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U.S. Postal Service Board of Governors: Background, Pending Nominees, and Issues for Congress

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Summary

Unlike other executive agencies, the United States Postal Service is governed not by a single presidentially appointed, Senate-confirmed agency head, but rather by an entity known as the Board of Governors. The Board of Governors of the U.S. Postal Service (hereinafter, the Board) was created by the Postal Reorganization Act in 1970 (PRA, 39 U.S.C. §202). The U.S. Postal Service (USPS) describes the Board as "comparable to a board of directors of a private corporation."

As currently constructed under the Postal Accountability and Enhancement Act of 2006 (PAEA, P.L. 109-435), the Board consists of the Postmaster General, the Deputy Postmaster General, and nine Governors, appointed to staggered terms of seven years. The Governors appoint, or may remove, the Postmaster General; the Deputy Postmaster General is appointed, or may be removed, by both the Governors and the Postmaster General. Currently, there are no Senate-confirmed Governors and the only members on the Board are the Postmaster General and the Deputy Postmaster General. It is unclear whether the appointment or removal clauses of 39 U.S.C. §202 could operate as written, given the Board's current composition. President Trump sent four Governor nominations to the Senate on October 30, 2017; however, as of the date of this report, none of the nominations have been confirmed.

Under 39 U.S.C. §205, vacancies may not prevent the Board from conducting its business as long as there is a quorum of members. Without any appointed Governors, the Board cannot have a quorum. Just prior to the loss of its quorum, the Board adopted a resolution delegating its authority to a Temporary Emergency Committee (TEC), in order to "provide for continuity of [postal] operations." The Board will continue without a quorum until four or more Governors have been confirmed.

Although the Board, as a whole, has many authorities and responsibilities, certain matters are reserved for decision by the Governors alone. The lack of any appointed Governors leaves the USPS without legal authority for actions that must be authorized by the Governors, such as

- the establishment of rates and classes of competitive products;
- the adjustment of rates for market dominant products; and
- setting compensation for the Postmaster General and Deputy Postmaster General.

Contents

Background: U.S. Postal Service Board of Governors 1
Appointments to the Board of Governors 1
Current and Former Members of the Board 2
Nominations to the Board of Governors in the 114th and 115th Congresses 3
Responsibilities of the Governors Compared with Those of the Board 4
Issues for Congress: Operation of the USPS without Governors 4
Loss of Quorum 5
Appointment and Removal Authority 5
Establishment of Mail Rates 5
Authority of Newly Appointed Governors 6

Figures

Figure 1. USPS Governor Terms of Service Since Enactment of PAEA 2

Tables

Table 1. Pending Nominees for Postal Governor, as of 8/6/2018 3
Table 2. Selected Authorities and Responsibilities of the Governors and of the Board 4

Contacts

Author Information 6

Background: U.S. Postal Service Board of Governors

The Board of Governors of the U.S. Postal Service (hereinafter, the Board) was created by the Postal Reorganization Act in 1970 (PRA, 39 U.S.C. §202). The U.S. Postal Service (USPS) describes the Board as "comparable to a board of directors of a private corporation."[1] Guided by statute and its bylaws, the Board "directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service."[2]

The Board is composed of 11 members, including nine Governors who are appointed by the President with the advice and consent of the Senate.[3] As noted in a USPS Office of Inspector General (USPSOIG) white paper, as an executive branch agency, the Postal Service is to be led by presidentially appointed and Senate-confirmed officers.[4] The nine Governors serve this role. Additionally, the Board includes the Postmaster General, who is appointed, or may be removed, by the Governors, and the Deputy Postmaster General, who is appointed, or may be removed, by both the Governors and the Postmaster General.

Under the PRA, Governors served nine-year terms, with the first nine appointees serving staggered terms of one to nine years. The Postal Accountability and Enhancement Act (PAEA, P.L. 109-435) reduced the Governors' staggered terms to seven years. Additionally, the PAEA requires that Governors represent the public interest and that at least four Governors be chosen based on their demonstrated ability to manage organizations with at least 50,000 employees. No more than five Governors may belong to the same political party.

Appointments to the Board of Governors

The President is required by law to consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate in selecting a nominee to the Board of Governors. While the statute stipulates that "not more than 5 of [the Governors] may be adherents of the same political party," it does not specify an order in which nominations are to be considered and confirmed to satisfy this requirement.[5]

Because USPS Governor nominations are advice and consent positions, Senate procedural considerations may affect the confirmation process. For example, a Governor nomination, like any other measure or matter available for Senate floor consideration, may be the subject of a Senate "hold." Senators place holds to accomplish a variety of purposes—to receive notification of upcoming legislative proceedings, for instance, or to express objections to a particular proposal or executive nomination—but ultimately the decision to honor a hold request, and for how long, rests with the majority leader.[6]

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[1] U.S. Postal Service, *About the Board of Governors*, at http://about.usps.com/who-we-are/leadership/board-governors.htm.

[2] 39 C.F.R. §3.1.

[3] Section 202 of H.R. 756 [115th], *Postal Service Reform Act of 2017*, would reduce the number of Governors to five.

[4] United States Postal Service Office of Inspector General, *Governance of the U.S. Postal Service*, November 10, 2016, at https://www.uspsoig.gov/sites/default/files/document-library-files/2016/RARC-WP-17-002.pdf.

[5] 39 U.S.C. §202(a)(2).

[6] For more information on Senate "holds," see CRS Report R43563, *"Holds" in the Senate*, by Mark J. Oleszek.

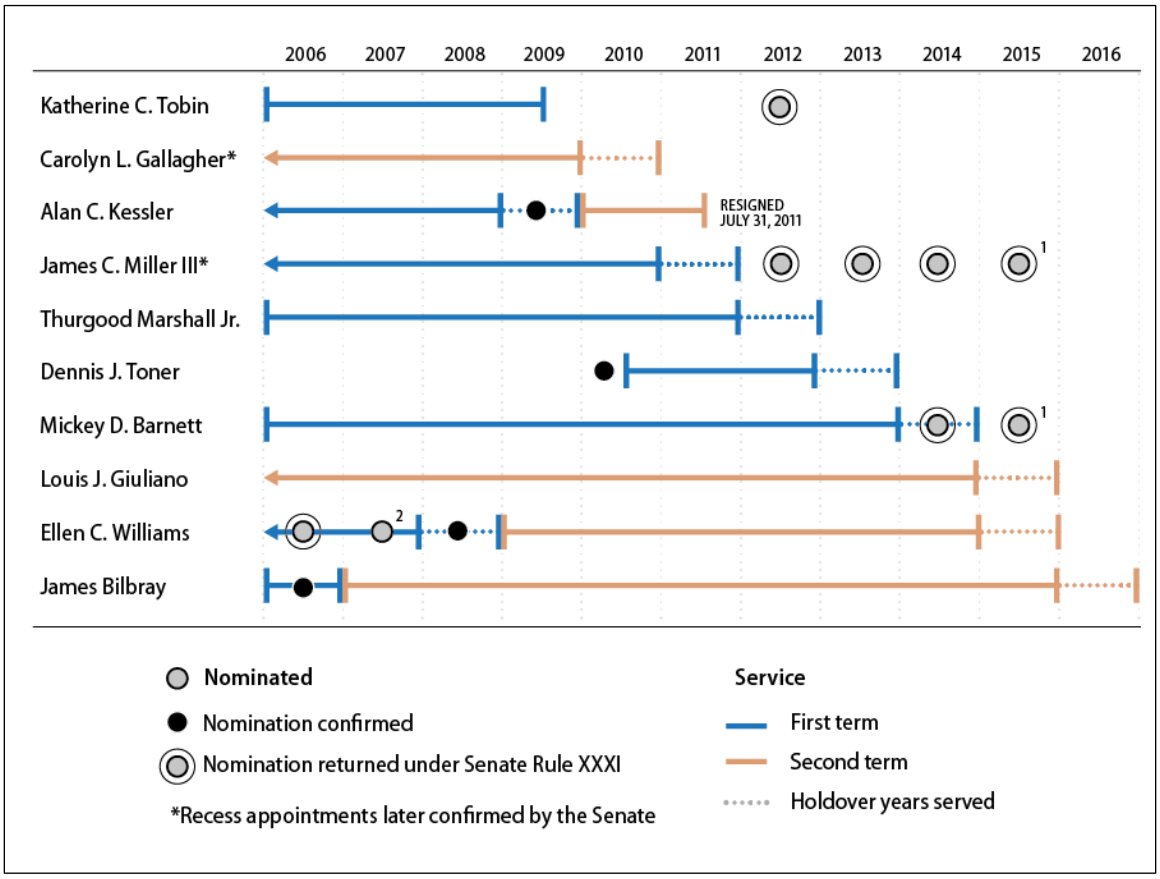
Typically, an executive agency head is appointed by the President, by and with the advice and consent of the Senate. In the case of USPS, however, the Postmaster General is only appointed, or may be removed, by the Governors.[7] Similarly, the Deputy Postmaster General is only appointed, or may be removed by the Postmaster General and the Governors.[8] No term limits exist for either the Postmaster General or Deputy Postmaster General.

It is unclear whether the appointment or removal clauses of 39 U.S.C. §202 could operate as written, given the Board's current composition.

Current and Former Members of the Board

As of the date of this report, the Board has no Governors. The term of the last Governor, Chairman James H. Bilbray, expired on December 8, 2016. The Board's membership as a whole includes the Postmaster General, Megan J. Brennan, and the Deputy Postmaster General, Ronald A. Stroman. **Figure 1** shows the terms of Governors serving at the time the PAEA was enacted and Governors appointed or reappointed since the PAEA was enacted.

Figure 1. USPS Governor Terms of Service Since Enactment of PAEA



Source: CRS graphic created using data received via email from U.S. Postal Service on March 16, 2016.

[7] 39 U.S.C. §202(c).

[8] 39 U.S.C. §202(d).

Note: Graphic includes Governors serving at the time the PAEA was enacted and Governors appointed or reappointed since the PAEA was enacted. (1) These nominations were returned under Senate Rule XXXI at the conclusion of the 114th Congress in 2017. (2) This nomination was withdrawn.

Nominations to the Board of Governors in the 114th and 115th Congresses

President Barack Obama sent seven nominations to the position of Governor of the United States Postal Service to the Senate during the 114th Congress. All seven nominations were returned to the President under the provisions of Senate Rule XXXI at the conclusion of the 114th Congress on January 3, 2017. Of these seven nominations, one received a hearing. On April 21, 2016, the Senate Committee on Homeland Security and Governmental Affairs held a hearing to consider the nomination of Jeffrey A. Rosen.[9] All seven nominations were subsequently reported favorably from the Senate Committee on Homeland Security and Governmental Affairs and all were placed on the Senate Executive Calendar. No votes were held on any of the nominations.[10]

In the 115th Congress, President Trump sent four nominations for Governors of the USPS to the Senate on October 30, 2017. The three nominees are Robert M. Duncan of Kentucky (who is the subject of two nominations to two separate terms), Calvin R. Tucker of Pennsylvania, and David Williams of Illinois. Of the four nominations, three were placed on the Senate Executive Calendar on May 7, 2018. The fourth nomination, of Calvin R. Tucker, received a hearing on April 18, 2018. **Table 1** provides details on each nomination.

Table 1. Pending Nominees for Postal Governor, as of 8/6/2018

Nominee (Nomination Number)	To Replace/For Term Expiring	Nomination Received	Latest Action	Date of Latest Action
Robert M. Duncan (PN1188)	Thurgood Marshall Jr., for a term expiring 12/08/2018	10/30/2017	Placed on Senate Executive Calendar	05/07/2018
Robert M. Duncan (PN1189)	Reappointment, for a term expiring 12/08/2025	10/30/2017	Placed on Senate Executive Calendar	05/07/2018
Calvin R. Tucker (PN1190)	Carolyn L. Gallagher, for a term expiring 12/08/2023	10/30/2017	Hearing held	04/18/2018
David Williams (PN1191)	Dennis J. Toner, for a term expiring 12/08/2019	10/30/2017	Placed on Senate Executive Calendar	05/07/2018

Source: Search of Congress.gov Nominations Database (Organizations search with term "postal service").

[9] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nomination of Honorable Jeffrey A. Rosen to be a Governor, U.S. Postal Service*, 114th Cong., 2nd sess., April 21, 2016, pp. 114-593.

[10] CRS collected Governors nomination information from the Legislative Information System's nominations database, located at http://www.lis.gov/nomis.

Responsibilities of the Governors Compared with Those of the Board

Although many authorities and responsibilities are given to the Board, certain matters are reserved for decision by the Governors alone. **Table 2** lists selected matters that are reserved for decision by the Governors alone or by the full Board. It is unclear whether decisions that are reserved to the Governors alone (e.g., appointment and removal of the Postmaster General) could be made when no Governors remain on the Board.

Table 2. Selected Authorities and Responsibilities of the Governors and of the Board

Reserved for Decision by the Governors (39 C.F.R. §3.4)	Reserved for Decision by the Board (39 C.F.R. §3.3)
Appointment, pay, term of service, and removal of the Postmaster General[a]; Appointment and removal of USPS Inspector General[b]	Adoption of the bylaws of the Board
Establishment of rates and classes of competitive products	Approval of the annual Postal Service Finance Plan, Operating Plan, and Capital Plan
Authorization of the Postal Service to adjust the rates and fees for market dominant products	Approval of the annual financial statements of the Postal Service following receipt of the annual report of the Postal Service's independent, certified public accounting firm
Authorization of the Postal Service to request that the Postal Regulatory Commission change the lists of market dominant and competitive products[c]	Authorization of the Postal Service, in consultation with the Postal Regulatory Commission, to establish service standards[d]
Authorization of the Postal Service to file a request with the Postal Regulatory Commission for adjustment of rates on an expedited basis due to extraordinary or exceptional circumstances	Authorization of the Postal Service to request that the Postal Regulatory Commission submit an advisory opinion on a proposed change to certain postal services
Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements[e]	Approval of official statements adopting major policy positions and of official positions on legislative proposals having a major impact on the Postal Service

Sources: 39 C.F.R. §3.3; 39 C.F.R. §3.4.

a. 39 U.S.C. §202(c).

b. 39 U.S.C. §202(e).

c. The PRC is granted this authority under 39 U.S.C. §3642.

d. The PRC is granted this authority under 39 U.S.C. §3691.

e. USPS is required to obtain this certification under 39 U.S.C. §2008(e).

Issues for Congress: Operation of the USPS without Governors

The Postal Service's day-to-day operations are largely the responsibility of USPS senior leadership and may not be affected by the absence of Governors. As shown in **Table 2**, however, certain actions may only be authorized or approved by the Board or the Governors. However, under 39 U.S.C. §205, vacancies may not prevent the Board from conducting its business as long as there is a quorum of members. To have a quorum, generally at least six members of the Board

must be present. For example, if the Postmaster General, Deputy Postmaster General, and four Governors are present, then the Board would have a quorum for the transaction of business. The quorum requirement applies to the business of the Board, but not to the conduct of business related to those matters that are reserved for decision by the Governors alone.[11]

Loss of Quorum

The Board lost its quorum when the term of former Governor Mickey D. Barnett expired on December 8, 2014, and the Board's makeup dropped to five members. Just prior to the loss of its quorum, the Board adopted a resolution delegating its authority to a Temporary Emergency Committee (TEC), in order to "provide for continuity of [postal] operations" in light of the loss of a Board quorum.[12] While the Board has the authority (with certain restrictions) to create such a committee,[13] it is unknown to what extent the TEC may act on matters that are explicitly reserved to the Board. Further, unlike the loss of quorum, the loss of the final Governor leaves the USPS without legal authority for several actions that must be authorized by the Governors.

Appointment and Removal Authority

Select USPS appointment authority is provided to the Governors rather than to the Board. For example, the appointment of, removal of, and setting compensation for the Postmaster General requires an absolute majority of the Governors currently in office. In addition, the Inspector General is appointed by the Governors and may be removed only for cause "upon the written concurrence of at least 7 Governors."[14]

In the event the Postmaster General is incapacitated due to "an enemy attack or other national emergency," USPS guidance names the Deputy Postmaster General followed by the Vice President, Area Operations, Eastern Area, in the line of succession to perform the Postmaster's duties.[15] The guidance does not specify whether a vacancy caused by lack of Governors would qualify as an emergency or trigger its emergency succession plan.[16]

Establishment of Mail Rates

The Governors have sole authority to (1) establish rates for Competitive Mail Products (e.g., Priority Mail®, Priority Mail Express®) and (2) adjust rates of Market Dominant Products (e.g., First-Class Mail, Advertising Mail).[17]

As noted by the USPSOIG, without at least one sitting Governor, the USPS cannot perform these actions—or any actions listed in the left column of **Table 2**—without subjecting itself to potential legal challenge.[18] While Governor Bilbray remained on the Board, he continued to act on those

[11] 39 C.F.R. §6.6.

[12] U.S. Postal Service, "Exercise of Powers Reserved to the Governors and the Board of Governors," 79 *Federal Register* 241, December 16, 2014, pp. 74780-74782.

[13] 39 C.F.R. §5.1.

[14] 39 U.S.C. §202(e)(3).

[15] U.S. Postal Service, *Administrative Support Manual* (ASM), §286.1.

[16] Ibid.

[17] 39 C.F.R. §3.4(d)-(e); 39 U.S.C. §3632; 39 U.S.C. §3622.

[18] U.S. Postal Service Office of Inspector General, *Governance of the U.S. Postal Service*, November 10, 2016, at https://www.uspsoig.gov/sites/default/files/document-library-files/2016/RARC-WP-17-002.pdf.

matters alone. Prior to his departure, Bilbray wrote Governors' Decision No. 16-8 allowing for an increase in rates for USPS competitive products "on or about January 21, 2018."[19] On October 6, 2017, USPS filed with the Postal Regulatory Commission (PRC) a notice of its intent to increase prices for certain Market Dominant Products under this authority, and the PRC approved the request on November 9, 2017.[20] As mentioned earlier, Governor Bilbray's term expired on December 8, 2016.

Authority of Newly Appointed Governors

Another issue for consideration is the authority, in absence of a quorum, of any newly appointed Governors to act on matters reserved to the Board. As discussed above, prior to the loss of its quorum, the Board established and delegated its authority to the TEC in order to "provide for continuity of [postal] operations" in light of the loss of a Board quorum.[21] The Board will continue without a quorum until four or more Governors have been confirmed. In its resolution establishing the TEC, the Board affirmed that "the inability of the Board to constitute a quorum does not prevent *the Governors then in office* from exercising those powers vested solely in the Governors, as distinguished from the Board" (emphasis added).[22] The resolution, however, did not specify whether newly appointed Governors are automatically members of the TEC.

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[19] Postal Regulatory Commission, *Notice of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision Nos. 16-8 and 16-10*, Docket No. CP2018-8, Washington, DC, October 6, 2017, p. 5, at https://www.prc.gov/docs/102/102017/Notice%20CP2018-8.pdf.

[20] U.S. Postal Service, *2017 Report on Form 10-K*, p. 2, at https://about.usps.com/who-we-are/financials/10k-reports/fy2017.pdf.

[21] U.S. Postal Service, "Exercise of Powers Reserved to the Governors and the Board of Governors," 79 *Federal Register* 241, December 16, 2014, pp. 74780-74782.

[22] Ibid.