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March 21, 2013

The Honorable Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations
Committee on Oversight and Government Reform
House of Representatives

Subject: *U.S. Postal Service—Applicability of Appropriations Act Provision Under Continuing Resolution*

Dear Mr. Connolly:

This responds to your February 22, 2013, request for our legal opinion concerning whether the Continuing Appropriations Resolution, 2013, continues the applicability of a provision in the Financial Services and General Government Appropriations Act, 2012, that required the U.S. Postal Service (USPS) to continue 6-day delivery and rural delivery of mail at not less than the 1983 level. As explained below, we conclude that USPS continues to be bound by the provision in the Financial Services and General Government Appropriations Act, 2012.

In accordance with our regular practice, we contacted USPS to obtain its legal position on this matter. Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, USPS, Feb. 26, 2013; GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/lawresources/resources.html. USPS provided us a letter setting out its legal views. Letter from General Counsel, USPS, to Assistant General Counsel for Appropriations Law, GAO, Mar. 1, 2013 (USPS Letter).

BACKGROUND

USPS is an independent establishment of the executive branch of the U.S. Government. 39 U.S.C. § 201. USPS receives a permanent and indefinite appropriation of all revenues that it earns. 39 U.S.C. § 2401. USPS deposits its revenues into the Postal Service Fund, which is a revolving fund in the U.S. Treasury. 39 U.S.C. § 2003. In an appropriations act for fiscal year 1987, Congress also appropriated amounts to the Postal Service Fund to compensate

USPS for revenue foregone on free and reduced rate mail that it is required by law to carry, “[p]rovided further, That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level.”¹ Postal Service Appropriations Act, 1987, Pub. L. No. 99-591, title II, 100 Stat. 3341 (Oct. 30, 1986) (emphasis in original). Congress has enacted a similar provision concerning 6-day delivery of mail in every regular USPS appropriations act since fiscal year 1987. See, e.g., Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, 119 Stat. 2396, 2490 (Nov. 30, 2005). In the Financial Services and General Government Appropriations Act, 2012 (2012 Appropriations Act), Congress also appropriated amounts to the Postal Service Fund to compensate USPS for revenue foregone, with a provision identical to those enacted since fiscal year 1987 concerning 6-day delivery of mail.² Pub. L. No. 112-74, 125 Stat. 786, 884, 923 (Dec. 23, 2011).

To continue government operations into fiscal year 2013, Congress enacted a continuing resolution that, generally, provided appropriations to agencies to continue operations at a specified rate. Continuing Appropriations Resolution, 2013, Pub. L. No. 112-175, 126 Stat. 1313 (Sept. 28, 2012) (Continuing Resolution). The language of the proviso itself, however, does not appear in the Continuing Resolution.

On February 6, 2013, USPS announced that beginning the week of August 5, 2013, it would reduce mail delivery to street addresses from 6 days a week to 5 days a week.³ USPS, *Postal Service Announces New Delivery Schedule*, Feb. 6, 2013, available at about.usps.com/news/national-releases/2013/pr13_019.htm (last visited Mar. 15, 2013). As we explain further below, USPS notes that because of the peculiar nature of its funding (a payment for foregone revenue made in the next

¹ Congress enacted other provisions concerning mail delivery frequency at least as early as 1980. Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, § 412, 94 Stat. 2599, 2607 (Dec. 5, 1980).

² The provision in the 2012 Appropriations Act states “[t]hat 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level.” Pub. L. No. 112-74, 125 Stat. at 923. A provision in an appropriations act is not permanent legislation unless the language or nature of the provision makes it clear that Congress intended the provision to be permanent. 65 Comp. Gen. 588 (1986). One way Congress indicates permanence is to include words of futurity, such as “henceforth,” in a provision. *Id.* This provision contains no words of futurity. In addition, Congress has enacted this provision every year since fiscal year 1987.

³ According to the announcement, packages will continue to be delivered 6 days a week, as would mail addressed to post office boxes. In this opinion, we consider only whether USPS continues to be bound by the provision in the 2012 Appropriations Act. We do not consider whether the planned service changes USPS has announced would comport with the provision.

fiscal year), the Continuing Resolution did not appropriate funds to USPS. USPS Letter, at 4. The 6-day delivery provision, USPS asserts, is a condition imposed only on amounts appropriated in 2012. *Id.*, at 3. USPS argues that the provision does not apply during the pendency of the Continuing Resolution for the simple reason that the Continuing Resolution appropriates no funds to USPS.⁴ *Id.*, at 4.

DISCUSSION

At issue here is whether the provision from the fiscal year 2012 appropriations act continues to apply during the fiscal year 2013 continuing resolution.

It is commonly accepted that the purpose of a continuing resolution is to maintain the *status quo* with regard to government funding and operations. See, e.g., GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 35–36. Over the years, our decisions have concluded that agencies operating under a continuing resolution are to preserve the *status quo* as established by the appropriations acts identified in the continuing resolution until Congress completes action on appropriations acts for the remainder of the fiscal year. We have stated that “continuing resolutions are intended by Congress to be temporary stop-gap measures enacted to keep existing federal programs functioning after the expiration of previous budget authority.” 58 Comp. Gen. 530 (1979); see also B-300673, July 3, 2003; 66 Comp. Gen. 484 (1987); B-209583, Jan. 18, 1983. We have also said that a “continuing resolution generally maintains the *status quo* until Congress can pass a formal appropriations act.” B-317022, Sept. 25, 2008.

There are a number of standard provisions⁵ enacted in most continuing resolutions that, when taken together, establish an expectation that agencies will continue to carry out the *status quo* during a continuing resolution, unless otherwise specifically stated. For example, one standard provision, which appears as section 101 of the Continuing Resolution, states that agencies must act “under the authorities and conditions provided” in the fiscal year 2012 appropriations acts. Pub. L. No. 112-175, § 101 (emphasis added). Agencies also may continue projects or activities only if they were “conducted in fiscal year 2012.” *Id.* In addition, section 101 refers to appropriations acts from fiscal year 2012 in their entirety, and the amount appropriated under the Continuing Resolution is determined by reference to the corresponding fiscal year 2012 appropriation. *Id.*

⁴ USPS states that “Congress will, of course, have the opportunity to enact further appropriations legislation prior to the Postal Service’s proposed implementation date in August. For the Postal Service to move forward with its plan, Congress will have to refrain from re-enacting a 6-day rider in such legislation” USPS Letter, at 6.

⁵ For an explanation of standard provisions in continuing resolutions, see GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 2009).

Three other standard provisions are important here. Section 103 incorporates restrictions from the prior year's appropriations acts. *Id.*, § 103. Under section 104, amounts appropriated under the Continuing Resolution are not available to initiate or resume projects or activities for which appropriations, funds, or authority were not available during the prior fiscal year. *Id.*, § 104. Under section 111, appropriated entitlements and other mandatory payments whose budget authority was provided in prior year appropriations acts are to continue at a rate to maintain program levels under current law. *Id.*, § 111.

The Supreme Court has indicated that the meaning of a statute is to be determined not just "by reference to the language itself," but also by reference to "the specific context in which that language is used and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). In our view, as we have stated before in our case law, continuing resolutions are temporary measures that require agencies to continue operating under the *status quo* established by the previous appropriations acts until Congress completes action on appropriations acts for the remainder of the fiscal year.

It is in this context that we must interpret the Continuing Resolution as it applies to USPS. The 6-day delivery provision has been enacted into law every year since 1987, and was enacted once again in the 2012 Appropriations Act. When we read section 101 with other provisions in the context of its broader purpose, it is clear that it extends all the authorities and conditions of the identified appropriations, including the 2012 Appropriations Act, for the duration of the Continuing Resolution. The 6-day delivery provision is one of the "authorities and conditions provided" in the 2012 Appropriations Act. It would be anomalous, and inconsistent with the nature and purpose of a continuing resolution, to conclude that Congress intended in this Continuing Resolution, without specific legislative language, to eliminate this directive, especially since Congress had imposed it on USPS in the previous fiscal year and every year since 1987.

USPS asserts that it need not comply with the provision during the period of the Continuing Resolution because the Continuing Resolution did not appropriate any amounts for the Postal Service Fund.⁶ USPS Letter, at 3. We disagree. This conclusion rests upon a faulty USPS premise, which is that the provision is "explicitly tied to the receipt of annually appropriated funds for revenue foregone." *Id.* No language in the provision indicates that its applicability is predicated upon and restricted to amounts appropriated in the 2012 Appropriations Act or in any other act. Instead, the provision is a legislative directive establishing an operational standard for USPS. An appropriations act is a law like any other law, and Congress is free to

⁶ USPS has stated that it will abide by the 6-day delivery provision if a full-year continuing resolution were to include language providing an appropriation for the Postal Service Fund. USPS Letter, at 6; see, e.g., Department of Defense and Full-Year Continuing Appropriation Act, 2011, Pub. L. No. 112-10, div. B, § 1118, 125 Stat. 38, 107 (Apr. 15, 2011).

enact operational directives and prohibitions in appropriations acts, as well as appropriations themselves. See *Atlantic Fish Spotters Association v. Evans*, 321 F.3d 220, 224 (1st Cir. 2003). USPS's interpretation of the Continuing Resolution and of the 2012 Appropriations Act parses the statutes in a fashion that frustrates both the nature and the purpose of the Continuing Resolution.

CONCLUSION

The Continuing Appropriations Resolution, 2013, continues the applicability of a provision in the Financial Services and General Government Appropriations Act, 2012, that required the U.S. Postal Service to continue 6-day delivery and rural delivery of mail at not less than the 1983 level. Absent specific legislative language, a continuing resolution maintains the *status quo* regarding government funding and operations. Although the provision at issue herein is an operational directive, not an appropriation, we see no language in the fiscal year 2013 Continuing Resolution to indicate that Congress did not expect it to continue to apply during the Continuing Resolution.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel for Appropriations Law, at (202) 512-4023.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "SA Poling".

Susan A. Poling
General Counsel