EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 26, 2005
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 22 - Postal Accountability and Enhancement Act
(Rep. McHugh (R) New York and 163 cosponsors)

The Administration strongly supports efforts to enact comprehensive postal reform legislation, and appreciates the progress toward that goal made in drafting H.R. 22. The Administration appreciates the opportunity to work with Congress toward a solution that will enable the United States Postal Service (USPS) to respond not only to today's known needs, but also to unforeseen future issues, in a responsible manner that is fair to taxpayers, ratepayers, and USPS employees.

In December 2003, the President established five principles to guide comprehensive postal reform: best practices of corporate governance; transparency; flexibility; accountability; and self-financing. The Administration appreciates the House Government Reform Committee's efforts to address many of the Administration's concerns by including a number of provisions in H.R. 22 that are based on the President's reform principles. Specifically, the Administration supports the House provisions that will increase transparency at USPS, most notably through Securities and Exchange Commission (SEC)-like reporting standards, and provisions that will give USPS greater flexibility in the areas of executive compensation, network optimization, and worksharing. However, the Administration remains concerned that several important reforms have not been addressed completely or at all. The Administration looks forward to working with Congress to ensure that a final, comprehensive postal reform bill includes these additional provisions.

Specific Issues

The Administration strongly believes that the final legislation must adopt the Senate's postal reform proposals in S. 662 regarding the following issues:

> Pricing flexibility within a firm annual Consumer Price Index (CPI) rate cap with a strict exigency requirement. A hard annual cap at the CPI rate applied at the class level provides a good balance between new pricing flexibility for USPS and reasonable and predictable prices for ratepayers. By strictly limiting the circumstances in which rate increases can exceed the CPI rate, ratepayers can be assured that USPS management will work hard to keep costs under control.
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> Reform of the workers' compensation system. The Administration supports the intent of the reforms contained in S. 662 that require a three-day waiting period before benefits begin and that require retirement-age beneficiaries to transition from workers' compensation benefits to a retirement-level benefit. The Administration, however, has proposed comprehensive reform of the Federal Employees' Compensation Act and urges Congress to act on its legislative proposal, which will be transmitted in the coming weeks and would supersede any USPS-specific changes.

The Administration also believes that final postal reform legislation must also address the following issues:

Full compliance with all SEC reporting standards including segment reporting. The Postal Regulatory Commission should not be able to weaken SEC reporting requirements, and USPS should be required to report segments in a manner that is entirely consistent with SEC requirements.

Limitations on borrowing from the Competitive Products Fund. Total borrowings of the Competitive Products Fund should be limited to $3 billion. Without such language, the borrowing cap would be the entire $15 billion USPS debt limit.

Greater flexibility to use worksharing. USPS should continue to focus on the last-mile delivery aspect of its business and offer discounts to mailers that perform certain cost-saving tasks like pre-sorting or transportation. The current provision is highly prescriptive and places too many restrictions on these discounts.

Greater flexibility to enter into negotiated service arrangements. In addition to pricing flexibility under the Administration-proposed price cap and full use of worksharing, USPS should be given greater authority to negotiate service agreements to further increase productivity and attract volume.

Direction to the arbitrator in labor negotiations to consider the financial health of USPS. A transformed USPS with a self-financing mandate and a new price cap regime must be assured that these new limitations will be considered by a third-party arbitrator during contract negotiations.

In addition, the Administration has identified constitutional and other concerns with various provisions in the bill, including the bill's application of antitrust laws to USPS and its expansion of law enforcement authorities, which the Administration will communicate in more detail at a later date.

Self-Financing Principle

The Administration believes that comprehensive postal reform must require USPS to cover all of its financial obligations, including its on- and off-balance sheet unfunded liabilities. This approach is consistent with the statutory requirement that USPS meet its responsibilities in a business-like fashion by ensuring that revenues from the sale of products and services are sufficient to cover all operating costs. In establishing self-financing as one of the guiding principles for postal reform, the Administration intended that USPS meet all of its obligations without reliance on the General Fund of the Treasury. Accordingly, the Administration has serious concerns with two elements of the legislation that do not adhere to the self-financing principle:

Unfunded Liabilities and the Escrow Requirement. The Administration supports the elimination of the statutory escrow requirement and further supports allowing USPS to benefit fully from all of the pension savings resulting from the enactment of Public Law 108-18, the Postal Civil Service Retirement System Funding Reform Act of 2003, by placing USPS on a financing plan to ensure that it can cover its post-retirement health benefits costs.

As of September 30, 2005, it is estimated that USPS's retiree health benefits liability will be $63.9 billion. The substantial pension savings from P.L. 108-18 provide an excellent opportunity to transition to a financially self-sufficient USPS. The President's FY 2006 Budget proposes to use the amounts that would otherwise be held in escrow to enable USPS to contribute $42.5 billion over the next 10 years toward paying down its substantial retiree health benefits liability. If these unfunded retiree health benefit liabilities are not fully addressed now, unnecessarily large spending will be needed in the future to pay these health benefits costs as they come due.

The President's Budget proposal would allow the elimination of the statutory escrow requirement to be accomplished in a manner that would have no adverse budget impact. However, H.R. 22 would allow USPS to use a portion of the escrow as a subsidy for current operations, and thus would have an adverse budget impact.

<u>Treatment of Military Service Obligations</u>. The Administration believes that USPS must continue to be responsible for pension costs connected with military service credits for postal employees under the Civil Service Retirement System (CSRS) and opposes provisions in the current version of H.R 22 that would grant USPS a subsidy with a net present value of $27 billion by transferring all of these military service pension credit obligations to the General Fund of the Treasury. USPS's responsibility for paying this military service pension credit obligation is a cost of doing business, and USPS should not be absolved of its responsibility to pay for these unfunded liabilities.

Requiring USPS to fund these obligations is not a hardship – it is the corollary to the massive savings USPS realized under P.L. 108-18. That Act effectively converted USPS's CSRS program to the funding system utilized for the Federal Employees' Retirement System (FERS). FERS is a fully-funded retirement system where the annual pension contributions from employees and the agencies are enough to match anticipated future pension payments and where each agency, rather than the Treasury, covers the costs of the military service pension credits of its retirees. By shifting to a FERS-like system for its entire workforce, USPS’s CSRS pension obligations were reduced by $105 billion, and USPS was required to cover the cost of military service credits in its pension plan. This legislation was a $78 billion net benefit to USPS.

<u>Additional Policy Concerns</u>

The Administration has other concerns with various provisions of the bill, including provisions regarding the application of antitrust laws to the USPS and expanding law enforcement authorities. The Administration urges that section 401(a) and 502(a) of the bill be amended to delete the restriction that members of the USPS Board of Governors and of the Postal Regulatory Commission may be removed only for cause, so as to preserve the President’s flexibility with respect to the Board and the Commission. The Administration will continue to work in the legislative process to address these and other concerns.

<u>Constitutional Concerns</u>

A number of provisions in the bill should be amended to conform to constitutional requirements. In particular, section 205 of the Act should be amended to preclude lawsuits in Federal court between the Postal Regulatory Commission and the USPS, as the judicial power does not extend to resolving disputes between two elements of the Executive Branch. Such disputes lie within the province of the President in supervising the unitary Executive Branch.

Section 305 of the Act, which purports to prohibit the United States from concluding treaties of a certain content and purports to regulate the conduct by the Executive Branch of negotiations with foreign governments and international bodies, would infringe upon the President's constitutional authority to conduct the Nation's foreign affairs and supervise the unitary Executive Branch. Accordingly, the new section 407 of title 39 of the U.S. Code should be amended to specify that its provisions apply "unless otherwise directed by the President."

Section 401(a) of the bill should be amended to delete the purported qualifications for members of the USPS Board of Governors, which is inconsistent with the powers vested in the President by the Appointments Clause of the Constitution. Sections 503, 702(a)(2), and 707(b) of the bill should be amended to provide for submission of such recommendations for legislation, including appropriations legislation, "as the President shall judge necessary and expedient," so as to make the provision consistent with the Constitution's commitment to the President of exclusive authority to recommend measures for the consideration of Congress and to supervise the unitary Executive Branch.

Conclusion

The Administration looks forward to the passage of postal reform legislation that the President can sign reflecting his five reform principles and to working with Congress to address these issues. However, the bill ultimately presented to the President must not contain provisions that would have an adverse impact on the Federal budget, either by releasing funds from escrow without devoting them to pre-fund liabilities or by transferring the military service obligation from USPS to taxpayers. Should the final bill have such an adverse impact on the Federal budget, the President's senior advisers would recommend that he veto the bill.

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