



OFFICE OF
**INSPECTOR
GENERAL**
UNITED STATES POSTAL SERVICE



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**INSPECTOR
GENERAL**
POSTAL REGULATORY
COMMISSION

Cost of Appeals for Closing Postal Service-Operated Retail Facilities

Audit Report

July 12, 2012

Report Number CI-AR-12-005



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HIGHLIGHTS

July 12, 2012
Cost of Appeals for Closing Postal Service-Operated Retail
Facilities
Report Number CI-AR-12-005

BACKGROUND:

This was a joint audit between the Offices of Inspectors General (OIG) of the U.S. Postal Service and the U.S. Postal Regulatory Commission (PRC). Since fiscal year (FY) 2009, the Postal Service has increased its efforts to optimize the retail network. As a result, the number of final determinations to discontinue retail operations has increased from 118 to 362 (307 percent) from FY 2010 to FY 2011.

Consequently, appeals of final determinations also increased from six to 103 (1,766 percent) for the same period. On May 9, 2012, the Postal Service announced a new strategy to preserve post offices in rural America and achieve cost savings.

Our objective was to assess the costs for the Postal Service and the PRC to process, administer, and manage closure appeals for Postal Service-operated retail facilities. The Postal Service Law Department (Law Department) is responsible for tracking, monitoring, and processing all retail facility closure appeal cases opened by the PRC. The PRC Office of General Counsel is responsible for processing and advising PRC commissioners on appeal cases. In addition, the PRC appoints a Public Representative to represent the interests of the public in each appeal.

WHAT THE OIGs FOUND

The Postal Service OIG estimated the average costs and staff hours the Law

Department needs to process each appeal are about \$1,365 and 15 hours, respectively. The PRC OIG's review determined the costs and staff hours the PRC needs to process an appeal ranges from \$1,806 to \$2,496 and from 19 to 29 hours, respectively.

In addition, the Postal Service OIG found the Law Department did not consistently track attorney and staff hours spent on individual appeals. The Law Department recognizes the need for additional resources to handle the estimated workload and, accordingly, issued a statement of work to obtain support through contracting.

Lastly, from July through November 2011, the Postal Service withdrew four final determinations after appeals were filed with the PRC. It did not disclose the factors that led to withdrawing its final determinations. The Postal Service OIG estimated the Postal Service could have realized cost savings of \$5,460 if it considered those facts before the final determinations.

WHAT THE OIGs RECOMMENDED:

Although the report does not contain recommendations, Postal Service management provided written comments and the Postal Service OIG consider them responsive. PRC management elected not to provide written comments because there were no recommendations.



July 12, 2012

MEMORANDUM FOR: MARY ANN GIBBONS
GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT

DEAN J. GRANHOLM
VICE PRESIDENT, DELIVERY AND POST OFFICE
OPERATIONS

SHOSHANA GROVE
SECRETARY AND CHIEF ADMINISTRATIVE OFFICER,
U.S. POSTAL REGULATORY COMMISSION

A handwritten signature in black ink that reads "David Williams".

FROM: David C. Williams
Inspector General, U.S. Postal Service

/s/ Jack Callender

Jack Callender
Inspector General, U.S. Postal Regulatory Commission

SUBJECT: Audit Report – Cost of Appeals for Closing
Postal Service-Operated Retail Facilities
(Report Number CI-AR-12-005)

This report presents the results of our joint audit with the U.S. Postal Regulatory Commission (PRC) Office of Inspector General (OIG) of the cost of appeals for closing Postal Service-operated retail facilities (Project Number 12YG003CI000).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Michael L. Thompson, director, Planning, Innovation, and Optimization, at 703-248-2389, or me at 703-248-2100.

Attachments

cc: Commissioners, Postal Regulatory Commission
Anthony F. Alverno
James J. Boldt
Corporate Audit and Response Management

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Introduction

This report presents the results of a joint audit between the Offices of Inspectors General (OIG) of the U.S. Postal Service and the Postal Regulatory Commission (PRC) of the cost of appeals for closing Postal Service-operated retail facilities (Project Number 12YG003CI000). The objective of this self-initiated audit was to assess costs for the Postal Service and the PRC to process, administer, and manage closure and consolidation appeals for Postal Service-operated retail facilities. This audit addresses strategic, financial, and operational risks. See [Appendix A](#) for additional information about this audit.

Since fiscal year (FY) 2009, the Postal Service has increased its efforts to optimize the retail network. The Postal Service issued new discontinuance procedures and began two national initiatives¹ to consolidate offices by reviewing more than 7,200 Postal Service-operated facilities for discontinuance opportunities.² As a result, the number of final determinations to discontinue retail operations has increased from 118 to 362 (307 percent) from FY 2010 to FY 2011. Consequently, appeals of the Postal Service’s final determinations to the PRC have also increased (see Table 1). According to the PRC’s public website, it received eight appeals between FYs 2007 and 2010 and 103 appeals in FY 2011. On May 9, 2012, the Postal Service announced a new strategy³ to preserve post offices (POs) in rural America and achieve cost savings.

Table 1: Postal Service-Operated Facility Appeals

Fiscal Year	Number of Closures ⁴	Number of Appeals	Percentage of Appeals
2012 (as of 5/21/2012)	537	126	23%
2011	362	103	28%
2010	118	6	5%
2007–2009	308	2	1%

Source: The Postal Service’s Change Suspension Discontinuance Center System for the number of closures and the PRC’s public website for the number of appeals.

¹ Thirty-six hundred studies from the Stations and Branches Optimization and Consolidation Initiative, April 2009 and 3,652 studies from the Retail Access Optimization Initiative, July 2011.

² Under Postal Service policy, headquarters or field personnel may initiate a discontinuance study to examine the continuation of a retail facility operation. A written proposal must be posted for 60 days at affected retail facilities. The proposal must explain the services recommended as substitutes and the rationale that supports the proposal to discontinue the retail facility operation, along with an invitation for written feedback from customers.

³ The Postal Service’s new strategy consists of maintaining the existing PO, staffed by a Postal Service employee, with modified retail hours to match customer needs. Access to the retail lobby and PO boxes will remain unchanged, and the town’s ZIP Code and community identity will be retained. This new strategy complements existing options, which include: 1) providing mail delivery by either rural carrier or highway contract route, 2) contracting with a local establishment to create a Village PO, and 3) offering service from a nearby PO.

⁴ Anyone served by the PO slated for the proposed closing may appeal to the PRC within 30 days of the Postal Service’s final determination posting.

Conclusion

The Postal Service OIG estimated the average costs and staff hours the Postal Service Law Department (Law Department) needs to process each appeal are about \$1,365⁵ and 15 hours, respectively. The PRC OIG's review determined that the costs and staff hours⁶ the PRC needs to process an appeal case range from \$1,806 to \$2,496 and 19 to 29 hours, respectively.

In addition, the Postal Service OIG found the Law Department should strengthen its staff resource planning. This effort would support the organization's retail network optimization initiatives and help control administrative and appeal costs. Previously, the Law Department did not have a plan to address the increased workload resulting from appeals, because appeals have been historically low in number (anywhere from zero to six per year). Also, the Law Department does not track attorney and staff hours spent on individual appeals. The Law Department recognizes that it has insufficient staff resources to handle the estimated workload and, accordingly, issued a statement of work⁷ to obtain a litigation support contract with a not-to-exceed value of \$ [REDACTED] for 1 year.⁸ In addition, the Law Department created appeals checklists and presentations to train attorneys and staff and established an internal website to post training materials and templates for pleadings.

Lastly, from July through November 2011, the Postal Service withdrew four final determinations after appeals were filed with the PRC. The Postal Service did not disclose the factors that led to withdrawing its final determinations. The Postal Service OIG estimated the Postal Service could have realized cost savings of \$5,460 if those facts were considered before the final determinations.

Appeal Costs

The public has the right to appeal a PO closing decision⁹ to the PRC as stipulated in federal law¹⁰ and Postal Service policy.¹¹ Historically, there have been few PO closure

⁵ The Postal Service OIG's estimate was based on workhours tracked for two appeal cases on which the Law Department used an average of 15 attorney workhours to process each appeal. Our estimates do not include other Postal Service staff resources that might be required to process appeals. We calculated an hourly rate of \$ [REDACTED] by averaging the rate per hour of all attorneys handling appeals and adding fringe benefits ([REDACTED] x \$ [REDACTED] = \$1,365).

⁶ The PRC appeal costs and staff hours are limited to those of the Public Representation, Office of General Counsel and contract services. The PRC OIG estimates do not include other PRC staff resources that might be involved in processing appeals.

⁷ Attorney and paralegal hours are to be fixed at an hourly rate and paralegals will be paid time and a half for more than 40 hours per week worked. The period of performance is 1 year from the first date of the contract with an option for 2 additional years.

⁸ At the time of our audit, a support contract was not executed.

⁹ After consideration of customer comments, if warranted, the Postal Service might decide to proceed with a final determination to discontinue the retail facility operation under study. Any such final determination is posted in the affected retail facility for 30 days. For discontinuance actions associated with POs, customers may appeal the final determination to the PRC. The PRC has up to 120 days to consider and decide an appeal.

¹⁰ 39 U.S.C. § 404(d).

¹¹ Handbook PO-101, *Postal Service-Operated Retail Facilities Discontinuance Guide*, January 2012.

appeals, but the number has grown in the last year as the Postal Service has begun closing more POs, stations, and branches.¹² The increase in retail facility closures has caused an increase in appeals (see Table 1). According to the PRC's public website, it received eight appeals between FYs 2007 and 2010. In FY 2011, the PRC received 103 appeals, 83 (or 81 percent) of which were appealed in a 3-month period, from July to September 2011. Previously, the Law Department did not have a plan to address the increased workload for appeals because it historically ranged from zero to six per year. The Law Department does not track attorney and staff hours spent on individual appeals.

The Law Department recognizes that current staffing is insufficient to handle the estimated appeals workload and issued a statement of work on September 28, 2011, to obtain additional contract support to process appeals for a not-to-exceed contract value of \$██████ for 1 year. The Postal Service OIG estimated that each appeal could cost the Postal Service \$██████¹³ if contractors process the appeals, compared to \$1,365 if Law Department employees process them. Although a contract to process appeals might be cost effective, it does not include the Law Department's costs to manage the contract and its associated personnel. At the time of our audit, the Law Department had not executed a contract. We are not making a recommendation because management took corrective action during the review to address the issue identified.

The PRC OIG estimated that the costs and staff hours the PRC needs to process each appeal range from \$1,806 to \$2,496 and between 19 and 29 hours, respectively, under current practices. The cost range includes contract litigation services to augment the appeals workload at a firm-fixed price per case.

After an appeal is filed with the PRC, the Law Department might determine that the official record¹⁴ used to support the final determination is deficient or incomplete. As such, the Postal Service submits a notice to the PRC to withdraw its final determination to close the facility, and it remains in operation. From July through November 2011, the Postal Service withdrew four final determinations after appeals were filed with the PRC. The Postal Service OIG's review of documents obtained from the PRC's public website showed that the basis for the four appeal petitions was the Postal Service's failure to consider community input and use of erroneous economic saving calculations. The Postal Service did not disclose the factors that led to withdrawing its final determinations; however, if it had considered those facts before making the final determinations, the Postal Service could have realized cost savings of \$5,460.¹⁵ See [Appendix B](#) for the monetary impact.

¹² Classified stations and branches are staffed by Postal Service personnel under the administration of an independent PO. Stations are located within and branches are located outside of the corporate limits of the city or town in which the independent PO is located.

¹³ We estimated the weighted average hourly rate for attorneys and paralegals from a potential temporary services placement firm of \$██████ (██████ x \$██████ = \$██████).

¹⁴ All internal and external communications related to the discontinuance, including documents shared at the community meeting or otherwise, must be placed in the administrative record.

¹⁵ The cost savings of \$5,460 represents Law Department staff resources and does not include other Postal Service staff resources required to prepare the proposal for final determination decisions.

Management's Comments

Postal Service management agreed with the findings and monetary impact in the report. Management stated that, while the Law Department does not track attorney and staff hours spent on individual appeals, they track and monitor all appeal cases opened by the PRC. Management added that the Law Department manages workload and costs by deferring attorney reviews of final determinations until the appeals stage. Management believed that attorney reviews of all final determinations before posting would significantly increase attorney workhours. Further, management stated that they updated Handbook PO-101 through January 2012 and the period of contract support performance is 1 year. Lastly, management believes that statements regarding the Postal Service's reasons for withdrawing appeals and contactors' hourly rates and total costs might be exempt from mandatory disclosure under the Freedom of Information Act. See [Appendix D](#) for management's comments in their entirety.

PRC management agreed with the findings and elected not to provide written comments because there were no recommendations.

Evaluation of Management's Comments

Although the report does not contain any recommendations, the Postal Service OIG considers management's comments responsive. With regard to management's comments on attorney review of all final determinations prior to posting, we acknowledge that such action would increase attorney workhours. However, the intent of the finding was to report the basis for appeal petitions to the PRC. We believe thorough consideration of factors leading to final determinations to close retail facilities by management would help control administrative and appeal costs. In addition, on June 25, 2012, we clarified with Law Department management that the Postal Service did not disclose the factors that led to withdrawing its final determinations. We have considered management's comments and edited the final report, where appropriate.

Appendix A: Additional Information

Background

Federal law and Postal Service policy require a discontinuance process be followed when Postal Service-operated retail facilities are under consideration for closure. The Law Department is responsible for tracking, monitoring, and processing all retail facility closure appeal cases opened by the PRC. The PRC Office of General Counsel is responsible for processing and advising the PRC commissioners in appeal cases. In addition, the PRC appoints a Public Representative to represent the interests of the general public in each appeal proceeding. Once the final determination to discontinue a retail facility is posted, the Postal Service must wait at least 60 days before proceeding with the closure. Anyone served by the PO slated for the proposed closing may appeal to the PRC within 30 days of the Postal Service's final determination posting. When the PRC receives an appeal, it establishes a case to support a review of the determination made by the Postal Service and has up to 120 days to act on the appeal. The PRC may dispose of an appeal in one of three ways:

- Affirm the Postal Service made its decision in accordance with the law;
- Remand the case to the Postal Service for reconsideration; or
- Dismiss the case for lack of jurisdiction, untimely filing, or withdrawal by either party.

The PRC may suspend the effectiveness of the final determination pending disposition of the appeal. See [Appendix C](#) for a flowchart of this process.

Objective, Scope, and Methodology

Our objective was to assess the costs for the Postal Service and the PRC to process, administer, and manage closure and consolidation appeals for Postal Service-operated retail facilities. To accomplish this objective, the Postal Service OIG:

- Reviewed applicable policies, procedures, laws, and regulations and consulted with OIG counsel;
- Interviewed Postal Service officials;
- Reviewed and analyzed PRC appeal cases from FY 2007 to FY 2012; and
- Reviewed news articles related to retail facility closures and appeals.

The Postal Service OIG relied on the information obtained by the PRC OIG related to PRC appeal costs and staff hours. While the Postal Service OIG did not test the accuracy of the information, it was determined reliable for the purposes of this report.

The OIGs conducted this performance audit from July 2011 through July 2012¹⁶ in accordance with generally accepted government auditing standards and included such tests of internal controls as we considered necessary under the circumstances. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusion based on our audit objective. The OIGs believe that the evidence obtained provides a reasonable basis for their findings and conclusion based on the audit objective. The OIGs discussed their observations and conclusion with PRC and Postal Service management on June 7, 2012, and June 19, 2012, respectively, and included their comments where appropriate.

The Postal Service OIG relied on computer-generated data from the Postal Service's Change Suspension Discontinuance Center System.¹⁷ To validate the data, the Postal Service OIG traced the appeal case documentation and compared the results to the computer-generated data, and determined that the data were sufficiently reliable for the purposes of this report.

Prior Audit Coverage

The OIGs have not performed prior audits or reviews related to the objective of this audit.

¹⁶ The review was suspended from July 26 through October 2, 2011, and from January 10 through April 23, 2012, due to higher priorities.

¹⁷ The Change, Suspension Discontinuance Center is a web-based application that standardizes and tracks retail facility closures and consolidations, and provides management with greater visibility over discontinuance activities enterprise-wide.

Appendix B: Monetary Impact

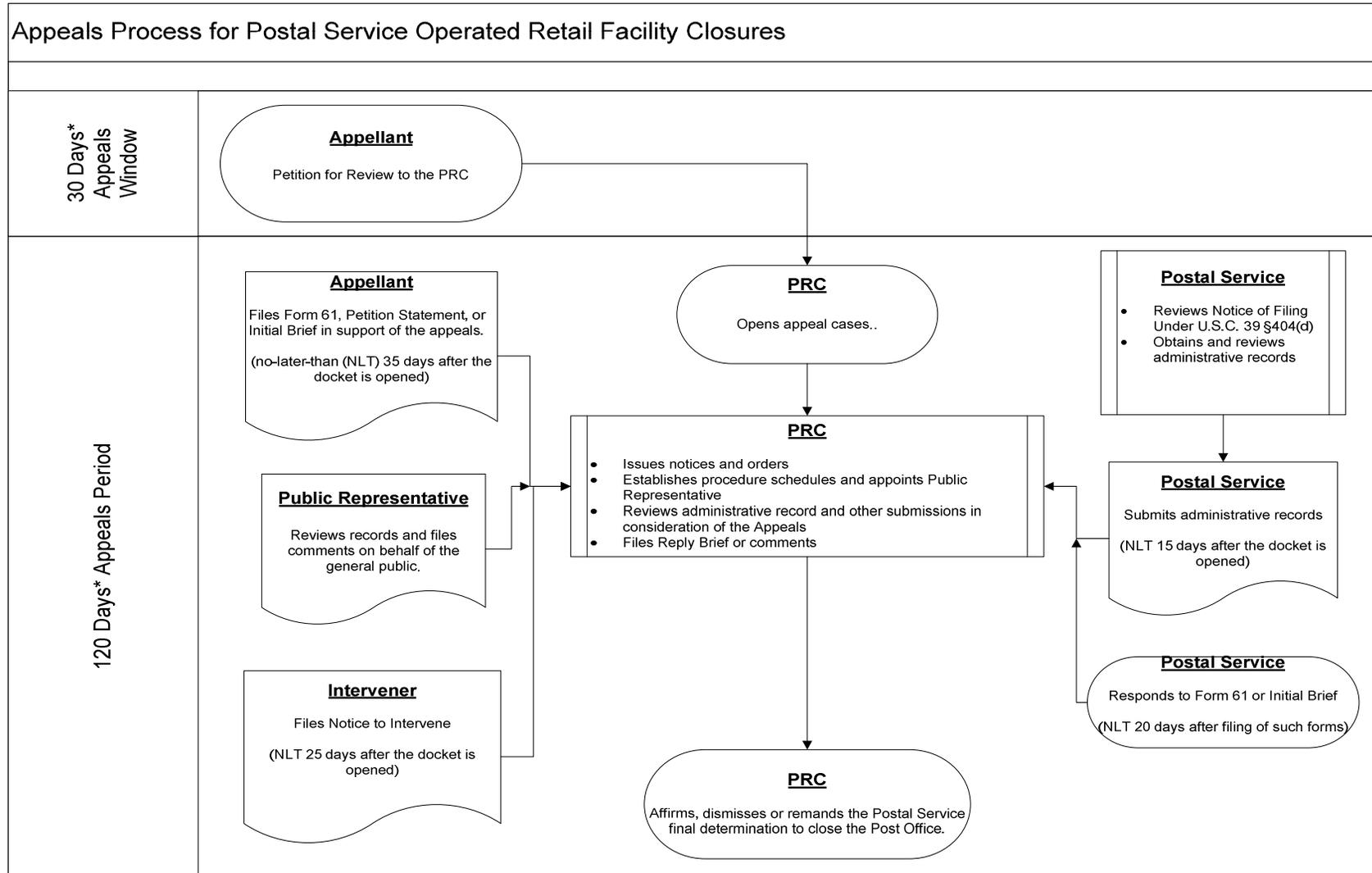
Finding	Impact Category	Amount
Cost of Appeals	Questioned Costs ¹⁸	\$5,460.00

After an appeal is filed with the PRC, the Law Department might determine the official record used to support the final determination to close a PO is deficient or incomplete. As such, the Postal Service will submit a motion to the PRC to withdraw its final determination to close the facility. As a result, the PRC dismisses the appeal and the retail facility remains in operation. From July through November 2011, the Postal Service withdrew four appeals with an average cost of \$1,365¹⁹ each.

¹⁸ Unnecessary, unreasonable, unsupported, or an alleged violation of law, regulation, contract, etcetera. May be recoverable or unrecoverable and is usually the result of historical events.

¹⁹ The average costs include the Law Department's resources and do not include other Postal Service staff resources that might be required to process appeals.

Appendix C: Appeals Process Flowchart



*Timeframe is mandated by requirements in U.S.C. § 404(d).

Appendix D: Management's Comments

MARY ANNE GIBBONS
GENERAL COUNSEL
AND EXECUTIVE VICE PRESIDENT



June 19, 2012

Mr. Michael Magalski
Deputy Assistant Inspector General
for Support Operations
Office of the Inspector General
United States Postal Service
1735 North Lynn Street, 2nd Floor
Arlington, VA 22209-2019

RE: Draft Audit Report – Cost of Appeals for Closing Postal Service Operated
Retail Facilities (Report Number CI-AR-12-DRAFT)

Dear Mr. Magalski:

Our office has reviewed the Draft Audit Report titled Cost of Appeals for Closing Postal Service Operated Retail Facilities (Draft Report) and generally agrees with its statements and conclusions. Specifically, the Postal Service agrees with the Office of Inspector General's (OIG's) findings related to (1) the overall cost of appeals borne by the Postal Service, (2) the actions taken by the Postal Service to ensure sufficient staff to process appeals, including obtaining a contract to obtain litigation support, and (3) the Postal Service's development of resources and training materials for attorneys and staff working on appeals.

We would like to clarify certain points raised in the Draft Report. First, the Draft Report states on pages 2 and 3 that the Law Department does not track and document the current appeal workload. We note, however, that while the Law Department does not track attorney and staff hours spent on individual appeals, the Law Department does track and monitor all appeals docketed by the Postal Regulatory Commission using Law Department work tracking databases.

Second, the Draft Report states on pages 2, 3 and 6 that the Postal Service could have realized cost savings of \$5,460 if the four withdrawn appeals identified in the Draft Report were reviewed and corrections were made prior to posting the Final Determinations. We note, however, that this estimate does not account for the comparatively significant increase in attorney time that

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would need to be committed to reviewing all Final Determinations before posting. By deferring thorough attorney review until the appeals stage, the Law Department is reducing its workload for those facilities which are discontinued but not appealed.

Third, please note that in footnote 12 on page 2 of the Draft Report, the current version of Handbook PO-101 is January 2012, and that the litigation services contract referenced on pages 2 and 3 of the Draft Report was for a term of one year.

The Postal Service believes that some statements within the Draft Report may be exempt from mandatory disclosure under the Freedom of Information Act (FOIA). Specifically, sentences identified in the attached version of the Draft Report regarding Law Department documents used in preparation for litigation and Law Department reasoning for withdrawing appeals should be protected from disclosure pursuant to FOIA Exemption 5, on grounds that they are protected by the attorney work-product doctrine. Furthermore, the total cost and hourly rate for contractor provided services should be protected pursuant to FOIA Exemption 3, coupled with 39 U.S.C. § 410(c)(2), and FOIA Exemption 4.

A copy of the Draft Report reflecting these comments is attached for your reference.

Please feel free to contact me if further information would be helpful.

Sincerely,



Mary Anne Gibbons

Enclosure