United States Senate

WASHINGTON, D.C. 20510

March 20, 2012

The Honorable Patrick R. Donahoe
Postmaster General of the United States of America
475 L'Enfant Plaza SW
Washington DC 20260

Dear Postmaster General Donahoe:

As you know, the Senate may soon consider legislation with the goal of placing the United States Postal Service on a sustainable financial track. The Postal Service's recent budgetary problems are well-documented, and we all agree on the need to take action to preserve mail services for all Americans, including through the protection of timely mail delivery, small and rural post offices, and processing facilities – all of which are important to the communities we represent.

In the spirit of making sure that whatever legislation is passed by Congress actually solves the Postal Service's financial problems, while maintaining services for customers and providing a maximum level of protection for employees and retirees, there are several important questions that we request you answer. Given the possibility of Senate action on postal reform legislation in the coming days or weeks, please respond in writing no later than March 27, 2012.

<u>Cost-Containment</u>

The Congressional Budget Office (CBO) recently concluded that the *21st Century Postal Service Act of 2011* (S. 1789) will increase our deficit by $6.3 billion, which should be a concern to all of us during difficult budgetary times. Perhaps the most troubling aspect of CBO's analysis is the conclusion that the Postal Service will not maximize the cost-savings provided by the bill. In particular, CBO found that reducing retiree health care expenses and transferring surplus pension payments would actually "lead the USPS to increase its net operational spending relative to current law." As a result, the nearly $31.9 billion in financial relief provided by S. 1789 – which creates an "on budget" cost of that same amount – translates into "off budget" savings of only $15.7 billion for the Postal Service.

CBO's report is a clear indication that any postal reform legislation must require the Postal Service to take the steps it needs to reduce costs. Rather than using Congressionally-provided financial relief as a cushion to unnecessarily increase costs elsewhere, it is imperative that the Postal Service undertake strong cost-containment measures that will create financial stability within the Postal Service *and* make S. 1789 deficit-neutral.

- *Pricing of Products and Workshare Discounts*: For Fiscal Year (FY) 2009, the Postal Regulatory Commission (PRC) found that $1.7 billion of the Postal Service's $3.8 billion loss came from 14 products that did not cover their costs, identifying in particular products "for which the Postal Service has a longstanding cost-control problem." For

FY 2010, the PRC again found that 10 products did not cover their costs, resulting in another loss of $1.7 billion. That year, the PRC concluded that the "Postal Service has repeatedly failed to utilize existing pricing options to address the growing Standard Mail intra-class cross subsidy." Similar findings showing losses of up to $600 million per year for Periodicals alone were contained in a joint report issued by the Postal Service and the PRC in September 2011, as required under the Postal Accountability and Enhancement Act. Additionally, the PRC and the Postal Service Inspector General have identified instances in which workshare discounts provided by the Postal Service have exceeded avoided costs. As an example, in a December 2010 report, the Inspector General noted that in FY 2008, the Postal Service provided $15 billion in workshare discounts, but in doing so avoided only $14.8 billion in costs – for a net loss of $200 million. Please identify steps the Postal Service has taken to prevent losses from these and other products and discounts, the savings associated with those steps, and any statutory authority needed to prevent losses from these products and discounts.

- *Rental Income and Excess Space*: An August 2011 Postal Service Inspector General report estimated that the Postal Service maintains 67 million square feet of excess interior space, but "does not understand the extent of interior excess space in its facilities." The report further concluded that the demand for existing commercial space will rise and that "the Postal Service may be in a position to capitalize on the upward trend to dispose of its vacant space", with an opportunity to realize $3.4 billion over 10 years through the disposal of excess space, of which $2 billion is considered to be "funds put to better use". Similarly, a June 2011 Postal Service Inspector General report found that "Postal Service internal controls over the collection and recording of rental income need improvement", and that at least $1.5 million in rental payments were "at risk for potential fraud or loss." These reports show the need for the Postal Service to better evaluate areas where it can maximize revenue from unused space and existing lease agreements. Please identify the steps the Postal Service is taking to maximize revenue through the disposal of unused space and cost savings associated with existing lease agreements, as well as the revenue and savings associated with those steps.

- *Executive Bonuses*: Current law caps the pay for Postal Service executives at $199,700, the rate of pay for most Cabinet-level Secretaries. However, provisions in the law allow for bonuses and other compensation increases to $276,840, which is 120 percent of the Vice President's salary. Additionally, the Congressional Research Service (CRS) notes that "Postal executives may be eligible for deferred annual incentive bonuses" that exceed existing statutory caps, the payment of which can be deferred until after he or she leaves the Postal Service. As an example, according to CRS, former Postmaster General John Potter earned $501,384 in total compensation in FY 2010. Most Americans would be shocked to know that Postal Service executives can earn larger salaries, in the form of bonuses and deferred compensation, than Cabinet-level secretaries. Please identify the total yearly compensation for the most recent fiscal year for the top 12 officers of the Postal Service, as well as the amount of deferred annual incentive bonuses that exceed existing statutory caps accrued by those officers both in FY 2011 and throughout their tenure with the Postal Service. Please also identify any steps the Postal Service has taken to limit executive compensation and the cost savings associated with those steps.

- *Growing Markets*: Last month, the Census Bureau released data estimating that e-commerce sales for 2011 were $194.3 billion, an increase of 16.1 percent from 2010, which outpaced the 7.9 percent growth in total retail sales. Along those lines, a January 2012 New York Times article, *Online Sales Buoy U.P.S. And FedEx*, describes the benefits for the mailing industry that have resulted from the growth, and subsequent delivery, of online purchases. Please identify the Postal Service's market share and that of its leading competitors for each of the past 5 years, both in dollars and packages delivered, of deliveries from e-commerce sales. Please also describe steps the Postal Service has taken to maximize its share of this growing market.

- *Headquarters Staff*: According to the CRS, the Postal Service cut more than 200,000 jobs between FYs 1995 and 2010. Yet, during that same time period, it increased headquarters staff by 60 percent (1,112 positions). Postal Service employees in our states, who have seen a large number of jobs lost, are questioning the necessity of adding new headquarters personnel – and we agree that the Postal Service has an obligation to explain how large staffing increases in Washington, D.C. support its efforts to contain costs. Please provide such an explanation.

- *Advertising Costs*: In recent years, the Postal Service has faced criticism as a result of some of its advertising expenditures, including sponsorship of the U.S. Tour de France cycling team and a NASCAR racing team. Further, in an August 2010 report, the Postal Service Inspector General concluded that for FY 2009, the Postal Service did not accurately report advertising costs and "understated Priority Mail advertising costs, which made the product appear more profitable". That report also found that the Postal Service "understated competitive product advertising costs by $14.3 million" and that misallocation of advertising costs increased in FY 2010. Although the Postal Service's understatements of its advertising costs are not large as a percentage of its total budget, we agree with the Inspector General's conclusion that "Strengthening controls over reporting of advertising costs could assist the Postal Service in maintaining stakeholder confidence and goodwill in the processes used to price products and services…" Please explain steps the Postal Service has taken to accurately report its advertising costs, and the savings associated with those steps, and explain how its advertising expenditures contribute to its financial stability.

- Please identify, with specificity, any other non-legislative steps that the Postal Service is taking to control costs, apart from the well-publicized closure of post offices and mail processing centers, as well as savings associated with those steps.

Employee and Retiree Health Care

We are equally concerned about a provision in S. 1789 that would allow the Postal Service to negotiate a withdrawal of employees from the Federal Employee Health Benefits Plan (FEHBP), as well as recent reports that the Postal Service and its employees' unions are beginning such negotiations outside of the legislative process. The protection of health care benefits for employees and retirees is an extremely important priority regardless of whether we are talking about Postal employees, federal, state, or local government employees, or private sector employees. For example, in West Virginia, we have seen the devastating impact that occurs when retirees' health care is unilaterally terminated – and it is not clear that S. 1789 or the ongoing negotiations between the Postal Service and its employees' unions offer any substantive protections for employees who have been paying into FEHBP throughout their careers.

In order to adequately understand the impact of withdrawing employees from FEHBP, it is necessary to first understand the Postal Service's original proposal to withdraw both employees and retirees. Specifically, in an August 2011 "Discussion Draft", the Postal Service concluded that withdrawing 480,000 retirees and 600,000 active employees from FEHBP would allow it to save money, while also providing retirees with benefits "comparable to those offered by the most popular plan providers in the FEHB program, at equal or lower cost" and providing active employees with health benefit plans that are "comparable in value and cost with those provided under FEHB." You reiterated this proposal to the Senate Committee on Homeland Security and Governmental Affairs in September 2011. However, the Discussion Draft and your testimony provide little to no explanation of how the Postal Service can provide comparable benefits while also achieving cost-savings as compared with participation in FEHBP.

- Health economist Walt Francis has concluded that the Postal Service "will be less competent and less efficient than [the Office of Personnel Management], by far, in trying to run their own insurance program." Similarly, OPM Director John Berry testified that "the Postal Service and its employees and retirees are well-served by the existing health benefits program". He identified several advantages to remaining in the program: low overhead costs, comparable benefit packages to those provided by large employers, and low annual premium increases. Please provide specific estimates of the cost-savings you expect from withdrawing current employees while continuing to provide benefits comparable to FEHBP, the source of those cost savings, and whether or not there will be an impact on Medicare. Please include documentation and data to support those estimated savings.

- As noted above, S. 1789 permits the Postal Service to negotiate with its employee unions to withdraw from FEHBP any "employee of the Postal Service who is represented by a bargaining representative". Do you interpret this provision to allow you to negotiate a withdrawal from FEHBP of both current employees and current retirees, or only current employees? If the former, please provide specific estimates of the cost-savings you expect from withdrawing both employees and retirees from FEHBP while continuing to provide benefits comparable to FEHBP, the source of those cost savings, and whether or not there will be an impact on Medicare. Please include documentation and data to support those savings.

- S. 1789 requires any new health benefits program established by the Postal Service to "provide adequate and appropriate health benefits". Please explain your understanding of what it means to provide "adequate and appropriate" benefits. Regardless of your understanding of this term, are you committed to providing benefits comparable to FEHBP, as was promised in the August 2011 Discussion Draft?

- S. 1789 states that the Postal Service's new health benefits program shall be available for participation by any officer "at the option solely of that officer". Currently, such officers are able to participate in FEHBP. Until this year, the Postal Service paid 100 percent of their premiums and just recently began phasing in a reduction in employer contributions to match those paid by the rest of the federal government. Is it your understanding that S. 1789 allows officers of the Postal Service to remain in FEHBP, even as the employees are transitioned into a new health benefits program? If so, will you elect to remove yourself from FEHBP and participate in the same plan as your employees?

- Of particular concern is that Director Berry also testified that if such a withdrawal were to occur, "It may be challenging for the [Postal Service] to have provider networks for employees and retirees located all across the country, especially in rural areas." Do you agree with Director Berry's assessment? If not, please provide the details of any analysis you have done on this issue, including documentation and data to support a conclusion that the Postal Service will be able to establish provider networks in rural areas.

- In the August 2011 Discussion Draft, the Postal Service concluded that in order to successfully withdraw employees and retirees from FEHBP, "the Postal Service would have to receive the $42.5 billion of assets currently in the Postal Service Retiree Health Benefit Fund to offset the retiree health care liabilities assumed." Knowing that S. 1789 does not provide authority to pull this amount of funding out of the Postal Service Retiree Health Benefits Fund, do you continue to believe that a refund of this funding is necessary to successfully withdraw employees and retirees from FEHBP? If so, and the Postal Service were to negotiate a withdrawal of only employees (but not retirees) from FEHBP, how much funding would the Postal Service need refunded in order to successfully withdraw from FEHBP and assume the liabilities associated with establishing its own health benefits program?

<u>Layoff Protections</u>

Finally, in another August 2011 "Discussion Draft", the Postal Service requested that Congress provide it with the authority to break its own employee contracts in order to void layoff protections and terminate 120,000 employees, in addition to another 100,000 employees whose positions would be eliminated through attrition. Shockingly, this request came just months after the Postal Service agreed to these layoff protections in negotiations with one of its unions.

- In the August 2011 Discussion Draft, the Postal Service argues that Congressional intervention to void the terms of its contracts is necessary because "it is not likely that the Postal Service will be able to eliminate these layoff protections through collective bargaining, given the nature of collective bargaining and interest arbitration." That Discussion Draft identifies one instance, in 1978, in which the Postal Service proposed to eliminate these layoff protections, but that such proposal was denied by an arbitrator. It then concludes that "In subsequent negotiations, the no-layoff protections have been the subject of collective bargaining but no agreement or arbitration decision has eliminated those provisions…" Please describe with specificity the steps the Postal Service has taken since 1978 to renegotiate these layoff protections or seek their modification through arbitration.

We are committed to continuing to work with you and our colleagues in Congress to create financial stability within the Postal Service. By looking broadly at all of the structural problems within the Postal Service, we firmly believe that we can find a reasonable solution that places the Postal Service on a sustainable financial path and preserves mail services and jobs throughout America. We look forward to your prompt reply to these questions, which will be extremely helpful to us as we evaluate the various proposals moving through both Chambers.

Sincerely,

Jay Rockefeller
Senator John D. Rockefeller IV

Joe Manchin
Senator Joe Manchin III

Jon Tester
Senator Jon Tester

Max Baucus
Senator Max Baucus

Jeffrey A. Merkley
Senator Jeff Merkley

Ron Wyden
Senator Ron Wyden

Kirsten E. Gillibrand
Senator Kirsten E. Gillibrand