UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

SEP 24 2010

Honorable Ruth Y. Goldway
Chairman
Postal Regulatory Commission
Washington, D.C. 20268-0001

Dear Ms. Goldway:

Thank you for your letter transmitting the report from The Segal Company (Segal) regarding "the allocation of the costs of Civil Service Retirement System (CSRS) benefits paid to former Post Office Department (POD) employees." OPM's principal roles in this matter are those of a program administrator and trust fund fiduciary. As such, our principal concerns must be for the efficient operation and reliable funding of the retirement and insurance programs. As a trust fund fiduciary, our principal relevant concern is with the adequate funding of the program and not with the source of that funding.

The Segal report provides a useful discussion of issues that have been raised regarding the current formula used to allocate funding shares between the Postal Service and the Treasury for CSRS. The report, however, is also narrowly focused, addressing only one aspect of a complex arrangement. The Segal report acknowledges as much when it states that its "recommendation is, in essence, a 2010 fresh look, and does not attempt to deal with the history accumulated over forty years since the PRA was enacted." We are happy to support a re-examination of the current policy regarding Postal Service funding of CSRS taking into account the relevant circumstances, but must note that the Segal report discusses only a subset of those circumstances.

Legislative History

OPM determines the Postal Service's responsibility for CSRS costs in accordance with current law. OPM's methodology is based on the determinations made by prior Congresses that the Postal Service is responsible for CSRS costs attributable to pay increases granted by the Postal Service. Congress first established this policy in 1974, under Public Law 93-349, and no subsequent legislation has established an alternative policy.

In 2003, the Congress enacted the Postal Civil Service Retirement System Funding Reform Act of 2003 (P.L. 108-18). P.L. 108-18 established separate accounting of all USPS payments and outlays to and from CSRS from the creation of the Postal Service in 1971. The law cancelled prior payment requirements that if continued would have ultimately over-funded the Postal Service's liabilities by $78 billion. The law made no provision to change the allocation of costs between the government and the Postal Service. The Senate Committee Report notes that P.L. 108-18 "continues the Postal Service's liability for the retirement costs attributable to its employees covered by the CSRS, which was imposed when the Post Office Department became the self-supporting United States Postal Service in July 1971." [S.Rep. No. 108-35, at 3 (2003)]

Following enactment of P.L. 108-18, OPM in 2003 provided a report to Congress detailing its methodology for allocating CSRS costs to the Postal Service. In 2004, the Postal Service appealed this methodology to OPM. OPM reviewed its methodology, and found that it was correctly applying the methodology consistent with Congressional intent.

In 2006, the Congress again addressed Postal CSRS funding, via the Postal Accountability and Enhancement Act (PAEA; P.L. 109-435), which included a provision for the Treasury to take responsibility for the cost of military service credit in the computation of CSRS annuities. This Congressional action was implemented by OPM and resulted in a savings of $28 billion to the Postal Service. The legislative history of that bill does not indicate that the Congress questioned the allocation methodology used to determine Postal CSRS obligations. The cost figures incorporated in Congressional reports associated with both P.L. 109-435 and P.L. 108-18, were based upon calculations using the current methodology. If the current methodology could have been changed by either law, the cost would have been reflected in the Congressional reports.

CSRS Allocation Policy

The Segal report argues that the current allocation methodology is not fair and equitable "except in the context of Congressional legislation" and the 1974 law. That is, Segal acknowledges that Congress spoke clearly on how the allocation was to be determined, and OPM has consistently followed these directions.

As you are aware, the original transfer of pension obligations to the Postal Service was but one part of a larger transaction between the Postal Service and the taxpayer. When the Postal Service was created in 1971, it assumed certain liabilities, such as those associated with the future CSRS accruals for its workforce, but it also received certain considerations. Without further obligation, all assets of the Post Office Department were transferred to the Postal Service. The Postal Service was granted a monopoly over first-class mail. The Postal Service remained exempt from Federal, State, and local taxes and vehicle licensing fees, among other things. As in private sector merger and divestiture transactions, pension obligations were considered in the context of the larger set of transactions.

Reprinted in a Senate Committee Report on H.R. 29 (subsequently enacted as P.L. 93-349) is a March 27, 1973, letter from the Postal Service stating its position:

> "This legislation has been proposed on the ground that the Postal Service should operate on a financially self-sufficient basis, meeting its operating costs out of its revenues and not out of hidden subsidies. After careful consideration—and in full awareness of the financial burdens enactment of the bill will impose—the Postal Service has concluded that it is proper, as a matter of principle, for these costs to be imposed on postal ratepayers rather than the taxpayers." [S.Rep. No. 93-947, at 9 (1974)]

As for making judgments about how equitable the allocation methodology is, the Segal recommendation relies heavily on Financial Accounting Standards Board (FASB) financial accounting standards, which require advance recognition of expected future salary increases in corporate reporting of private sector pension liabilities. The Segal Report notes also, however, that actual funding of private sector pensions is governed by the provisions of the Pension Protection Act of 2006, which Segal notes provides "little or no allowance for the impact of future salary increases." Thus, arguments based on current private pension funding practices can go either way, for or against, the existing CSRS allocation method as it is currently administered by OPM.

The Segal report estimates that an alternative allocation method would result in a reduction of the Postal Service obligation to CSRS of approximately $55 billion. Given that the exact determination of the impact of the alternative methodology would involve the analysis of nearly 40 years of accounting records, we cannot confirm the absolute accuracy of this estimate. We do, however, believe that the Segal analyses were professionally conducted and provide a reasonable order of magnitude basis for Congress to evaluate the cost of Segal's alternative allocation method.

To recap, in 2003, Congress directed OPM to make changes to the accounting of Postal Service CSRS obligations that led to a $78 billion decrease in future Postal CSRS funding payments. Then in 2006, Congress directed OPM to change how military service costs should be allocated under CSRS that led to a $28 billon adjustment. In both cases, the magnitude of the adjustment was understood by Congress when the laws were passed. It appears to OPM that when Congress intends to make adjustments of the magnitude suggested by the Segal report, it does so by taking specific legislative action.

Redetermination Provisions

We believe that the implication that OPM has the discretion to make basic changes in the allocation method between the Postal Service and the Treasury goes beyond the intent of, and the authority provided to OPM in, the 2006 Postal Accountability and Enhancement Act. That law included a provision, section 802(c), allowing the Postal Service to appeal to OPM its annual determination of the Postal Service CSRS supplemental liability under 5 U.S.C. 8348(h)(1).

Section 802(c) provides in pertinent part:

> (A) Request for review.--Notwithstanding any other provision of this section (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

Footnote 1 of the PRC transmittal indicates that their action is based upon:

> Request of the United States Postal Service for the Commission to Conduct a Review Pursuant to PAEA Section 802(c) of OPM Determinations Regarding CSRS, February

23, 2010; Clarification of Request of the United States Postal Service for the Commission to Conduct a Review Pursuant to PAEA Section 802(c) of OPM Determinations Regarding CSRS, March 2, 2010.

Our view is that, section 802(c) is intended to permit review of specific calculations made by OPM of the annual supplemental liability determination according to the established Fund allocation methodology. The Segal report is something entirely different, a review of what methodology should be employed generally in evaluating one aspect of Postal Service CSRS obligations. Nevertheless, OPM is providing this response in the manner as would be applicable under section 802(c)(2).

Conclusion

After careful review by counsel, we have concluded that OPM does not have the authority to make a reallocation in the manner suggested in the Segal report. However, if Congress determines that another methodology is more appropriate, OPM will of course comply with any changes in the current law.

Once again, thank you for the opportunity to provide our views. Copies of this letter will be furnished to the relevant committees of the Senate and House of Representatives, and to the United States Postal Service.

Sincerely,

John Berry

John Berry
Director

cc: Committee on Homeland Security
and Governmental Affairs
United States Senate

Committee on Oversight
and Government Reform
United States House of Representatives

United States Postal Service