*****A Postal Rate-Payer's Perspective*****

Attachment

Explanation of Pension Overfunding Problem

PL 93-349: Intent and Consequences

When the Post Office Department (POD) became the Postal Service on July 1, 1971, there was no change to postal employees' retirement benefits. Employees continued to participate in the Civil Service Retirement System (CSRS), and the Postal Service continued to make the same contributions that federal agencies did to the Civil Service Retirement and Disability Fund. Every time postal employees receive a pay increase, their CSRS benefits, including any benefits earned at the old POD, grow in value (i.e., the CSRS obligation grows). PL 93-349, passed in 1974, effectively required that OPM make the Postal Service pay for this increase not only for post-1971(USPS) service but also for the (POD) years of service before 1971. This methodology assumes that those old POD employees would receive no pay increases – not even to offset inflation – even if the POD had continued beyond 1971. This approach forces the USPS to pay a large portion of the old POD pension benefits as well as for pension benefits it caused after onset of its own operations. The USPS payment for old POD benefits is the source of the $75B overfunding identified by the OIG/Hay Report.

In explaining the 1974 legislation, the House Report 93-120 (April 11, 1973) issued by the House Committee on Post Office and Civil Service on the PL 93-349 legislation stated:

> The purpose of this legislation is to clearly establish the responsibility of the U.S. Postal Service to finance increases in the liability of the Civil Service Retirement and Disability Fund, *caused by administrative action of the Postal Service, as apart from increases in unfunded liabilities which are incurred by act of Congress*. (italics not in original)
>
> And
>
> The situation with respect to the Postal Service is quite unique and results from passage of the Postal Reorganization Act. *The Congress now has no control – no oversight whatsoever – with respect to the pay machinery in the Postal Service.* Since each future pay raise, negotiated or otherwise granted to employees in the Postal Service, will result in a specific unfunded liability and a new drain on the Retirement Fund, the cost of this liability should properly and equitably be borne by the Postal Service. (Appendix B of the OIG/Hay Report, italics not in original)

However, Congress was unrealistic in its assumptions and plain wrong about its "control" over the USPS pay machinery. First, it is unrealistic for Congress to assume that postal employees would have had no pay increases after 1971 had they remained employees of the old POD (i.e., if the USPS had not been established). Congress itself, in the PRA, mandated a postal salary increase, and non-postal federal employees have had pay increases since 1971. Clearly, Congress should have expected postal pay increases after 1971.

Second, the PRA (i.e., Congress) that created the USPS also included provisions and protections that ensured employees were treated fairly and that their pay and benefits remained comparable to the terms and conditions before postal reorganization. (page 6/27 of OIG/Hay Report)

Third, the PRA (i.e., Congress) required that POD employees in CSRS were entitled to remain in the CSRS for pension purposes. If the USPS had instead been granted the freedom and flexibility to establish new and separate pension plans for its employees and provide benefits on employment beginning July 197l, when it was created, there would be no dispute over funding now. Any POD employees would then either have to accept a lower CSRS pension (based only on their POD years of service and salary as of 1971) or the US Treasury would have had to make up the difference in order to fund the CSRS pension that those employees were entitled to expect from their POD years of service. (page 6/27 of OIG/Hay Report)

Fourth, related to the previous comment, when there is a change in ownership of a business in the private sector, the unfunded costs for pensionable service accrued prior to the transfer date (i.e., the July 1971 transfer from POD to USPS) are determined using the projected final salary at retirement (consistent with the Hay recommended approach), rather than the accrued benefit at date of transfer (as PL 93-349 requires). (page 16/27 of OIG/Hay Report) Either those unfunded pension costs are funded by the old owner (and placed in the pension fund) or some other aspect of the ownership transfer – i.e., asset valuation, cash, or relief from some other obligation – is adjusted to compensate the new owner for undertaking those unfunded pension obligations. (page 2/27 of OIG/Hay Report)

Thus, the old POD had responsibility to fund the expected impact of future pay increases on benefits earned by its employees prior to July 1971. Congress has some responsibility for the unfunded obligations since they prevented the USPS from avoiding them. And Congress also has responsibility for the impact on the CSRS obligation from increases in postal salaries and wages after 1971.

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New Legislation Renders PL 93-349 Obsolete

There are two new pieces of legislation that render PL 93-349 obsolete: PL 108-18 and the PAEA. PL 108-18 required the OPM to calculate the CSRS fund balance (current net assets of the fund), "as determined by the Office in accordance *with appropriate accounting standards*." (PL 108-18, Section (2)(a)(2), italics not in the original). (OIG/Hay Report page 5/27) *As demonstrated by the OIG/Hay throughout its report, the OPM calculation is not in accord with appropriate accounting standards as required by PL 108-18.*

Moreover, PAEA Title VIII, Section 802(a)(2) explains how the supplemental CSRS pension liability or surplus must be estimated by OPM – to be done by June 15, 2007. Below is the relevant language of the section (with italics added for emphasis):

> (2) by amending section 8348(h) to read as follows:
>
> \`(h)(1) In this subsection, the term \`Postal surplus or supplemental liability' means the estimated difference, as determined by the Office, between—
>
> \`(A) the actuarial present value of all *future benefits payable* from the Fund under this subchapter to *current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service*; and
>
> \`(B) the sum of—
>
> \`(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;
> \`(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, *minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund*; and
> \`(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

The above language means that the OPM, in calculating the present value of the unfunded liability or surplus, must deduct from the current CSRS fund balance only three amounts:

- Present value of future benefits payments (cited in (A) above) attributable to *civilian employment with the USPS*,
- Past benefit payments (cited in (B)(ii) above) attributable to *civilian employment with the USPS*,

- Any appropriate amount in accordance with generally accepted actuarial practices and principles.

Nothing in this PAEA language suggests that PL 93-349 is still in place; nothing suggests that any benefit payments attributable to POD service should be deducted from the fund's value (as PL 93-349 and OPM dictate); and, clearly the OPM approach of including benefit payments attributable to POD service is not in accord with generally accepted actuarial practices and principles.

Corrective legislation is required to explicitly rescind the interpretation OPM is using from PL 93-349.

There is Precedent for a Congressional Fix

In 1997, Congress recognized a similar scenario as inconsistent with the goal of making Washington, DC more efficient through independence. Congress removed the financial burden they had placed on the district to enable it to move forward as a more financially secure entity. In the process, it removed a disproportionate burden on tax payers in the district that was rightly spread out over all the tax payers in the country that originally funded the federal employees. Similarly, Congress should take this opportunity to repay the USPS, and thus the mailers and consumers, for any obligations that should never have resided anywhere but the US Treasury.