Applicability of 6-Day Delivery Rider

The Postal Service has proposed to move to a general 5-day delivery schedule for mail (except packages), beginning in early August, 2013. This proposal is predicated on the conclusion that current law does not prevent a movement to 5-day delivery in that timeframe: no regular appropriations bill setting forth the rider requiring the continuation of “6-day delivery...at not less than the 1983 level” has been enacted for FY 2013, and even if the current continuing resolution (Public Law No. 112-175) extends the rider (although we do not concede it does), the resolution expires on March 27, 2013. As such, the proposal can be implemented absent the enactment of disabling legislative language, either in a future appropriations bill that is applicable in August (e.g., a full-year CR or regular appropriation bill), or in other legislation which prohibits the Postal Service from moving forward. In this regard, the Postal Service strongly believes that implementing its modified 5-day delivery plan is a necessary, responsible step considering its financial condition, and as such we will continue to work with Congress in the hopes of ensuring that Congress does not include a 6-day rider in future legislation. This memorandum discusses why the 6-day appropriations rider does not currently prevent the implementation of the Postal Service’s proposal.¹

1. Background on Postal Service Appropriations

The Postal Service generally operates on the basis of the revenues it receives from the sale of its products, and from other sources; this revenue is permanently appropriated to the Postal Service. 39 U.S.C. § 2401(a). In addition to this permanent appropriation, the Postal Service is also authorized to receive various annual appropriations. One relates to public service costs associated with providing universal service, and has not been requested or appropriated since the early 1980s. Id. at § 2401(b). Two others relate to what is known as “revenue foregone.”

First, the Postal Service is authorized to receive an appropriation to compensate it for revenues it foregoes on mail that is required by law to be carried for free (certain materials for the blind and overseas voters). Id. at § 2401(c). This appropriation is based on an estimate of the revenue that will not be received during the fiscal year covered by the appropriations bill, plus an adjustment for a prior fiscal year to reconcile the estimate for that year with actual results. For example, the FY 2012 appropriations bill compensated the Postal Service for estimated FY 2012 revenue foregone (along with a reconciliation adjustment for FY 2009). See, e.g., Budget of the United States Government, Fiscal Year 2013, Appendix at 1388. This compensation for FY 2012 came in the form of a reimbursement provided in full on October 1, 2013, the beginning of FY 2013.

Second, the Postal Service is authorized to receive an annual appropriation of $29 million for each fiscal year through FY 2035 to compensate it for losses caused by insufficient revenue foregone appropriations in FYs 1991 through 1993, at a time when the revenue foregone appropriation covered a broader array of preferred-rate mail categories than just free mail for the blind and overseas voters, and for losses caused by the transition provisions of a prior law that eliminated the appropriations for those preferred rate categories. 39 U.S.C. § 2401(c). Congress did not appropriate this money in FY 2012.

¹ The Postal Service also believes that its 5-day delivery proposal is fully consistent with its obligations under title 39, United States Code, and that the only potential legal prohibition on implementing the proposal is the appropriations rider. This memorandum does not discuss title 39 issues.
In the appropriations bills that have provided these amounts (or, as it did last year, only the first amount), Congress each year includes various riders. The FY 2012 appropriations act was typical, setting forth three long-standing riders in addition to the 6-day rider:

For payment to the Postal Service Fund for revenue forgone on free and reduced rate mail, pursuant to subsections (c) and (d) of section 2401 of title 39, United States Code, $78,153,000, which shall not be available for obligation until October 1, 2012: Provided, That mail for overseas voting and mail for the blind shall continue to be free: Provided further, That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level: Provided further, That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer: Provided further, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in fiscal year 2012.


2. The 6-Day Appropriations Rider Must be Re-enacted Each Fiscal Year to Have Effect

As an initial matter, it is clear that the 6-day appropriations rider does not constitute permanent legislation, and must therefore be annually re-enacted in order to have continuing effect. Substantive restrictions set forth in appropriations legislation are "strongly presumed" not to be permanent legislation. See, e.g., Building & Constr. Trades Dep't, AFL-CIO v. Martin, 961 F.2d 269, 273-74 (D.C. Cir. 1992) (noting the "very strong presumption" that when an appropriations act makes substantive changes in the law, "the change is only intended for one fiscal year."); 20 U.S. Op. Off. Legal Counsel 232 (1996) (noting that, based on case law, "clear and convincing evidence of congressional intent is needed to establish that a provision in an appropriations act constitutes permanent legislation"); General Accountability Office, Principles of Federal Appropriations Law, Vol. I, at 2-34 (3rd ed. 2004) ("A provision contained in an annual appropriation act is not to be construed to be permanent legislation unless the language used therein or the nature of the provision makes it clear that Congress intended it to be permanent.") (hereinafter "Red Book"). There is nothing in the plain language of the 6-day rider to rebut this presumption. Indeed, the fact that Congress has included it in annual postal appropriations language indicates that Congress does not consider it to be permanent. See, e.g., Red Book, Vol. I, at 2-37 (noting that "the repeated inclusion of a provision in annual appropriation acts indicates that it is not considered or intended by Congress to be permanent") (citations omitted).

3. The Current Partial-Year Continuing Resolution Does Not Prevent Implementation of 5-Day Delivery in August

The current continuing resolution (CR) does not prohibit implementation of 5-day delivery in August. The CR expires according to its terms on March 27, 2013. See Pub. Law No. 112-175, § 106. Therefore, even if the CR extended the 6-day rider beyond the end of FY 2012 (which, as discussed below, we do not concede), the CR clearly does not extend the requirement that 6-day delivery be maintained to the Postal Service's proposed implementation date in August. Furthermore, even if the rider is currently in effect, it does not prevent the Postal Service from proposing a future change to the number of days of delivery, and to make preparations to effectuate that change. The Postal Service will urge Congress not to act to prevent the
implementation of the modified 5-day plan, either through appropriations legislation that succeeds the CR, imposes the six-day delivery requirement, and extends through August, or through other legislation that requires the same result.

In this respect, the Postal Service’s action of setting forth its modified plan, and requesting that Congress not act to stop implementation, is not something that can only be done because a CR is in effect. As noted above, Congress must annually decide whether to continue the 6-day rider; the rider therefore expires when the fiscal year covered by the appropriations act incorporating the rider expires. The Postal Service could have, in any year, prior to the enactment of an appropriations act for the next fiscal year containing the rider, issued a plan to implement a modified 5-day delivery plan on October 1 (the beginning of the next fiscal year), and requested that Congress ensure that appropriations legislation for the next fiscal year not prevent the Postal Service from implementing on that date. This is not “flouting” the will of Congress, as has been suggested by some, but requesting that Congress make a policy decision to allow the Postal Service to move to 5-day mail delivery. What is unique about this year is that the Postal Service can propose a date in the existing fiscal year rather than at the beginning of the next fiscal year, without requesting that Congress affirmatively change existing law, because of the fact that a full-year funding bill incorporating the rider has not yet been enacted.

This year might also be unique because in our view the current CR does not extend the rider even at this point of time (though, as discussed further below, this issue is irrelevant to determining whether 5-day delivery can be implemented in August). The FY 2012 appropriations bill only provided what is known in appropriations law as an “advance appropriation”: the reimbursement for estimated FY 2012 revenue foregone expenses was not made available until October 1, 2012, the beginning of FY 2013. See General Accountability Office, A Glossary of Terms Used in the Federal Budget Process, GAO-05-734SP, at 8 (2005) (defining “advance appropriation”).² Based on a comparison of the current CR with prior CRs, it is doubtful that the extension of budget authority set forth in § 101(a) of the current CR confers any advance appropriations like the one afforded to the Postal Service in the 2012 appropriations legislation. As such, we do not believe that the current CR extends the 6-day rider, which cannot serve as a condition imposed on the receipt of appropriated funds when those funds have not been appropriated.

From a review of recent fiscal years in which Congress never enacted a regular appropriations bill, and instead promulgated a full-year CR following a series of partial-year CRs (FYs 2007 and 2011), Congress did not address advance appropriations until the full-year CR, and it did so though an explicit provision, not included in the partial-year CRs. See Revised Continuing Appropriation Resolution, 2007, Pub. Law No. 110-5, § 109 (“With respect to any discretionary account for which advance appropriations were provided for fiscal year 2007 or 2008 in an appropriations Act for fiscal year 2006, the levels established by section 101 shall include advance appropriations in the same amount for fiscal year 2008 or 2009, respectively, with a comparable period of availability.”); Department of Defense and Full-Year Continuing Appropriation Act, 2011, Pub. Law No. 112-10, § 1118 (With respect to any discretionary account for which advance appropriations were provided for fiscal year 2011 or 2012 in an appropriations Act for fiscal year 2010, in addition to amounts otherwise made available by this

² As discussed further below, while the Postal Service received an “advance appropriation” within the technical meaning of that term, the term is something of a misnomer in this context, because the appropriation is a reimbursement for expenses incurred in the fiscal year covered by the appropriations act.
Act, advance appropriations are provided in the same amount for fiscal year 2012 or 2013, respectively, with a comparable period of availability.

Past practice therefore indicates that Congress has not intended the language of § 101 in partial-year CRs as conferring advance appropriations. This past practice is highly relevant because the current CR, like the CRs in FYs 2007 and 2011, follows what GAO refers to as the "traditional" form, in that it uses a number of standardized provisions, including § 101. Red Book, Vol. II, at 8-3. If § 101 of the partial-year CRs in those prior years were not interpreted as conferring advance appropriations, there seems to be no reason to interpret the language of § 101 in the current CR any differently. Cf. id., at 8-8 (noting that "indications of congressional intent expressed in well-established methods" are relevant in interpreting the language of traditional continuing resolutions).

This interpretation is re-enforced by language in the full-year CRs for those years that specifically addressed the Postal Service’s appropriation; this language further indicated that an advance appropriation for revenue foregone was not provided until those separate, explicit provisions were included in the full-year CR. In the FY 2007 full-year CR, for example, Congress included the following provision:

Notwithstanding section 101, the level for 'United States Postal Service, Payment to the Postal Service Fund' shall be $29,000,000; and, in addition, $6,915,000, which shall not be available for obligation until October 1, 2007, and shall be in addition to amounts provided under section 109.

Revised Continuing Appropriation Resolution, 2007, Pub. Law No. 110-5, § 21072 (emphasis added). This language first reflects the fact that the FY 2006 appropriations act provided a regular appropriation (i.e., an appropriation made available in the fiscal year covered by the appropriations act) in addition to an advance appropriation. This regular appropriation was extended by the full-year CR (it had also been extended by the partial-year CRs), though ultimately in the amount of $29 million rather than the figure provided in the FY 2006 act. The language also says that, "in addition", the full-year CR provided $6.915 million as an advance appropriation, on top of an advance appropriation amount equivalent to that provided in the FY 2006 act pursuant to section 109 (which was the provision explicitly addressing advance appropriations).

Similarly, the FY 2011 full-year CR included the following provision:

Notwithstanding section 1118, the amounts included under the heading “Independent Agencies, United States Postal Service, Payment to the Postal Service Fund” in division C of Public Law 111–117 shall be applied to funds appropriated by this division as follows:
(1) By substituting "$86,705,000" for "$118,328,000".
(2) By substituting "$74,905,000" for "$89,328,000".
(3) By substituting "2011" for "2010".

Department of Defense and Full-Year Continuing Appropriation Act, 2011, Pub. Law No. 112–10, § 1569 (emphasis added). This language expressly referred back to section 1118, which as noted above provided advance appropriations "in addition to amounts otherwise made available
by this Act," again indicating that until an explicit provision was included in the full-year CR, the CRs employed in that fiscal year did not confer an advance appropriation to the Postal Service.  

If section 101(a) of the current partial-year CR does not confer an advance appropriation, the Postal Service has been appropriated no money under the current CR for its FY 2013 revenue foregone expenses: this is because, unlike the FYs 2006 and 2010 appropriations acts, the FY 2012 appropriations act did not provide the Postal Service with a regular appropriation. Since this is the case, it is counterintuitive to argue that the partial-year CR extends the 6-day rider, considering section 101(a) indicates that the "conditions" provided in the FY 2012 appropriations acts would continue to apply to "amounts" appropriated by the CR. The Postal Service has been appropriated no amounts by the CR, and thus the rider should not logically be in effect.

However, this debate is largely beside the point, because the Postal Service is not proposing to implement its plan during the term of the existing CR. Rather, the Postal Service is proposing to implement its plan in August, well after the current CR expires. Prior to that, Congress will have the opportunity to enact further appropriations legislation. As such, the Postal Service's legal ability to move forward with its plan depends on Congressional restraint to refrain from enacting any full-year funding bill, or other legislation which imposes the 6-day delivery obligation.

4. The FY 2012 Appropriations Bill Does Not Prevent Implementation of 5-Day Delivery in August

An additional issue to consider is whether the Postal Service is precluded from moving to 5-day delivery in August because of the fact that the rider was incorporated into the FY 2012 appropriations bill. A potential argument is that, because the FY 2012 appropriations language provided the Postal Service with an advance appropriation available for obligation beginning October 1, 2012 (the start of FY 2013), the rider applies throughout FY 2013. However, the Postal Service believes that Congress' long-standing and consistent intent in enacting the rider is to ensure that 6-day delivery is provided in the fiscal year that is covered by the appropriations act, meaning the FY 2012 act required 6-day delivery in FY 2012, but not beyond.

The revenue foregone appropriation for free mail for the blind and overseas voters is based on an estimate of the revenue that will not be received during the fiscal year covered by the appropriations act, plus an adjustment for a prior fiscal year to reconcile the estimate for that year with actual results. The FY 2012 act, for instance, reimbursed the Postal Service for FY 2012 revenue foregone, with a reconciliation adjustment for FY 2009. Therefore, this is not a situation in which Congress, through an advance appropriation, is providing future funding for a particular program based on a decision regarding the operating needs of the program in a future period of time.  

Rather, Congress is reimbursing the Postal Service for revenue not generated

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[3] The FY 2010 appropriation act had also provided a regular appropriation, in the amount of $29 million, in addition to an advance appropriation of $89.328 million.

[4] For instance, Congress has used discretionary advance appropriations to give the agency administering the program greater certainty regarding the resources it will have in the future, so that it can better manage the services it provides in that year. See, e.g., H.R. Rep. No. 111-171 (2009) (discussing advance appropriation authority for the Department of Veteran's Affairs). It has also used the device to with respect to agencies providing grants or government assistance to persons or other entities, to ensure that those agencies have certainty as to the amounts they will be able to provide in a future period. See
during the fiscal year covered by the appropriations act, and is simply delaying the Postal Service’s receipt of that reimbursement until the start of the subsequent fiscal year. There is no reason to believe that the rider—which is a condition on the receipt of the reimbursement—is intended to apply to the fiscal year following the year covered by the appropriations act, whose revenue foregone costs will be reimbursed in future legislation. Rather, the rider requires that, in order to be reimbursed for a particular fiscal year, the Postal Service must maintain 6-day delivery in that fiscal year.

This interpretation properly reflects the boilerplate nature of the 6-day rider. Originally crafted in the early 1980s as a free-standing requirement in reconciliation legislation, the requirement that 6-day delivery be maintained soon morphed into a rider on the use of appropriated funds and then to its current form, a straight requirement to continue 6-day delivery (though still expressed as a condition on the receipt of appropriated funds). Until the FY 1999 appropriations legislation, the Postal Service was provided regular appropriations for revenue foregone, rather than advance appropriations. See, e.g., Postal Service Appropriations Act, 1988, Pub. L. No. 100-202; Postal Service Appropriations Act, 1996, Pub. L. No. 104-52. It was therefore clear that the rider only applied to the fiscal year covered by the appropriations act. See, e.g., Building & Constr. Trades Dept’ v. AFL-CIO, 981 F.2d at 273-74.

Beginning with the FY 1999 appropriations act, Congress began to use the device of an advance appropriation to delay the Postal Service’s receipt of the reimbursement payment. See Postal Service Appropriations Act, 1999, Pub. L. No. 105-277. This advance appropriation has usually been accompanied by a regular appropriation (e.g., the Postal Service Appropriations Act, 2003, Pub. L. No. 108-7), though, as the FY 2012 act demonstrates, this has not always been the case. There is no indication that, when Congress began using the device of an advance appropriation in order to delay the obligation of some (or, in certain years, all) of the funds provided to the Postal Service as reimbursement for revenue foregone for the year covered by the appropriations act, it considered this change as affecting the time period in which the 6-day rider was applicable. Indeed, the proposal to delay the FY 1999 payment until the beginning of FY 2000 was proposed by the Senate Appropriations Committee (H.R. CONF. REP. No. 105-825, at 1490 (1998)), and the discussion of the 6-day rider for FY 1999 was identical to its discussion in FY 1998, when an advance appropriation was not used. Compare S. REP. No. 105-49, at 39 (1997) with S. REP. No. 105-251, at 43 (1998). If the use of an advance appropriation constituted a change in the time period in which the rider applies, its use

Budget of the United States Government, Fiscal Year 2013, Appendix at 1427 (listing discretionary advance appropriations).

In addition, unlike most other Executive Branch entities that may receive an advance appropriation, the Postal Service is generally exempt from provisions of “Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds.” 39 U.S.C. § 410(a). As such, an interpretation of the 6-day rider would seem to have little broader relevance as to how other advance appropriations may be interpreted.

Indeed, a condition imposed on reimbursement does not as a logical matter extend beyond the reimbursement; for instance, if you work for two weeks and get paid for doing so, acceptance of the reimbursement does not compel you to work another two weeks.


Indeed, in originally incorporating the 6-day delivery requirement into the appropriations process, it was emphasized that the condition would only apply in the fiscal year covered by the appropriations act. See Appendix B, at 158.
in the FY 1999 appropriations act (which only provided an advance appropriation)\(^9\) would have meant that the 6-day rider did not apply in FY 1999. There is certainly no reason to believe that Congress intended to create such a gap in the applicability of the 6-day rider to exist; indeed, the Senate Committee report expressly noted that it was necessary to include the rider in the FY 1999 legislation to protect 6-day delivery “in 1999.” S. REP. No. 105-251, at 43.\(^{10}\) Overall, there is no reason to believe that, by utilizing an advance appropriation as a mechanism for compensating the Postal Service for revenue foregone in a particular fiscal year, Congress intended to deviate from its original intent of having the 6-day rider apply to the fiscal year covered by the appropriations act (and hence to the fiscal year for which the revenue foregone being compensated for is incurred).

A counter-argument might be that the language of the small post office proviso, which expressly applies to “fiscal year 2012,” demonstrates that when Congress wishes to specify when a rider applies to a specific fiscal year other than the year in which the appropriated funds are made available, it does so expressly. However, the fact that the 6-day rider does not have equivalent language loses significance when one considers that the provisos existed in the exact same form when it was clear that both only applied to the fiscal year covered by the appropriations act. As such, there is no reason to believe that Congress has intended the varying language between the two provisos to be a relevant consideration in interpreting the time period in which the 6-day rider applies.

In fact, according dispositive significance to the small post office proviso’s reference to “fiscal year 2012” would render that proviso completely superfluous under its plain language: it was impossible for the Postal Service to have used the “funds provided in [the FY 2012] Act” to close small post offices “in fiscal year 2012,” since the appropriated funds were not provided to the Postal Service until October 1, 2012. This inconsistency again reflects the boilerplate nature of the riders attached to the Postal Service’s appropriation language, and underscores that Congress has not intended its decision to use an advance appropriation to reimburse the Postal Service for revenue foregone expenses in the year covered by the appropriations act as being of importance in determining how the riders should be interpreted. The only way to avoid rendering the rider completely superfluous is to interpret it as not being limited to “fiscal year 2012.” A contrary attempt to avoid rendering the proviso superfluous—that the proviso prohibits the closure of small post offices, even with the use of the Postal Service’s permanently appropriated funds (as opposed to the funds appropriated on an annual basis) as a condition of being reimbursed for revenue foregone—is untenable, because it would ignore the fact that the limitation of the rider to use of the “funds provided in this Act” is centrally important to its long-understood meaning: the Postal Service has over the years closed many small post offices as it has adapted its retail network, without running afoul of the rider. See, e.g., Postal Regulatory Commission, Report on Universal Service and the Postal Monopoly, at 136 (2008) (noting that the small post office rider “does not appear to not appear to bar the Postal Service from using other funds to close or consolidate small post offices, and the Postal Service has in fact closed...

\(^9\) The FY 1999 appropriations language stated that “none of the funds” provided by the Act were available for obligation until October 1, 1999.

\(^{10}\) The Report’s mention that 6-day delivery should be provided “beyond” FY 1999 was hortatory, since the same statement was included in prior Committee reports when the appropriations language provided only a regular appropriation. See, e.g., S. Rep. No. 105-49, at 39 (FY 1998 appropriations act); S. Rep. No. 103-256, at 47 (FY 1996 appropriations act) (Indeed, this reference to maintaining services “beyond” the current year applied to the small post office rider as well, which by its express terms was limited to the fiscal year covered by these acts).
or consolidated hundreds of small post offices since 1985.”); see also id. at 137 (“Congress has not expressly barred the Postal Service from closing small and rural post offices.”). 11

This highlights a relevant distinction between the small post office proviso (and the child support proviso) and the 6-day rider, which further supports an interpretation that the 6-day rider applies to the fiscal year covered by the appropriations act, and hence the fiscal year on which the reimbursement is based. The small post office proviso, as well as the child support enforcement proviso, are limitations on the use of the “funds made available” or the “funds provided in” the Act; by contrast, the 6-day rider is a condition imposed on the Postal Service’s ability to be reimbursed for revenue foregone for a particular year. 12 The fact that the small post office and child support enforcement provisos are use limitations on the precise funds that are appropriated serves to mitigate their breadth, by allowing the Postal Service to take the actions prescribed by the provisos so long as it uses permanently appropriated funds to do so. By contrast, the 6-day rider cannot be satisfied in this fashion. At the same time, the fact that the small post office and child support enforcement provisos (but not the 6-day proviso) apply to the actual use of the funds means they naturally govern the use of the funds, once received. By contrast, because the 6-day rider is a condition imposed on reimbursement, rather than a condition imposed on the use put to that reimbursement, there is no reason to conclude that it is appropriate to have the 6-day rider apply on the basis of when the reimbursement for a fiscal year actually occurs. 13

This interpretation is further supported by a discussion of the appropriations language in the Senate Appropriations Committee Report for the FY 2013 appropriations bill (S. 3301, 112th Cong.). Rather than indicating an understanding that the FY 2012 appropriations act already ensured that 6-day delivery would be provided in FY 2013, the Report notes that action in the FY 2013 bill was needed to preserve this requirement:

Mail Delivery.—Since fiscal year 1981, annual appropriations bills have each included language requiring 6-day per week postal delivery. The Committee believes that 6-day mail delivery is one of the most important services provided by the Federal Government to its citizens. Especially in rural and small-town America, this critical postal service is the linchpin that serves to bind the Nation together. The Committee does not include a provision that would alter this requirement during fiscal year 2013.

11 The Postal Service is given broad statutory authority to determine the contours of its retail network in order to provide customers with “ready access to essential postal services” in a manner that is “consistent with reasonable economies of postal operations.” 39 U.S.C. § 403(b)(3). See also PRC USO Report at 185 (“The Postal Service has used its flexibility to realign the placement of postal facilities to meet the needs of patrons as those needs change. The historic growth and decline in the number of post offices and collection boxes in favor of carrier delivery and collection at an individual’s mailbox both demonstrate the continuing realignment of access to comply with the needs of patrons nationwide.”).

12 As noted above, at one point very early in its history the rider was a limitation on the use of appropriated funds.

13 Furthermore, considering the small post office proviso is explicitly tied to the Postal Service’s use of the appropriated funds, in contrast to the 6-day requirement, there is not an equivalent need, in order to adhere to Congressional intent, to avoid interpreting the history of the appropriations language so as to avoid a “gap” in the period of time in which the rider was governing the Postal Service. In other words, the fact that the small post office proviso did not operate in FY 1999 (due to the fact that Congress moved to an advance appropriation) does no violence to Congress’s intent regarding the rider, whereas it would with respect to the 6-day delivery rider.
See S. REP. NO. 112-177, at 116-117 (2012) (emphasis added). While it is true that this Report discusses the unenacted FY 2013 appropriations bill rather than the FY 2012 appropriations bill, it is clearly a valid means of ascertaining Congress’s understanding of the 6-day rider in the FY 2012 bill, considering the FY 2013 appropriations language being discussed by the Senate Report was identical in all material respects to the enacted FY 2012 language, and was the product of the exact same Congress (the 112th) that enacted the FY 2012 bill. Thus, there is no reason to believe that Congress’s understanding of the FY 2012 language would have changed from FY 2012 to FY 2013.

Finally, the Postal Service’s interpretation is consistent with prior public statements that were made to both Congress and the Postal Regulatory Commission (PRC) when the Postal Service originally proposed 5-day delivery; these statements have not been challenged in any way. In the spring of 2010, the Postal Service proposed to move to 5-day delivery for all mail, with a proposed implementation date during FY 2011. In the FY 2010 appropriations bill (Public Law No. 111-117), Congress enacted a revenue foregone appropriation that included an advance appropriation (and hence available for obligation in FY 2011), which, under the argument being considered here, would have forbidden the Postal Service from moving forward with its 5-day delivery plans in FY 2011, absent a change in the law affirmatively granting the Postal Service the authority to do so. Nevertheless, in a Report to Congress describing its proposal (also filed during the PRC advisory opinion proceedings), the Postal Service noted that implementing its plan required that Congress not act to prevent implementation:

The Postal Service’s intent is to implement five-day delivery during FY 2011, which ends Sept. 30, 2011. For that to happen, Congress must not enact an FY 2011 appropriations bill requiring six-day delivery.

See Ensuring a Viable Postal Service for America—How Five-Day Delivery is Part of the Solution at 5 (2010), available at http://www.prc.gov/Docs/67/67429/USPS-LR-1.pdf. The Postal Service made similar statements in other filings at the PRC, which no party contested. See, e.g., PRC Docket No. N2010-1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, at 10 (2010) (“Assuming no disabling legislative enactment, the Postal Service intends to implement its Docket No. N2010-1 service changes in fiscal year 2011, which begins on October 1, 2010.”). While it is true that the lack of any challenge to these statements is not definitive evidence of the meaning of the 6-day rider, it does indicate the consistent understanding within the postal community—which is consistent with the consistent intent of Congress—as to the time period in which the 6-day rider applies.  

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14 The only changes from the 2012 language to the 2013 language discussed in the Report were to the amounts appropriated, the date those amounts would be made available, and the inclusion of an additional rider in the 2013 language concerning the closure of mail processing plants.

15 Regarding the postal community, it is at least noteworthy that in a press release issued when the current continuing resolution was enacted, the National Association of Letter Carriers (NALC) stated that the 6-day requirement was only valid through the period in which the resolution is in effect. See http://afl.salsalabs.com/o/5875/t/0/blastContent.jsp?email_blast_KEY=107413. NALC has re-iterated that position. See http://afl.salsalabs.com/o/5875/t/0/blastContent.jsp?email_blast_KEY=125150