

THE 21ST CENTURY POSTAL SERVICE ACT OF 2011

Section-by-Section Summary

Section 1 – Short Title

Section 1 establishes the title of the legislation as the “21st Century Postal Service Act of 2011.”

Section 2 – Table of Contents

Section 2 sets forth the table of contents for the four titles in the Act.

Title I: Postal Workforce Matters

Section 101–Treatment of surplus contributions to Federal Employees Retirement System (FERS)

This section requires a calculation of the FERS overpayment (currently estimated to be \$6.9 billion) and directs this overpayment to be transferred to the Postal Service to be used for buyouts (up to the existing cap for federal workers of \$25,000 for any one individual) or additional service credits under section 102. If there are additional funds remaining, these may be used by the Postal Service for other items such as repaying debt, worker’s compensation payments, paying down the retiree health liability and pension obligations.

Section 102 – Additional service credit

This section allows the Postal Service (through OPM) to offer up to one year of credited service for individuals in the Civil Service Retirement System (CSRS) pension system and up to two years for individuals in FERS as an incentive to encourage retirement.

Section 103 – Medicare coverage for Postal Service Medicare eligible annuitants

This section directs the Postal Service to a) require Medicare-eligible retirees to enroll in Medicare Parts A and B; b) work with OPM to develop Medigap-like plans that offer comparable benefits within the Federal Employee Health Benefits program for postal retirees and their dependents.

Section 104 – Restructuring of payments for retiree health benefits

This section would restructure the Postal Services’ pre-funded retirement health payments. The bill would immediately begin a 40 year amortized payment schedule for the Postal Service is to fund retirees’ health benefits. It would also reduce the pre-fund goal to 80%. The bill also allows the amount of these payments to be reduced if the Postmaster General and postal union representatives are able to reach consensus on a health plan that significantly reduces this liability. The Postal Service and its unions would have until September 2012 to negotiate a health plan which could be part of the existing Federal Employee Health Benefit (FEHB) plan or a separate USPS plan. The bill would also require any retirees eligible for Medicare who are not

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enrolled in Parts A and B to enroll and directs the Postal Service to work with OPM to develop Medigap-like plans (with the same benefit level that employees receive under the current system) within FEHB for postal retirees and their dependants.

Section 105 – Postal Service Health Benefits Program

This section would authorize the Postal Service to enter into negotiations with all of its employee unions for the purpose of developing a potential new Postal Service health care plan outside the Federal Employee Health Benefit Plan. The new Postal Service Health Benefits Program would only be implemented if all the unions and the Postal Service agree.

Section 106 – Arbitration

This section would require that arbitrators deciding a contract dispute between the Postal Service and labor organizations to take into consideration the following factors when rendering a binding decision: 1) the financial condition of the Postal Service; 2) the requirement in law that USPS consider comparability of wages and benefits to those offered to federal workers and 3) the policies of title 39, the section of the U.S. Code that deals with all matters of postal law.

Title II: Postal Services and Operations

Section 201 – Processing Facilities

This section requires certain steps before the closure of a processing facility:

- 1) A complete and published study that includes the feasibility of downsizing rather than closing the facility;
- 2) A 45 days public comment period after publishing the study;
- 3) A 30 day period for the Postal Service to consider and respond to certain factors, culminating with the publication of a justification on its web site, which shall include:
 - a. Responses to public comments;
 - b. The effect of closure on the affected community, including disproportionate impact on a State, region or locality;
 - c. The change in travel times and distances for affected customers;
 - d. The change in delivery times for all classes of mail;
 - e. Geographical factors such as remoteness, weather related factors, and broadband availability;
 - f. Any other appropriate factors.

Fifteen days after the publication on the USPS web site of the closure justification, USPS may close the processing facility.

Section 202 – Additional Postal Service planning

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This section requires the Postal Service to consider how its plans to increase the use of alternate retail might increase customers' access to the Postal Service. Current law requires the Postal Service to report annually on its efforts to change and streamline its network of processing and retail facilities. One aspect of the required report involves a discussion of the Postal Service's plans to expand the use of retail alternatives to post offices. This section builds on that report. It also requires any plans to replace post offices with alternate retail: 1) consider the impact on small communities and rural areas; 2) ensure that the Postal Service continues to serve small communities and rural areas after the implementation of the plan; and 3) allow for the solicitation of community input.

Section 203 – Area and District Offices

This section requires the Postal to develop and update every five years a strategic plan for how to consolidate area and district offices and create related efficiencies. Consistent with this plan, this section also requires the Postal Service to consolidate district offices located within 50 miles of each other, to consolidate those area and district offices that have less than the mean mail volume and number of work hours for all area and district offices and relocate area offices to headquarters.

Section 204 – Retail service standards

This section requires the Postal Service to develop a set of service standards that would guarantee its customers a certain level of access to retail services, whether at a post office or some alternative to a post office, taking into consideration the following: 1) the universal service obligation; 2) the retail alternative plan under section 202; 3) population factors that may affect customers' ability to access services, such as age/disability status; 4) the feasibility of offering retail access to services; and 5) the existing requirement that the Postal Service serve remote areas and communities with transportation challenges, including inclement weather, and other conditions that could impede access to services. Customers who believe that the Postal Service has failed to provide them or their community with a level of service consistent with the standard would be permitted to file a complaint with the Postal Regulatory Commission.

Section 205 – Conversion of Door Delivery Points

This section authorizes, no later than 2015, the conversion of door delivery points to curbside, sidewalk, or centralized delivery points. This section provides certain exceptions to the use of this authority, including physical hardship of a customer, weather conditions in a geographical area (such as snow plows burying street mailboxes), street parking in urban areas that obstructs access to curbside mailboxes, or "other exceptional circumstances." This section also requires the Postal Service to report to Congress and the Postal Inspector General on its progress in carrying out this section.

Section 206 – Limitations on Changes to Mail Delivery Schedule

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This section would prohibit the Postal Service from implementing its plan to eliminate Saturday delivery for at least two years. The implementation could only move forward if the following conditions are met: 1) the Postal Service identifies customers who may be affected disproportionately by five-day delivery and develops remedies; 2) the Postal Service makes full use of its authorities under current law and the new authorities and mandates included in this bill to increase revenue and reduce costs; and 3) after implementing all other savings options, the Postal Service determines that a five-day schedule is still necessary to achieve sustainability. Once that decision is made, and demonstrated through careful financial analysis, the Government Accountability Office (GAO) would review the Postal Service's financial situation, projections, and the adequacy of the savings initiatives already implemented in order to determine whether the implementation of five-day delivery is financially necessary. The Postal Service would not be able to implement a five-day schedule unless GAO has made a determination that doing so is necessary.

This section specifies that where five-day delivery is implemented, there can be no more than two consecutive days without mail (e.g., on holiday weekends). The section also clarifies that the bill does not authorize further reductions in the delivery schedule for areas that may already have less than six-day delivery, nor any changes to the schedules for post offices, post office boxes, and mail acceptance.

Section 207 – Time Limits for Consideration of Service Changes

This section establishes a default timeline of 90 days for advisory opinions to be issued by the PRC if an alternate schedule is not mutually agreed upon between the PRC and the USPS. Subsequent to the issuance of the opinion, the Postal Service would not be permitted to act on the a proposed service change until 30 days after it has formally responded to the opinion and any recommendations it might include.

Section 208 - Public Procedures for Significant Changes to Mailing Specifications

This section requires the Postal Service to provide at least 30 days notice of any proposed changes to mailing specifications not reviewed by the Postal Regulatory Commission, and to receive and respond to public comments on the changes. The section further requires the Postal Service to analyze the financial impact of the proposed change on the Postal Service and its customers.

Section 209 – Nonpostal Products and Services

This section would allow USPS to offer a nonpostal product or service only if the Postal Regulatory Commission has determined that the offering of this product/service meets all of the following criteria:

- 1) It utilizes USPS's processing, transportation, delivery, retail network, or technology;

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- 2) It is consistent with the public interest and a demonstrated demand for the Postal Service to provide this new product or service rather than or in addition to another entity;
- 3) It does not abuse the Postal Service's monopoly status nor create unfair competition with the private sector;
- 4) It is justified by a market analysis that has been conducted by USPS and submitted to Congress and the PRC that demonstrates the potential to improve the financial position of the postal service.

The PRC must designate any new product or service that meets the above criteria under an existing mailing product classification: market-dominant, competitive, or experimental. Classification of the product would allow it to be regulated in the same manner as existing postal products and services.

Title III: Federal Employees' Compensation Act

Section 301 – Short Title and References

The name of this title is the “Workers’ Compensation Reform Act of 2011.” The section also explains that all citations are in reference to Title 5 unless otherwise noted.

Section 302 – Federal Workers’ Compensation Reforms for Retirement Age Employees

This section, in combination with section 303 changes the workers compensation benefits structure for each of two categories: future enrollees and current enrollees.

For new enrollees (after enactment), upon reaching the age of full retirement as defined in the Social Security Act, wage-loss compensation is reduced to 50 percent of the individual’s salary at the time of injury.

For current beneficiaries, wage-loss compensation is different for different groups:

- 1) Those who are permanently, totally disabled and unable to return to work: no change in benefits (“grandfathered”). This group is defined as those who are classified by the program as “totally disabled” and also meet one of the following criteria:
 - a. Lost the use of two appendages (e.g. arms/legs);
 - b. Receiving custodial home nursing care or full nursing home care for at least a year prior to enactment;
 - c. Receiving “total disability” wage-loss compensation level for at least three years prior to enactment or will have been done so within the first three years after enactment.
- 2) Those who do not qualify as permanently totally disabled and are under the age of retirement: when they reach the age of retirement, wage-loss compensation shall be 50 percent of the individual’s salary at time of injury;

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- 3) Those who do not qualify as permanently totally disabled but who are already at the age of retirement: starting three years after enactment, wage-loss compensation shall be 66 2/3 of salary at time of injury (as described in section 303), and will not change thereafter.

Section 303 – Augmented Compensation for Dependents

This section eliminates the additional compensation in current law for beneficiaries who have dependents. By setting compensation at 66 2/3, this section brings the program in line with 39 of 50 state programs (who offer 66 2/3 percent of salary or less). An exception to this elimination is preserved for the “grandfathered” group as described in section 302.

Section 304 – “Schedule Compensation Payments”

This section allows workers’ compensation beneficiaries to receive “schedule compensation payments” if their benefits are reduced under sections 302 or 303, at the time of such reduction. (Schedule compensation payments are specific payments authorized under existing law for certain injuries, such as loss of use of a limb.) Under current law, an injured individual is not eligible to receive a schedule compensation payment for an injury in addition to and simultaneously with benefits for total or partial disability.

Section 305 – Vocational Rehabilitation

This section:

- a) Changes current law to allow existing vocational rehabilitation opportunities for injured workers who are not permanently disabled;
- b) Expands current authority (which allows the vocational rehabilitation program to pay a non-federal employer the salary of a beneficiary) to allow the payment of salary to a federal agency that employs the beneficiary;
- c) Makes compliance with the Return to Work plan developed between the program and the beneficiary a condition of receiving continued benefits (though this condition shall not apply to beneficiaries who are over the age of retirement).

Section 306 – Reporting Requirements

This section requires the Secretary to require beneficiaries to report any outside income they receive to the Department of Labor.

Section 307 – Disability Management Review; Independent Medical Examinations

This section requires an independent medical assessment of disability and potential for return to work for beneficiaries after six months into the program, and on a regularly scheduled basis thereafter (no less frequently than every three years). Further, the Secretary of Labor shall

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approve a request by a beneficiary's employing agency that a second medical opinion be obtained.

Section 308 – Waiting Period

This section extends the three-day waiting period (immediately after a work-related injury) before benefits apply to all beneficiaries that, under current law, only applies to postal beneficiaries. The provision would permit the use of sick leave, annual leave or leave without pay for the waiting period. There are exceptions to this waiting period applied retroactively if the injury or condition is severe, such as traumatic brain injury, or asbestos-related lung cancer.

Section 309 – Election of Benefits

This section prevents an injured worker from retroactively claiming workers compensation benefits after having declined such benefits in favor of federal retirement benefits. This provision would minimize the opportunity for a claimant to elect federal retirement benefits as a means of avoiding required participation in vocational rehabilitation or acceptance of an offered suitable job and then later retroactively electing the potentially more generous workers compensation benefits.

Section 310 – Sanctions for Non-Cooperation with Nurses

This section suspends benefits when an injured worker fails to cooperate with the Office of Workers' Compensation Program's (OWCP) nurse program.

Section 311 – Subrogation of Continuation of Pay

This section allows the U.S. to recover "continuation of pay" (i.e., salary that's continued to be paid to the beneficiary during the period between the injury and the initiation of full workers' compensation benefits) from third parties that are liable for the beneficiary's work-related injury.

Section 312 – Social Security Earnings Information

This section requires the Social Security Administration, upon written request, to provide income earnings information to the Department of Labor for workers' compensation beneficiaries, both living and deceased. This would help prevent fraud.

Section 313 – Amount of Compensation

This section increases the amount an injured worker receives for a severe disfigurement of the face, head or neck from \$3,500 to \$50,000 maximum. This section also increases the amount allowed to reimburse funeral expenses incurred due to a death from a work-related injury from \$800 to a maximum of \$6,000. These limits of the current law have not been significantly changed since 1949.

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Section 314 - Technical Amendments

This section contains a number of technical amendments to Title V so that all the citations referenced in the bill reflect the law as it has been amended over time.

Section 315 – Regulations

This section requires the Labor Department to issue regulation to carry out the legislation.

Title IV: Other Matters

Section 401 – Profitability Plan

This section requires the Postal Service to submit to Congress within 90 days of enactment a plan detailing how it will become profitable by fiscal year 2015 and achieve long term financial solvency. The plan must take into consideration the Postal Services' current authorities, the authorities given to it under this bill, cost savings that will be achieved through negotiations with employees of the Postal Service, and projected changes in mail volume. The plan must also be updated each quarter until the last quarter of fiscal year 2015.

Section 402 – Postal rates

This section requires the Postal Regulatory Commission, not earlier than two years after enactment, to commence a study regarding: (1) the extent to which any market-dominant classes, products, or types of mail services do not bear their attributable costs; and (2) the impact of any excess mail processing, transportation, or delivery capacity of the Postal Service on the costs attributable to any class that bears less than 100 percent of the costs attributable to such classes, products, or types of mail service. The Commission must also hold a public hearing before completing the study. At the conclusion of this study, for certain classes deemed by the PRC to recover less than 90 percent of costs, the Postmaster General may increase rates for such class(es) by no more than 2 percent a year above the current rate increase until such time as the class is covering 90 percent of its costs.

Section 403 – Cooperation with State and Local Governments

This section allows the Postal Service to work with state and local governments to provide government services (such as fishing licenses or tax forms) in post offices as it currently does with federal agencies.

Section 404 – Shipping of Wine and Beer

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This section amends Title 18 and would allow the Postal Service to ship wine and beer (which private carriers such as FedEx and UPS already do), sent by a licensed winery or brewery in accordance with the laws of the state to which the items are addressed and received. The section would further require that the Postal Service issue regulations providing that wine and beer is mailed directly to a person who is at least 21 years old and presenting a valid, government-issued form of identification at the time of delivery.

Section 405 – Annual Report on U.S. Mailing Industry

This section requires the Postal Regulatory Commission to publish annually a report on the financial health of the U.S. mailing industry, and requires the Postal Service and any other appropriate federal agency to assist in the report's preparation.

Section 406 – Use of Negotiated Service Agreements

This section authorizes the Postal Service to enter into Negotiated Service Agreements (NSAs) with individual mailers to retain existing mail volume; clearing up an ambiguity in the law. The section also requires the Postal Service to coordinate with the PRC to increase the use of NSAs.

Section 407 – Contracts Disputes

This section corrects a mistake in the Postal Accountability and Enhancement Act of 2006 which inadvertently deleted the Postal Service and the Postal Regulatory Commission from the list of agencies covered by the Contract Disputes Act of 1978. The Contract Disputes Act governs how contractor claims against federal agencies are to be handled.

Section 408 – Contracting Provisions

This section institutes contracting reforms and new ethics provisions for the Postal Regulatory Commission and the Postal Service. These include: 1) establishing the position of Advocate for Competition, who will encourage the use of commercial items, challenge barriers to competition, and review procurement; 2) clarifying that the Postmaster General and the PRC Chairman are ultimately responsible for any delegation of authority with respect to contracting, and requires public posting of such delegations; 3) requiring the Postal Service and PRC to publicly post justifications for noncompetitive contracts, with the PRC required to post all such contracts, and the Postal Service required to post all contracts valued at more than \$250,000; 4) requiring that if a contracting officer identifies an ethical issue surrounding a proposed contract, that contract must be submitted to the agency's designated ethics official before it is awarded; 5) clarifying ethics rules by requiring employees who have a decision-making role in the award of noncompetitive contracts to disclose any relationship that could potentially lead to questions about their impartiality, requiring a review by the ethics counsel of any disclosures to determine if disqualification of the employee from participation is warranted, and requiring contractors to disclose conflicts of interest. This section also allows the head of the postal entity to void a contract and recover funds when a violation is proven.

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