to bind the nation together" by providing universal

[1]USPS's Total Factor Productivity (TFP) is an index that measures how efficiently USPS uses resources to handle all aspects of its workload. TFP has declined in 4 of the last 5 fiscal years, reaching its lowest level in fiscal year 2019 since fiscal year 2013. USPS attributes the decline in fiscal year 2019 to lower labor productivity, declining mail volumes, increased transportation expenses and increased investments. See USPS, *FY2019 Annual Report to Congress* (Washington, D.C.: December 2019).

postal service;[2] to be financially self-sustaining by covering its costs, primarily with revenues generated from its postal operations; and to be an independent establishment of the executive branch.[3] This report: (1) examines major challenges facing USPS, (2) identifies how selected domestic businesses and foreign posts reportedly have addressed serious challenges, (3) examines critical foundational elements for transforming USPS's business model, and (4) identifies key previously issued GAO matters for congressional consideration regarding USPS and actions taken in response.

For all of our objectives, we reviewed relevant federal laws and regulations and interviewed USPS officials. To determine key challenges to making USPS's business model financially sustainable, we reviewed:

- USPS's documents on financial and operational performance,
- our prior work, and
- reports by the USPS Office of Inspector General (OIG), the Postal Regulatory Commission (PRC), the 2003 President's Commission on the United States Postal Service, and the 2018 Task Force on the United States Postal Service, among others.[4]

To examine how selected domestic businesses and foreign posts have transformed their business models to become more financially viable, we selected six domestic businesses in the airline, automobile, and railroad industries. These businesses have or had large unionized workforces and national network operations and significantly changed their business models through bankruptcy or other restructuring options in response to

[2]USPS's universal service obligation is governed by several statutory provisions, including the requirement to provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. See 39 U.S.C. § 101. For more information, see GAO, *U.S. Postal Service: Strategies and Options to Facilitate Progress toward Financial Viability*, GAO-10-455 (Washington, D.C.: Apr. 12, 2010) and Postal Regulatory Commission, *Report on Universal Postal Service and Postal Monopoly* (Washington, D.C.: Dec. 19, 2008).

[3]39 U.S.C. § 201.

[4]President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service* (Washington, D.C.: July 31, 2003) and Task Force on the United States Postal System, *United States Postal Service: A Sustainable Path Forward* (Washington, D.C.: Dec. 4, 2018).

market changes in the last 10 to 40 years.[5] We also selected foreign posts in five industrialized countries that made changes during the same time period.[6] We selected these five countries based on prior work that identified them as having made changes to adapt to the changing use of mail; diverse characteristics, including the extent of privatization of their postal operators and geography with both urban and rural areas; and the availability of information in English. We reviewed and summarized key findings of public reports on the financial and operational performance as well as institutional structure and requirements of the selected domestic businesses and the selected countries' postal operators. Our review included private company reports filed with the Securities and Exchange Commission (SEC), annual reports by the private companies and foreign posts, reports by GAO and the Congressional Research Service (CRS), books, and academic articles, among other sources. We also conducted site visits to France, Germany, and the United Kingdom to interview government officials and representatives of foreign posts, a labor union, a private-sector mail delivery company, postal economists, and two former chief executives of foreign posts, about the changes to postal operations in their countries. We did not conduct interviews with representatives of the selected domestic businesses.

To identify the key issues for consideration involved in transformation, we reviewed our prior work and reports from the USPS OIG and others on different options. We used information on how our selected domestic industries and foreign posts made significant changes to provide examples of how different aspects of USPS's business model could change and their potential effects on USPS's stakeholders. We also interviewed representatives from three postal labor unions, a mailer group that represents commercial mailers, and four third-party experts on postal policy regarding their views on how USPS can change and the potential effects of such a transformation on mailers, postal employees, ratepayers, and competitors. We selected the mailer group and the third-party experts based on our prior work and their differing positions on USPS reform. While the views of the stakeholders and experts we

[5]The six businesses we selected were American Airlines, Delta Airlines, and United Airlines; General Motors (GM) and Ford Motor Company (automobile); and Conrail (railroad). We did not independently verify the information contained in the public reports we analyzed from these companies.

[6]The five postal operators we selected were Australia Post (Australia); La Poste (France); Deutsche Post (Germany); New Zealand Post (New Zealand); and Royal Mail (the United Kingdom). We did not analyze applicable foreign postal laws. Instead, we relied on documentation and interviews with foreign post officials.

interviewed are not generalizable, they provide information and different perspectives on options for USPS.

To provide expert insight into how USPS might be able to use the U.S. Bankruptcy Code (Code) or other restructuring processes, we consulted with the National Bankruptcy Conference (NBC). NBC is a non-partisan, non-profit organization formed in the 1940s and today consists of approximately 60 lawyers, law professors, and bankruptcy judges who are leading experts in bankruptcy law. NBC's primary purpose is to advise Congress on the operation of bankruptcy and related laws and on any proposed changes to those laws. NBC provided a report on whether USPS could use the Code or other restructuring processes to address its financial obligations and achieve a sustainable business model. We also asked NBC what factors Congress should consider in deciding whether to amend the Code or enact other legislation to address USPS's financial condition.

To describe GAO's previously issued "Matters for Congressional Consideration" regarding USPS, we reviewed and summarized our 2010 report on USPS's business model, our 2018 report on Postal Retiree Health Benefits, and our 2019 High Risk update.[7] We also reviewed Congressional actions since 2010 regarding our proposed matters.

We conducted this performance audit from October 2018 to May 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

USPS has the mission of providing prompt, reliable, and efficient universal postal service, and federal law requires USPS to "provide postal services to bind the Nation together through the personal, educational,

[7]GAO-10-455; GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2019); and GAO, *High Risk Series: Substantial Efforts Needed to Achieve Greater Progress in High Risk Areas*, GAO-19-157SP (Washington, D.C.: Mar. 6, 2019).

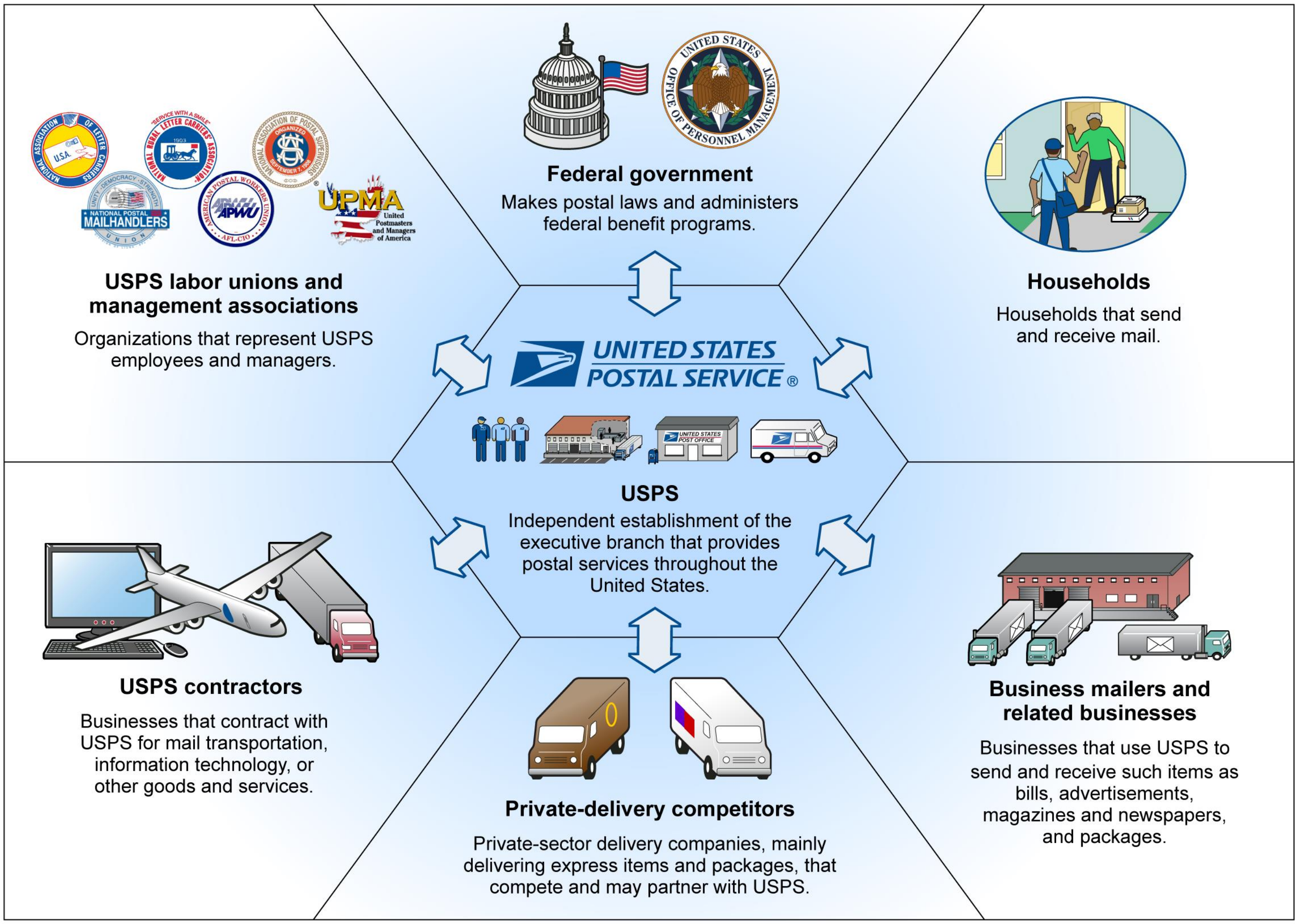
literary, and business correspondence of the people."[8] USPS is required to serve, as nearly as practicable, the entire population of the United States.[9]

USPS has a number of key stakeholders, each with different interests in USPS and its operations (see fig. 1). USPS is a key part of the mailing industry, and over time, it has become both a competitor and partner to private companies that also operate in the broader mail and delivery industries. For example, although United Parcel Service (UPS) and FedEx both pay USPS to deliver packages that they enter into USPS's system at local post offices where carriers pick up their mail, they also compete with USPS for end-to-end package delivery business, such as moving packages from the retailer to the purchaser. Similarly, FedEx is USPS's largest contractor, providing air transportation for Priority Mail Express (formerly Express Mail), Priority Mail, and First-Class Mail. UPS is also one of USPS's largest contractors, providing long-distance mail transportation.

[8]39 U.S.C. § 101.

[9]39 U.S.C. § 403(a).

Figure 1: United States Postal Service's (USPS) Key Stakeholders



Source: GAO. | GAO-20-385

Over the years, legislation has changed key aspects of the business model used to provide the nation's postal services. Until 1970, the federal government provided postal services via the U.S. Post Office Department, a government agency that received annual appropriations from Congress.[10] At that time, Congress was involved in many aspects of the department's operations, such as selecting postmasters and setting postal rates and wages. In addition, the President controlled the hiring

[10]In fiscal year 1971, the last fiscal year before USPS was created, the U.S. Post Office Department's appropriations were approximately 25 percent of its expenses and commitments.

and firing of Postmasters General, as it was a cabinet-level position. By the late 1960s, the department had several major problems including financial losses, management problems, service breakdowns, and low productivity. Because key postal business decisions were made by Congress through the legislative process, postal management had limited ability to plan and finance department operations and capital investments in accordance with postal needs.[11]

In order to improve and modernize postal services, the Postal Reorganization Act (PRA) was enacted in 1970 and replaced the U.S. Post Office Department with USPS, an independent establishment of the executive branch of the government of the United States.[12] Congress designed USPS to be a self-sustaining, business-like entity headed by a Board of Governors that would cover its operating costs primarily with revenues generated through the sales of postage and postal-related products and services.[13]

However, by the early 2000s, USPS faced a bleak financial outlook that put its mission of providing universal postal service at risk, according to the 2003 Presidential Commission on the United States Postal Service.[14] The Commission evaluated USPS's business model and concluded that USPS must have greater flexibility to operate in a business-like fashion, but that this latitude required enhanced transparency to enable effective management and congressional oversight. The Postal Accountability and

[11]In response to these growing challenges, President Lyndon B. Johnson appointed a commission to identify recommendations for improving the nation's postal services. In 1968, the commission, referred to as the "Kappel Commission," concluded that the U.S. Post Office Department should be restructured to become financially self-supporting and that management authority should be invested in a Board of Directors. See President's Commission on Postal Organization, *Towards Postal Excellence* (Washington, D.C.: June 1968).

[12]Pub. L. No. 91-375 (1970); 39 U.S.C. § 201.

[13]USPS received an annual appropriation as a general public service subsidy until 1982. See USPS, *The United States Postal Service: An American History, 1776-2006* (Washington, D.C.: Nov 2012). Currently, USPS receives an annual appropriation for revenue forgone for providing (1) free and reduced rate mail for the blind and (2) overseas voting materials for U.S. elections. See e.g., Pub. L. No. 116-93 (2019). Congress appropriated about $55.2 million to USPS for these purposes in fiscal year 2019. USPS earned $71.1 billion in operating revenue in fiscal year 2019.

[14]President's Commission on the United States Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*.

Enhancement Act (PAEA) was enacted in 2006.[15] PAEA provided USPS additional pricing flexibility for mail products,[16] but with provisions for increased transparency, oversight, and accountability, among other things.

Specifically, PAEA gave USPS broader latitude to change postal rates in a more streamlined process that included review by the newly created Postal Regulatory Commission (PRC).[17] The PRC, which replaced the former Postal Rate Commission, is an independent establishment of the executive branch responsible for regulating USPS. PRC is required to make annual determinations of USPS's compliance with mail delivery standards and postal rate requirements.[18] If PRC finds noncompliance, it is required to specify USPS actions to restore compliance.[19]

USPS Cannot Become Financially Self-Sustaining under Its Current Business Model due to Three Key Challenges

USPS's current business model is not financially sustainable due to declining mail volumes, increased compensation and benefits costs, and increased unfunded liabilities and debt. USPS's costs continue to rise faster than its revenues, and although USPS has made changes over the years to address these challenges, its efforts have been limited by stakeholder opposition and statutory requirements.

[15] Pub. L. No. 109-435 (2006).

[16] USPS's products are divided into market-dominant and competitive categories. Market-dominant products are those for which USPS "exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642. PAEA also authorized USPS to raise average rates for market-dominant products up to a defined annual cap of the consumer price index. Competitive products are all other products.

[17] 39 U.S.C. §§ 501, 3622, 3632.

[18] 39 U.S.C. § 3653.

[19] 39 U.S.C. § 3653.

Declining Mail Volumes

As online communication and payments have expanded, USPS continues to face decreases in mail volume, its primary revenue source. First-Class Mail volume has declined 44 percent since fiscal year 2006, the year that total mail volume peaked. The long-term decline of First-Class Mail volume, which USPS has stated was exacerbated by the Great Recession and expects to continue for the foreseeable future,[20] has fundamental implications for USPS's business model because First-Class Mail is USPS's most profitable class of mail. USPS Marketing Mail—which comprises most other mail volume—declined 27 percent from fiscal year 2007 to fiscal year 2019, in part due to electronic advertising alternatives. The volume of USPS competitive products more than tripled since fiscal year 2007. This volume, however, began to decline in the second half of fiscal year 2019 due to growing competition for package delivery.[21]

USPS has taken steps to right size its operations in response to declining mail volumes. For example, in both 2009 and 2011, USPS announced plans to close several thousand USPS retail facilities. However, due to stakeholder opposition—including from members of Congress, postal unions, and local communities, among others—USPS instead closed a few hundred retail facilities. USPS also expanded the alternative options for customers to access retail postal products and services outside of USPS-operated postal facilities—such as self-service kiosks and partnerships with other retailers such as contract postal units. According to USPS, as a compromise effort to right size the retail network and due in part to USPS's efforts to expand retail alternatives, USPS began reducing retail hours at selected post offices in 2012, ultimately decreasing retail hours at approximately 13,000 post offices. Another major cost-cutting effort was its 2011 Network Rationalization Initiative, a multi-part plan to consolidate its mail processing network. USPS

[20]The National Bureau of Economic Research reported that the Great Recession lasted from December 2007 to June 2009.

[21]Competitive mail volume was 4 percent of total mail volume but about 33 percent of USPS revenues in fiscal year 2019. Nearly all of USPS's remaining revenue—about 2/3 of its total revenue—was generated from the sale of market-dominant products such as First-Class Mail and USPS Marketing Mail.

consolidated more than 160 mail processing facilities, but did not fully implement this initiative following opposition from various stakeholders.

In addition to stakeholder opposition to changing postal services, federal laws also factor into USPS's limited ability to respond to declining mail volumes. For example, federal laws define the level of postal services USPS is to provide, postal products, and pricing.[22]

- Postal services to be provided: USPS has limited ability to make changes in the postal services it provides. Specifically, USPS is required to provide 6-days-a-week delivery and to operate postal facilities across the country.[23] Federal law requires USPS to provide the maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.[24] Federal law also limits USPS's ability to close retail facilities. For example, USPS cannot close a small post office solely because it is unprofitable.[25] As of the end of fiscal year 2019, there were approximately 34,600 postal retail outlets nationwide, including approximately 31,300 USPS-managed post offices, branches, and stations, and, as we recently reported, USPS's analysis showed that about 36 percent of its retail facilities were unprofitable in fiscal year 2018.[26]
- Postal products and pricing: USPS's pricing flexibility is limited by a price cap on market-dominant products that generally limits rate increases for these products to a common measure of inflation. Each competitive product is required to cover its attributable costs; competitive products collectively are required to recover their attributable costs; and competitive products collectively are required to cover a PRC-specified minimum of USPS's institutional costs. In addition, USPS is prohibited

[22]See appendix II for more information on selected legal requirements applicable to USPS.

[23]See Pub. L. No. 116-93 (2019); 39 U.S.C. § 403(b)(3).

[24]39 U.S.C. § 101(b).

[25]39 U.S.C. § 101(b).

[26]GAO, *U.S. Postal Service: Expanding Nonpostal Products and Services at Retail Facilities Would Likely Present Benefits and Challenges*, GAO-20-354 (Washington, D.C.: Mar. 10, 2020). USPS defines profitable retail facilities as those with a positive net retail revenue contribution, which is defined as retail revenue less retail costs. Facilities with a negative net retail revenue contribution are defined as unprofitable. This figure includes USPS-managed retail facilities including USPS-operated post offices, postal stations, branches, and carrier annexes, as defined in USPS's Annual Reports to Congress.

from providing new nonpostal products and services. Such requirements affect USPS's ability to increase revenues.

Increased Compensation and Benefits Costs

While mail volumes have decreased, USPS's compensation and benefits costs for current employees have been increasing since 2014, despite USPS's efforts to control these costs. Although USPS reduced its total workforce (career and non-career employees) from 785,900 in fiscal year 2007, to 617,700 in fiscal year 2013, its workforce increased to about 630,000 in fiscal year 2019.[27] Similarly, as we previously reported,[28] recent trends show total work hours increased from a combination of new hiring and increased work hours for current employees. Specifically, we reported that from fiscal years 2014 through 2018, work hours increased by 5.4 percent. The number of work hours associated with higher costs—overtime and penalty overtime—have also been increasing.[29] According to USPS, total compensation and benefits costs increased by almost $1 billion in fiscal year 2019 alone.

USPS has implemented changes to help control employee compensation and benefits costs, including lowering pay for new career employees and increasing use of non-career employees.[30] For example, as we previously reported, starting about 10 years ago, USPS's collective bargaining agreements have included the ability to hire up to 20 percent of the

[27]In addition to being classified by occupation type (e.g., letter carrier and mail handler), USPS employees are also divided into "career" and "non-career" employees. Career employees are considered permanent and are entitled to a range of benefits (e.g., health and retirement) and privileges. USPS stated that non-career employees include those with lower-paid positions such as city carrier assistants and postal support employees and temporary employees hired during times of large mail volume such as holidays.

[28]GAO, *U.S. Postal Service: Additional Guidance Needed to Assess Effect of Changes to Employee Compensation* GAO-20-140 (Washington, D.C.: Jan. 17, 2019).

[29]Overtime hours are paid at one and one-half times the employee's basic hourly rate and penalty overtime hours are paid at twice the employee's basic hourly rate for hours as provided for in applicable collective bargaining agreements. USPS stated that while overtime hours have been increasing, its use of regular overtime is less expensive than hiring additional employees.

[30]GAO-20-140.

workforce as non-career employees.[31] Non-career employees are less costly because they generally have lower pay rates and are not entitled to the full federal benefits received by career employees. According to USPS officials, non-career employees are also “more flexible” because there are fewer restrictions on their tasks and schedules. We recently reported that our analysis estimated that USPS likely saved about $6.6 billion from fiscal years 2016 through 2018 from increased use of non-career employees.[32] USPS has recognized trade-offs in increasing the use of non-career employees in entry-level positions, such as a high turnover rate, as would be expected for almost any entry-level position in the private sector.

With respect to benefits costs for current postal employees, we have recently reported that USPS has also achieved savings by gradually decreasing its contribution percentage for employee health insurance premiums over the past decade, with corresponding increases in the contribution percentage paid by employees.[33] These changes were negotiated with the four major postal labor unions and were included in successive collective bargaining agreements, each of which covered a multi-year period.[34] We found that the reduction in USPS health insurance contributions generated estimated savings of about $1.4 billion for fiscal years 2016 through 2018.[35]

A number of restrictions limit USPS’s ability to control employee compensation and benefits costs. As we recently reported, USPS compensation and benefits costs—which represent about three-fourths of its total costs—are driven by a mix of USPS contracts and policies, including collective bargaining agreements negotiated with unions representing 92 percent of USPS employees, and statutory requirements

[31]Collective Bargaining Agreements (CBAs) with postal labor unions generally specify caps for the percentage of non-career employees that USPS may use in positions covered by the agreements. GAO-20-140. USPS hires non-career employees to supplement its regular workforce in a select number of positions including “mail service handler assistant.” Non-career employees do not receive full employee benefits and privileges.

[32]GAO-20-140.

[33]GAO-20-140. For this report’s analysis, fiscal year 2018 was the most recent fiscal year covered.

[34]USPS’s contribution percentage for retiree health benefits is governed by statute. 5 U.S.C. § 8906(g). For more information, see GAO-18-602.

[35]GAO-20-140.

governing USPS employee pay and benefits.[36] When USPS and its unions are unable to agree, the parties are required to enter into binding arbitration by a third-party panel. USPS's collective bargaining agreements with these labor unions, some of which were established through binding arbitration, have established salary increases and cost-of-living adjustments and, as mentioned above, have also capped the number of non-career employees at approximately 20 percent of the number of employees covered by the agreements. Federal law requires USPS to participate in the Federal Employees Health Benefits Program (FEHBP), which covers current employees and retirees, as well as federal pension and workers' compensation programs.[37] Further, USPS must provide fringe benefits that, as a whole, are no less favorable than those in effect when the Postal Reorganization Act of 1970 was enacted.[38]

Increased Unfunded Liabilities and Debt

USPS's unfunded liabilities and debt,[39] which consist mostly of unfunded liabilities for retiree health and pension benefits, have become a significant financial burden, increasing from 99 percent of USPS's annual revenues at the end of fiscal year 2007 to 226 percent of its fiscal year 2019 revenues.[40] At the end of fiscal year 2019, USPS's unfunded liabilities and debt totaled approximately $161 billion. However, it has begun paying down this debt in recent years, leaving a balance of $11 billion at the end of fiscal year 2019 (see fig. 2).

[36]GAO-20-140.

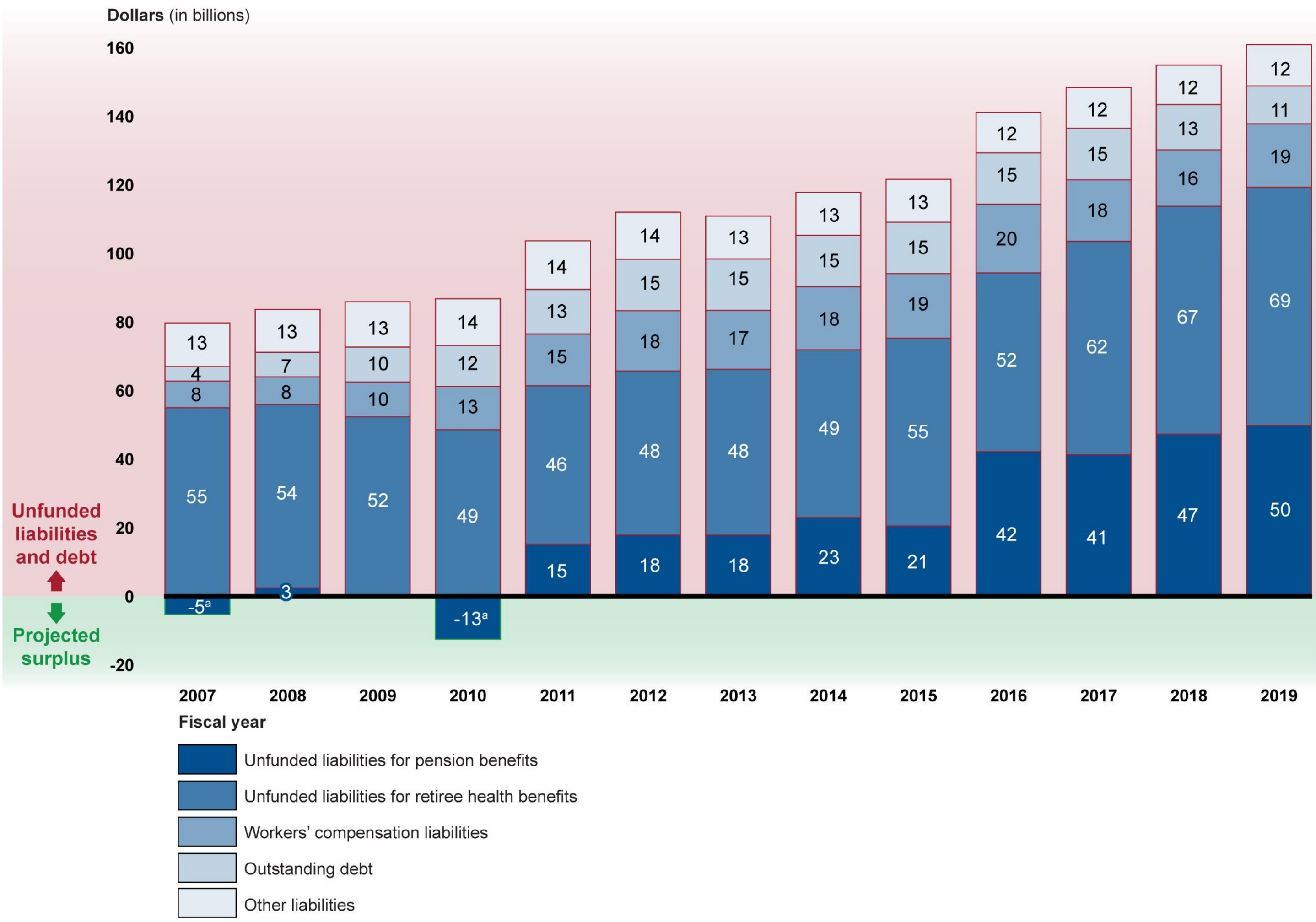
[37]5 U.S.C. §§ 8901 et seq., 39 U.S.C. § 1005(f). USPS is required to participate in FEHBP unless USPS and its unions agree to an alternative health benefits program.

[38]39 U.S.C. § 1005(f).

[39]As of the end of fiscal year 2019, USPS was authorized to borrow up to $15 billion. 39 U.S.C. § 2005(a).

[40]Unfunded benefit liabilities are the estimated amount USPS has not sufficiently set aside to cover the benefits earned by its current and retired employees that are attributable to service already rendered.

Figure 2: Total U.S. Postal Service's (USPS) Unfunded Liabilities and Debt, Fiscal Years 2007 through 2019



Source: U.S. Postal Service 10-K reports | GAO-20-385

[a]Negative unfunded liabilities for pension benefits in fiscal years 2007 and 2010 represent projected funding surpluses.

Total unfunded liabilities have risen in part due to USPS not making payments to fund its retiree health and pension benefits. USPS has stated that it prioritizes its "primary universal service mission" when it is unable to fulfill all of its financial obligations, and that it therefore did not make payments to fund its postal retiree health benefits and pensions to minimize the risk of running out of cash.[41] In doing so, USPS cited its precarious financial condition and the need to cover current and

[41]USPS, *2019 Report on Form 10-K* (Washington, D.C.: Nov. 14, 2019).

anticipated costs and any contingencies. It has not paid $55.4 billion in required payments for funding these benefits through fiscal year 2019, including $47.2 billion in missed funding payments for retiree health benefits since fiscal year 2010, and $8.2 billion for funding pension benefits since fiscal year 2014. In addition, for many years, USPS had been at its statutory debt limit of $15 billion; however, it has begun paying down this debt in recent years, leaving a balance of $11 billion at the end of fiscal year 2019.

A number of federal laws define the requirements for USPS's retiree health and pension benefits that comprise most of its unfunded liabilities.

Retiree health benefits: Federal law establishes certain requirements for postal retiree health benefits, including basic requirements for coverage eligibility and contributions. In administering the FEHBP, the Office of Personnel Management (OPM) negotiates with the insurance providers to establish the level of benefits provided to beneficiaries.[42] USPS is required to prefund its share of health benefits for its retirees. Under PAEA, the first 10 years of prefunding payments were fixed—ranging from $5.4 billion to $5.8 billion annually from fiscal years 2007 to 2016.[43] From fiscal years 2007 through 2016, USPS was also required to continue "pay-as-you-go" payments for its share of premiums for current retirees. The permanent schedule for USPS payments to prefund postal retiree health benefits under PAEA required USPS to make annual payments starting in fiscal year 2017.[44] Currently, USPS no longer makes payments for retiree health benefits premiums. Starting in 2016, these premiums are paid out of the RHB Fund until it is depleted, whereupon USPS will resume paying premiums on a pay-as-you-go basis.[45] As we previously reported, survey data we reviewed indicated that most

[42]GAO-18-602.

[43]USPS's required prefunding payment due in 2009 was reduced from $5.4 billion to $1.4 billion. Pub. L. No. 111-68, § 164(a) 123 Stat. 2023, 2053 (Oct.1, 2009).

[44]Under the permanent payment schedule, USPS's payments are based on annual actuarial determinations of the following component costs: (1) a statutorily determined amortization schedule to address the unfunded liabilities for postal retiree health benefits by 2056, or within 15 years, whichever is later, and (2) the "normal costs" of retiree health benefits for current employees. The "normal cost" is the annual expected growth in liability attributable to an additional year of employees' service. OPM is required to annually re-estimate future expenses for retiree health benefits and adjust USPS's payment schedule. See 5 U.S.C. § 8909a.

[45]5 U.S.C.§ 8906(g)(2)(A).

companies do not offer retiree health benefits and that the number of companies providing such benefits is decreasing over time. Many companies that have retained their retiree health benefits have done so by making changes to control costs, including tightening eligibility and restructuring benefits.[46] However, all approaches we identified have different potential effects and would require congressional action.

Pension benefits: Federal law also requires USPS to finance its pension benefits under the Federal Employees Retirement System (FERS) and the Civil Service Retirement System (CSRS) and contains specific provisions defining USPS's required contribution level to fund these benefits. USPS's payments consist of a rolling 30-year amortization schedule to address unfunded FERS liabilities, an amortization schedule to address unfunded CSRS liabilities by 2043, and the normal costs of FERS benefits for current employees.

Selected Domestic Companies and Foreign Posts Took Key Steps to Address Major Challenges

The large domestic companies we selected in the airline, auto, and railroad industries took actions over a number of years to address major business challenges. Airlines such as Delta, American, and United faced competition from low-cost airlines, downward pressure on airfares, and rising compensation, benefits, and volatile fuel costs. These challenges were exacerbated by the economic downturn that began in 2000, the terrorist attacks of September 11, 2001, and the Great Recession that began in December 2007, all of which temporarily depressed demand for airline travel.[47] Similarly, General Motors (GM) and Ford Motor Company (Ford) faced competition from lower cost competitors, the Great

[46]GAO-18-602. For example, the percentage of all private and public organizations (e.g., state or local governments) with more than 200 employees that offer employee health benefits and that also offer retiree health benefits is estimated to have declined from 40 percent in 1999 to 25 percent in 2017, according to annual surveys conducted by the Henry J. Kaiser Family Foundation and the Health Research & Educational Trust.

[47]GAO, *Airline Competition: The Average Number of Competitors in Markets Serving the Majority of Passengers Has Changed Little in Recent Years, but Stakeholders Voice Concerns about Competition*, GAO-14-515 (Washington, D.C.: June 11, 2014) and *Commercial Aviation: Legacy Airlines Must Further Reduce Costs to Restore Profitability*, GAO-04-836 (Washington, D.C.: Aug. 11, 2004).

Recession, a workforce and networks too large to be supported by smaller sales volumes, and other changes in the market.[48] Likewise, large U.S. railroads competed for freight and passengers from other transportation modes, such as the trucking and airline industries that operated over publicly provided infrastructure, while railroads had to invest in their own infrastructure.

Based on our review of the selected companies' annual reports and statements to the SEC as well as selected federal laws, and GAO, CRS, and other organizations' reports, books, and academic articles, among other sources, we found that selected companies made changes to (1) products and services, (2) financial self-sustainment, and (3) use of the bankruptcy process. While some of the selected businesses restructured through a bankruptcy proceeding, other businesses took similar actions outside of the bankruptcy process.[49] Mergers also played an important role for the airlines and railroads.

Actions Taken by Companies to Address Challenges

Actions Regarding Products and Services

The selected companies made multiple changes to their products and services. Specifically:

- Airlines: Selected airlines altered pricing by changing route structure to focus on more profitable routes and adding fees, such as for checked baggage.[50] In addition, all three selected airlines merged with other major airlines, thereby broadening their routes and revenues.[51]
- Automakers: Selected automakers focused on producing more profitable brands and models, discontinuing some models and introducing others. For example, during its financial difficulties about a decade ago, GM

[48]GAO, *Auto Industry: Summary of Government Efforts and Automakers' Restructuring to Date*, GAO-09-553 (Washington, D.C.: Apr. 23, 2009).

[49]GAO, *Commercial Aviation: Bankruptcy and Pension Problems Are Symptoms of Underlying Structural Issues*, GAO-05-945 (Washington, D.C.: Sept. 30, 2005).

[50]GAO, *Commercial Aviation: Information on Airline Fees for Optional Services*, GAO-17-756 (Washington, D.C.: Sept. 20, 2017).

[51]GAO-14-515 and GAO, *Airline Mergers: Issues Raised by the Proposed Merger of United and Continental Airlines*, GAO-10-778T (Washington, D.C.: May 27, 2010).

discontinued a number of unprofitable brands. In 2018, after years of declining car sales, Ford said it would eliminate some of its most well-known cars in North America, allowing it to devote more resources to sport utility vehicles and trucks.

- Railroads: Large railroads focused on more profitable routes and abandoned unprofitable routes or sold them to other railroads. For example, the federal government created a new freight railroad, Conrail, by merging several bankrupt railroads in the Northeast and Midwest.[52] As we have reported previously, federal government deregulation of railroad pricing and contracts after 1980 also helped Conrail to reach profitability and increase capital investment.[53]

Actions Regarding Financial Self-Sustainment

Cost reduction was a major theme for the selected businesses in the airline, automotive, and rail industries, particularly with respect to compensation, benefits, and infrastructure costs. Specifically:

- Airlines: The three selected airlines negotiated wage cuts and work rule changes with their unions; made workforce reductions, in part by outsourcing work; and cut pension and retiree health benefit programs.[54] Wage cuts included all levels of employees, such as management, pilots, flight attendants, and mechanics. Benefit cuts involved reducing the level of pensions and retiree health benefits and transitioning pension programs from defined benefits plans to defined contribution plans that

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[52] In 1974, the federal government created the Consolidated Railroad Corporation (Conrail), a government-owned and financed freight railroad and authorized its initial capitalization. Eighty-five percent of Conrail's shares were owned by the federal government and 15 percent of the shares were owned by Conrail's employees. See GAO, *Budget Issues: Privatization/Divestiture Practices in Other Nations* GAO/AIMD-96-23 (Washington, D.C.: Dec.15, 1995).

[53] GAO, *Guidelines for Rescuing Large Failing Firms and Municipalities*, GAO/GGD-84-34 (Washington, D.C.: Mar. 29, 1984); GAO, *Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980*, GAO/RCED-90-80, (Washington, D.C.: May 16, 1990); and GAO/AIMD-96-23.

[54] Work rules specify the work that employees are expected to do and the amount of compensation they will receive for performing this work. Although such agreements can and do include changes designed to increase employee productivity by increasing or broadening the types of tasks that employees can perform, such agreements can also affect productivity by limiting the amount or type of work that employees can perform. GAO, *Intercity Passenger Rail: National Policy and Strategy Needed to Maximize Public Benefits from Federal Expenditures*, GAO-07-15 (Washington, D.C.: Nov.13, 2006).

were structured to be less costly.[55] Airlines also reduced infrastructure costs by eliminating some hubs, reducing the total number of aircraft, and changing the mix of aircraft in their fleet to save on maintenance and fuel costs. The airlines further cut costs by restructuring debt, reducing facility leasing costs, and renegotiating aircraft leases and vendor contracts.

While in bankruptcy, the airlines took major actions to reduce their costs. For example, United implemented steep pay cuts, cut retiree health benefits, and terminated its defined benefit pension plans, resulting in the Pension Benefit Guaranty Corporation (PBGC) assuming responsibility for some of its pension payments,[56] and a reduction in benefits for the plan's participants.[57] United also cut its workforce size by 31 percent, reduced the number of airplanes by 19 percent, and reduced the total number of flights by 13 percent. Delta and American also reduced pay and pension benefits while in bankruptcy, and the PBGC assumed responsibility for some of Delta's pension liabilities.

- Automakers: The two selected automakers negotiated pay cuts, lower wages for entry-level employees, and changes to work rules designed to increase competitiveness; cut the workforce size in about half; made changes to employee benefits; closed many auto plants and dealerships; eliminated some vehicle brands and models; and changed the production process to increase efficiency. Specifically, The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) agreed to cuts in compensation for the automakers' employees to levels paid by GM and Ford's competitors. UAW also agreed to move retiree health care benefits into a private Voluntary

[55]Defined benefit plans are employer-sponsored retirement plans that traditionally promise to provide a benefit for the life of the participant, based on a formula specified in the plan that typically takes into account factors such as an employee's salary, years of service, and age at retirement. In contrast, defined contribution plans allow participants to accumulate savings in an individual account based on the contributions made to the accounts, and the performance of the investments in those accounts, which may fluctuate in value. For additional details, see GAO, *The Nation's Retirement System: A Comprehensive Re-evaluation Is Needed to Better Promote Future Retirement Security*, GAO-18-111SP (Washington, D.C.: Oct.18, 2017).

[56]The Employee Retirement Income Security Act of 1974 established the PBGC to insure the pension benefits of participants in qualified defined benefit plans should the plans be terminated with insufficient funds or become insolvent. See GAO, *Retirement Security Trends in Corporate Restructurings and Implications for Employee Pensions*, GAO-19-447R (Washington, D.C.: July 12, 2019).

[57]GAO-05-945.

Employee Beneficiary Association (VEBA)[58] for current and former UAW-represented employees in 2007; the VEBA took over health benefits for retirees starting in 2010. The automakers also closed defined benefit pension plans to new participants and moved to defined contribution pension plans for eligible new employees.

- Railroads: The Staggers Rail Act of 1980 was enacted to improve the financial stability of the railroad system.[59] Subsequently, railroads improved their financial health through, among other things, cost reduction measures such as reducing their workforce through layoffs and federal buyouts agreed to by unions, and abandoned or sold off unprofitable rail lines to reduce infrastructure and operating costs.[60] Overall railroad employment fell greatly as railroads consolidated, reduced service, and changed work rules. For example, Conrail reduced its workforce from about 82,000 employees in 1977 to about 21,000 in 1996. Congress specifically facilitated Conrail's downsizing by passing the Northeast Rail Service Act of 1981, which among other things, directed a $200 million a year reduction in labor costs and authorized Conrail to terminate employees.[61]

The U.S. government provided assistance to selected companies in various forms, including appropriated funds, loans, and other actions that helped enable companies to reduce their expenses. For example:

- Automakers: The federal government committed $49.5 billion in funding to help GM continue to operate while restructuring. After the government became the majority owner of the GM that emerged from bankruptcy, the Administration laid out core principles that included managing its ownership in a hands-off manner and voting as a shareholder only on core governance issues.[62]

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[58]A VEBA is an entity that provides and administers health benefits separately from an employer. The VEBA determines the specific benefits that are provided, the level of contributions from the VEBA members, and the investing of its assets. GAO-18-602.

[59]Pub. L. No. 96-448, §§ 101, 201 (1980).

[60]GAO/RCED-90-80.

[61]Pub. L. No. 97-35, §§ 1134, 1136, 1143(a) (1981).

[62]GAO, *TARP: Treasury's Exit from GM and Chrysler Highlights Competing Goals, and Results of Support to Auto Communities Are Unclear*, GAO-11-471 (Washington, D.C.: May 10, 2011) and CRS, *The Role of TARP Assistance in the Restructuring of General Motors* (Washington, D.C.: Mar. 18, 2014).

- Airlines: Under the 2001 Air Transportation Safety and System Stabilization Act, the federal government provided nearly $5 billion in compensation to airlines for losses due to the September 11, 2001 terrorist attacks, including $856 million for American, $668 million for Delta, and $782 million for United.[63] Additionally, under the Emergency Wartime Supplemental Appropriations Act, $2.4 billion was appropriated to the Transportation Security Administration to compensate airlines for certain security expenses and fees, including $358 million to American, $411 million to Delta, and $300 million to United.[64]
- Railroads: The federal government spent about $8 billion creating, subsidizing, and preparing Conrail for sale to the private sector.[65] This funding included $7 billion through 1988 for purchasing properties of bankrupt railroads, operating subsidies, and capital improvements and employee buyouts. Amtrak, the national passenger railroad, took over money-losing intercity and commuter passenger rail services[66] and funded federal payments of up to $25,000 for each laid-off employee as authorized by legislation.[67]

Use of Bankruptcy

Some airlines, automakers, and railroads made changes through the bankruptcy process. Specifically:

- Airlines: All three selected airlines went through bankruptcy proceedings—United in December 2002, Delta in September 2005, and American in November 2011. The actions these airlines took to reduce costs while in bankruptcy are discussed above.
- Automakers: GM declared bankruptcy in June 2009 to implement its restructuring plan.[68] The federal government became GM's majority

[63]Pub. L. No. 107-42, § 101 (2001).

[64]Pub. L. No. 108-11 (2003). Appropriation amounts are those reported by each airline in annual 10-K reports to SEC.

[65]GAO/AIMD-96-23.

[66]GAO, *Amtrak: Better Reporting, Planning, and Improved Financial Information Could Enhance Decision Making*, GAO-16-67 (Washington, D.C.: Jan. 6, 2016), GAO-07-15, and CRS, *Improving Intercity Passenger Rail Service in the United States*, R45783 (Washington, D.C.: June 25, 2019).

[67]Pub. L. No. 91-518, § 305 (1970); Pub. L. No. 97-35, §§ 1137, 1143 (a) (1981).

[68]In contrast, Ford obtained private financing secured by many of its assets; as a result, it did not declare bankruptcy.

shareholder and continued to provide financial assistance while GM was in bankruptcy. The bankruptcy court approved the sale of substantially all of old GM's assets to a newly formed company ("new GM") in June 2009 as well the old GM's amended bankruptcy plan in March 2011, and its assets and liabilities were transferred to liquidating trusts. These actions and the restructuring—which included major cost reductions described above—helped enable GM to report positive net income in every year from 2010 through 2019.

- Railroads: In 1970, the Penn Central Railroad, one of the largest in the country at the time, filed for bankruptcy. As Penn Central's losses continued while in bankruptcy, the value of whatever assets that might have been available to satisfy its creditors' claims was further eroded. Therefore, the bankruptcy proceeding was initiated to liquidate the railroad to meet the demands of its creditors. Faced with the potential cessation of railroad service for an entire section of the country, the federal government created Conrail to take over and operate specified portions of Penn Central as well as several other bankrupt railroads in the Northeast United States. Legislation was enacted that, combined with Conrail actions described above, enabled Conrail to become profitable.[69]

Foreign Governments and Foreign Posts Took Actions to Address Challenges

In the countries we selected, foreign governments also took actions to develop goals for their postal operators that enabled changes in the postal operators' institutional structures and actions to address competitive pressures, economic downturns, and market changes. Based on our review of the selected countries' government reports, including summaries of postal reform legislation, annual reports from foreign posts, and interviews with foreign government officials and representatives of foreign posts, we found that changes were made to foreign posts': (1) products and services; (2) financial self-sustainment; and (3) institutional structure. Some of these actions were authorized by legislation that changed the status and duties of the postal operators; others were taken over a lengthy period that predated passage of key legislation. Some

[69]See e.g., Pub. L. No. 93-236 (1974); Pub. L. No. 97-35 (1981). Legislation was enacted that, combined with Conrail actions described above, enabled Conrail to become profitable. See GAO/AIMD-96-23. In 1986, the Conrail Privatization Act authorized a public stock offering for the government-owned Conrail shares. Pub. L. No. 99-509, tit. IV (1986). These shares were sold through a public offering in 1987, earning about $1.6 billion.

foreign posts also diversified into nonpostal products and services; however, postal-specific challenges and changes are the focus of this discussion.

Actions Regarding Products and Services

The selected foreign posts made multiple changes to their products and services. We found that, when transforming their postal operations, selected countries determined the level of postal services they deemed necessary to adequately serve the public. The main product changes involved expansion of their package delivery business by enhancing service and investing in facilities and sorting equipment dedicated to handling packages. Large increases in their package volumes and revenues helped offset declining letter mail volume and revenues.

Two of the selected foreign posts reduced service levels to help control costs. For example, according to New Zealand Post officials, in response to reduced mail volume, New Zealand Post reduced its required frequency of mail delivery in urban areas from 5 to 3 days while maintaining 5-day delivery in rural areas with the stated goal of ensuring that postal service remained viable without government subsidization.[70] Australia Post revised the service standards it provided for delivery of letter mail in 2016, resulting in slower delivery of some mail.

In addition, the main pricing changes have involved price increases for all mail, as well as the introduction of discounted postal rates for letter mail entered at processing facilities that generally were closer to the final destination of the mail. For example, Royal Mail raised postal rates above the rate of inflation after relaxation of its price cap.[71] In France, the postal regulator established a price cap in 2015 of 3.5 percent per year (in addition to inflation) and established a new cap in 2018 of 5 percent annual rate increases (including inflation) for 2019 through 2022 for letter mail and packages considered part of universal postal service. The 2018 price cap allows La Poste more price flexibility than the previous one.

[70]New Zealand Post media release, *Rural Delivery Changes*, Feb. 15, 2017, accessed Mar. 2, 2020, https://www.nzpost.co.nz/about-us/media-centre/media-release/rural-delivery-changes.

[71]According to Ofcom, Royal Mail's First Class letter mail prices increased 40.5 percent (adjusted for inflation) between 2009 and 2018, averaging around 4 percent per year. The steepest increase of about 27 percent came between 2011 and 2012, right after relaxation of its price cap.

Likewise, Australia Post implemented an above-inflation rate increase in January 2020, citing the need to generate revenues to offset growing financial pressures from declining letter mail volume.[72]

Actions Regarding Financial Self-Sustainment

Cost reduction was a major theme for the selected foreign posts, particularly with respect to compensation, benefits, and infrastructure costs. These actions were stimulated in part by reductions in mail volume and the associated revenues and workload, and in part by legislative or regulatory changes that allowed greater competition and created incentives, such as privatization, which resulted in shareholder pressure to enhance or encourage organizational profitability and efficiency. Because postal operations are labor-intensive, actions to address workforce costs were particularly important to improving financial results. These often went hand in hand with outsourcing, network restructuring, reductions in service levels to better align service with demand, and other changes to increase productivity and achieve cost savings. The governments and the postal operators of selected countries also considered the effects on stakeholders when making postal reform decisions. Specific changes varied from one foreign post to another.

- Workforce: In Germany, Deutsche Post officials told us that its employees hired after 1990 were designated private sector employees with lower pay and benefits than postal employees who were previously hired as civil servants. In France, La Poste officials told us that La Poste likewise transitioned its workforce in the 1990s from civil servants to private employees and ended recruitment of civil servants in 2000. They also said that this transition provided La Poste with a more flexible workforce and reduced its pension liability. Australia Post closed its defined benefit pension plan to new employees in 2012, while Royal Mail is transitioning to a defined contribution pension plan that it introduced in 2018. Royal Mail and New Zealand Post also have reduced the size of their workforce in recent years.

- Infrastructure: Some selected foreign posts consolidated their mail processing networks to reduce costs. For example, following the reunification of Germany, Deutsche Post replaced more than 320 mail processing facilities with 82 such facilities. Royal Mail and La Poste

[72]In addition, Australia Post also raised its basic postal rate 13.7 percent above inflation in 2014 and by 41.8 percent above inflation in 2016. See Australia Post, *Annual Report 2018* (Melbourne, Victoria).

reduced the number of mail sorting centers by about 40 percent over the past two decades.

In addition, all five selected postal operators have made changes to reduce retail network costs. As we reported in 2011, some foreign posts reduced the number of postal operator-owned and -operated facilities and in some cases closed facilities in an effort to reduce costs.[73] At the same time, some minimized this disruption by expanding retail access through alternatives such as Internet sales and partnerships with retail businesses such as grocery stores or pharmacies. We reported that these changes either reduced operating and labor costs or improved customer service, in some cases because the partner retail facility stays open longer, or both.

This trend continues. Deutsche Post, Post Office Limited in the United Kingdom, La Poste, Australia Post, and New Zealand Post have outsourced or franchised most of their postal retail functions to private nonpostal operators. For example, Deutsche Post franchised its postal retail outlets to local businesses to not only reduce expenses, but also increase the availability of postal retail services nationwide by putting retail counters in stores that were open longer than traditional post offices. Deutsche Post representatives stated that while there was some initial resistance to these changes, these concerns abated after a few months as customers realized they received better service and longer hours. The representatives also said the number of retail outlets has increased in recent years in response to increased demand for e-commerce package returns. La Poste has a substantial and growing proportion of retail facilities operated by private providers (in partnership with small shops, especially in rural areas) or co-located in local government-owned buildings (in partnership with local town halls in rural areas). In addition, Australia Post combined its letter and parcel delivery networks in 2018 to obtain efficiencies.

- Productivity: All of the postal operators in the selected countries took actions to enhance productivity, such as improving automation of mail processing, modernizing and streamlining operations, and changing work processes. For example, Deutsche Post officials stated they had streamlined their parcel sorting process and went from 140 parcel sorting centers in 1990 to 34 in 2019. Deutsche Post officials stated that this streamlining improved service performance for parcels; previously, most parcels were delivered within 3 or 4 days; by 2019, 93 percent of parcels were delivered within 1 day. Royal Mail officials also stated that they

[73]GAO, *U.S. Postal Service: Foreign Posts' Strategies Could Inform U.S. Postal Service's Efforts to Modernize*, GAO-11-282 (Washington, D.C.: Feb. 16, 2011).

increased their level of automation and introduced new methods of parcel delivery, such as new high-capacity equipment for mail carriers, to increase efficiency as well.

- Government Assistance: The governments of some of the selected countries provided assistance to their postal operators in various forms, including assuming pension costs, granting tax exemptions, and providing subsidies to postal retail operations. For example, the governments of France and the United Kingdom assumed costs of defined benefit pensions for postal employees who are civil servants, while the government of Germany assumed these costs to the extent that they exceed the costs of private sector pensions. While all new employees are employed as private sector employees, German audit officials stated that the government's pension obligation for postal employees who are or were civil servants and their dependents will last until 2079 and cost the government about €306 billion.[74]

  The assumption of these pension plans was important in facilitating the privatization of these postal operators, according to Royal Mail and Deutsche Post officials, because without the reduced unfunded pension liabilities, the stock offerings for the newly created companies would have been much less attractive to private investors.[75] France also provides subsidies for certain postal activities.[76] In addition, the United Kingdom split off the postal retail network from Royal Mail into

[74]About $333 billion in April 2020.

[75]Royal Mail representatives stated that its pension deficit meant that Royal Mail was insolvent according to its balance sheet prior to the government assuming the historic assets and liabilities of its pension plan. According to Deutsche Post representatives, Deutsche Post continues to employ former public sector postal employees who are civil servants and public employees. According to German government officials, those employees, retained and newly recruited, are subject to private sector working conditions and enrolled in statutory pension insurance. Pension liabilities for postal civil servants are covered by a pension fund established by German law. In the course of the postal transformation, Deutsche Post assumed a fixed share to finance this pension fund. Since that share does not cover all pension liabilities, the German government contributes the complementary funds needed.

[76]According to La Poste, these subsidies included local tax exemptions for locations where maintaining a retail postal presence is unprofitable (such as rural areas, poor city suburbs, and overseas territories), subsidies for the transport and delivery of newspapers and magazines, and subsidies for access to basic banking services through La Banque Postale, a bank that is part of the La Poste group.

Post Office Limited, a separate entity owned and subsidized by the national government.[77]

Actions Regarding Institutional Structure

Each of the five foreign countries we selected changed their institutional structure following the development of goals for postal transformation that were tailored to national needs and priorities.[78] Each of these countries had definitions of universal postal services including provisions for nationwide delivery and access to postal retail services. As the following examples illustrate, the national context of each country has been of central importance to shaping these goals. In addition, postal transformation in the three selected European countries—Germany, the United Kingdom, and France—also had an international context in the broader effort to create and promote a single European internal market.

- Germany: In the 1990s, the German government changed its postal operator, Deutsche Post, from a government agency to a government-owned corporation. In 2000, the government changed Deutsche Post to a privately owned company so it could raise capital, modernize, and create a sustainable infrastructure. Goals for the newly created Deutsche Post were to maintain the high level of postal services, increase efficiency, and enhance profit. The legislation that created Deutsche Post also gave it more flexibility to respond to changes in the market. Currently, Deutsche Post remains a private company with the government holding a minority of its shares.

- United Kingdom: In 1969, the government of the United Kingdom changed the Post Office, its postal operator, from a government department to Royal Mail, a government-owned corporation prior to changing it to a privately owned company. It began privatizing Royal Mail in 2013 so Royal Mail could become more modern and competitive by

[77]According to a representative of Post Office Limited, the United Kingdom has invested about £1.5 billion (about $1.9 billion as of April 2020) in Post Office Limited, but plans to eliminate this subsidy by 2021. The government of the United Kingdom provided £70 million (about $87.5 million as of April 2020) to Post Office Limited in 2019.

[78]USPS has noted that the origin and evolution of the business models of different foreign posts are deeply rooted in the underlying economic, political, social, cultural, and geographic history of each country. USPS stated that these models vary according to national priorities for social and political goals as well as economic considerations. USPS, *Assessment of U.S. Postal Service Future Business Model* (Washington, D.C.: November 2009).

raising private capital, operating with more flexibility, and be subject to shareholder scrutiny to drive efficiency.[79] As mentioned above, the government of the United Kingdom also split off postal retail units into a new government-owned entity called “Post Office Limited” that is separate from Royal Mail.

- France: In 1991, the government of France changed La Poste, the postal service of France, from a government department to a public industrial and commercial establishment.[80] In 2010, the government of France converted La Poste into a state-owned public limited company. This step allowed La Poste to raise additional public capital for investments to maintain and modernize its network, build a European parcel and express network, allow acquisitions outside Europe, and add nonpostal products and services, such as expanding its banking services.

- Australia: In 1989, the government of Australia changed its postal operator, Australia Post, from a government department to a government-owned corporation. It is required to earn a reasonable rate of return on its assets, maintain its equity, pay a reasonable dividend to the government, and be liable for the same taxes and charges as its competitors.
- New Zealand: According to a recent report, New Zealand Post began as a government department and became a state-owned enterprise in 1987, when legislation (State-Owned Enterprises Act 1986) created several such entities to address challenges in the national economy.[81] Such corporations are required to be as profitable and efficient as a comparable business not owned by the state.[82]

[79]Royal Mail was privatized in two stages. In 2013, the government of the United Kingdom gave 10 percent of shares to employees for free and sold 60 percent of its stake. In 2015, a further 2 percent of shares were given free to employees and the remaining 28 percent was sold.

[80]Specifically, in 1991 La Poste became a government-owned entity with a contractual relationship with the national government.

[81]New Zealand Post Limited, *NZ Post-Tukurau Aotearoa Integrated Report 2017* (Wellington, New Zealand: Sept. 11, 2017).

[82]A separate “Deed of Understanding” between the government and New Zealand Post specifies requirements for universal postal service. Ministry of Communications and Information Technology and New Zealand Post Limited, *Deed of Amendment and Restatement* (Wellington and Porirua, New Zealand: Dec. 12, 2013).

USPS's Transformation Involves Reassessment of Three Critical Foundational Elements of Its Business Model

Congress will face difficult choices in fundamentally reassessing the three critical foundational elements of USPS's business model—level of universal postal service, financial sustainability, and institutional structure. These choices are likely to require changes in laws and will have differing effects on postal stakeholders. While the specific impacts will depend on the changes made, some or all of USPS's stakeholders could be affected and these impacts should be considered as part of any reassessment. All three key areas are interrelated and significant changes in one area may affect another. For example, we have testified that Congress faces a tradeoff between the level of postal services the nation needs and the level of postal services the nation is willing to pay for.[83]

Level of Universal Postal Service Needed

Based on our prior work, a starting point for a fundamental reassessment of USPS's business model should be determining the level of postal services the nation needs. While mail volumes have declined since fiscal year 2006, businesses, governments, and households still pay USPS billions of dollars annually to deliver more than 140 billion of pieces of mail, demonstrating a continued nationwide demand for postal services. We and others—such as USPS, PRC, and USPS OIG—have called for a fundamental reexamination of what postal services the nation needs now and may need in the future. In particular, we have testified that USPS's growing financial difficulties, combined with changing demand for postal services, have provided Congress with an opportunity to examine and potentially redefine what postal services should be provided on a universal basis and how they should be provided.[84]

As mentioned above, there are numerous federal laws and requirements related to the provision of universal postal service.[85] For example, 6-day

[83]GAO-17-404T.

[84]GAO-17-404T.

[85]See appendix II for a list of selected legal requirements that are applicable to USPS.

delivery has long been required by annual USPS appropriations acts.[86] Over the past decade, legislation has been introduced, and USPS and others have proposed reducing the frequency of delivery.[87] However, no legislation has been enacted that would allow USPS to reduce delivery frequency.

There is also no consensus on the level of postal services the nation needs. Changes in service levels face opposition from some stakeholders, such as labor unions, affected communities, and the general public. Currently, legislation has been introduced that supports the preservation of both 6-day and door-to-door delivery for addresses that have it, and some mailer groups support one or both of these positions.[88] Representatives from postal labor unions we spoke with stated that universal postal service is appropriate as currently defined and could be expanded to provide more products and services. Stakeholders have also expressed differing views on whether the frequency of delivery should be reduced to help USPS address its financial problems. USPS and PRC have estimated that eliminating Saturday delivery would reduce USPS's costs but also would likely affect mail volume sent by business mailers, although USPS and PRC disagreed on the degree to which it would do so.[89] USPS estimated that it could save $1.4 billion to $1.8 billion a year by reducing the frequency of mail delivery to 5 days while maintaining 7-day package delivery. To put these potential savings into context, delivery is USPS's most costly operation. We reported, however, that USPS would face challenges in, among other things, how efficiently USPS would absorb the additional volume delivered in the remaining delivery days and its potential effect on mail volume. We also described potential trade-offs, such as possibly reducing the demand and value of USPS products if customers are not getting their delivery needs met.[90]

[86]See e.g., Pub. L. No. 116-6, 133 Stat. 180 (2019).

[87]See PRC, *Advisory Opinion on Elimination of Saturday Delivery,* Docket No. N2010-1 (Washington, D.C.: Mar. 24, 2011). See S. 3831, 111th Cong. (2010), S. 1010, 12th Cong. (2011), S. 1625, 112th Cong. (2011), S. 1789, 112th Cong (2011), H.R. 2748, 113th Cong. (2013), S. 1486, 113th Cong. (2013).

[88]H.R. 54, 116th Cong. (2019) and H.R. 23, 116th Cong. (2019). These bills have 291 and 257 co-sponsors respectively.

[89]See PRC, *Advisory Opinion on Elimination of Saturday Delivery,* Docket No. N2010-1 at 103-113 (Washington, D.C.: Mar. 24, 2011).

[90]GAO-20-140.

Further, key postal stakeholders hold opposing views on many other options that have been proposed. For example, to raise revenues, USPS and some postal labor unions favor eliminating or raising the price cap on market-dominant products, which would enable USPS to raise rates more than the rate of inflation but would require changing the current regulatory system.[91] Mailers, however, have expressed opposition to increasing postage rates higher than the rate of inflation.

Postal labor unions also favor increasing revenues by introducing new postal and nonpostal products and services.[92] We have recently found, however, that USPS's nonpostal revenues generated at postal retail facilities are small and that there are limited opportunities to generate revenues from nonpostal products and services from USPS's delivery network.[93] For example, we reported that nonpostal products and services offered through USPS's postal retail facilities generated about $431 million in fiscal year 2018, accounting for less than 1 percent of USPS's total revenue.[94] In addition, we reported several potential limitations to USPS adding nonpostal services to USPS's mail carrier activities, such as checking in on homebound and older residents and reporting signs of blighted properties. These limitations included, among other things, limited net revenue potential and a potential adverse effect on mail service delivery.[95]

Financial Sustainability

A fundamental reassessment of USPS's business model would include determining the degree to which USPS should be financially self-sustaining, i.e., the degree to which USPS's operating costs and liabilities

[91]PAEA required that PRC establish a modern system of regulating rates and classes for market dominant products and required that PRC review this system 10 years later. Pub. L. No. 109-435 § 201 (2006), codified at 39 U.S.C. §3622(a),(d)(3). As of April 2020, this review was ongoing.

[92]PAEA eliminated USPS's authority to offer nonpostal services unless they were offered as of January 1, 2006, and expressly grandfathered by the PRC. Pub. L. No. 109-435, § 102.

[93]See GAO, *Offering Nonpostal Services through Its Delivery Network Would Likely Present Benefits and Limitations*, GAO-20-190 (Washington: D.C.: Dec. 17, 2019) and GAO-20-354.

[94]GAO-20-354.

[95]GAO-20-190.

should be covered by ratepayers (such as businesses and individuals who pay USPS to send mail). If a reassessment concluded that USPS should be fully self-sustaining, past legislative proposals that would change elements of USPS's costs and revenues may be worth congressional consideration.[96] Stakeholders, however, have not reached a consensus on any of these proposals and none has been enacted.

Another avenue is to focus on reducing costs. As we have also reported, compensation and benefits costs, which comprise about three-quarters of USPS's operating costs, are driven by a mix of USPS contracts and policies, including collective bargaining agreements negotiated with unions representing 92 percent of USPS employees and statutory requirements governing USPS employee pay and benefits.[97] USPS compensation and benefits costs for its active employees increased by almost $1 billion in fiscal year 2019 despite a slight decrease in the size of the workforce and declining workload from reduced mail volume.

While USPS has been able to make some reductions in pay and benefits, its ability to control compensation costs is significantly inhibited by the collective bargaining process, which results in binding arbitration if an impasse is reached. According to USPS, all negotiations take place against the backdrop of binding arbitration (and the arbitrators have historically been reluctant to deviate from the status quo), resulting in only incremental changes. We have long supported changing the laws regarding collective bargaining to require that USPS's financial condition be considered in binding arbitration.[98] We have also reported that the collective bargaining structure, which was established many years ago, should be reexamined considering the dramatic changes in USPS's competitive environment and rising personnel costs that have contributed to USPS's losses.[99]

[96]See e.g. S. 3831, 111th Cong. (2010), S. 353, 112th Cong. (2011) and S. 1486, 113th Cong. (2013).

[97]GAO-20-140.

[98]See GAO-19-157SP, GAO-17-404T, and GAO-10-455.

[99]GAO-10-455.

Multiple bills have been proposed changing the process and/or criteria for collective bargaining to a different standard.[100] The 2018 report from the Task Force on the United States Postal System recommended that collective bargaining over compensation should be eliminated for postal employees.[101] While eliminating or revising the collective bargaining process could potentially provide USPS greater flexibility in employee pay, there would be trade-offs. For example, we recently found that the potential annual cost savings associated with USPS implementing cuts for all current employee pay by 1 percent would be about $321 million; a 10 percent cut would potentially save $3.2 billion.[102] However, we also reported that while USPS could reduce its compensation costs through efforts such as reducing mail delivery frequency, USPS would face challenges in realizing these savings, such as the extent to which workhours could be reduced. Furthermore, these savings could be offset by other factors including service or morale issues.

With respect to benefits, we recently reported on a wide range of possible changes that would reduce or limit costs for postal retiree health benefits, nearly all of which would require a legislative change. Some approaches would shift costs to the federal government; some would reduce benefits or increase costs to postal retirees or employees; and some approaches would change how benefits are funded.[103] Similar types of legislative changes could be considered with respect to postal pension benefits.[104]

In addition, if Congress decides that USPS should be financially self-sustaining but makes no changes to improve USPS's financial condition,

[100]For example, S. 3831, 111th Cong. (2010), S. 353, 112th Cong. (2011), S. 1010, 112th Cong. (2011), S. 1625, 112th Cong. (2011), H.R. 2309, 112th Cong. (2012), S. 1789, 112th Cong (2012), H.R. 2748, 113th Cong. (2013), S. 1486, 113th Cong. (2013).

[101]Task Force on the United States Postal System, *United States Postal Service: A Sustainable Path Forward*.

[102]GAO-20-140.

[103]See GAO-18-602. Postal retiree health benefits are provided as part of the Federal Employees Health Benefits Program (FEHBP), as specified by Chapter 89 of Title 5, U.S. Code. Proposed bills would require alternative approaches for how the benefits are funded. See e.g., H.R. 2382, 116th Cong. (2019).

[104]For example, in 2013 USPS proposed converting postal pensions for future employees into a defined contribution program. See USPS, *Statement of Postmaster General and Chief Executive Officer Patrick R. Donahoe Before the Committee on Oversight and Government Reform, United States House of Representatives* (Washington, D.C.: July 17, 2013), and S. 1486, 113th Cong.

USPS will be unable to address unfunded liabilities for postal retiree health and pension benefits, an inability that could eventually translate into higher costs for future postal ratepayers. Ultimately, if USPS's expenses continue to exceed its revenues, USPS is likely to continue to miss required payments, reduce operations, or seek federal appropriations through the annual appropriations process to cover its operating costs.[105]

If Congress determines that USPS should no longer be expected to be financially self-sustaining or if actions taken do not restore financial self-sustainability, Congress could provide financial assistance—not unlike what happened in other countries or for selected domestic business—to enable USPS to cover its costs, and to fulfill its obligation to provide federal health and pension benefits to postal employees and retirees. Federal financial assistance could be provided in various forms, such as:

- Appropriating funds to help cover USPS's operating costs, essentially the same arrangement that was used to finance the former U.S. Post Office Department.
- Appropriating funds to supplement USPS's payment of certain costs, such as to help fund its capital investments. For example, the federal government provides Amtrak, which is operated as a for-profit corporation with annual grants to operate and make capital investments in passenger rail service to supplement the revenues it generates.
- Assuming some or all of USPS's unfunded liabilities for retiree health benefits. This could take different forms, such as direct assumption of responsibility for unfunded liabilities or, more indirectly, requiring postal retirees to participate in Medicare which would decrease USPS's costs but increase Medicare's costs.[106]
- Assuming some or all of USPS's unfunded liabilities for pension benefits.

[105]The most immediate policy issue resulting from USPS missing required payments concerns postal retiree health benefits. We reported in 2018 that based on OPM projections requested by GAO, the fund supporting postal retiree health benefits is on track to be depleted in fiscal year 2030 if USPS continues to make no payments into the fund. If this fund becomes depleted, USPS would be required by law to make the payments necessary to cover its share of health benefits premiums for current postal retirees. Current law does not address what would happen if the fund becomes depleted and USPS does not make payments to cover those premiums. Depletion of the fund could affect postal retirees as well as USPS, customers, and other stakeholders, including the federal government. GAO-18-602.

[106]GAO-18-602.

- Writing off some or all of USPS's debts to the U.S. Treasury.

Options regarding the federal government providing ongoing financial assistance to USPS could have effects on both USPS and the federal government as a whole. Notably, this assistance would have to be funded in some way—either through offsetting reductions in federal expenditures in other areas, through tax increases, or through an increase in federal deficits. Moreover, reliance on federal funding could mean that USPS would be exposed to the uncertainty inherent in the annual appropriations process. In addition, access to annual appropriations to cover financial shortfalls could have an unintended consequence of reducing USPS's incentives to become more cost-efficient.

At present, there is no consensus on USPS's level of financial self-sustainability should be. For example, representatives of labor unions we spoke with stated that Congress should address issues regarding postal retiree benefits before any reassessment of USPS's financial self-sufficiency can occur. Increased federal financial support of USPS might also face political opposition, due to concerns about minimizing federal deficits and ensuring fair competition between USPS and the private sector.

Institutional Structure

The final area of consideration in any reassessment of USPS's business model is identifying what institutional structure could best deliver the level of postal services at the level of financial sustainability that Congress has determined. As an independent establishment of the executive branch, USPS must provide universal postal service while being expected to be financially self-sustaining. Thus, there may be a tension between attempting to fulfill public service missions while operating in an efficient, business-like and financially self-sustaining manner. USPS officials told us that as an entity of the federal government, its primary purpose is the achievement of its statutory universal service mission, and it has no incentive to seek to maximize profits at the expense of achieving its public service mission over the long term.

Therefore, according to USPS, if it were maintained as an independent establishment of the executive branch or converted into a more typical government agency, it could continue to prioritize this public service mission. Additionally, there is widespread support for USPS's institutional status as an independent establishment of the executive branch. Congressional resolutions have been introduced stating that "Congress should take all appropriate measures to ensure that the United States Postal Service remains an independent establishment of the Federal Government and is not subject to privatization."[107] Likewise, all four of the largest USPS unions, both of its management organizations, and a number of mailer groups and mailers support keeping USPS an independent establishment of the executive branch.

Nonetheless, considering the depth of USPS's financial problems and its poor financial outlook, now may be an appropriate time for Congress to reconsider what institutional structure will be most appropriate for USPS in the 21st century. However, any substantial change to USPS's institutional status would require changing federal law. Based on our past work and options identified by USPS and others, Congress has a range of options it could consider in reassessing USPS's structure (see table 1).

Table 1: Examples of Potential Institutional Structures for the U.S. Postal Service (USPS)

Structure	Financing USPS would receive under this structure	Ownership	Examples of other Organizations
Government Agency	Postal revenues and federal appropriations provided through the annual appropriations process	Federal	Federal agencies, such as Department of Energy or the Department of Commerce
Independent establishment of the executive branch with fewer legal constraints[a]	Postal revenues and appropriations provided through the annual appropriations process for certain required services	Federal	None
Government-owned corporation[b]	Postal revenues	Federal	Tennessee Valley Authority, La Poste (France), Australia Post, New Zealand Post
Government-sponsored enterprise[b]	Postal revenues	Private sector	Fannie Mae and Freddie Mac
Private company	Postal and other revenues, such as logistics or banking	Private sector	Royal Mail (United Kingdom), Deutsche Post (Germany), domestic private sector corporations

Source: GAO reports and analysis of foreign post reports and interviews. | GAO-20-385

Notes: USPS could potentially receive federal appropriations through the annual appropriations process under all of these structures.

Government-sponsored enterprises are federally established private corporations. They typically receive financing from private investment, and the credit markets perceive that they are implicitly financially backed by the federal government. According to CRS, this impression of federal backing has been encouraged by the federal government's past actions. See CRS, *Government-Sponsored Enterprises (GSEs): An Institutional Overview* (Washington, D.C.: Apr.23, 2007).

[107] S. Res. 99, 116th Cong. (2019), H. Res. 33, 116th Cong. (2019).

[a]These could include addressing legal requirements such as on pricing, products, and other requirements that restrict USPS's ability to reduce its costs. For more examples, see GAO, *U.S. Postal Service: Mail Trends Highlight Need to Change Business Model*, GAO-12-159SP (Washington D.C.: Oct. 14, 2011).

[b]For more information on government-owned corporations and government-sponsored enterprises, see GAO, *Government Corporations: Profiles of Existing Government Corporations*, GAO/GGD-96-14 (Washington D.C.: Dec. 13, 1995).

The potential advantages and disadvantages of placing USPS into alternative institutional structures for USPS have long been debated. Several options have been discussed:

- USPS could revert to a traditional federal agency. USPS and its governance would be more consistent with other federal activities that are dependent on federal appropriations provided through the annual appropriations process. Many postal stakeholders, however, do not support such a change. For example, USPS told us that if it became a typical government agency reliant on federal appropriations to fill any operating gap, the political constraints that typically apply to government agencies could reduce USPS's adaptability. Furthermore, changing USPS to a typical government agency could reduce its incentives to increase revenues or reduce costs in response to changing communication technologies and patterns. Consistent with this point, the 1968 presidential commission found that when it operated as a federal agency, the former U.S. Post Office Department had a lack of innovation, cost-control, and capital investment with major managerial decisions made through the legislative process. These and other issues led to persistent operational deficits, low productivity, and poor mail service.[108]
- USPS could remain an independent establishment of the federal government with additional authority—relative to the status quo—over certain aspects of its business model. For example, USPS could be provided more flexibility to raise postal rates, introduce new nonpostal products, and make various changes to reduce its costs such as reducing the frequency of delivery or further consolidating its retail, transportation, and processing networks.[109] USPS has long advocated for additional flexibility under its current institutional structure—such as to eliminate the price cap on market-dominant products and have greater flexibility to offer nonpostal products. Representatives from postal unions also stated that USPS should be provided additional flexibility, such as to expand into nonpostal products, which some representatives stated could help preserve its public service mission to provide universal postal services.

[108]The President's Commission on Postal Organization, *Towards Postal Excellence*.

[109]GAO, *U.S. Postal Service: Mail Trends Highlight Need to Fundamentally Change Business Model*, GAO-12-159SP (Washington, D.C.: Oct. 14, 2011) and GAO-10-455.

Consensus does not, however, exist as to what flexibility should be given to USPS. For example, some mailer groups favor keeping the price cap unchanged, stating the cap is sufficient and provides incentives for increased efficiency. In addition, some stakeholders have supported further limiting USPS's flexibility to reduce service standards, close retail outlets, or consolidate processing facilities, while other stakeholders noted that greater flexibilities in these areas would reduce USPS's costs and enhance its efficiency.

- If USPS were to become a government-owned corporation or a government-sponsored enterprise, USPS could be incentivized to increase efficiency as a federally chartered entity providing a public service with a predominantly business nature. For example, three of the four third-party experts we spoke with stated that USPS should retain its current mission of universal postal service but become more like a private company with greater freedom to operate in a business-like manner. The new structure could promote greater incentives toward cost control and financial success. Government-owned corporations are federally chartered entities that provide a public service with a predominantly business nature. These corporations can have a board of directors that is appointed by the President.[110] Government-sponsored enterprises are federally chartered entities that are privately owned and, typically, have a board of directors appointed by private sector owners.[111]
- If USPS were to be a private company it would become accountable to the shareholders of that company. USPS told us that as a private company, its primary incentive could be to maximize profits and that, in USPS's view, private shareholders would be most focused on short-term financial outcomes. Thus, any such design of a private USPS would need to balance its profit motive with the nation's needs for universal postal service and the affordability of that service. For example, while Royal Mail is a private corporation owned by shareholders, the government of the United Kingdom still mandates 6-day delivery for letter mail (and 5-day delivery for packages) with specified delivery standards, and some mail types are subject to price controls. In addition, the United Kingdom monitors the provision of universal postal service and can take enforcement actions regarding regulatory conditions and competition

[110] GAO/GGD-96-14. USPS's Governors who serve on its Board are appointed by the President and confirmed by the Senate.

[111] CRS, *Government-Sponsored Enterprises (GSEs): An Institutional Overview* (Washington, D.C.: Apr. 23, 2007).

law.[112] Similarly, Germany has legal instruments to enforce the provision of universal postal services, although according to German government officials these instruments have not been used.[113]

Although some of the domestic businesses we examined reduced their costs through bankruptcy, this is likely not an option for USPS. As detailed in its report (see appendix I), National Bankruptcy Conference (NBC) found that USPS is not eligible to become a “debtor” under chapters 11 or 9 of the current Bankruptcy Code.[114] According to NBC, a court likely would deem USPS to be a “governmental unit”—meaning it could not file for relief under chapter 11—and a court would deem USPS not to be a “municipality”—meaning it could not file for relief under chapter 9. Therefore, legislation amending the Code would be required to make USPS eligible for relief.

According to NBC, however, even if the Bankruptcy Code were amended to allow USPS to file as a chapter 11 or 9 debtor, the Code would still not currently authorize a bankruptcy court to discharge the ongoing statutory obligations that have led to USPS’s current financial situation,[115] and

[112]In the United Kingdom, The Postal Service Act 2011 sets out the minimum requirements for Royal Mail. These are statutory and can only be amended with the consent of Parliament. The United Kingdom’s Office of Communications (Ofcom) is an independent public authority responsible for regulating Royal Mail and has put in place a detailed monitoring regime focusing on efficiency, financial sustainability, competition and consumers. Ofcom also defines quality of service standards and maintains the price caps on certain types of letter mail.

[113]The European Union (EU) also mandates that its member states deliver mail 5 days a week. E.U. Directive 97/67/EC (Dec. 15, 1997).

[114]A chapter 11 proceeding allows a debtor to adjust or reorganize its pre-bankruptcy obligations to enable it to meet its adjusted obligations, operating expenses and capital costs after it exits bankruptcy. A chapter 9 proceeding provides a municipal debtor the ability to adjust unsustainable debt to continue providing public services to its citizens. Only a “debtor,” defined as either a “person” or a “municipality,” may file for relief under chapter 11 or chapter 9, respectively. *See* 11 U.S.C. § 101(13). A “person” is defined to include corporations but to exclude “governmental units.” 11 U.S.C. § 101(41). A “municipality” is defined as a political subdivision or public agency or instrumentality of a State. 11 U.S.C. § 101(40).

[115]Statutes imposing USPS’s pension and health benefit obligations do not clearly address who would be responsible for these obligations in the event USPS is unable to pay them. In NBC’s view, other parts of the federal government would continue to be obligated to pay current and former USPS employees and the shortfall would need to be addressed either by appropriations, additional contributions to the funds from other federal departments and agencies, or reduced benefits for all civil service employees who are beneficiaries of those funds.

amending the Code to authorize such court action could raise constitutional (separation of powers) concerns. Moreover, NBC noted the bankruptcy process is designed to address obligations that have already accrued, not to override or amend statutes that apply to a debtor's post-bankruptcy operations and obligations. In NBC's opinion, because USPS's pension and health care obligations are imposed by statute instead of by contract as in most bankruptcy reorganization proceedings, the bankruptcy process is not an effective or appropriate mechanism to address USPS's obligations or potential transformation. NBC thus concluded that "although the bankruptcy process and bankruptcy tools raise interesting ideas for restructuring USPS's existing and future obligations…all roads for doing so lead back to Congress."

Implementation Considerations

Any changes that Congress makes to USPS's business model will take time to implement and will need to be reevaluated as market conditions evolve. We have reported that fully implementing major transformations of government agencies can take years,[116] and we also found that to be the case for the selected domestic businesses and foreign posts noted in this report, regardless of the changes needed. For example, railroads in the Northeast, airlines, and automakers took many years to implement a series of changes to their businesses. It took Germany more than a decade to fully liberalize and then privatize its postal operator, and the United Kingdom's effort to privatize its postal operator took about 5 years. All of these organizations continue to adapt as they address ongoing challenges in a changing and highly competitive business environment. For example, GM recently stated that years after exiting bankruptcy and restoring profitability, it is closing some factories and focusing on developing electric and self-driving cars.[117] Several freight railroads facing a downturn in freight traffic have also decided to run longer trains less frequently to reduce labor costs and increase efficiencies.[118]

Similarly, changes in the use of postal services will continue for the foreseeable future, necessitating continued adaptation. Some of the

[116]GAO, *Government Reorganization: Key Questions to Assess Agency Reform Efforts*, GAO-18-427 (Washington, D.C.: June 13, 2018).

[117]General Motors Company, *2018 Report on Form 10-K* (Detroit, MI.: Feb. 6, 2019).

[118]For more information, see GAO, *Rail Safety: Freight Trains are Getting Longer and Additional Information Is Needed to Assess Their Impact*, GAO-19-443 (Washington, D.C.: May 30, 2019).

countries we selected are anticipating the need to be prepared for possible future changes. For example:

- In August 2019, German government officials said they would consider reducing postal delivery frequency from 6 to 5 days a week as part of an ongoing review to adapt Germany's 20-year old postal law to changing market conditions and customer demands.
- In the United Kingdom, the postal regulator assessed postal users' needs in 2020 in light of the changes in the postal market and to prepare for its regulatory review, which is to be concluded by 2022.
- A 2018 consultant's report to the European Union (EU) recommended that the EU relax its universal service obligations to accommodate future changes in the postal market.[119] The EU is currently studying how postal users' needs are changing to determine if it needs to change its framework to allow member states to change their definitions of universal service obligations.
- In November 2019, the Australian government ordered a review of Australia Post's long-term strategy to operate as a sustainable postal service provider, considering market conditions such as e-commerce, the regulatory environment and changes in business and consumer service needs.
- The government of New Zealand is scheduled to revise its memorandum of understanding with New Zealand Post defining universal service obligations by 2021.

GAO's Calls for Congressional Action to Address USPS's Solvency Remain Unaddressed

PAEA required GAO to evaluate strategies and options for the long-term structural and operational reform of USPS by December 2011.[120] As USPS continued to face financial challenges, we accelerated this evaluation, which we issued in April 2010.[121] However, we found that

[119]Copenhagen Economics, *Main Developments in the Postal Sector (2013-2016): Study for the European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs* (Copenhagen, Denmark: July 2018).

[120]Pub. L. No. 109-435 § 710 (2006).

[121]GAO-10-455.

USPS's business model, which was to provide universal postal service through self-supporting, business-like operations as an independent establishment of the executive branch, was not viable due to USPS's inability to reduce costs sufficiently to respond to continuing declines in mail volume and revenue. In particular, we identified strategies to reduce compensation and benefit costs, reduce other operations and network costs, improve efficiency, and generate revenues through product and pricing flexibility. We also stated that while USPS may be able to improve its financial viability if it took more aggressive action to reduce costs, it was unlikely that those actions alone would fully resolve USPS's problems unless Congress also took action.

Therefore, we stated that Congress should consider, among other things, any and all options available to reduce USPS's costs. While bills on these issues were introduced and in some cases passed congressional committees, postal reform legislation to address these considerations has not been enacted. In addition, in our most recent update to our High Risk List in 2019, we reiterated the basic elements of our 2010 matter for congressional consideration by stating that Congress should consider various options to better align USPS's costs with its revenues. We stated that Congress should consider addressing constraints and legal restrictions that limit USPS's ability to reduce costs and improve efficiency through considering a comprehensive package of legislative actions. To date, such a legislative package has not been enacted.

Furthermore, we reported in 2018 that the financial outlook for the Postal Service's Retiree Health Benefits Fund was poor, as USPS had not made any payments into it since 2010.[122] OPM then forecasted the fund would be depleted by 2030 if USPS continued to not make payments. Therefore, we stated that Congress should consider passing legislation to put postal retiree health benefits on a more sustainable financial footing. However, legislation has not yet been enacted to address this issue.

Conclusions

We have often reported over the past 10 years that USPS's ability to take actions taken under its current authority is insufficient to fully address its financial situation. Absent congressional action on critical foundational elements of the USPS business model, USPS's mission and financial

[122] GAO-18-602.

solvency are increasingly in peril. USPS's growing difficulties to provide universal postal service in a financially self-sustaining matter provide Congress with the need to consider fundamental reform of the entire framework of postal services in the United States. In so doing, we continue to believe that as we stated in 2010, Congress should consider any and all available options. Comprehensive postal reform has not taken place in part because of the difficulty in obtaining compromise among various stakeholders with divergent views. Comprehensive, effective, and successful reform cannot occur until there is leadership and clarity around:

- what services should be provided,
- whether USPS is to be fully financially self-sustaining or the extent of federal financial support, and
- what institutional structure best supports these changes.

Congressional leadership is critical in transforming USPS because consensus on policy decisions involving value judgments, trade-offs, and effects on postal stakeholders will be difficult to achieve. In addressing these issues, while all stakeholders' interests should be understood and taken into consideration, the fundamental needs of the nation must take precedence. Continued inaction will result in deepening financial problems—putting USPS's mission to provide universal postal service at greater risk and minimizing the ability to make the most appropriate or sustainable policy decisions.

Matters for Congressional Consideration

We are making the following three matters for congressional consideration:

Congress should consider reassessing and determining the level of universal postal service the nation requires. (Matter for Consideration 1)

Congress should consider determining the extent to which USPS should be financially self-sustaining and what changes to law would be appropriate to enable USPS to meet this goal. (Matter for Consideration 2)

Congress should consider determining the most appropriate institutional structure for USPS. (Matter for Consideration 3)

Agency Comments and Our Evaluation

We provided a draft of this report to USPS and PRC. USPS and PRC provided written responses which are reproduced in appendixes IV and V, respectively.

In its response, USPS concurred with our first two matters to reassess and determine the level of universal postal services the nation requires and to determine the extent to which USPS should be financially self-sustaining. USPS noted that the recent COVID-19 pandemic has both highlighted USPS's essential role in the nation's infrastructure and has caused a significant and sudden decline in mail volume, leading to a short-term liquidity crisis. USPS stated that while action by Congress is critical to ensure its ability to operate in the short-term, its financial situation has long been unsustainable due to statutory and regulatory structures that limit their ability to increase revenues and decrease costs. USPS noted that these changes require Congress to adopt reforms to secure USPS's long-term financial viability. In addition, USPS concurred with the National Bankruptcy Conference's legal analysis that Federal bankruptcy laws do not apply to USPS and that all roads for USPS restructuring lead back to Congress.

USPS generally agreed with our third matter, stating that determining the institutional structure could logically be a part of a comprehensive congressional examination of its business model. USPS stated that it does not believe that corporatization or privatization would unlock new efficiency potential in USPS and that sustainable postal service does not hinge on the provider's institutional form. However, as we and USPS have stated, its current legal and regulatory structure does not provide flexibility in some key areas. While our report states that a corporate or privatized institutional structure could provide both the flexibility and a greater incentive to operate in a more business-like manner than USPS's current structure, we also recognize there are advantages and disadvantages to any institutional structure. As a result, we are not recommending any particular institutional structure for USPS, but are urging that Congress identify what institutional structure could best deliver the level of postal services at the level of financial sustainability that Congress determines.

In its response, PRC agreed with all of our matters for congressional consideration. Particularly, PRC noted that the matter to reassess and determine the level of universal postal service the nation requires must be addressed as soon as possible. The PRC noted that given USPS's severe and worsening financial situation (even before the impacts of the current pandemic crisis), a clear and specific definition of universal postal service and how that obligation can be funded must be provided. The PRC stated that Congress may want to consider mandating that PRC define and update the universal service definition by regulation.

Both USPS and PRC provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Postmaster General, the Chairman of PRC, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or rectanusl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff making key contributions to this report are listed in appendix VI.

Lori Rectanus, Director
Physical Infrastructure Issues

Appendix I: Reprint of National Bankruptcy Conference's Report on U.S. Postal Service Bankruptcy Issues

NATIONAL BANKRUPTCY CONFERENCE REPORT

UNITED STATES POSTAL SERVICE RESTRUCTURING

October 29, 2019

This National Bankruptcy Conference[1] Report addresses whether and how the United States Postal Service ("**USPS**") might be able to use chapter 11 (corporate reorganization) or chapter 9 (adjustment of debts of a municipality) of the Bankruptcy Code or a similar process that Congress might create to address its obligations and achieve a sustainable future while meeting its service obligations. This Report examines the current statutory limitations on the use of any such process and what legislation might be needed to facilitate a restructuring in the manner achieved by major U.S. corporations and municipalities with significant borrowed money, pension, and retiree medical benefit liabilities, such as the airlines, steel manufacturers, and coal mining companies, the City of Detroit, and Puerto Rico (pending). The Conference prepared this Report at the request of the Government Accountability Office in connection with GAO's study of issues confronting USPS and potential solutions. Because of the short deadline under which the Conference prepared this Report, it does not purport to address all issues that might arise in connection with the matters addressed below, nor does it address the issues covered below in a comprehensive and conclusive manner. This Report does not address any of the operations questions likely to be raised in a full USPS restructuring. The Conference reserves the right to revise its analysis based on further research and consideration of the complex, difficult questions the request presented.

After an Executive Summary of our conclusions, this Report begins by describing in general terms the operation of chapter 11 (Reorganization) and chapter 9 (Adjustment of Debts of a Municipality) that might be relevant to a reorganization under a bankruptcy or bankruptcy-like process for USPS. It then reviews the USPS organization and structure and the major USPS obligations that might be subject to a restructuring. The Report next examines USPS's eligibility for chapter 11 and chapter 9, an alternative bankruptcy-like process for USPS, and the limitations on how chapter 11 or 9 or a bankruptcy-like process could affect USPS's principal obligations. Finally, this Report describes some recent experience with control boards for financially distressed governmental units.

The Conference has approached this Report fully aware that from USPS's beginning, USPS has played an important historical role in the creation of a national identity and in ensuring that all parts of the United States have been able to participate in the life of the country. In addition, the Conference provides its views strictly as an adviser to GAO, and through GAO, indirectly to Members of Congress, not as an adviser to or advocate for any of the many parties in interest who might be involved in a restructuring of USPS.

[1] *See* www.nbconf.org. A Fact Sheet describing the National Bankruptcy Conference and listing its members is attached to this Report.

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A. Executive Summary of Conclusions

USPS's major obligations arise out of statutory mandates for pension and employee and retiree health benefits. The statutory framework is complex and does not clearly address the consequences of USPS's failure to meet certain of its obligations, creating some uncertainty over who has claims against USPS and how they may be enforced. USPS's failure to meet many of those accrued obligations results in significant part from statutes that require specified levels of service, impose workforce expenses, and limit rates and the services USPS may provide, such that its revenues do not cover its current and accrued obligations. As experts in bankruptcy and reorganization, the Conference, through this Report, limits itself to the procedures and legal principles through which those problems could be addressed.

Subject to that limitation, the Conference believes:

- USPS is not eligible to become a debtor under either chapter 11 or chapter 9 of the Bankruptcy Code. Legislation would be required to make such a process available for USPS, but any such legislation should be tailored to the unique aspects of USPS, its role, and its obligations. Simply making USPS eligible for either chapter 11 or chapter 9 would pose legal challenges not adequately addressed by the current Bankruptcy Code.
- USPS's pension and employee and retiree health benefits obligations largely run to government-wide benefit funds within the U.S. Treasury, not directly to USPS employees and retirees. If USPS did not pay those obligations, other parts of the federal government would continue to have the obligation to pay current and former USPS employees, which would require either appropriations to cover the shortfall, additional contributions to the funds from other federal departments and agencies, or reduced benefits available to all civil service employees who are beneficiaries of those funds.
- The other significant USPS obligation is also to the U.S. Treasury under a loan in the current amount of approximately $13.2 billion. Any reduction or discharge of that obligation would affect the Treasury directly.
- Because USPS' pension and retiree medical obligations run to U.S. Treasury which in turn owes such obligations to USPS' employees and retirees and because the major obligations are imposed primarily by statute, not contract as is the case in most restructuring cases, and would continue to bind USPS after a reorganization, the bankruptcy process is not an effective or appropriate means to address the important issues associated with a potential restructuring of USPS, which should be addressed by Congress. The federal judiciary likely does not have the means to do so, and any attempts to address USPS's difficulties through the bankruptcy court process will likely be met with constitutional challenges.
- Finally, terminating or adjusting USPS's or the U.S. Treasury's obligations could raise complex constitutional issues. We raise these issues but do not attempt to analyze them in full.

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B. Chapter 11

Chapter 11 of the Bankruptcy Code enables a debtor to adjust or reorganize its pre-bankruptcy obligations such that on a going forward basis, it can meet both its restructured, adjusted obligations as well as its current operating and capital costs. As Congress explained in enacting chapter 11, "The purpose of a business reorganization case, unlike a liquidation case, is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders." H.R. Rep. No. 95-595, at 220 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6179. The courts have similarly recognized chapter 11's two primary purposes: (1) to preserve the business as a going concern where possible and (2) to maximize the value of the debtor's estate for the benefit of creditors and, if the entity is solvent, stockholders. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999) (noting that "the two recognized policies underlying Chapter 11" are "preserving going concerns and maximizing property available to satisfy creditors") (citing *Toibb v. Radloff*, 501 U.S. 157, 163 (1991)); *In re Am. Capital Equip., LLC*, 688 F.3d 145, 156-57 (3d Cir. 2012) (same).

A bankruptcy case under chapter 11 is typically initiated by the filing of a voluntary petition under 11 U.S.C. § 301. The entity filing for bankruptcy under chapter 11—known as the "debtor"—need not be insolvent to be eligible for chapter 11 relief. The filing of the petition creates a bankruptcy estate (11 U.S.C. § 541), which separates the debtor's prepetition and postpetition activities and brings the debtor under the control of the bankruptcy court in which the petition was filed. Bankruptcy judges are not Article III judges but instead serve in a unit of the district courts. 28 U.S.C. § 151. That distinction can raise important limits on what bankruptcy judges may do. *See Stern v. Marshall*, 564 U.S. 462 (2011).

Chapter 11 provides reorganizing debtors many tools to accomplish its purposes. The automatic stay, 11 U.S.C. § 362, prevents creditors from taking any act to collect a debt, continue litigation, or obtain or perfect a lien, to provide the debtor (and other creditors, whose interests would be impacted by other creditors' actions) with a breathing spell during which the debtor and its creditors can develop, negotiate, and obtain court approval (confirmation) of a plan. With court approval, the debtor may enter into transactions out of the ordinary course of the debtor's business, such as selling all or a material portion of the debtor's business or assets, 11 U.S.C. § 363(b); obtain postpetition (debtor in possession) financing, *id.* § 364; and assume or reject executory contracts or unexpired leases, *id.* § 365(a). Under section 365 of the Bankruptcy Code, a debtor has the ability to assume favorable contracts and leases (provided that the court concludes that the debtor is likely not to default in the future, *id.* § 365(b)) and to reject burdensome ones (but the counterparty is entitled to a damage claim arising from the rejection, which is treated as a pre-bankruptcy breach of the contract or lease). *Mission Prods. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (2019)).

To prevent one or more creditors from being preferred over others, a debtor can recover certain payments made before bankruptcy. *See generally* 11 U.S.C. §§ 544–550. The debtor may not pay pre-bankruptcy debts without court approval except under a confirmed chapter 11 plan. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017); *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004); 11 U.S.C. §§ 362, 363(b), 549.[2]

[2] A chapter 11 trustee or debtor in possession may recover preferences and fraudulent transfers from the U.S. Government because of the waiver of sovereign immunity in section 106 of the Bankruptcy Code.

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A reorganizing chapter 11 debtor may develop new product lines or raise prices to increase revenues, and it may sell new equity, issue warrants or other securities to raise capital to fund a reorganization plan. However, nothing in chapter 11 specifically authorizes such actions; they are the result of business planning and execution subject to applicable nonbankruptcy law and, in some cases, bankruptcy court approval.

The bankruptcy court has the limited role of approving or disapproving these matters. The bankruptcy court does not initiate any of these processes, and its approval is generally cabined by the business judgment doctrine, under which the court determines only whether the debtor's proposed action is a reasonable exercise of business judgment, *In re Curlew Valley Assoc.*, 14 B.R. 506 (Bankr. D. Utah 1981), or there is a good business reason for the transaction. *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). However, to reject a collective bargaining agreement, a debtor must comply with more stringent procedural and substantive requirements set forth in section 1113. Section 1114 imposes similar requirements for a debtor to modify or reject retiree medical benefits. Similarly, the court does not develop, negotiate, or propose a reorganization plan; that task is left to the debtor and its creditors and shareholders. *See* 11 U.S.C. § 1121.

The bankruptcy court also has limited authority in removing the debtor's management. When a debtor files a chapter 11 case, the debtor and its board remain in possession and control of its business and assets, with all the rights and powers of a bankruptcy trustee. 11 U.S.C. § 1107. The court may order the appointment of a trustee to oust the board and management only if the debtor is guilty of fraud, dishonesty, or gross mismanagement or if appointment would be in the best interest of creditors, shareholders, and other parties in interest. *Id.* § 1104(a). If the court so orders, the United States trustee, a Department of Justice official, selects and appoints the trustee. *Id.* § 1104(d).

Chapter 11 permits confirmation of a debt restructuring plan approved by creditors in the various classes of impaired claims under a statutory voting rule, as long as the plan provides equal treatment for all claims in the class and any nonaccepting creditors holding claims in the class receive at least as much as they would receive if the plan were not confirmed and the debtor were liquidated. 11 U.S.C. §§ 1123(a)(4), 1129(a)(7). If certain additional requirements are met, a court may confirm a plan even if one or more classes rejects it. *Id.*; § 1129(b). Importantly, while a plan will serve to reduce the amount of or adjust the amortization of debt, neither chapter 11nor chapter 9 provides a statutory means to create or enhance revenue: that depends solely on a debtor's ability to increase sales and control costs independently of the bankruptcy process and statute. And chapter 11 requires as a plan confirmation condition that "any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval." *Id.* § 1129(a)(6). Chapter 11 also imposes a feasibility requirement on confirmation: "confirmation is not likely to be followed by the liquidation, or need for further financial reorganization, of the debtor," unless the plan so provides. 11 U.S.C. § 1129(a)(11). Thus, the reorganized debtor should be able to operate free of any protections of the bankruptcy court and to meet the restructured obligations it assumes in the plan.

The panoply of claims a plan may adjust includes bond and institutional debt; trade debt; claims arising from rejection of contracts and leases, tort claims; judgments; lease obligations; and wages, medical benefits, and related legacy costs, such as pension and retiree medical obligations, among others. A chapter 11 plan may include the conversion of debt to equity, the sale of a subsidiary or division or even the whole business, or a merger or similar transaction. *See generally* 11 U.S.C. § 1123.

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Plan confirmation discharges a debtor from all "debts" and substitutes the obligations undertaken under the plan, such as restructured debt or equity securities. *See* 11 U.S.C. § 1141(d).[3] The Code defines "debt" as "liability on a claim," *id.* § 101(12). *See Pa. Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552 (1990). It defines "claim" as "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured" and includes an "equitable remedy for breach of performance if such breach gives rise to a right to payment." *Id.* § 101(5). The definition of "claim" is extremely broad. 2 COLLIER ON BANKRUPTCY ¶ 101.05 (16th ed. 2019). It includes liability arising from breach of a state statutory obligation. *Ohio v. Kovacs*, 469 U.S. 274 (1985).

However, the discharge extends only to claims that arise before confirmation. *Id.* § 1141(d)(1). The fact that an entity may have a claim that arises in the future does not mean that the entity has a claim on the date of the petition. For example, a person who might be injured in the future due to a manufacturing defect in a product made before bankruptcy does not have a prepetition claim if the person did not have a prepetition relationship with the debtor or the product. 2 COLLIER ON BANKRUPTCY ¶ 101.05 (16th ed. 2019), citing *Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135 (2d Cir. 2016) (future automobile injuries); *Epstein v. Official Comm. of Unsecured Creditors (In re Piper Aircraft Corp.), 58 F.3d* 1573 (11th Cir. 1995) (future aircraft injuries).[4] The discharge does not affect future claims, that is, rights to payment, whether statutory or contractual. As a result, a discharge does not release a reorganized debtor from statutory, regulatory, or other legal obligations that arise in the conduct of its business after confirmation.

Importantly, a chapter 11 debtor's owners pay a price for debt relief for their company: where the debtor's reorganization value is insufficient to satisfy all creditor claims in full, the company's owners—shareholders—typically receive nothing or their interests are diluted. Debt

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[3] The Code provides limited exceptions to discharge for a corporate debtor, none of which would apply to USPS. 11 U.S.C. § 1141(d)(6).

[4] Beyond that, the courts have not settled on a single test to determine when a claim arises, and this can be an important issue in a bankruptcy case depending on the underlying factual situation. As described by Collier on Bankruptcy:

> Despite the broad definition of claims as including contingent and unmatured claims, courts are divided on approaches to determining when a claim arises. Courts have adopted competing tests in the "conduct theory" or the "prepetition relationship theory."
>
> …
>
> Under the "conduct theory," a "claim arises at the time of the debtor's conduct giving rise to the alleged liability, rather than when the cause of action accrued." …
>
> Other courts have declined to adopt the conduct theory based on concerns about the applicability of the conduct test when a tortious act may have occurred prepetition, but the cause of action, including environmental clean-up costs, personal injury or product liability, may not arise until many years later, perhaps after the debtor has emerged from bankruptcy. These courts have instead adopted the "prepetition relationship theory," which recognizes that certain contingent claims are simply too remote to fall within the scope of the definition of a "claim" and therefore could not have arisen in connection with the debtor's conduct. Under this approach, there must be "some prepetition relationship, such as contact, exposure, impact, or privity, between the debtor's prepetition conduct and the claimant in order for the claimant to hold a § 101(5) claim."

8 COLLIER ON BANKRUPTCY ¶ 1141.05 (16th ed. 2019) (citations omitted).

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must be satisfied before equity. If debt is not paid in full or in agreed amounts, either new owners acquire the equity, previous owners recapitalize the business with new money, or the debt may be converted to equity in the reorganized company, and creditors become the new owners, often of a majority interest. If the debtor is even more deeply insolvent, junior classes of debt might also receive little or nothing on account of their claims. But because reorganizing firms often need new capital, existing shareholders can be an important source of that capital, and a new investment might allow them to retain an interest in the reorganized business. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434 (1999); *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939).

C. Chapter 9

In contrast to chapter 11, chapter 9 of the Bankruptcy Code is designed, first and foremost, to ensure that, by providing relief from unsustainable debt, a municipal debtor will be able to continue providing public services to the citizens it serves. *See In re City of Detroit*, 524 B.R. 147, 248 (Bankr. E.D. Mich. 2014) ("The primary purpose of debt restructuring for a municipality is not future profit, but rather continued provision of public services.") (quoting *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 34 (Bankr. D. Colo. 1999)); *In re Hardeman Cnty. Hosp. Dist.*, 540 B.R. 229, 237 (Bankr. N.D. Tex. 2015) (same; further noting that "the objective and purpose of Chapter 9 of the Bankruptcy Code … is to permit a financially distressed public entity to adjust its debts in light of the fact that it is an operating municipality, which, by its nature, is not subject to liquidation"). The Bankruptcy Code limits chapter 9 eligibility to a "municipality," which the Code defines as a "political subdivision or public agency or instrumentality of a State." 11 U.S.C. §§ 101(40), 109(c). Unlike a chapter 11 debtor, a municipality filing under chapter 9 must be insolvent. 11 U.S.C. §109(c)(3).

Out of deference to principles of State sovereignty, *see United States v. Bekins*, 304 U.S. 27 (1938); H.R. Rept. No. 95-595, 95th Cong., 1st Sess. 263 (1977),[5] the court's role in chapter 9 is considerably more circumscribed than in chapter 11. The bankruptcy court has no authority to interfere with a chapter 9 debtor's use of its property, exercise of its governmental powers, or day-to-day decision-making. *See* 11 U.S.C. § 904 ("Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—(1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor's use or enjoyment of any income-producing property."); *Financial Oversight Management Board v. Ad Hoc Committee of PREPA Bondholders*, 899 F.3d 13, 19 (1st Cir. 2018); *Ass'n of Retired Emps. v. City of Stockton (In re City of Stockton)*, 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012) ("In the overall construct, § 904 performs the role of the clean-up hitter in baseball. Its preambular language '[n]otwithstanding any power of the court, ... the court may not, by any stay, order, or decree, in the case or otherwise ...' is so comprehensive that it can only mean that a federal court can use no tool in its toolkit—no inherent authority power, no implied equitable power, no Bankruptcy Code § 105 power, no writ, no stay, no order—to interfere with a municipality regarding political or governmental powers, property or revenues, or use or enjoyment of income-producing property. As a practical matter, the § 904 restriction functions as an anti-injunction statute—and more.") (internal citations omitted); *Lyda v. City of Detroit (In re City of Detroit)*, 841 F.3d 684, 695-96 (6th

[5] *See generally*, Mayer, State Sovereignty, State Bankruptcy and a Reconsideration of Chapter 9, 85 AM. BANKR. L. J. 363, 370-71 (2011).

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Cir. 2016) (same); *In re City of Stockton*, 486 B.R. 194, 199 (Bankr. E.D. Cal. 2013) ("Hence, § 904 means that the City can expend its property and revenues during the chapter 9 case as it wishes. It can pay any debt in full without permission from this court. If it wishes to spend $55,000 settling a lawsuit, it is entitled to do so without needing a permission from this court; such permission would imply a power to disapprove and thereby to interfere with the City's property or revenues that would offend § 904."); *Prime Healthcare Mgmt., Inc. v. Valley Health Sys. (In re Valley Health Sys.)*, 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010) ("By virtue of § 904, a debtor in chapter 9 retains title to, possession of, and complete control over its property and its operations….").

As a result of these limitations, in a chapter 9 case, a municipal debtor is free to pay prepetition obligations in its discretion and sell assets without court approval or opportunity for stakeholder objections, because section 363 of the Bankruptcy Code—which governs the debtor's use, sale or lease of estate property in chapter 11 and requires court approval of asset sales, settlements and various other transactions—does not apply in chapter 9 cases. *See* 11 U.S.C. § 901(a) (excluding section 363 of the Bankruptcy Code from the sections made applicable in chapter 9 cases); *Stockton*, 478 B.R. at 20 ("[T]he Bankruptcy Code's restrictions on use, sale, or lease of property do not apply in chapter 9.") (citations omitted).

Additionally, as discussed further below, chapter 9 imposes no specialized restrictions on the rejection of collective bargaining agreements, or the modification or termination of retiree benefits, equivalent to those set forth in sections 1113 and 1114, respectively. *See* 11 U.S.C. § 901(a) (not including sections 1113 or 1114 among the sections applicable in chapter 9 cases).

Debts are adjusted in a variety of ways in a chapter 9 case, including extension of maturities or reduction of interest rates; payment of general unsecured claims at less than 100%, either as a lump sum or over time; rejection or consensual restructuring of burdensome leases and contracts, including collective bargaining agreements, and payment of the rejection damages at a discount (comparable in most cases to the discount imposed on holders of other general claims); compromising disputes; and restructuring long-term secured obligations (including adjusting term, amortization, pricing, principal amount, etc.).

Although some municipal debtors sell assets to fund a portion of their repayments to creditors, chapter 9 debtors typically use future cash flow to fund their adjusted obligations. A municipal debtor may raise taxes to fund its adjusted obligations, but the Bankruptcy Code does not give the court or the debtor the power to do so without compliance with otherwise applicable law. 11 U.S.C. § 943(b)(6). For example, in the City of Stockton, California and City of Vallejo, California, chapter 9 cases, voters approved sales tax measures that raised additional funds. In addition, subject to applicable state law, municipalities can sell nonessential realty, privatize certain governmental functions or, as was the case in the City of Detroit chapter 9 case, receive hundreds of millions of dollars in contributions from charitable foundations and the state government's contribution to the financing of its plan. And, as long as it has the financial ability to support it, the reorganized debtor can obtain new funding, generally by selling new bonds or entering into new financing leases. As in chapter 11, the Bankruptcy Code does not give the debtor or the court the authority to disregard applicable nonbankruptcy law in post-reorganization operations.

As in chapter 11, a court may confirm a chapter 9 plan of adjustment over the rejection by a minority of creditors in a class or even over the rejection by one or more classes of claims. In the former case, the confirmation requires that creditors' recoveries under the plan represent a reasonable effort to repay creditors over a reasonable period of time. 11 U.S.C. § 943(b)(7) ("the plan is in the best interest of creditors and is feasible); *In re City of Detroit*, 524 B.R. 147, 149–170

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(Bankr. E.D. Mich. 2014) (plan was in the best interest of creditors as a whole as it provided more than creditors could reasonably expect under the circumstances, the city had made reasonable efforts to monetize its assets, and the plan was a better alternative than dismissal); 6 COLLIER ON BANKRUPTCY ¶ 943.03[7][a] (16th ed. 2019). In the latter case, the plan must be "fair and equitable," 11 U.S.C. § 901(a) (making sections 1129(a)(8) and 1129(b) applicable in chapter 9 cases), which courts have construed to mean that the plan provides "all that can reasonably be expected under the circumstances. *See* 6 COLLIER ON BANKRUPTCY ¶ 843.03[1][f] (16th ed. 2019); *Franklin High Yield Tax–Free Income Fund v. City of Stockton (In re City of Stockton)*, 542 B.R. 261, 284-85 (9th Cir. BAP 2015). Like chapter 11, chapter 9 requires feasibility as a confirmation condition. 11 U.S.C. § 943(b)(7).

A chapter 11 debtor has a larger toolbox than a municipal chapter 9 debtor, because a chapter 9 plan may not include the conversion of debt to equity: creditors cannot become the "owners" of a municipality. And because chapter 9 is designed to preserve municipalities, chapter 9 plans generally do not provide for the sale of portions of the municipality or similar transactions.

D. USPS Structure and Obligations[6]

1. Statutory structure

USPS is an independent establishment of the executive branch of the U.S. Government established in 1971 by the 1970 Postal Reorganization Act. Pub. L. 91-375 ("**PRA**"). 39 U.S.C. § 201. In FY 2018, it had 497,157 career employees and 137,290 non-career employees.[7] Despite being an "establishment of the executive branch," USPS is not under the direct control of the executive branch. Instead, it is governed by a Board of Governors, consisting of independent Governors appointed by the President with the advice and consent of the Senate, the Postmaster General, who is selected by the independent Governors, and the Deputy Postmaster General, who is selected by the Governors and the Postmaster General. *See* 39 U.S.C. § 202. USPS also has some powers government agencies typically do not, such as the authority to issue debt, subject to a statutory limit, and to set rates, subject to the authority of Postal Regulatory Commission ("**PRC**"). *See* 39 U.S.C. § 501.

For nearly all its revenue,[8] USPS is structured to operate as a self-financing entity that covers its costs through the revenue it generates, primarily through the sale of postal products

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[6] A substantial portion of the information in this section has been provided by the Government Accountability Office. Our analysis is based on the descriptions in in this section, which has been supported to a degree by our own research. However, the Conference is not and does not purport to be knowledgeable or expert on USPS's statutory structure and obligations. Inaccuracy, if any, in the description in this section might affect our analysis, although the general bankruptcy principles we set forth and apply should apply similarly to a precise description of USPS's statutory structure and obligations.

[7] USPS, FY2018 Annual Report to Congress (Washington, D.C.: Dec. 2018). Under the PRA, the newly established U.S. Postal Service replaced the former United States Post Office Department, a Cabinet-level Department in the Executive Branch.

[8] USPS receives a small annual appropriation for its costs of providing (as required by statute, see 39 U.S.C. §§ 3401, 3403) free mailing to blind persons and overseas voters. For FY 2019, the appropriation for reimbursing USPS's costs incurred in providing these services was about $55 million. Consolidated Appropriations Act, 2019, Division D, Title V, Pub. L. No. 116-6 (2019). USPS has generally transacted its financial business through withdrawals from revolving funds (a form of permanent appropriation) established in the U.S. Treasury for the deposit of all USPS revenues, interest, appropriations, proceeds from borrowing,

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and services. In FY 2018, USPS reported total operating revenue of $70.6 billion, operating expenses of $74.4 billion, and a net loss from operations of $3.7 billion.[9] USPS's mail products (including both its market-dominant and competitive products)[10] accounted for about 99.2% of its FY 2018 revenues, and, according to USPS, its revenue continues to be pressured by the ongoing erosion of First-Class Mail volumes.[11]

Legislation constrains USPS's ability to increase its revenues to cover its operating expenses and liabilities. With some exceptions, USPS is prohibited from offering non-postal products. 39 U.S.C. § 404(e). Postal rates for its market-dominant products—a diminishing share of USPS's business—are capped at the rate of inflation and are regulated by the PRC. Rates for USPS's competitive products also are regulated by the PRC, 39 U.S.C. § 3622, although they are not subject to the rate cap.[12]

In addition, several statutory provisions impose on USPS what is commonly referred to as a "universal service obligation" ("**USO**"), which governs its operations:

- USPS "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." It is required to provide "prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities." 39 U.S.C. § 101(a).
- USPS must provide "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. § 101(b).
- USPS may not close small post offices solely for operating at a deficit, "it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." 39 U.S.C. § 101(b).

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and any other receipts from its operations. 39 U.S.C. §§ 2003, 2011. USPS is authorized to use monies from the USPS Fund to carry out its purposes, functions, and powers. *Id.*

[9] USPS, Fiscal Year 2018 Results (Washington, D.C.: Nov. 16, 2018); USPS, Fiscal Year 2018 Annual Report to Congress, https://about.usps.com/what/financials/annual-reports/fy2018.pdf.

[10] Market-dominant products are those over which USPS exercises sufficient market power to effectively set prices substantially above costs, "raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b). Market-dominant products include products covered by USPS's statutory monopoly to deliver letter mail. 39 U.S.C. § 3642(b)(2). Examples include First-Class Mail, USPS Marketing Mail (formerly called Standard Mail), Periodicals, and special services such as money orders, and delivery confirmation. *See* 39 U.S.C. § 3621. Competitive products are all other USPS products. 39 U.S.C. § 3642(b)(1). Examples include Priority Mail, Priority Mail Express (formerly Expedited Mail), and Bulk Parcel Post. 39 U.S.C. § 3631.

[11] USPS, Fiscal Year 2018 Annual Report to Congress, *supra* note 9.

[12] The PRC is required to issue regulations to: (1) prohibit the subsidization of USPS's competitive products by its market-dominant products; (2) ensure that each competitive product covers its direct and indirect attributable costs; and (3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of USPS's institutional costs. 39 U.S.C. § 3633(a). PRC is required to conduct a review every five years to determine whether this institutional costs contribution requirement should be retained, modified, or eliminated, which determination must consider, among other things, prevailing market-competitive conditions and the degree to which any costs are uniquely or disproportionately associated with any competitive products. *Id.* § 3633(b).

- Congress typically includes a provision in USPS annual appropriations act requiring delivery of mail 6 days a week. *See, e.g.*, Consolidated Appropriations Act, 2019, Division D, Title V, Pub. L. No. 116-6 (2019).

Most USPS employees are represented by a union, and most of those belong one of four principal unions (there are seven unions total that could represent USPS employees). USPS employees are roughly organized along occupation type and are also divided into "career" and "non-career" employees. Career employees are permanent and entitled to a full range of benefits (*e.g.*, health and retirement). USPS collectively bargains employee pay with the unions. If the parties fail to reach agreement, the issues are decided in binding arbitration. 39 U.S.C. § 1207(b), (c)(2).

2. Postal employee benefits programs

a. Pensions.

The PRA imposes a number of requirements related to the compensation and benefits of USPS officers, employees, and retirees. Some provisions are expressed as general policies regarding USPS compensation while others specify that particular programs and benefits covering the federal workforce shall apply to the USPS workforce. These provisions include the following:

- USPS must "achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector" of the U.S. economy. 39 U.S.C. § 101(c).
- "I]t shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy." 39 U.S.C. § 1003(a).
- Federal health benefit, pension, workers' compensation, life insurance and other programs shall apply to officers and employees of the USPS, and its employees are eligible to receive the same benefits as other federal employees. 39 U.S.C. § 1005(d), (f).
- "No variation, addition, or substitution with respect to fringe benefits shall result in a program of fringe benefits which on the whole is less favorable to the officers and employees than fringe benefits in effect on the effective date of this section …." PRA, Pub. L. No. 91-375 (1970), codified at 39 U.S.C. § 1005(f).[13]

By statute, federal employees, including USPS employees (andemployees of the former Post Office Department) participate in one of two federal retirement systems, the Civil Service Retirement System ("**CSRS**") for employees who first entered a covered position on or before December 31, 1984, and the Federal Employee Retirement System ("**FERS**") for employees who first entered a covered position on and after January 1, 1985.[14] FERS benefits comprise three

[13] We do not to address whether any of these provisions and other compensation and benefit provisions in other federal statutes are inconsistent with each other, andf, to the extent they are, we do not attempt to prioritize or otherwise reconcile these provisions among themselves or with other compensation-related provisions of the PRA.

[14] Statutory authority for CSRS and the FERS Basic Benefit is found in Title 5 U.S.C, chapters 83 and 84, respectively, and accompanying regulations, 5 C.F.R Part 831 [CSRS] and Part 841 [FERS]. The rules governing the TSP are also statutory and apply government-wide. In general, employees contribute a

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components: a Social Security base, a FERS Basic Benefit, and an individual account in the federal Thrift Savings Plan. CSRS and the FERS Basic Benefit are defined benefit plans that are considered separate components of a single fund, the Civil Service Retirement and Disability Fund ("**CSRDF**"), from which the benefits for both systems are paid. See 5 U.S.C. § 8348. The Office of Personnel Management ("**OPM**") administers CSRS and the FERS Basic Benefit. The Thrift Savings Plan ("**TSP**") is a defined contribution plan, which is administered by a separate Federal Retirement Thrift Investment Board. Eligibility, types of retirement and benefits (including survivor benefits), application procedures, claims determination and related administrative rules, and funding requirements for CSRS and the FERS Basic Benefit are spelled out in the statute and regulations. Eligibility and contribution rules for the TSP are also prescribed by statute.

Funding rules for both CSRS and the FERS Basic Benefit are set forth in Title 5 U.S.C and regulations. In general, employees contribute to both CSRS and FERS in percentages of pay rates specified by the statute and deducted bi-weekly from pay. 5 U.S.C. § 8334 [CSRS]; 5 U.S.C.§ 8422 [FERS]. The rules for agency and Postal Service contributions are also statutorily specified. For FERS, the Postal Service (along with other agencies) makes periodic, statutorily prescribed contributions designed to fund each year's normal cost. In addition, based upon a calculation of FERS unfunded liabilities as of an annual valuation date, OPM assesses supplemental liability contributions (representing amortized payments of unfunded liability shortfalls) for which the Postal Service is also liable (the U.S. Treasury funds other, non-Postal supplemental liability assessments). 5 U.S.C. § 8423. Under the 2006 Postal Accountability and Enhancement Act ("**PAEA**"), USPS's regular contributions to CSRS were discontinued due to a then-determined CSRS surplus. However, PAEA requires that, beginning in FY 2017, USPS make annual supplemental liability payments for amortized unfunded postal pension liabilities, if any, as determined by OPM for CSRS. 5 U.S.C. § 8348(h). *See generally*, GAO, U.S. Postal Service: Action Needed to Address Unfunded Benefit Liabilities, GAO-14-398T (Washington, D.C. March 13, 2014).[15] For FY 2018, USPS reported that it had been invoiced by OPM for 2017 and 2018 amortized supplemental liability payments due for CSRS and FERS in a total amount of approximately $5.1 billion. Citing liquidity concerns, USPS reported that it had not made those payments. According to USPS, OPM has estimated that, as of the close of FY 2018, the Postal Service's share of total unfunded liabilities for both CSRS and FERS is $43.5 billion, although this amount is subject to change as OPM updates its projections. USPS FY 2018 Form 10-K, at 30–31. USPS has also reported that, based on OPM's 2018 annual report for the CSRDF, its share of CSRS assets represent 58.8% of the total government-wide CSRS assets, its accumulated benefit obligations were 18.4% of the total government-wide accumulated benefit obligations, and Postal CSRS liability was 86.5% funded. For FERS, USPS reported that its FERS assets represented 18.4% of government-wide FERS assets, its accumulated benefit obligations represented 17.4% of the government-wide FERS obligations, and the Postal FERS liability was 87.7% funded. USPS Form 10-K, at 32.

As noted above, eligibility and coverage rules for CSRS and FERS are established by statute and set forth in Title 5 U.S.C. While employee and employer contributions are statutorily

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percentage of pay and, for the TSP portion of FERS, the federal employer makes matching contributions up to caps that are set out in the law. 5 U.S.C. § 8351.

[15] Pub. L. No. 109-435, § 802. *See* GAO, *U.S. USPS: Key Considerations for Restoring Fiscal Sustainability*, GAO 17-404T (Washington, D.C.: Feb. 7, 2017). A surplus in the USPS CSRS liability would be transferable to the Postal Retiree Health Benefit Fund. 5 U.S.C. § 8348(h)(2)(C),

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mandated in each system, no statutory provision requires that employer contributions are required as a condition of eligibility for benefits.[16]

b. Health Benefits: Federal Employees Health Benefits Program (FEHBP)

USPS and all other federal employees and retirees participate in the FEHBP established in 1960 by the Federal Employees Health Benefits Act, 5 U.S.C. §§ 8901-8914 ("**FEHBA**"). Under FEHBA, federal employees and retirees may join a wide variety of health plans, which offer benefits by contracting with OPM as health plan "carriers" in the FEHBP system. Eligibility for benefits, certain benefit coverage provisions and program-wide minimum standards for coverage and for health plans are set forth in FEHBA and regulations. *See* 5 U.S.C. §§ 8902, 8905; 5 C.F.R. Part 890. Under FEHBA, employees and federal employers share in the premium costs. Retirees who are eligible and choose to continue their coverage into retirement share premium costs with the federal government (and, in the case of Postal retirees, the Postal Service). The statutory formula for the premium split is expressed as a percentage of an annually-determined "weighted average" premium, which is calculated once OPM conducts annual rate negotiations with the health plans. *See* 5 U.S.C. § 8906. The federal employers pay 72% of the weighted average premium towards the cost of the monthly premium charged by the plan, which is capped at 75% of the plan's premium. The employee pays the balance. Through collective bargaining, USPS employees negotiated a lower employee premium share and higher USPS share (but still subject to the 75% cap) than the share paid by non-USPS employees and agencies. However, over time, the employee's percentage of the share has risen, and the difference between the Postal premium share for most of its collectively bargained career employees and the non-Postal employer share is now relatively small.[17] This negotiated split is not applicable to retirees. Premiums are paid to an Employee Health Benefits fund held at Treasury. 5 U.S.C. § 8909. The FEHBP health plans receive periodic payments from the Treasury fund attributable to their plan enrollment, from which they pay benefits. 48 C.F.R. § 1632.170.

PAEA required USPS to begin pre-funding its health benefits costs for current and future postal retirees. Under this mandate, USPS would fully fund the actuarial present value of its portion of the cost of future retiree health premiums attributable to past service for its current retirees and a portion of such future costs for current actives. PAEA mandated annual specified payments of between $5.4 billion to $5.8 billion for FY 2007 through 2016 and, thereafter, annual payments based upon actuarial determinations by OPM. (Congress subsequently reduced the scheduled amount owed for 2009 from $5.4 billion to $1.4 billion.) USPS's payments are made into the Postal Retiree Health Benefits Fund ("**RHB Fund**"). Pub. L. No. 109- 435, § 803 (2006). *See generally*, GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2018) The RHB Fund is also maintained at Treasury. Investments are made "in the same manner as investments for" the CSRSF. 5 U.S.C. § 8909a. In FY 2010, USPS made its required payment of $5.5 billion but has not made any required payments since then. In

[16] *See* Office of Legal Counsel, U.S. Department of Justice, "Whether Postal Employees Are Entitled To Receive Service Credit, For Purposes Of Their Retirement Annuity Under The Federal Employees' Retirement System, For Periods Of Employment During Which The United States Postal Service Has Not Made Its Required Employer Contributions," 2011 WL 7431070 (O.L.C.). See also 5 U.S.C.§ 8333(c) (setting forth requirements for deduction or payment of employee contributions for benefit eligibility).

[17] *See* https://www.opm.gov/healthcare-insurance/healthcare/plan-information/premiums/, which lists all of the health benefit plans available in 2019 and their premiums, showing Postal and non-Postal premium rates.

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accordance with PAEA, beginning in FY 2017, premiums for USPS's share of retiree health premium costs are paid from the RHB Fund, resulting in the Office of Personnel Management drawing down the RHB Fund balance. Pub. L. No. 109-435, § 803. As of the close of FY 2018, USPS reported that, due to liquidity concerns, it had not made a total of $42.67 billion in payments invoiced by OPM for the RHB Fund. OPM has estimated USPS's total underfunded liability for future projected retiree health benefits costs to be about $66.5 billion.[18]

Under PAEA, if the RHB Fund is depleted, USPS would then resume its pay-as-you-go retiree premiums.[19] Eligibility for retiree health benefits is not conditioned upon payment of the employer portion of the premium, so USPS retirees would continue to be eligible even if USPS stopped making premium payments. In that event, FEHBP health plans likely would be underpaid,[20] and Congress would have to address the consequences.[21]

c. *Labor-Management Relations*

USPS has extensive, detailed manuals for various aspects of its operations, one of which is an Employee and Labor Manual, which widely covers labor-management matters and is readily accessible on its website. USPS also has entered into collective bargaining agreements with the four labor unions that represent most of the organized workforce. USPS collective bargaining was established under the PRA. Except as modified by the PRA, the National Labor Relations Act governs labor-management relations (and, like other civil service employees, USPS employees are prohibited by law from engaging in strikes). If collective bargaining results in an impasse, the PRA provides for binding interest arbitration. 39 U.S.C. § 1207.

3. Other USPS Obligations

Like any large commercial enterprise, USPS also has certain identifiable commercial creditors, such as those relating to more than 31,000 USPS-managed postal retail facilities (post offices, branches, and stations),[22] most of which are leased,[23] as well as to mail processing facilities and other real property. There are thousands of trade creditors who supply everything from equipment and uniforms to parts for the approximately 208,000 mail delivery and collection

[18] GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2018) (reporting missed payments of $38.2 billion); USPS FY 2018 Form 10-K, p. 35.

[19] *See* 5 U.S.C. 8906(g)(2)(A) (providing that, after FY2016, Postal retiree premiums shall be paid first by the RHB Fund "up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service."). The RHB Fund had about $50 Billion at the end of 2017. OPM has estimated that, as of 2018, if there were no further payments, the Fund would last until 2030. Payments of $2 Billion per year would extend the Fund for another 5 years. GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2018).

[20] GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2018, p.9. The plans are credited with a "contingency" reserve for which the law permits certain uses. *See* 5 U.S.C. § 8909(b). However, in general, the plans may have limited options for addressing lower-than-expected premium payments from the FEHBP Fund.

[21] *Id.*

[22] https://about.usps.com/what/financials/annual-reports/fy2018.pdf, hard copy at 2.

[23] We understand that for some post offices, the General Services Administration is the lessee. We have not investigated the relationship between USPS and GSA to determine whether GSA would be treated as a creditor in a bankruptcy-like process, but the relationship suggests another instance in which the U.S. Government is the creditor for USPS's obligations.

vehicles and the numerous other vehicles owned and operated by USPS. At the close of FY 2018, USPS reported about $11.5 billion for various liabilities, including liabilities related to compensation and benefits, customer deposit accounts, and other noncurrent liabilities, and $13.2 billion in outstanding debt to the U.S. Treasury for borrowed money.[24] (USPS's maximum statutory borrowing authority is $15 billion. 39 U.S.C. § 2005.) In addition, USPS reported about $15 billion in estimated future actuarial liabilities for workers' compensation benefits at the end of Fiscal Year 2018, and about $1.4 billion in cash reimbursement costs.[25]

E. Chapters 9 and 11 Concepts as Applied to USPS

1. USPS Eligibility for Chapter 11 or Chapter 9

Under section 109(d) of the Bankruptcy Code, only a "person" is eligible to be a debtor under chapter 11, and only a "municipality" is eligible to be a debtor under chapter 9. The definition of "person" includes "corporation" but excludes "governmental unit;" 11 US.C. §§ 101(41); the definition of "municipality" includes only a political subdivision or public agencies or instrumentalities of a state. *Id.* § 101(40). The definition of "governmental unit" includes the United States and a department, agency, or instrumentality of the United States. *Id.* § 101(27). Under these definitions, USPS is not a "municipality" eligible to be a debtor under chapter 9. If USPS is a corporation, it would be eligible for chapter 11, but not if it is a department, agency, or instrumentality of the United States.

The legislative history to section 101 (27) makes clear that the Code defines governmental unit broadly, but that the relationship must be an active one in which the department, agency, or instrumentality is actually carrying out some governmental function. H.R. Rep. No. 95-595, 95th Cong, 1st Sess. 311 (1977). Courts have followed this intent, including as "governmental units" even entities the public might not regard as part of the government. For example, *TI Federal Credit Union v. DelBonis*, 72 F.3d 921, 937-38 (1st Cir. 1995), held a credit union was a governmental unit in the context of a student loan discharge exception, noting that Congress created credit unions to perform significant governmental purposes of "broadening the availability of credit in the United States [.]," to invest in governmental obligations, invest in securities and serve as fiscal agents of the United States and depositories for public funds. *Accord Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 211 (1921); *U.S. v. Michigan*, 851 F.2d 803, 806 (6th Cir. 1988) ("Federal credit unions also perform another, though somewhat less significant, federal function. Under 12 U.S.C. § 1767, federal credit unions are authorized to act as fiscal agents of the United States and as depositories of public money." (internal citation omitted)). *In re Northern Mariana Islands Retirement Fund*, 2012 WL 8654317 (D.C.N. Mariana Islands 2012), held a retirement fund was a governmental unit. *U.S. Trustee v. Hospital Authority of Charlton County (In re Hospital Authority of Charlton County)*, 2012 WL 2905796 (Bankr. S.D. Ga. 2012), held a hospital authority founded

[24] See USPS, *FY2018 Annual Report to Congress* (Washington, D.C.: Dec. 2018). USPS FY 2018 Form 10-K, at 9, 54

[25] USPS FY2018 Form 10-K, at 7, 54. Postal employees are covered by the Federal Employees Compensation Act, 5 U.S.C. §§ 81 et seq. ("**FECA**"); 39 U.S.C. § 1005(c). The Department of Labor ("**DOL**") administers the program, determines workers' compensation awards, and pays compensation and related medical benefits. DOL projects an actuarial liability for future FECA benefits for each agency based upon cases it has approved and certain incurred but not reported benefits. DOL also invoices the agencies each year for benefits it has paid out during the year and associated administrative costs. *See* U.,. Report # 22-19-003-004-431 (November 12, 2018), at 17-18.

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under Georgia law that authorized the authority's creation and operation was a governmental unit.

By contrast, focusing more on the degree of control the state exercises over the entity, *In re Lombard Pub. Facilities Corp.*, 579 B.R. 493 (Bankr. N.D. Ill. 2017), held a corporation formed by a village to finance and construct a convention center was not a municipality eligible for chapter 9: while generating and encouraging economic activity is worthwhile, it is not a core government function. *In re Las Vegas Monorail Co.*, 429 B.R. 770 (Bankr. D. Nev. 2010), held a privately financed monorail service was not a governmental unit, despite the strategic and regulatory control the state exercised over the entity. In that case, the entity had no powers typical of public agencies such as eminent domain, the taxing power, or sovereign immunity and did not directly perform a public function. *Ky. Employees Retirement Sys. v. Seven Counties Servs, Inc.*, 901 F.3d 718 (6th Cir. 2018), held an entity authorized by state law and designated by a state department to provide mental health services that received nearly all its funding from the state under contracts, not from direct appropriations, and had no governmental powers, such as eminent domain, sovereign immunity, or the taxing power was not a governmental unit.

USPS provides an essential governmental function specifically authorized by the Constitution. U.S. CONST. Art. I, Sec. 8, cl. 7. Although Congress has ceded direct control over USPS to the Board of Governors, the Governors are appointed by the President with the advice and consent of the Senate, as are Officers of the United States. *Id.* Art. II, sec. 2. An extensive legislative scheme governs postal service, including the universal service obligation, USPS rates, and the businesses USPS may conduct. Its employees are federal employees subject to the Civil Service law and the PRA, and, among other things, entitled to retirement and health benefits provided to federal government employees and retirees under programs administered by OPM. And the PRA specifically created USPS as an independent establishment of the Executive Branch of the government. 39 U.S.C. § 201. Although created as "independent," USPS was not created as a separate legal entity, such as the Pension Benefit Guarantee Corporation. 29 U.S.C. § 1302 ("There is established within the Department of Labor, a body corporate to be known as the Pension Benefit Guarantee Corporation."). And in other contexts, the Supreme Court has held USPS was not a "person" subject to the Sherman Act, but rather part of the Government, *USPS v. Flamingo*, 540 U.S. 736 (2004), or a "person" under the America Invents Act. *Return Mail, Inc. v. USPS*, 139 S. Ct. 1853 (2019).

Based on the current state of the law, it appears a court would likely hold that USPS is a governmental entity. As such, it would not be eligible for chapter 11. And because it is not an instrumentality or agency of a state, it would not be eligible for chapter 9. Therefore, new legislation would be required to make USPS eligible for either chapter 11 or chapter 9.

Whether such legislation would be well advised presents a different question. Chapter 11 is designed primarily for commercial enterprises that can enter into a variety of transactions prohibited to USPS, such as sale of the business as a going concern, merging with another company, issuing debt or equity to fund a restructuring, converting debt obligations into equity, adjusting compensation and benefits, or even liquidating if doing so would result in a better return for creditors. The statutory constraints on USPS would prevent it from taking full advantage of chapter 11, which likely would prevent adequate relief from its obligations. As we emphasized in our March 29, 2006 letter to members of the United States Senate, "sale of a debtor's business to generate cash to pay creditors, … a transfer of some or all of the ownership to creditors, or … a combination of these approaches [would not be] appropriate for the USPS, which provides an essential governmental function; it should not fall into private ownership

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based on the rulings of a bankruptcy court, rather than on considered public policy debate in and decision by Congress." Nat'l Bank. Conf. letter to Hon. Susan M. Collins et al., re H.R. 22 (Senate Version)—The Postal Accountability and Enhancement Act, at 2 (Mar. 29, 2006).[26] Also, legislation simply authorizing USPS to avail itself of the protections of chapter 11, which would of necessity permit the adjustment in a judicial process of statutory obligations would likely raise separation of powers concerns, as all legislative power is vested in Congress, not the judiciary. U.S. CONST., Art. I, sec. 1. While Congress may delegate to Executive Branch agencies authority to write regulations to implement legislation, *see generally Chevron U.S.A., Inc. v. Nat'l Res. Def. Council, Inc.*, 467 U.S. 837 (1984), it is unclear whether Congress could delegate to a federal court the authority to override existing statutes, nor, as the Conference emphasized in its 2006 letter, would such delegation be consistent with Congress's role and the democratic process.

Chapter 9 is designed for political subdivisions or instrumentalities of a State, but because of the State sovereignty concerns discussed above and more general concerns about democratic values, a court's powers are severely limited, and creditors' rights are more constrained than in chapter 11. Accordingly, chapter 9 would also not likely be a good fit for USPS as any effective restructuring would still require the USPS Board and Congress to address both the revenue and liability aspects of USPS's current fiscal situation. Such acts can be achieved, if the political will exists, without recourse to a court process.

Beyond questions of suitability and fit, if USPS is a component of the U.S. Government, constitutional constraints might prevent Congress from addressing its financial obligations through a bankruptcy-like process or using the Constitution's bankruptcy power. Although the Supreme Court has construed the bankruptcy power to extend to all matters involving the relation of a debtor to its creditors, *Continental Ill. Nat'l Bank & Tr. v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648 (1935), and has approved the use of the bankruptcy power to adjust the debts of public agencies and instrumentalities of a State, *U.S. v.Bekins*, 304 U.S. 27 (1938), it has never addressed the use of the bankruptcy power to adjust the debts of the federal government or a federal agency or instrumentality or even of a State. Historically, sovereign entities are protected from their creditors by sovereign immunity, obviating the need for any bankruptcy power to protect them from creditors. On the other hand, although PRA expressly provides that USPS is an "establishment of the Executive Branch," PRA's waiver of sovereign immunity and establishment of USPS as "independent" might persuade a court that USPS is in fact a separate instrumentality that is not part of the Government. If so, these constitutional constraints might not apply, and discharge of obligations through a bankruptcy-like process would be subject only to the same limitations that apply to commercial or municipal bankruptcies.

Even if sovereign immunity principles did not apply, constitutional limitations might prevent adjustment of governmental obligations without creditor consent. In certain circumstances, the federal government has been found to be liable for contractual breaches of its own obligations. *See U.S. v. Winstar Corp.*, 518 U.S. 839 (1996). And the Takings Clause, U.S. CONST., Amend. V (no taking without just compensation), might similarly restrict Congress' ability to "take" the claims owned by USPS creditors to rehabilitate USPS. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935); *U.S. v. Sec. Indus. Bank*, 459 U.S. 70 (1982); *Holt v. Henley*, 232 U.S. 637 (1914); *see Armstrong v. U.S.*, 364 U.S. 40 (1960) (effectively preventing lien enforcement was a taking). These cases involved liens, which are held to be property interests. The discharge of unsecured claims differs, on the theory that a claim against a debtor is not a

[26] http://nbconf.org/wp-content/uploads/2015/07/NBC-Letter-to-Senators-on-HR-22.pdf.

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property interest in the debtor, even though the claim itself is property. We do not express a view on whether a discharge of USPS unsecured obligations would constitute a taking; we raise the issue for consideration by constitutional scholars and because any consideration of a bankruptcy-like process for USPS should take into account the likelihood of a challenge on this ground.

Legislation that would permit a court to discharge or otherwise avoid USPS's obligations to make payments to the federal pension and retiree health funds in the future based on past or future employee services also raises constitutional separation of power questions of whether a court may void the application of a statute, even if Congress itself authorized the court to do so.[27] Delegation of statutory enforcement to the Executive Branch is less likely to raise separation of powers concerns. The courts might conclude that if Congress wishes to amend the USPS future pension and retiree health funding obligations, it must do so by legislation, not by delegation to another branch of government. These questions are beyond the particular expertise of the National Bankruptcy Conference. We raise them only for the appropriate constitutional experts to consider and, if necessary, address.

As an alternative to making USPS eligible to file under chapter 9, Congress could consider a hybrid statute that serves a similar purpose. For example, to address the financial distress of the Commonwealth of Puerto Rico, Congress recently enacted the Puerto Rico Oversight, Management, and Economic Stability Act ("**PROMESA**"), Pub. L. 114-187 (2016), which establishes a control board for the Commonwealth and authorizes a chapter 9-like process for the Commonwealth and its subdivisions and instrumentalities. It incorporates many of chapter 9's provisions and adds additional provisions specifically tailored to Puerto Rico's circumstances. However, even a specifically tailored process like PROMESA, incorporating specific provisions of the Bankruptcy Code for a USPS restructuring and adding others for problems unique to USPS could not adequately address the policy or constitutional issues noted above.

2. USPS's Obligations

Even enactment of a PROMESA-like statute for USPS likely would not provide the restructuring and debt relief the USPS might need. As noted above, bankruptcy restructuring and PROMESA permit reorganization by discharge of existing (or pre-confirmation) claims. They do not authorize a court to excuse future performance with on-going statutory obligations.

The largest claims that USPS would have to address in a bankruptcy or bankruptcy-like proceeding—pension and health benefit funding claims—are established by statute. USPS's funding obligation remains a statutory obligation under CSRS and FERS to CSRDF as ongoing retirement plans intended to be continued indefinitely. The benefits themselves should not be considered "claims" of the employees and retirees themselves, because the benefits are financial obligations of the CSRDF, paid from a single, commingled fund, not by USPS.

As discussed above, pension contribution obligations to CSRDF are allocated among federal departments and agencies and deposited under a combination of statutory and regulatory rules and OPM-supervised calculations. The unpaid supplemental liability contributions are likely "claims," i.e., "rights to payment," since USPS did not pay them when assessed, as the

[27] It might also set a statutory precedent for a super-discharge that might enable other debtors to use bankruptcy as a way to evade future statutory obligations, such as environmental liabilities or even taxes. Such an expansion of the discharge could likely occur only by amendment to the Bankruptcy Code, but bankruptcy courts (and their appellate courts) have occasionally taken concepts that are helpful to rehabilitation and reorganization and applied them as part of the common law of bankruptcy, without express statutory authorization.

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statute required. But the statute does not appear to specify the holder of the claim—the "creditor." The creditor could be OPM as administrator, on behalf of the Fund or on behalf of the Executive branch generally; or perhaps CSRDF, as a fund for the two government-wide systems, with contribution amounts allocated to the departments and agencies by OPM, could be considered at least the nominal creditor, and OPM as its administrator would likely act on CSRDF's behalf.

Regardless of who the creditor is, OPM's authority to agree to compromise these statutorily-mandated, unpaid supplemental liability obligations, whether in a bankruptcy-like process or otherwise, is unclear, since OPM is operating under a statutory regime that imposes those obligations and requires OPM to enforce them. Moreover, a negotiated resolution regarding either these claims could adversely affect CSRDF funding levels such that the financial contributions of other agencies or Treasury would need to rise once USPS's funding obligations are reduced to cover the retirement systems' obligations, through the CSRDF, to all federal retirees, thus creating not only a need to secure funding for CSRDF from an alternative source, but also a potentially disabling conflict for OPM.

Moreover, the unpaid amounts are not comparable to unpaid private sector pension plan contributions for plans that will be terminated under the pension insurance guaranty rules, where court-derived rules have developed regarding payment priorities applicable to unpaid pension contributions. Ultimately, absent a recognized "guarantor" for unpaid sums (such as the PBGC for private defined benefit plans) or statutory changes to the retirement benefits or funding mechanisms to mitigate the impact of foregone USPS contributions through some type of bankruptcy-like process, additional amounts would be required to meet the entire funding requirements for all beneficiaries of CSRS and FERS, not just for USPS retirees. The statutory foundation of the funding requirements present obstacles to applying bankruptcy discharge or restructuring rules. Only Congress can change the funding rules.

Similarly, USPS's participation in FEHBP is statutory. Its retiree health premium costs are based on a statutory premium formula; employees' premium shares are also statutory, although there is a collective bargaining component. Benefits are not within USPS's control, as employees and retirees select their health plans, and FEHBA and OPM set certain minimum standards for the plans. PAEA established retiree health pre-funding, with only a limited opportunity for challenge based upon analyses of OPM's calculations by the PRC. *See* 5 U.S.C. § 8909a. If the due and unpaid RHB contributions are "claims," OPM might serve as the nominal "creditor" for those claims on behalf of the RHB Fund based on its administrative role in FEHBP, but would likely confront the same challenges to changing or compromising the claims, beyond any actuarial adjustments already within their authority,[28] as it would in compromising the amounts due to the CSRDF. Moreover, OPM has no authority to restrict the retirees' eligibility or the general plan selection process, which are established by statute, and there seems to be agreement that non-payment does not affect retirees' entitlement to benefits.[29]

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[28] The PRC, through its Actuary, has the authority to review the OPM RHB calculations. In one recent report, while finding that certain reviewed assumptions were within professional standards, the Actuary recommended that certain data be viewed for updated postal-only trends to determine whether postal-specific data would produce different projected cost estimates. Report to the Postal Regulatory Commission, Retiree Health Benefit Fund Liability Examination (August 2018).

[29] *See* GAO, *Postal Retiree Health Benefits: Unsustainable Finances Need to Be Addressed*, GAO-18-602 (Washington, D.C.: Aug. 31, 2018).

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Chapter 11 or chapter 9 could enable USPS to reject burdensome contracts and leases and to pay prepetition trade creditors and vendors at a discount (assuming resolution of any constitutional infirmities discussed above). However, because the overwhelming majority of USPS current and future obligations, such as the retiree health and pension pre-funding, would not be subject to adjustment in chapter 11 or chapter 9, the use of bankruptcy to reduce only the contract, lease, and vendor debt would be of questionable utility, particularly in light of the expenses of a chapter 11 or chapter 9 case. Such a limited restructuring also might fail chapter 11's feasibility test if the statutory scheme were not amended by Congress to prevent a repeat of the current situation USPS is experiencing with respect to future employee and retiree benefit funding obligations.

Assuming that legislation would make USPS eligible for a bankruptcy-like process, it could take advantage of the tools discussed above. For example, it could pay vendor and other unsecured claims at a discount from future cash flow, from the sale of real property or equipment or from appropriations from Congress. Legislation creating a bankruptcy-like process would have to modify a number chapter 11's tools, perhaps following the paths taken in 11 U.S.C. § 901(a) for chapter 9 and 48 U.S.C. § 2161(14) for PROMESA, respectively. For example, (i) only USPS should be authorized to initiate the process and propose a reorganization plan; creditors should not be permitted to take control of the case; (ii) provisions providing for theappointment of and enumeration of the duties of a trustee or examiner should not apply; (iii) provisions governing if and under what circumstances the court could terminate the process and dismiss the case would have to be developed; (iv) the plan confirmation standards would have to take account of the inability to liquidate USPS as a going concern; (v) perhaps most important, the legislation would have to determine the extent to which, if any, the court could have direct oversight of the operations of USPS, as in a chapter 11 case, or very limited oversight, as in a chapter 9 case.

F. Control Boards

In chapter 11, the courts are limited in their power to displace corporate management; in chapter 9, the court is prohibited from doing so. However, federal or state governments have enacted legislation displacing or restricting management of insolvent governmental entities subject to their laws. For example, New York imposed a control board on New York City in the 1970s, and Michigan imposed an "Emergency Manager" on the City of Detroit in 2013. The federal government imposed control boards on the District of Columbia and Puerto Rico. Governmental insolvencies, including those referred to above, usually result from inadequate budgeting and financial reporting that contribute to unsustainable spending (often enabled by unrepayable bond issuances) in the face of inadequate revenues. Control boards generally operate outside the political process that creates pressure to increase spending and reduce taxes. They can address both those issues and impose financial reporting, budgeting, and fiscal discipline.

By contrast, USPS operates under strict federal accounting and budgetary scrutiny. USPS insolvency results from statutory limitations imposed through the political process (rather than through business and financial process, as would be the case for a strictly commercial enterprise). USPS' ability to increase revenues is limited by federal law, which establishes a regulatory system to govern the rates it can charge for the postal service it already provides and limits the non-postal businesses in which it may engage. USPS's ability to cut expenses is limited by federal law requiring postal service for every region and regulating employee compensation and benefit levels. USPS incurred solvency-threatening funding obligations with respect to pension and retiree medical liabilities because federal law (rather than contractual obligations, as in the commercial context) required USPS to do so, while limiting USPS's revenue-generating capabilities.

Congress could impose a control board on USPS, separate from the existing Board of Governors. In section 201 of PROMESA, Congress created the Puerto Rico Financial Oversight & Management Board ("**FOMB**") with the duty and power to certify a "Fiscal Plan." Although Congress created FOMB based on its powers under the Constitution's Territories Clause, U.S. CONST. Art. IV, sec. 3; 48 U.S.C. § 2121(b), Congress could create a control board for USPS under its Constitutional authority over postal service, U.S. CONST., Art. I, sec. 8, cl. 7, as it has done in creating the Board of Governors and the Postal Rate Commission.

A control board could facilitate the restructuring of USPS, but for reasons different from those motivating the displacement the management of insolvent governments in the above-mentioned cases, because restructuring USPS operations and obligations requires re-examination of legislation. Congress could empower a USPS control board to implement that re-examination by serving as the focal point for negotiations among USPS' labor unions with respect to current wages and benefits and future pension and retiree medical benefits, USPS retirees with respect to retiree medical benefits, commercial creditors such as suppliers and landlords, the Postal Rate Commission and USPS customers with respect to rates, and private businesses seeking a shield from unfair competition with USPS in non-postal services.

Experience with Puerto Rico and chapter 9 shows that a control board with access to a bankruptcy or bankruptcy-like process that allows grouping similarly-situated claimants into classes and provides or recognizes negotiating representatives for the classes and a voting process can achieve debt restructuring on a more-or-less consensual basis. However, application of that experience to USPS is complicated by the different nature of USPS, which is tied to the Executive Branch itself, and the significant statutory obligations that have resulted in most of USPS's liabilities. Since USPS's obligations appear to be to fund the federal government's obligations for postal pensions and retiree medical benefits, rather than to provide benefits directly to USPS employees and retirees, the federal government, through CSRDF and FEHBP, appears to be directly liable to employees and retirees for those benefits.

However, a control board cannot legislate. In legislation creating a USPS control board, Congress could give it the authority to commence a chapter 11-like process for USPS and provide that a USPS restructuring plan may restructure postal pensions and retiree medical obligations of the federal government, overriding any existing federal law guaranteeing such pensions upon the effective date of the plan. Or Congress could delegate authority to make rules, which is a time-consuming process, governing future employment expenses, service obligations, and rates, but would itself have to amend the statutes that currently impose USPS's unmanageable obligations and the restrictions on services and rates to provide the space for rule-making. Or, as described above, Congress could authorize a board to consult and negotiate with the parties described above, seek to arrive at a consensual resolution, and recommend legislation to Congress. Under any of those alternatives, a control board could not impose a discharge or release of accrued obligations, as a bankruptcy court does, without the consent of the creditors. Moreover, the Board of Governors already has general supervisory authority over USPS finances and strategic vision, operates by law with a "public interest" component, and is somewhat independent from USPS management and from the political process as a control board would likely be. It is not clear why the Board could not serve the function of a control board without the need to establish yet another body to address USPS's finances and sustainability. We believe these limits as well as the

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existence of the independent Board of Governors makes a control board a less advantageous alternative than in other governmental restructurings.

If Congress were determined to establish a control board for USPS or to vest the Board of Governors with increased powers comparable to those of a control board, the Puerto Rico and Detroit experiences contain an important lesson for a USPS control board: a control board is only as effective as the power granted to it. FOMB's 2019 Fiscal Plan forecasts increased revenues and decreased expenditures from a combination of statutory reforms, tax reforms, and caps on health care expenditure growth. Several components are inconsistent with existing Territorial legislation, which Congress did not grant FOMB the power to override, thus limiting the FOMB's effectiveness. By contrast, the State of Michigan was not so constrained in granting the City of Detroit emergency manager near-plenary authority over these kinds of matters for a city wholly within the State's control.

A control board's effectiveness at restructuring USPS's current operations would also depend on the extent to which the legislation creating it specifically repeals or modifies existing statutes to allow the control board to optimize USPS operations, whether by raising rates without PRC approval, expanding the services USPS could offer, or addressing USPS's universal and six-day service obligations, all matters that have been strictly within Congress' purview and tight control. To address compensation and benefits burdens, Congress might also have to change the scope of collective bargaining, the statutes making USPS employees and retirees subject to the same benefits regime as other civil service employees, and the operation of FEHBP. For example, should current statutes providing retirement and health benefit programs to all federal civil service employees and retirees be amended to apply separately to USPS employees and retirees, under a different legal structure that would allow for control by the parties over participation rules and benefit levels? If so, how would a transition work, e.g., would transition occur before or after the overall restructuring process, and how would the current funds, CSRDF and FEHBP, be divided between USPS and non-USPS employees and retirees? Also, how would authority be delegated to representative groups of currently non-organized interested parties, such as USPS retirees in the pension systems and in FEHBP and employees not already represented by labor organizations, to engage in a negotiation process such as we have described? These are not the sorts of questions a bankruptcy court is either authorized or equipped to address and would likely exceed the authority that could be delegated to a control board.

G. Concluding Thoughts

In any bankruptcy-like process, whether chapter 11, chapter 9, or PROMESA, restructurings are the product of intense negotiations among the interested groups, usually resulting in an overall agreement that a court approves, making it binding on all parties in interest or occasionally in court orders imposing some elements of a restructuring on one or more nonconsenting groups in compliance with statutory standards. Although negotiations among interested groups and bankruptcy court orders may restructure accrued obligations, they may not override or amend statutes that apply to post-reorganization operations and obligations. Many USPS operational challenges and burdensome obligations arise from statutory mandates that could not be swept away in a court-centered process: separation of powers issues suggest Congress may not authorize courts to amend statutes.

Therefore, creating a bankruptcy-like settlement structure for USPS would require Congress to repeal the applicability of all the statutes that currently constrain USPS's operations, revenues, and expenses, leaving their replacement to a negotiation among the interested groups

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or at least prescribe standards to govern a court's discretion. It is unclear whether Congress would be willing to remove any limits on these constraints and delegate to a court the authority to approve any deal the groups might reach or to impose a solution for an essential government function without Congressionally-defined parameters. Such parameters would be the product of a similar negotiation process among interested groups, with Congress, rather than a court, approving the resolution and making it binding on all parties.

In short, although the bankruptcy process and bankruptcy tools raise interesting ideas for restructuring USPS's existing and future obligations, we believe that all roads for doing so lead back to Congress.

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Appendix II: Selected Legal Requirements Applicable to the U.S. Postal Service (USPS)

Citation(s)	Legal requirements
Geographic scope of service 39 U.S.C. §§ 101(a), 403(a)	USPS is required to provide prompt, reliable, and efficient services to patrons in all areas, render postal services to all communities, and serve as nearly as practicable the entire population of the United States. USPS is specifically required to receive, transmit, and deliver written and printed matter, parcels, and like matter throughout the United States, its territories and possessions, and pursuant to certain agreements, throughout the world.
Degree of service and post office closings 39 U.S.C. §§ 101(b), 404(d); 39 C.F.R. § 241.3	USPS is required to provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office can be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities. Statutory and regulatory requirements specify the process and criteria for post office closings, including appellate review by the Postal Regulatory Commission (PRC).
Mail delivery quality and frequency 39 U.S.C. § 101(e),(f); see, e.g., Pub. L. 116-6, 133 Stat. 180 (2019)	In determining all policies for postal services, USPS is required to give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. In selecting modes of transportation, USPS is required to give the highest consideration to the prompt and economical delivery of all mail. For many years, provisions in annual appropriations acts have stated “[t]hat 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level.”
Service standards 39 U.S.C. § 3691, 39 C.F.R. Pt. 121	USPS is required to establish modern service standards for each market-dominant product (e.g., delivery of First-Class Mail within the continental United States in 2-3 delivery days); these service standards are defined in the Code of Federal Regulations.
Letter mail monopoly 18 U.S.C. §§ 1693-99; 39 U.S.C. §§ 601-06	USPS’s letter delivery monopoly is codified in criminal and civil laws known as the Private Express Statutes. These laws generally prohibit anyone from establishing, operating, or using a private company to carry letters for compensation on regular trips or at stated periods over postal routes or between places where mail regularly is carried.
Mailbox monopoly 18 U.S.C. § 1725	Restricts access to mailboxes by prohibiting anyone from knowingly and willingly placing mailable matter without postage in any mailbox, providing USPS exclusive access to mailboxes.
Collective bargaining 39 U.S.C. §§1004,1206-07	USPS negotiates collective bargaining agreements with its labor unions. If the parties are unable to reach an agreement, binding arbitration by a third-party panel will ultimately be used to establish agreement. USPS is also required to consult with postal supervisory and managerial organizations concerning changes in pay, benefits, and other programs that affect their membership.

Citation(s)	Legal requirements
Benefit programs 39 U.S.C. § 1005; 5 U.S.C. §§ 8348(h), 8423, 8909a	USPS is required to participate in federal pension and health benefit programs, with specific provisions regarding the required level of USPS's funding of these programs. For example, USPS is required to prefund both postal pension benefits and postal retiree health benefits, each with payments that fully cover USPS's share of future benefit costs.
Level of benefits 39 U.S.C. § 1005(f)	The law requires USPS's fringe benefits to be at least as favorable as those in effect when the Postal Reorganization Act of 1970 was enacted, unless variation of benefits is collectively bargained.
Comparability 39 U.S.C. §§ 101(c), 1003(a)	Compensation for USPS officers and employees is required to be comparable to the rates and types of compensation paid in the private sector of the U.S. economy. USPS policy also is required to maintain compensation and benefits for all officers and employees on a standard of comparability to comparable levels of work in the private sector.
Workers' compensation 39 U.S.C. § 1005(c)	USPS is required to participate in the federal workers' compensation program, which covers postal and other federal employees and provides compensation to federal employees, as well as dependents, in the event of an employee's death.
Access to facilities 39 U.S.C. § 403(b)	USPS is required to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.
Appropriations restrictions See, e.g., Pub. L. 116-6, 133 Stat. 180 (2019)	Generally, annual appropriations prohibit USPS from using funding to consolidate or close small rural or other small post offices.
Processing/logistics facilities Pub. L. 109–435 § 302(c)(5), (2006), 120 Stat. 3219, codified at 39 U.S.C. § 3691 note	The law requires USPS to provide public information and opportunities for public input and comment before closing or consolidating any mail processing or logistics facilities, and take comments into account when making a final decision.
Price cap 39 U.S.C. § 3622(d)	An inflation-based price cap generally limits rate increases for market-dominant products, including First-Class Mail, USPS Marketing Mail, Periodicals and Package Services such as Bound Printed Matter, Media Mail, and Library Mail.
PRC review 39 U.S.C. §§ 501, 3661, 3622	The PRC, an independent establishment of the executive branch, must review USPS proposals to change domestic postal rates and fees.
Advisory opinions 39 U.S.C. § 3661	Whenever USPS proposes a change in the nature of postal services that will have an effect on a substantially nationwide basis, it must request an advisory opinion from the PRC on the proposal.
Debt limits 39 U.S.C. § 2005	USPS has the authority to borrow up to $15 billion from the U.S. Treasury. The annual net increase of obligations for capital improvements and defraying operating expenses is limited to $3 billion.
Restriction on nonpostal lines of business 39 U.S.C. §§ 404(e), 102(5)	USPS is limited to providing nonpostal services to those offered as of January 1, 2006 that PRC has authorized USPS to continue. Nonpostal service is defined to mean any service that is not a postal service. A postal service is defined as the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other function ancillary thereto.
Investment of postal retiree funds 5 U.S.C. §§ 8348(c), 8909a(c)	Funds set aside for postal pensions and retiree health benefits are required by law to be invested in U.S. Treasury securities.

Sources: GAO analysis of selected statutes and regulations. | GAO-20-385

Note: GAO identified the selected legal requirements based on past GAO work. Additionally, USPS is not subject to many federal laws that other federal agencies may be subject to dealing with public or federal contracts, property, works, officers, employees, budgets, or funds. 39 U.S.C. § 410(a). However, USPS is required to comply with specific laws that relate to federal purchases of products and services, such as the Davis-Bacon Act. Under the Davis-Bacon Act, USPS's contracts for public buildings and public works in a given local area worth more than $2,000 must require the contractors involved to pay all the laborers and mechanics they employ on those contracts the prevailing wage for that area, as calculated by the U.S. Department of Labor. See 40 U.S.C. §§ 3141-3147; 39 U.S.C. § 410(b)(4)(A).

Appendix III: U.S. Postal Service Financial Information for Fiscal Years 1972 through 2019

Fiscal year	Net income (loss): dollars in millions	Total revenues: dollars in millions	Total expenses: dollars in millions	Debt: dollars in millions
1972	$-175	$9,354	$9,529	$250
1973	-13	9,931	9,944	250
1974	-438	10,875	11,314	765
1975	-989	11,662	12,650	1,783
1976	-1,176	12,915	14,090	3,030
1976 TQ[a]	15	3,462	3,446	3,530
1977	-688	14,842	15,530	2,468
1978	-379	16,031	16,410	2,405
1979	470	18,174	17,705	1,888
1980	-306	19,253	19,559	1,841
1981	-588	21,874	22,462	1,608
1982	802	23,727	22,925	1,536
1983	616	24,789	24,173	1,464
1984	117	26,557	26,440	1,465
1985	-251	29,016	29,267	2,075
1986	305	31,135	30,830	3,234
1987	-223	32,505	32,728	4,728
1988	-597	35,939	36,536	5,880
1989	61	38,920	38,859	6,476
1990	-874	40,075	40,948	6,971
1991	-1,469	44,202	45,671	8,440
1992	-537	47,105	47,642	9,924
1993	-1,765	47,986	49,751	9,748
1994	-914	49,577	50,490	8,988
1995	1,770	54,509	52,739	7,280
1996	1,567	56,544	54,977	5,919
1997	1,264	58,331	57,067	5,872

Fiscal year	Net income (loss): dollars in millions	Total revenues: dollars in millions	Total expenses: dollars in millions	Debt: dollars in millions
1998	550	60,116	59,566	6,421
1999	363	62,755	62,392	6,917
2000	-199	64,581	64,780	9,316
2001	-1,680	65,869	67,549	11,315
2002	-676	66,688	67,364	11,115
2003	3,868	68,764	64,896	7,273
2004	3,065	69,029	65,964	1,800
2005	1,445	69,993	68,548	0
2006	900	72,817	71,917	2,100
2007	-5,142	74,973	80,115	4,200
2008	-2,806	74,968	77,774	7,200
2009	-3,794	68,116	71,910	10,200
2010	-8,505	67,077	75,582	12,000
2011	-5,067	65,739	70,806	13,000
2012	-15,906	65,248	81,154	15,000
2013	-4,977	67,342	72,319	15,000
2014	-5,508	67,854	73,362	15,000
2015	-5,060	68,951	74,011	15,000
2016	-5,591	71,530	77,121	15,000
2017	-2,742	69,694	72,436	15,000
2018	-3,913	70,783	74,696	13,200
2019	-8,813	71,306	80,119	11,200

Source: U.S. Postal Service reports. | GAO-20-385

[a]1976 TQ represents transition quarter, a period beginning July 1, 1976, and ending September 30, 1976. In a change taking effect October 1, 1976, the U.S. government changed its fiscal year from a period ending June 30 to a period beginning each October 1 and ending the following September 30.

Appendix IV: Comments from the U.S. Postal Service

THOMAS J. MARSHALL
GENERAL COUNSEL
AND EXECUTIVE VICE PRESIDENT

UNITED STATES POSTAL SERVICE

April 17, 2020

Lori Rectanus
Director, Physical Infrastructure Issues
Government Accountability Office

RE: U.S. Postal Service: Congressional Action to Enable a Sustainable Business Model Is Essential (Draft Report No. GAO-20-385)

Dear Ms. Rectanus:

On behalf of the United States Postal Service, this letter responds to your invitation to comment on the draft of the Government Accountability Office's (GAO's) audit report number GAO-20-385, which was transmitted to us for review on March 12.

Following the receipt of your draft report, the onset of the Coronavirus Disease 2019 (COVID-19) pandemic has had profound impacts both on the Nation, and the Postal Service. The pandemic has demonstrated the vital nature of the public services that the Postal Service performs, as Americans are being asked to shelter in place and to work from home. We operate by statute as a "basic and fundamental service" provided by the Federal Government to the American people, and the continued provision of postal services is designated as an essential function of the Government during times of emergency pursuant to the framework of the National Continuity Policy. The postal sector is also part of the nation's critical infrastructure. Every day, the men and women of the Postal Service accept, process, transport, and deliver vital mail and packages to all communities in the Nation, including important governmental information and benefits such as Census materials, social security checks, and materials advising the public on COVID-19; materials relating to elections, including ballots and political mail; materials that are essential to the functioning of our economy, such as transactional mail; and packages containing vital necessities, including medicines and other goods that sustain us that are purchased online.

While the criticality of the services the Postal Service provides has never been more evident, and we are committed to continuing to fulfill our universal service mission, the pandemic has also had drastic impacts on our financial condition. We have experienced significant and sudden declines in mail volume and revenue due to the pandemic. The result is a liquidity crisis that requires immediate action by Congress to ensure our continued ability to operate in the near term.

While short-term action by Congress is critical, the Postal Service's financial situation has long been unsustainable due to a combination of declining mail volumes and an inflexible statutory and regulatory structure that limits our ability to reduce costs and increase revenue. Therefore, Congress must also adopt financial and/or structural reforms to our business model, in order to ensure the Postal Service's long-term financial viability, as discussed in your report. As discussed below, we generally concur with your discussion of the structural challenges facing the Postal Service and the general policy options for addressing them, albeit with some clarifications.

As an initial matter, we concur with the National Bankruptcy Conference's thorough legal analysis, which concludes that the Federal bankruptcy laws do not apply to the Postal Service as an entity of the Federal Government. We further agree that attempting to apply a bankruptcy-like legal process meaningfully to the Postal Service would face significant legal hurdles, given that the central flaws in

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- 2 -

our business model derive from statute. In this regard, bankruptcy is a process to address outstanding debts, not significant future liabilities caused by statutory obligations. To place the Postal Service on a sustainable footing requires not only addressing our unpaid past liabilities, but also, more fundamentally, reform of statutorily determined aspects of our business model. Therefore, as the National Bankruptcy Conference and GAO note (e.g., at page 36 of the draft report), "all roads for [restructuring the Postal Service's existing and future obligations] lead back to Congress."

The essential policy issues for Congress can be boiled down to two questions: what does Congress want the Postal Service to do, and how should those mandates be paid for? The former question requires Congress to consider, in particular, the level of universal postal service that is appropriate to meet the evolving needs of the American people (which is particularly important to consider in times like these), and the compensation and benefits structure that should apply to the men and women who provide that essential, fundamental service. The latter question requires Congress to consider how the costs incurred by the Postal Service should be funded, whether through the sale of postal products and services, taxpayer appropriations, or other sources.

Over the past decade, the Postal Service has aggressively pursued opportunities within its control to reduce costs and sustain revenue, some of which are discussed in your report. Yet those opportunities remain insufficient to close the current gap between our costs and revenues. The Postal Service has therefore advocated for financial and structural reforms to our business model to rebalance costs and revenue, and to sustain that balance going forward, by giving the Postal Service greater pricing and product flexibility and greater ability to reduce costs.

The central aspect of our proposal has been to rationalize our post-retirement benefits structure by ensuring that our retiree health benefits program is appropriately integrated with Medicare. As your report notes (on page 13 of the draft), most companies do not offer retiree health benefits, and the number that do has declined over time. What is not specifically mentioned in your report is that, for the minority of employers that do continue to offer a retiree health benefits program, the universal practice is to integrate that program with Medicare. Doing so would wipe out most of the Postal Service's remaining retiree health benefits prefunding liability. While Medicare integration would shift some cost to Medicare, the increase would be very small when considering the Medicare program as a whole: it would increase Medicare spending by a small fraction of one percent. In addition, other options regarding our retirement benefits would not require taxpayer support, such as changes in liability calculation methods and diversified investment of fund assets.

Beyond these policy issues, GAO also recommends that Congress consider whether to retain the Postal Service's status as an independent establishment, or to adopt a different institutional structure. We agree with GAO that this topic could logically be part of a comprehensive examination of the Postal Service's business model by Congress. We understand the purpose of the GAO report is to not make any specific recommendations to Congress in this regard, but simply to lay out the various theoretical and practical effects of various possible institutional forms; our feedback on this matter was offered in the same spirit, and as a part of your intellectual exercise. Ultimately, Congress, with input from our Board of Governors and other interested stakeholders, would need to determine whether changing the Postal Service's institutional structure is necessary or appropriate to ensure the continued provision of prompt, reliable, and efficient universal postal services to the American people.

Given Congress's constitutional responsibility over postal services and the critical nature of the postal system to the functioning of the American economy and society, particularly in times like these, Congress would have to address the basic policy questions noted above regardless of whether the Postal Service remains an independent establishment or were recast in some other form. For example, even where foreign postal operators have been privatized, they remain – uniquely among letter and package delivery providers in their countries – legally obligated to provide universal service under statutory and regulatory conditions that constrain their autonomy over rates and costs. In those countries, privatization processes have involved legislative decisions about service levels, revenue diversification, labor and employment laws, ratemaking authority, governmental assumption of costs (e.g., pension liabilities in Germany and the United Kingdom, as well as operation of the post office network in the United Kingdom), and other taxpayer support (e.g., tax exemptions in various countries, and £ 1.1 billion in appropriated modernization funding in the United Kingdom). The draft report notes that the same was true of the privatization of Conrail in this country. And even established private automobile manufacturers and airlines have required Federal assistance and legal reforms in order to continue operating, pursuant to Congress's determination of the critical role of those industries in the American economy.

Hence, the core motivation of a sustainable postal service for the nation does not hinge on the provider's institutional form. Rather, that motivation – and the attendant legislative support – should apply so long as Congress deems postal services necessary to the nation's current and future needs. That said, it bears noting, when assessing how institutional form can affect institutional incentives, that a Government entity will necessarily prioritize the achievement of its service mission set forth in statute, while a privatized entity would have obligations to its shareholders.

At the same time, it should also be noted that (contrary to pages 34-35 of the draft report), institutional form in itself is not determinative regarding efficiency incentives. Although an independent establishment of the Executive Branch rather than a Government or private corporation, the Postal Service has long been recognized as at the forefront of postal operators – ahead of several cited in the draft report – in terms of operating efficiency. Many of the efficiency gains achieved by corporatized and privatized foreign postal operators in recent years essentially represent efforts to catch up to what the Postal Service has already done for decades (e.g., worksharing and automated delivery-point sequencing) or to keep pace with recent changes that the Postal Service began implementing before them (e.g., consolidation of its processing network and introduction of two-tier wage schedules). For example, the Postal Service was the first postal operator in the world to automate delivery sequencing (Royal Mail and La Poste followed more than a decade later). A change in institutional form is therefore clearly unnecessary to incent the Postal Service to be efficient.

In that regard, and particularly considering the highly competitive nature of the marketplace in which we operate for all of our products, we consider the drive to operate efficiently to be a part of the DNA of the Postal Service, and that would remain an inherent part of our culture irrespective of our institutional form. For that reason, we do not believe corporatization or privatization would somehow unlock new efficiency potential that the Postal Service purportedly lacks under the current structure; only reform in the laws governing Postal Service's cost structure can do that, and they would do so whether or not the Postal Service remains an independent establishment. Finally, for the reasons noted above, we also do not believe that a change in our status to a more typical federal agency that is more reliant on appropriations would result in disincentives for us to be efficient.
Thank you once again for providing us with the opportunity to comment. We would be pleased to assist your office with further information or discussion of this matter if you believe it would be helpful.

Sincerely,

Thomas J. Marshall

Attachment

cc: Corporate Audit & Response Management
Ms. Haring
Ms. Simmons

Appendix V: Comments from the Postal Regulatory Commission

POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Chairman

April 2, 2020

Ms. Lori Rectanus
Director, Physical Infrastructure Issues
Government Accountability Office
441 G St NW, Rm 2492
Washington, D.C. 20548-0002

Dear Ms. Rectanus:

Thank you for the opportunity to review and provide comments on the Government Accountability Office's (GAO) draft report entitled U.S. Postal Service: Congressional Action to Enable a Sustainable Business Model is Essential (GAO-20-385). The Commission commends the GAO for an excellent evaluation of the fundamental postal public policy issues confronting our Nation. Indeed, the report's recommended matters require immediate congressional consideration.

In particular, the GAO's first matter for congressional consideration – "*Congress should consider reassessing and determining the level of universal postal service the nation requires*" – must be addressed as soon as possible. Given the Postal Service's severe and worsening financial situation – even before the impacts of the current pandemic crisis – we as a nation must provide a clear and specific definition of universal service to meet our fellow citizens' postal needs and how that obligation can be funded. The PRC has recommended this to Congress on many occasions, including in its most recent statutorily mandated report of legislative recommendations to Congress and the President. (*See*: https://www.prc.gov/sites/default/files/reports/Section%20701%20rpt.pdf)

As a result of statutory mandates in the Postal Accountability & Enhancement Act of 2006, the Commission has extensive experience evaluating the matter of the Postal Service's universal service obligation. The Commission was tasked with providing a comprehensive report on universal service and the postal monopolies to the President and Congress. (*See*: https://www.prc.gov/docs/61/61628/USO%20Report.pdf) The Commission identified seven specific attributes that comprise universal service, but noted that unlike most other industrialized nations, the U.S. has rarely established specific standards of minimally acceptable service for its citizens. In addition, in its required *Annual Report to the President and Congress*, the Commission estimates the annual cost to the Postal Service of providing universal service. The current estimate is

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more than $5.2 billion and continues to grow. (*See*: https://www.prc.gov/sites/default/files/reports/FY2019_Annual%20Report.pdf)

Given the Commission's independence and expertise in this area, Congress may want to consider mandating that the Commission define and update the universal service definition by regulation. Congress undertook a similar approach in the Telecommunications Act of 1996 when it mandated that an independent regulatory agency – the Federal Communications Commission – define and update universal service under specific criteria that Congress included in the Act. A similar approach could work in the postal context for Congress with a mandate to the Commission. The universal service obligation is the basic mission statement for the U.S. Postal Service as a government entity. As confirmed by GAO's own evaluation, clarity of mission for our national treasure of the Postal Service should be job one, and therefore Congress should consider reassessing and determining the level of universal postal service the nation requires.

On behalf of the entire Commission, thank you again for the opportunity to review and comment on an excellent and timely report that deserves immediate attention by the Congress. We are providing minor technical suggestions separately.

With best wishes, I am

Sincerely yours,

Robert G. Taub
Chairman

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Lori Rectanus, (202) 512-2834 or rectanusl@gao.gov.

Staff Acknowledgments

In addition to the individual named above, Derrick Collins (Assistant Director); Greg Hanna (Analyst-in-Charge); Amy Abramowitz; Kenneth John; Hannah Laufe; Serena Lo; Michael Mgebroff; Joshua Ormond; Joshua Parr; Susan Sawtelle; Crystal Wesco; and Laurel Voloder made key contributions to this report.

Appendix VII: Accessible Data

Data Tables

Accessible Data for Total U.S. Postal Service's (USPS) Unfunded Liabilities and Debt, Fiscal Years 2007 through 2019

Fiscal Year	Unfunded liabilities for pension benefits	Unfunded benefits for retiree health benefits	Worker's compensation liabilities	Outstanding debt	Other liabilities
2007	0	55	7.8	4.2	12.7
2008	2.5	53.5	8	7.2	12.5
2009	0.4	52	10.1	10.2	13.2
2010	0	48.6	12.6	12	13.6
2011	15.2	46.2	15.1	13	14.2
2012	17.9	47.8	17.6	15	13.7
2013	17.9	48.3	17.2	15	12.5
2014	23	48.9	18.4	15	12.5
2015	20.5	54.8	18.8	15	12.5
2016	42.2	52.119	20.039	15	11.767
2017	41.3	62.247	17.91	15	11.895
2018	47.3	66.5	16.409	13.2	11.524
2019	49.9	69.4	18.529	11	12.046

Accessible Data for Figure 2: Total U.S. Postal Service's (USPS) Unfunded Liabilities and Debt, Fiscal Years 2007 through 2019

Fiscal Year	Unfunded liabilities for pension benefits	Unfunded benefits for retiree health benefits	Worker's compensation liabilities	Outstanding debt	Other liabilities
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2014	23	48.9	18.4	15	12.5
2015	20.5	54.8	18.8	15	12.5
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Agency Comment Letters

Accessible Text for Appendix IV Comments from the U.S. Postal Service

Page 1

April 17, 2020

Lori Rectanus

Director, Physical Infrastructure Issues Government Accountability Office

RE: U.S. Postal Service: Congressional Action to Enable a Sustainable Business Model Is Essential (Draft Report No. GAO-20-385)

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Given Congress's constitutional responsibility over postal services and the critical nature of the postal system to the functioning of the American economy and society, particularly in times like these, Congress would have to address the basic policy questions noted above regardless of whether the Postal Service remains an independent establishment or were recast in some other form. For example, even where foreign postal operators have been privatized, they remain - uniquely among letter and package delivery providers in their countries - legally obligated to provide universal service under statutory and regulatory conditions that constrain their autonomy over rates and costs. In those countries, privatization processes have involved legislative decisions about

Page 3

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Sincerely,

Thomas J. Marshall

Attachment

cc: Corporate Audit & Response Management

Ms. Haring

Ms. Simmons

Accessible Text for Appendix V Comments from the Postal Regulatory Commission

Page 1

April 2, 2020

Ms. Lori Rectanus

Director, Physical Infrastructure Issues Government Accountability Office

441 G St NW, Rm 2492

Washington, D.C. 20548-0002

Dear Ms. Rectanus:

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Page 2

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On behalf of the entire Commission, thank you again for the opportunity to review and comment on an excellent and timely report that deserves immediate attention by the Congress. We are providing minor technical suggestions separately.

With best wishes, I am

Sincerely yours,

Robert G. Taub

Chairman

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