

CRS Report for Congress

Do Not Mail Initiatives and Their Potential Effects: Possible Issues for Congress

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Prepared for Members and
Committees of Congress

Do Not Mail Initiatives and Their Potential Effects: Possible Issues for Congress

Summary

Since 2007, at least 19 state legislatures have introduced legislation that would require the creation of state Do Not Mail (DNM) registries. In 2008, 12 states had pending DNM legislation. Although each state's DNM initiative is unique, all attempt to curb the delivery of unsolicited advertising mail — often referred to as “junk mail” or “direct mail marketing.” Each state's bill would permit a resident to submit his or her name and address to a state agency or department, which would compile all the names and addresses into a registry that would then be distributed to direct mail marketers. Marketers who knowingly ignored the registry and sent unsolicited direct mail advertisements to individuals on a state's registry could be charged a fine for each infraction. While no federal DNM legislation is currently pending, some Members have expressed an interest in the subject, and constituents regularly request information about junk mail.

Proponents of DNM policies have claimed that advertising mail harms the environment, renders recipients more susceptible to identity theft and consumer fraud, and is a time-wasting nuisance. The United States Postal Service (USPS) and direct mail marketers, however, argue that the environmental impact from advertising is minimal, fraud or identity theft linked to mailings is rare, and “time-wasting” is in the eye of the beholder. While environmental and consumer protection groups have advocated the creation of the DNM registries, direct mail marketers and the USPS have offered alternative solutions to legislation, including Do Not Mail initiatives managed by direct mail marketers themselves.

Estimates suggest \$60 billion — or 21% of all advertising dollars in the United States — is spent on advertising mail. In 2007, USPS generated more than a quarter of its revenue — \$20.7 billion — from Standard Mail, the service's categorization for most advertising mail. The Direct Marketing Association estimates that nearly 460,000 people were directly employed by direct mail marketing — including printers, graphic designers, and catalog creators in 2007. An additional 3.1 million people were indirectly employed in jobs affected by direct mail marketing — including manufacturers, customer service employees, mail deliverers, and warehouse workers. USPS estimates it could lose between \$4 billion and \$10 billion in revenue if all states passed a DNM registry and all consumers registered for it.

This report examines the state level initiatives to create Do Not Mail registries, and analyzes their potential effects on the environment and the economy should they be implemented. It also notes, but does not exhaustively analyze, possible constitutional impediments to state DNM registries. In addition, the report reviews existing methods to reduce or eliminate the delivery of unsolicited advertising mail. This report concludes with federal legislative options that could affect direct mail marketing. This report will be updated when events warrant.

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Do Not Mail Initiatives and Their Potential Effects: Possible Issues for Congress

Introduction

Since 2007, at least 19 state legislatures have introduced bills that would require the creation of state Do Not Mail (DNM) registries. Although each state's bill is unique, all the bills attempt to curb the delivery of unsolicited advertising mail — often referred to as “junk mail” or “direct mail marketing.” Each bill would permit a resident to submit his or her name and address to a state agency or department, which would compile all the names and addresses into a registry that would then be distributed to direct mail marketers. Marketers who knowingly ignored the registry and sent unsolicited direct mail advertisements to individuals on a state's registry could be charged a fine for each infraction. This report focuses on the environmental and economic issues associated with state DNM statutes, recognizing that there may be constitutional impediments to their full implementation should they be enacted.¹

¹ A full analysis of possible constitutional issues related to state DNM statutes is beyond the scope of this report and, in any event, may be somewhat speculative given the apparent lack of direct judicial precedent and the absence of specific statutory language. Nonetheless, at least three constitutional principles may pertain: free speech rights, the power to regulate interstate and foreign commerce, and the express authority of Congress to establish post offices and postal roads. Precedent on state and federal “do not call” registries appears to indicate that DNM statutes could be crafted to comply with free speech principles. See, for example, *Mainstream Mktg. Servs. v. FTC*, 358 F.3d 1228 (10th Cir. 2004) (federal registry) and *Nat'l. Coalition of Prayer, Inc. v. Carter*, 455 F.3d 783 (7th Cir. 2006) (Indiana statute). See also, *Rowan v. Post Office Department*, 397 U.S. 728 (1970), in which the Supreme Court rejected an argument that a federal statute which allows addressees to request that postmasters issue orders prohibiting delivery of matter addressees in their discretion find offensive does not violate the First Amendment and observed generally that addressees have a right to control the kinds of mail that they wish to have delivered.

The implications under the Constitution's Commerce Clause may be more difficult to assess: Unlike the case of “do not call” registries, there is neither a federal statute that broadly regulates unsolicited mail through registries nor a federal statute that explicitly allows states to establish their own do not mail registries.

Perhaps the most formidable obstacle to state DNM statutes is the constitutional power granted to Congress to establish post offices and postal roads. Judicial interpretation of this congressional power is relatively sparse, but the authority that does exist (some of it quite old) suggests that the postal power embraces the regulation of the entire postal system and that a state statute which significantly interferes with the performance of this federal function by impeding the delivery of matter that may be mailed and how it may be mailed

(continued...)

Table 1 includes states that have introduced do-not-mail legislation in 2007 and 2008.

Table 1. States That Have Introduced Do-Not-Mail Legislation in 2007 or 2008

2007
Arkansas
Colorado
Connecticut
Hawaii (carried over to 2008)
Maryland
Michigan (carried over to 2008)
Missouri
Montana
New Jersey
New York (carried over to 2008)
North Carolina (carried over to 2008)
Rhode Island (carried over to 2008)
Texas
Vermont (carried over to 2008)
Washington (carried over to 2008)
2008
Illinois
Maryland (new bill introduced)
New Hampshire
Pennsylvania
Tennessee

Source: Direct Marketing Association, “State Do Not Mail Registry Bills — 2007,” available at [<http://www.the-dma.org/donotmail/2007legislation.shtml>], visited September 3, 2008; Direct Marketing Association, “State Do Not Mail Registry Bills — 2008,” available at [<http://www.the-dma.org/donotmail/2008legislation.shtml>], visited September 3, 2008. List also compiled using individual states’ bills.

¹ (...continued)

may be constitutionally suspect. See, for example, Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, S. Doc. No. 108-17, at 311-312 (2002). For further analysis of constitutional and legal issues regarding state DNM statutes, contact Thomas J. Nicola, Legislative Attorney, American Law Division.

Environmental groups, including Greendimes, ProQuo, ForestEthics, and The New American Dream, state that unsolicited mail creates large amounts of paper waste, invades individuals' privacy, renders individuals more susceptible to identity theft and mail fraud, and is a nuisance.² Direct mail marketers and the United States Postal Service (USPS), however, state that advertising mail is an extremely successful means for businesses and not-for-profit organizations to communicate with potential customers and donors that causes minimal environmental impact, creates jobs, and adds billions of dollars to the domestic and global economies.³ USPS estimates that it could lose between \$4 billion and \$10 billion in annual revenue if every state created a Do Not Mail Registry and every consumer placed his or her name on it.

The 110th Congress

Currently, no federal legislation to create a Do Not Mail registry has been introduced in the 110th Congress.⁴ Advertising mail, however, has been an issue of interest at congressional oversight hearings. At a March 5, 2008, hearing before the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, for example, Postmaster General John Potter stated that DNM initiatives

not only threaten the viability of the mail in and among the affected states; they also undermine our ability to support a national network, one capable of serving every resident of every state, territory, and possession — affordably, effectively, and efficiently. We believe the success of these initiatives will also come at the expense of jobs, the viability of local businesses, and the reduction in municipal,

² ForestEthics, "Do Not Mail: The Facts," available at [<http://www.donotmail.org/article.php?list=type&type=3>], viewed May 20, 2008. ForestEthics currently operates an online petition that seeks to create a national Do Not Mail Registry. As of June 4, 2008, the petition included nearly 45,000 signatures.

³ U.S. Postal Service, "Valuing the Mail," a handout from USPS, available from the author of the report.

⁴ 18 U.S.C. § 1461 prohibits the mailing of obscene or crime-inciting matter, but no statute or pending legislation would limit or curb advertising mail delivery. Advertising mail is also discussed in pending legislation related to consumer protection. Representative Gary L. Ackerman and others introduced H.R. 5895 on April 24, 2008. If passed, the legislation would require direct mail marketers to place a "large, clear, and bold typeface" notice "in a clear and conspicuous location on the outside envelope" of unsolicited advertising mail that reads "'This Is an Unsolicited Commercial Offer From' followed by the name of the person or company making such offer." The bill was referred to the House Committee on Financial Services on April 24, 2008. H.R. 5895 aims to reduce the number of American consumers who "are induced into falsely believing" that certain pieces of mail are "from a government entity or an institution with which they are currently doing business." Although the bill does not call for the creation of a Do Not Mail registry, it does have goals that are similar to some state level DNM efforts: eliminating the alleged nuisance and confusion that may be caused by direct mail marketing. The bill may not directly affect postal sales, but could cost direct mail marketers additional fees because they may have to redesign mailings.

county, and state revenue. We cannot afford these results during the best of times; they are unthinkable when the economy is faltering.⁵

Additionally, at the April 1, 2008, annual meeting of the National Postal Supervisors Association Meeting in Washington, D.C., Senator Susan M. Collins, the ranking member of the Senate Homeland Security and Governmental Affairs Committee, discussed existing state DNM initiatives.

The entire postal community is very concerned about proposed “Do Not Mail” legislation. This sounds good to a lot of legislators, who mistakenly equate this ill-conceived proposal with the “Do Not Call” registry. In fact, it would have devastating consequences. Direct mail is an essential part of the Postal Service’s mail volume. “Do Not Mail” legislation would curb this growth and place a heavier burden on other classes of mail to cover the fixed costs of providing postal service, and thus raise its costs and jeopardize universal, affordable service.

Direct mail is in no way comparable to the unsolicited and invasive telephone calls that are curbed by the “Do Not Call” registry. Direct mail imposes no burden on the public, it causes no interruptions, and I, for one, look forward to the Bed, Bath, and Beyond coupons I get in the mail. A “Do Not Mail” registry would attempt to solve a problem that does not exist and would have devastating consequences for every home, community, and business that relies upon our Postal Service.⁶

Controversial Numbers

The proposed reduction or elimination of advertising mail is a controversial issue. USPS states that 100 billion pieces of advertising mail were delivered to households in the United States in 2007 — about 16.7 pieces of advertising mail to each household per week.⁷ In 2007, advertising mail represented 60% of all household mail delivered in the United States.⁸ In 2006, advertising mail accounted for roughly 2.3% of all municipal waste.⁹ According to the Environmental Protection Agency (EPA), Standard Mail generated nearly 5.9 million tons of municipal solid

⁵ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *Postal Accountability Enhancement Act*, hearing on the implementation of P.L. 109-435, 110th Cong., 2nd sess., Mar. 5, 2008.

⁶ Sen. Susan Collins, “Senator Collins Addresses National Postal Supervisors,” available at [http://collins.senate.gov/public/continue.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=0b1c1c67-802a-23ad-4dd2-e8615ecdb750].1], viewed June 9, 2008.

⁷ U.S. Postal Service, *The Household Diary Study: Mail Use and Attitudes in FY2007* (Washington: USPS 2008), p. 38, available at [http://www.usps.com/householddiary/_pdf/USPS_HDS_FY07_web.pdf], viewed Sept. 22, 2008.

⁸ Ibid.

⁹ U.S. Environmental Protection Agency, “Municipal Solid Waste Tables and Figures, 2007,” available at [<http://www.epa.gov/garbage/pubs/06data.pdf>], viewed June 3, 2008. The latest year for which municipal waste information is available is 2006.

waste in 2006.¹⁰ Nearly 2.3 million tons (38.7%) of that waste was recovered.¹¹ Groups seeking to reduce or eliminate advertising mail assert that it inflicts costs upon the environment and the public. Advocates of curbing advertising mail state that nearly half of it is brought to landfills unopened.¹² According to the New American Dream, a Takoma Park, Maryland-based nonprofit organization, “more than 100 million trees’ worth of bulk mail arrive in American mail boxes each year ... the equivalent of deforesting the entire Rocky Mountain National Park every four months.”¹³ Forest Ethics calculates that it “would take the equivalent of over 500,000 garbage truck loads to dump all junk mail into landfills and incinerators each year.”¹⁴ In addition, ProQuo — a San Diego-based company that helps consumers control which organizations receive their names, addresses, and other personal information — advocates for the reduction of unsolicited advertising mail. ProQuo claims that such mailings could lead to identity theft because direct mail marketers, credit bureaus, and data brokers often trade and sell consumer information, making it more accessible to thieves and computer hackers.¹⁵

The Direct Marketing Association (DMA) does not dispute the New American Dream’s statistics or calculations, but points out that the numbers do not include important details. According to DMA, for example, many of the trees cut down to make paper for advertising mail were grown carefully and specifically for the purpose of being harvested for paper.¹⁶ According to a USPS study, 48% of recipients read their unsolicited advertising mail; an additional 33% glance at it, leaving 19% of people who do not read their advertising mail.¹⁷ According to USPS’s *Household*

¹⁰ Ibid.

¹¹ The EPA defines “recovered materials” as “waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process”; see E.O. 13101, Sec. 205, “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition”; see also 63 *Federal Register* 49644, Sept. 14, 1998.

¹² ForestEthics, “Do Not Mail: The Facts,” available at [<http://www.donotmail.org/article.php?list=type&type=3>], viewed May 20, 2008.

¹³ The New American Dream calculated the number of trees using data from Conservatree, a San Francisco, California-based nonprofit that advocates for sustainable paper use, and the U.S. Forest Service; see [<http://www.newdream.org/Junkmail/facts.php>], viewed May 20, 2008.

¹⁴ ForestEthics, “Do Not Mail: The Facts,” available at [<http://www.donotmail.org/article.php?list=type&type=3>], viewed May 20, 2008. ForestEthics used data from the *USPS Household Diary Study* and the *Environmental Defense Paper Calculator*; see [<http://www.donotmail.org/article.php?id=46>], viewed May 22, 2008.

¹⁵ ProQuo, “FAQ,” available at [<http://www.proquo.com/faq/#2>], viewed May 22, 2008.

¹⁶ U.S. Department of Agriculture, “Forest Service, U.S. Forest Facts and Historical Trends,” available at [<http://fia.fs.fed.us/library/briefings-summaries-overviews/docs/ForestFactsMetric.pdf>], viewed June 4, 2008.

¹⁷ U.S. Postal Service, *The Household Diary Study*, Demand Forecasting and Economic Analysis, Finance Division, Mar. 2007, p. 42, available at [http://www.usps.com/householddiary/_pdf/USPS_HDS_FY07_web.pdf], viewed Sept. 22,

(continued...)

Diary Study, an average of 1 in 10 pieces of advertising mail elicited a consumer response.¹⁸ A 2007 USPS Environmental Impact of Mail study found “that advertising mail, through the elimination of shopping trips, harmful emissions, and traffic accidents, results in an annual \$553 million net benefit to the American economy.”¹⁹

Additionally, USPS, the Direct Marketing Association, Valassis²⁰, and other direct mail marketers contend that advertising mail is constitutionally protected commercial speech, and provides very little opportunity for identity theft. According to the *Federal Trade Commission 2006 Identity Theft Survey Report*, in 2005 2% of 8.3 million identity theft victims believe their personal information was acquired through postal mail items.²¹

Finally, these organizations stress advertising mail’s importance to the economy. Estimates suggest that advertisers spent \$60 billion on direct mail marketing in 2006. One out of every five dollars spent on advertising in the United States is spent on mail.²² In addition to USPS’s 786,000 part-time and full-time employees, DMA estimates that nearly 460,000 people have jobs linked directly to advertising mail.²³ Those who hold jobs include delivery employees, graphic artists, catalog designers for companies like L.L. Bean, employees of tree-growing companies, and paper company employees. An additional 3.1 million people are employed in jobs indirectly linked to direct mail marketing, including warehouse workers, package deliverers, and customer service representatives.²⁴

¹⁷ (...continued)
2008.

¹⁸ *Ibid.*, p. 43.

¹⁹ U.S. Postal Service, “2007 Comprehensive Statement on Postal Operations, Chapter 4: Our Operations,” available at [http://www.usps.com/strategicplanning/cs07/chpt4_017.htm], viewed May 20, 2008.

²⁰ Valassis, a Livonia, Michigan-based company and one of the United States’ largest coupon distributors, claims to reach more than 100 million consumers weekly. For more information see the Valassis homepage at [<http://www.valassis.com/1024/Home/10home.aspx?val=true>], viewed Sept. 22, 2008.

²¹ According to the survey, 43% of victims do not know how their information was stolen, which raises the possibility that additional victims’ identities were obtained via postal mail items. For more information, see *Federal Trade Commission — 2006 Identity Theft Survey Report*, Nov. 2007, p. 30, available at [<http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf>], viewed Sept. 22, 2008.

²² Mail Moves America, *Direct Mail National Fact Sheet*, available at [<http://www.mailmovesamerica.org/national.php>], viewed Sept. 22, 2008.

²³ *Ibid.*

²⁴ *Ibid.*

Advertising Mail and the U.S. Postal Service

Data

The U.S. Postal Service generates nearly all of its funding — about \$74.8 billion annually — by charging users of the mail for the costs of its services.²⁵ Congress does provide an annual appropriation of approximately \$100 million to compensate USPS for revenue it forgoes in providing free mailing privileges to the blind and overseas voters, and for other purposes.²⁶ The largest product profit margin is created by First Class Mail sales, which have been in decline since 2000. USPS has, therefore, had to change its business model to rely more heavily on Standard Mail sales, which is comprised mainly of advertising mail.

Standard and First Class Mail. Most advertising mail (83%) in 2007 was sent as Standard Mail, a USPS classification for specialized items that weigh fewer than 16 ounces. Items that can be sent as Standard Mail include printed matter, flyers, circulars, advertising, newsletters, bulletins, catalogs and small parcels.²⁷ The remaining 17% of advertising mail was sent as First Class.²⁸ Any item can be sent as First Class Mail, which is more expensive than Standard Mail. Certain items, however, must be mailed First Class — including handwritten or typewritten material, bills, statements of account or invoices, credit cards, personal correspondence, personalized business correspondence, and all matter sealed against inspection.²⁹

Over the past eight years, USPS has experienced a significant shift in the composition of its mail volume. Since 2000, the volume of USPS First Class Mail has steadily declined. In 2005, for the first time, the volume of Standard Mail exceeded the volume of First Class Mail delivered by USPS (**Figure 1**). Because it is sold at a higher price and costs roughly the same for USPS to deliver,³⁰ First Class Mail provides the Postal Service with a higher profit per mail piece. Although USPS anticipates that Standard Mail sales and revenue will continue to grow,³¹ a significant reduction in Standard Mail volume — for example, volume losses prompted by the

²⁵ *United States Postal Service Annual Report 2007* (Washington: USPS, 2007), p. 3.

²⁶ See CRS Report RL34523, *Financial Services and General Government (FSGG): FY2009 Appropriations*, Garrett Hatch, Coordinator, pp. 39-40.

²⁷ U.S. Postal Service, “Business Mail 101, Classes of Mail: Standard Mail,” available at [<http://www.usps.com/businessmail101/classes/standard.htm>], viewed May 29, 2008.

²⁸ According to USPS, 0.5% of advertising mail is bound printed matter like telephone books, which is not classified as First Class or Standard Mail.

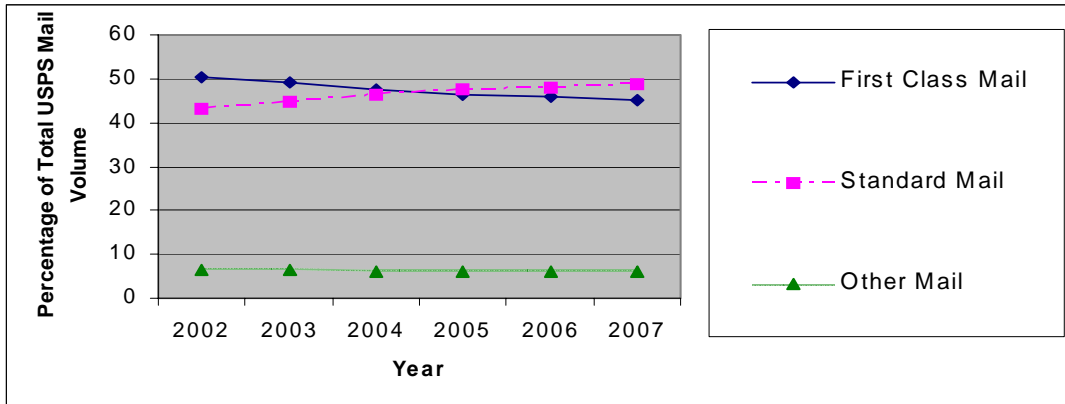
²⁹ USPS, *Domestic Mail Manual, 133 Prices and Eligibility, Section 3.0*, available at [<http://pe.usps.gov/text/dmm300/133.htm>], viewed August 25, 2008.

³⁰ First Class Mail can cost more to deliver if USPS must forward the mail to a different address if, for example, a resident has moved.

³¹ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008.

enactment of Do Not Mail initiatives — could lead to large revenue losses for USPS.³²

Figure 1. Composition of Mail by Class, 2002-2007



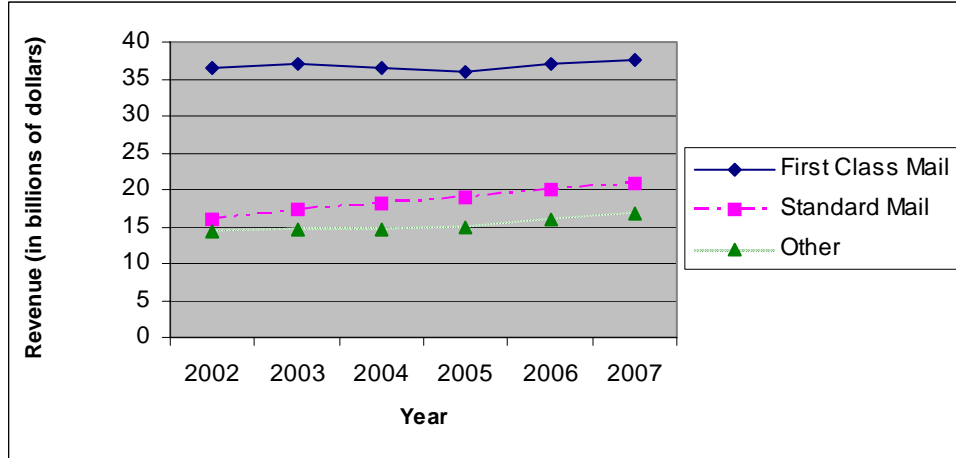
Source: CRS calculations using data from U.S. Postal Service, *Annual Report of the U.S. Postal Service* (Washington: USPS, 2004 — 2007).

Notes: “Other Mail” includes additional USPS mail categories, including Priority Mail, Express Mail, international mail, and package services.

As the volume of First Class Mail dropped, USPS increased the postage rate to send it. However, as **Figure 2** shows, revenue for First Class Mail has remained stagnant. Meanwhile USPS’s annual operating costs have increased. Standard Mail revenue, on the other hand, has grown from more than \$15.8 billion in FY2002 to nearly \$20.8 billion in FY2007.

³² According to congressional testimony by USPS Postmaster General John E. Potter, the current economic slump in the global and national economies has “made [USPS] far more sensitive to downturns in the economic cycle, as advertising spending is extremely vulnerable to periods of retrenchment.” U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *Postal Accountability and Enhancement Act*, hearing on the implementation of P.L. 109-435, 110th Cong., 2nd sess., Mar. 5, 2008. Assistance locating this testimony was provided by Jerry Mansfield, CRS Information Research Specialist.

Figure 2. USPS Revenue by Mail Class, 2002-2007

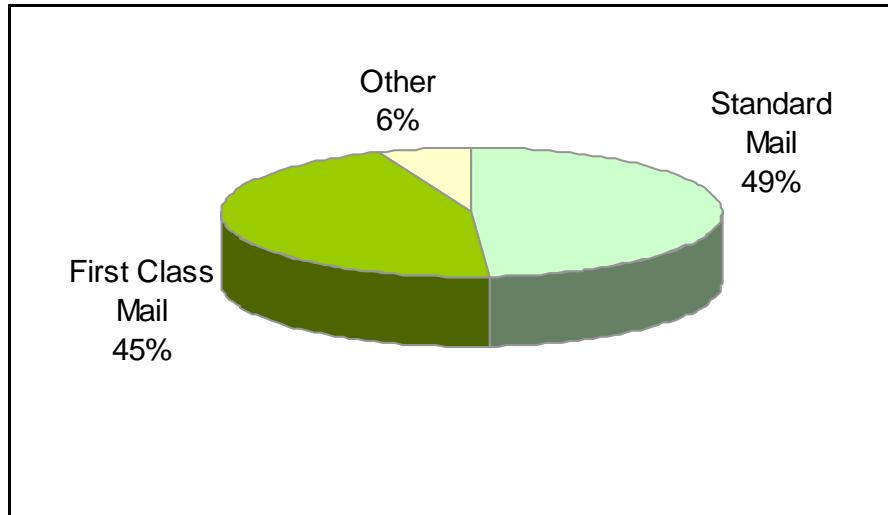


Source: CRS calculations using data from U.S. Postal Service, *Annual Report of the U.S. Postal Service* (Washington: USPS, 2004 - 2007).

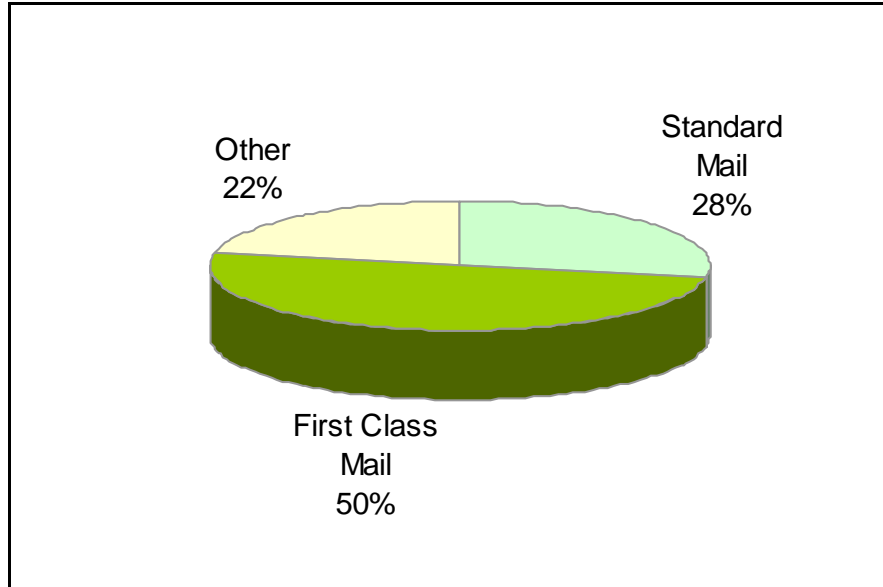
Notes: “Other” includes USPS revenue garnered from the sales of Priority Mail, Express Mail, international mail, and package services.

In 2007, Standard Mail generated 28% (\$20.8 billion) of USPS’s total revenue (**Figure 3**), and made up 49% of the 212 billion mail pieces delivered (**Figure 4**).

Figure 3. Composition of Mail by Class, 2007



Source: *Annual Report of the U.S. Postal Service* (Washington, USPS, 2007).

Figure 4. USPS Revenue Percentages by Mail Class, 2007

Source: *Annual Report of the U.S. Postal Service* (Washington, USPS, 2007).

According to Postmaster General John Potter, First Class Mail and Standard Mail have been declining in volume in 2007.

First-Class Mail, our largest revenue producer, fell by almost 1 billion pieces, some 4 percent below the same period last year. Standard Mail, which eclipsed First-Class Mail as our largest volume product in 2005, declined by almost 750 million pieces, 2.6 percent less than the first quarter of 2007. There are no current signs of improvement for quarter 2.³³

According to *The Washington Post*, recent economic conditions have also affected USPS, which anticipates a \$1 billion budget shortfall in 2008.

Troubled banks are mailing fewer credit card offers. Declining new-home sales mean vacant houses sitting with empty mailboxes. And as consumers switch to paying bills online, first-class mailings are drying up.³⁴

As USPS operating costs have increased steadily, revenue has not kept pace (**Table 2**). In 2007, USPS generated a \$5.4 billion revenue loss.

³³ Ibid.

³⁴ Lindsay, Layton, "Postal Service Feels the Weight of 'Junk Mail,'" *Washington Post*, Mar. 6, 2008, p. A02.

Table 2. Operating Costs and Revenue by Mail Class for USPS, 2002 - 2007

(in millions)

	2002	2003	2004	2005	2006	2007
First Class Mail	\$36,483	\$37,048	\$36,377	\$36,062	\$37,039	\$37,564
Standard Mail	\$15,819	\$17,231	\$18,123	\$18,953	\$19,877	\$20,779
Other	\$14,161	\$14,250	\$14,496	\$14,892	\$15,734	\$16,435
Revenue	\$66,463	\$68,529	\$68,996	\$69,907	\$72,650	\$74,778
Operating Costs	\$65,234	\$63,902	\$65,851	\$68,281	\$71,681	\$80,105
(Loss) Income from Operations	\$1,229	\$4,627	\$3,145	\$1,626	\$969	(\$5,327)

Source: *Annual Report of the U.S. Postal Service*, (Washington: USPS 2004 - 2007)

Notes: Other includes USPS revenue related to Priority Mail, Express Mail, international mail, and package services.

A June 3, 2008, GAO report found USPS's \$5 billion shortfall in FY2007 was largely caused by advance payments of retiree health benefits.³⁵ At a March 5, 2008, congressional oversight hearing, USPS Postmaster General John Potter stated that the service was already attempting to cut costs by reducing "expenditures for supplies, services and other non-personnel expenses."³⁶ USPS employees are not receiving as much overtime pay, and the service is, instead, making heavier use of less-expensive seasonal employees.³⁷ The additional loss of revenue has USPS administrators seeking new ways to earn money — including the possibility of renting space in the service's existing 37,000 post offices to private companies, such

³⁵ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 1.

³⁶ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, *Postal Accountability Enhancement Act*, hearing on the implementation of P.L. 109-435, 110th Cong, 2nd sess., Mar. 5, 2008. According to media reports, USPS is offering early retirement to employees who are over 50 years old and have at least 20 years of service or any USPS employee with at least 25 years of service. See Randolph E. Schmid, "Post Office Offering Early Retirements," *The Associated Press*, Aug. 20, 2008, available at [http://money.cnn.com/2008/08/20/news/economy/postal_retirement.ap/index.htm], viewed Aug. 25, 2008.

³⁷ *Ibid.*

as banks or coffee shops.³⁸ “[W]hen you look at the posts around the world, many of them are using their retail outlets as banks.... That type of flexibility is something, I think, that we need to explore because we do have the assets,” Potter said.³⁹ Statutes that restrict uses of federal property, however, could prevent such an activity.⁴⁰

According to USPS estimates, if Do Not Mail legislation were passed in every state — or if Congress passed a federal statute creating a DNM registry — the postal service could lose between \$4 billion and \$10 billion annually in sales revenue.⁴¹ These estimates do not include secondary effects, including revenue from business reply mail or future revenue from the creation of business relationships through advertising mail. “We would have to cut costs and make a lot of adjustments,” said Michael Kubayanda, a USPS congressional liaison.⁴²

According to media reports, private organizations that keep track of USPS sales as well as postal unions believe that the decrease in First Class Mail has made direct mail advertising critical to the Postal Service’s financial success.⁴³ In addition, these groups fear that continued loss in First Class Mail revenue could lead to severe financial troubles for USPS in the future.⁴⁴

³⁸ Ibid.

³⁹ Ibid. See also Lyndsey Layton, “Postal Service Feels the Weight of ‘Junk Mail,’” *Washington Post*.

⁴⁰ Generally, federal property laws do not apply to USPS property (39 U.S.C. § 410(a)). Other federal properties, however, would be subject to certain restrictions (40 U.S.C. §§ 3306, 3312, 3314).

⁴¹ Estimates are based on FY2007. USPS used information from the FY2007 Household Diary Study to determine the amount of advertising mail that would be affected by such legislation. The \$4 billion loss assumes that only 50% of consumers would sign up for a DNM registry. The \$10 billion assumption posits 100% of consumers would register. USPS’s third estimate, which assumes that the same number of consumers who signed the Do Not Call Registry (72%) would sign the Do Not Mail Registry, concludes the postal service could lose \$6 billion if DNM registries were created in each state or created on a federal level. USPS calculations and methodology are available from the author. The revenue losses do not account for reductions in costs for USPS. The fewer mail pieces that must be processed by USPS, the less variable costs the service will incur. On average for FY2007, attributable costs were 59.8% of the price paid for service. If USPS estimates a \$6 billion gross revenue loss, therefore, total estimated net losses to the service would be \$2.41 billion. If USPS estimates gross revenue losses at \$10 billion, total net estimated losses to the service would be \$4.02 billion. See U.S. Postal Service, “Cost Segments and Components Fiscal Year 2007, Revised March 20, 2008.

⁴² Information provided to author at an interview at USPS Headquarters, 475 L’Enfant Plaza SW, Washington, D.C., on June 30, 2008.

⁴³ “A First-Class Crisis in the Making?” *Business Week*, Apr. 11, 2005, available at [http://www.businessweek.com/magazine/content/05_15/b3928015.htm?campaign_id=rss_magzn], viewed June 17, 2008.

⁴⁴ Ibid. See also, *Know Your Facts: Mail Moves America*, Mail Handler Update, from the National Postal Mail Handlers Union, March 2008. Available from author. Additional (continued...)

Direct Mail Marketing and Employment. USPS and direct mail marketing organizations assert that DNM legislation would heavily affect sales revenue and potentially — in the longer term — employment at both the state and national levels. In the United States in 2007, 459,500 people were employed in businesses directly linked to advertising mail. Roughly 3.1 million people were employed in jobs that were indirectly linked to advertising mail. **Table 3** lists the number of employees directly and indirectly linked to direct mail marketing — as well as the number of USPS employees — in each state that has pending DNM legislation in 2008.

Table 3. Advertising-Mail-Related Employment

State	Employees Directly Linked to Direct Mail Marketing	Employees Indirectly Linked to Direct Mail Marketing	USPS Employees
Hawaii	2,000	15,000	3,000
Illinois	21,300	142,500	35,000
Maryland	8,000	59,000	15,000
Michigan	19,000	107,000	24,000
North Carolina	13,500	91,000	18,000
New Hampshire	2,500	16,800	3,500
New York	28,000	204,000	53,000
Pennsylvania	19,500	139,126	32,000
Rhode Island	1,600	12,000	3,000
Tennessee	10,600	64,500	13,000
Vermont	1,000	7,200	1,600
Washington	9,000	63,000	13,000

Source: Direct mail marketing employee counts come from Mail Moves America, “Advertising Mail Facts and Figures,” available at [<http://www.mailmovesamerica.org/national.php>], viewed on July 25, 2008. Postal Service employee counts come from USPS.

Notes: All direct mail marketing employee counts are for 2006. USPS employee counts are for 2007, and are rounded to the nearest thousand. Jobs directly related to direct mail advertising include graphic designers, catalog designers, marketing companies, and others involved in the creation of the advertisements. Employees indirectly linked to direct mail advertising including delivery men and women for private companies, customer service representatives and warehouse workers for catalog companies, and those who provide paper and printing services.

⁴⁴ (...continued)

information on Mail Moves America is available at [<http://www.mailmovesamerica.org>], viewed June 2, 2008.

State Legislative Efforts to Reduce Unsolicited Advertising Mail

Do Not Mail Registries

In 2008, at least 12 states have pending legislation at the state level that, if passed, require the creation of a Do Not Mail registry.⁴⁵ The lists are similar to the National Do Not Call Registry, which imposes fines on telemarketers who call phone numbers that are on the list. Unlike the National Do Not Call Registry, however, the Do Not Mail registries would be state run.⁴⁶ Some state proposals include very high penalties for organizations that ignore the registry. Two states' DNM bills — Tennessee's and Pennsylvania's — do not explicitly create penalty exemptions for nonprofit organizations.⁴⁷ Other states exempt political mail, small businesses, and existing business relationships from penalty — in addition to exemptions for nonprofit entities. Some states' bills would require the state attorney general to manage the list, while others would require the state's division of consumer protection to perform those duties. Still other states allow the registry to be contracted out to a private vendor. **Table 4** shows each state's bill, its status, and summary details on its design and content.

⁴⁵ In 2007, 15 states had legislation pending that would create a Do Not Mail registry. None of the bills became law. States that had DNM legislation pending in 2007 and did not reintroduce or carry over similar legislation in 2008 are Arkansas, Colorado, Connecticut, Missouri, Montana, New Jersey, and Texas. In the Maryland legislature, DNM bills were introduced in both 2007 and 2008. CRS recognizes that any of these pieces of legislation may raise constitutional questions of interstate commerce and state jurisdiction, but those issues are beyond the scope of this report, and will, therefore, not be addressed.

⁴⁶ The Federal Trade Commission manages the National Do Not Call Registry.

⁴⁷ Pennsylvania's legislation is the only DNM legislation that offers no exemptions. Tennessee's draft bill would cede the authority to determine DNM exemptions to the Commissioner of Commerce and Insurance.

Table 4. State Legislative Initiatives to Create a Do-Not-Mail Registry

State	Bill(s)	Status	State Agency Charged with Maintenance of Registry	Fees Required From Direct Mail Marketers	Penalty for Infraction	Exemptions From Fine or Penalty for Violating Do Not Mail law
Hawaii	SB908 and HB2592	Both bills are in committee http://www.wikileaks.org/wiki/CRS-10468	Department of Commerce and Consumer Affairs	No fee mentioned, but funding to manage registry would be appropriated by the state	Up to \$10,000 fine for each infraction or actual monetary damage	Prior permission, business contact within 180 days, 501(c)(3)s, agencies with federal regulatory authority
Illinois	SB2115	In committee http://www.wikileaks.org/wiki/CRS-10468	Attorney General or contractor	\$500 annual registration fee	Sliding scale with larger organizations paying stiffer fines	Established business relationship, prior permission, small businesses (fewer than five employees), 501(c)(3)s, political mail
Maryland	HB 53	Withdrawn as of February 12, 2008	Division of Consumer Protection within the Attorney General's Office	Division of Consumer Protection to determine fee	Up to \$5,000 fine and up to \$5,000 in damages if civil action filed by consumer	Expressed request from consumer, existing customer, existing business relationship, existing debt, 501(c)(3), from a person or agency over which a federal agency has authority

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State	Bill(s)	Status	State Agency Charged with Maintenance of Registry	Fees Required From Direct Mail Marketers	Penalty for Infraction	Exemptions From Fine or Penalty for Violating Do Not Mail law
Michigan	HB 4199	In committee http://www.legislature.mi.gov/doc.aspx/wiki/CRS-RL34643	Public Service Commission or contractor	Public Service Commission to determine fee	Up to six months in prison, up to \$500 fine per violation, or both. Consumers may seek to recover damages or \$250, whichever is greater, in a civil suit	Existing customer, governmental entity, prior permission, Section 527 of the Internal Revenue Code, charitable organizations, public safety solicitation
New Hampshire	HB1506	Reported from two committees; one committee's majority found the bill "inexpedient to legislate." The other committee reported the bill "ought to pass"	The Consumer Protection and Antitrust Bureau of the Department of Justice	Fee paid to the Consumer Protection and Antitrust Bureau that may not exceed the costs of managing the registry	Up to \$500 fine per violation, and up to \$500 for damages per violation	Expressed permission, established business relationship, referral, 501(c)(3), Section 527 of the Internal Revenue Code, political mail, businesses with fewer than 20 employees
New York	A02520 and S01403	The Assembly was withdrawn by the sponsor, the Senate bill is in committee	Consumer Protection Board	Consumer Protection Board to determine fee	Up to \$2,000 fine per violation	Expressed consent from customer, 501(c)(3), political mail, expressed request, established business relationship, exiting customer

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State	Bill(s)	Status	State Agency Charged with Maintenance of Registry	Fees Required From Direct Mail Marketers	Penalty for Infraction	Exemptions From Fine or Penalty for Violating Do Not Mail law
North Carolina	H1699	In committee http://wikileaks.org/wiki/CRS-RL34643	Contractor chosen by the North Carolina Utilities Commission	Fee on a sliding scale of up to \$500, with larger organizations paying the highest fee	Organizations can have up to three violations per month; no set financial penalty	Expressed permission, previous business contact, 501(c)(3), agencies with federal regulatory authority, referrals, person working from primary residence
Pennsylvania	H2551	In committee http://wikileaks.org/wiki/CRS-RL34643	Bureau of Consumer Protection within the Office of the Attorney General or contractor	Fee may not exceed the costs incurred in production, preparation and distribution of the registry	Attorney general can act to impose a civil penalty, subsequent offenses may lead to the revocation of the right to conduct mail solicitation in the commonwealth	None
Rhode Island	H 6190	Held in committee	Contractor selected by the Public Utilities Commission	Fee on a sliding scale of up to \$500, with larger organizations paying the highest fee	Up to three violations without penalty. No specific penalty defined	Small businesses and charitable organizations, established business relationship

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State	Bill(s)	Status	State Agency Charged with Maintenance of Registry	Fees Required From Direct Mail Marketers	Penalty for Infraction	Exemptions From Fine or Penalty for Violating Do Not Mail law
Tennessee	SB3760	Withdrawn on January 28, 2008 http://legis.senate.gov/public/?a= legis_public_display&id=CRS-RL34643	Division of Consumer Affairs in the Department of Commerce and Insurance	\$500 annual registration fee	Up to \$2,000 fee in civil penalty per violation	To be determined by the Commissioner of Commerce and Insurance
Vermont	H.0409	The legislature adjourned on May 3, 2008 without taking action on the bill http://legis.vermont.gov	Attorney General may later decide whether to contract out	Fee on a sliding scale of up to \$500, with larger organizations paying the highest fee	Actual damages or \$500 for the 1 st offense and \$1,000 for subsequent violations	Prior consent, business contact within 180 days, 510(c)(3), federal agencies with regulatory authority, response to referral, political mail
Washington	HB 1205 and SB 5719	The legislature adjourned on May 13, 2008 without taking action on the bill	Attorney General or private contractor through attorney general's office	Attorney General to determine fee	Fine of \$2,000 per violation in addition to other penalties and remedies	Expressed consent, established business relationship, existing customer, non-profit organization, political mail

Source: Text of each state's legislation.

Competing Priorities of Commerce and Environmentalism

In state legislatures where DNM bills have been introduced, anticipated environmental benefits of the bills have been pitted against potential commercial losses. Some states reference environmental concerns in the text of their pending DNM bills. North Carolina's legislation, for example, states, "Unsolicited bulk mail ('junk mail') ... annually accounts for millions of pounds of trash in North Carolina and the destruction of 100 million trees nationwide for paper pulp."⁴⁸ Rhode Island's DNM legislation states the following:

Unsolicited bulk mail ("junk mail") now represents a major portion of the budget and workload of the United States Postal Service, with over ninety billion (90,000,000,000) pieces⁴⁹ delivered per year, and annually account for millions of pounds of trash in North Carolina and the destruction of 100 million trees nationwide for paper pulp. ...

Junk Mail is a large, unnecessary source of solid waste and imposes an unnecessary burden on the environment for which taxpayers bear the cost.

Individual rights and commercial freedom of speech should be balanced in a way that accommodates both individual choice and legitimate marketing practices.⁵⁰

Illinois's bill refers to junk mail as "environmental sacrilege," and finds it "in the public interest to establish a mechanism under which the residents can decide whether or not to receive junk mail."⁵¹

In New Hampshire, however, the current majority party stated that while DNM legislation could reduce environmental concerns, other potential effects of the bill outweighed those benefits. The Commerce Committee, in reporting the bill, stated, "[v]aluable natural resources could be saved, landfill waste could be reduced, and postal customers could save time." Despite these "benefits," "they were not enough to overcome the various concerns and questions about this bill."

Many rural postal carriers are paid by the number of pieces of mail they deliver — HB1506 would directly affect their income. Exceptions in the bill for saturation mailings that go to every resident along the postal route, mailings by non-profits or political groups, and by or on behalf of a business with less than [sic] 20 employees led us to the conclusion that this bill, as drafted, would not significantly reduce unwanted mail. Lastly, the committee learned that the NHDES [New Hampshire Department of Environmental Services] website offers

⁴⁸ General Assembly of North Carolina, HB 1699, session 2007.

⁴⁹ Although several states include this 90 billion figure, none of them cite the source for that information. USPS reported that 100 billion pieces of advertising mail were delivered in 2007. See U.S. Postal Service, *The Household Diary Study: Mail Use and Attitudes in FY2007*, p. 35, available at [http://www.usps.com/householddiary/_pdf/USPS_HDS_FY07_web.pdf], viewed Sept. 22, 2008.

⁵⁰ General Assembly of North Carolina, House Bill 1699. Rhode Island and Illinois have similar, but not identical, bill introductions.

⁵¹ Illinois General Assembly, SB2115.

preaddressed postcards to major mailing organizations, which can be easily printed and used to be put on their ‘do-not-mail’ lists. This could be just as effective in reducing junk mail as the proposed legislation.⁵²

The report indicated the majority found it “inexpedient to legislate” on the initiative.

Although most nonprofit and for-profit organizations advocating the creation of DNM registries stress the environmental impact of “junk mail,” none of the state legislatures have referred their bills to an environmental committee. States referred their bills to consumer protection, judiciary, and finance committees.

“Junk” Mail and Public Opinion

The public’s dislike of unsolicited advertising mail may be prompting state legislative initiatives to give consumers a way to opt out of receiving it. A 2003 Pew Internet and American Life Project telephone poll of 2,200 adults found that 19% of respondents thought unsolicited advertising mail was a “very big intrusion” in their own life; 33% found unsolicited advertising mail a “big intrusion,” and 29% said it was a “small intrusion.” Some 17% of respondents found unsolicited advertising mail to be “no intrusion at all.”⁵³

Options for Consumers Wishing to Reduce the Receipt of Advertising Mail

There are actions that individuals may take to reduce the amount of advertising mail delivered to them. Subscribing to private Do Not Mail registries or contacting companies directly can curb advertising mail delivery, but it may take several months for mailings to decrease. Other ways to reduce unsolicited advertising mail include refusing to receive it when it is delivered, and avoiding solicitations that request personal information.

Private Do Not Mail Registries. Several private organizations host “do not mail” registries that are regularly updated and checked by direct mail marketers who then remove those addresses from their mailing lists. The Direct Marketing Association (DMA) maintains a Mail Preference Service, which functions similarly to a DNM registry. Consumers can log onto the DMA’s Mail Preference Service

⁵² New Hampshire General Court, Committee Reports, House Calendar — Regular Calendar, Part I, in the House Record, report to accompany HB1506-FN, 160th General Court, vol. 30, no. 16, Feb. 6, 2008, available at [http://www.gencourt.state.nh.us/house/caljourns/journals/2008/houjou2008_16.html], viewed May 22, 2008.

⁵³ Survey by Pew Internet & American Life Project. Methodology: Conducted by Princeton Survey Research Associates, June 10 - June 24, 2003, retrieved May 22, 2008 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. Although the Pew study may show public disapproval of direct mail marketing, the language used in question — specifically the term “junk mail” — may have prompted some respondents to report a higher level of dissatisfaction than if the question had used the term “advertising mail” or “direct mail marketing” in its place.

website and register their name and address.⁵⁴ Created in 1971, the Mail Preference Service allows consumers to tailor which advertising magazines they would like to have mailed to their homes and which magazines they would prefer not to receive. After selecting to opt out from receipt of certain magazines, catalogs, or other direct mail, consumers are asked to wait an additional 30 to 90 days for the request to become effective.

Other private companies, like GreenDimes, DirectMail.com and CatalogChoice.org, offer services that remove a consumer's name from a variety of direct mail marketing lists. GreenDimes grants subscribers access to a "catalog screener" that allows them to individually select catalogs they would like to continue to receive — and those they would not. GreenDimes offers their basic service — which includes removing the subscriber's name from a variety of mailing lists — for free. GreenDimes also offers services at various fee levels. The \$20 GreenDimes level, for example, includes everything in the free service plus access to the customer service hotline, monthly account monitoring, and the planting of five trees in the subscriber's name at a separate non-profit organization.⁵⁵ DirectMail.com also maintains an online Do Not Mail List.⁵⁶ Similar to the other DNM efforts, DirectMail.com allows a subscriber to register for free and tailor their direct mail to his or her preferences. CatalogChoice⁵⁷ allows subscribers to create an individual account, and then select which catalogs they would like to receive and which they would not. Additionally, several other private companies offer services to help consumers reduce the advertising mail for a variety of fees.

A consumer can remove his or her address from credit card and insurance company mailing lists for five years — or permanently — using optoutprescreen.com. Pursuant to the Fair Credit Reporting Act (FCRA; 15 U.S.C. § 1681 et seq.), consumer credit reporting companies may place a consumer's name and address on lists that creditors and insurers then use as potential customer databases. Credit card companies and insurance companies may send consumers on these lists unsolicited offers. FCRA, however, also mandated a right for consumers to "opt out" of receiving credit card and insurance company advertising mail. At optoutprescreen.com, consumers can electronically register to opt out of receiving the solicitations for up to five years. Consumers who would like to stop the solicitations indefinitely may fill out an online form⁵⁸ and then print the electronic Permanent Opt

⁵⁴ Direct Marketing Association, "Consumers: DMA's Mail Preference Service," available at [<https://www.dmachoice.org/MPS/proto1.php>], viewed June 17, 2008.

⁵⁵ Greendimes, "How Greendimes Works," available at [<http://www.greendimes.com/greendimes/HowItWorks/>], viewed June 17, 2008.

⁵⁶ DirectMail.com, "DirectMail.com Do Not Mail List," available at [https://www.DirectMail.com/directory/mail_preference/], viewed June 17, 2008.

⁵⁷ Catalog Choice, "Clean Out Your Mailbox," available at [<http://www.CatalogChoice.org>], viewed June 17, 2008.

⁵⁸ The online form prompts registrants to include their Social Security identification number. The website can be accessed, and the form can be downloaded without including a Social Security number in the form. Distribution of personal, private information may increase (continued...)

Out Election form found on the site. The form must then be mailed to the Opt Out Department in Illinois. Optoutprescreen.com also allows consumers to opt in to credit card and insurance offers they would like to receive.

Private DNM initiatives allow a consumer to individualize advertising mail to suit his or her preferences — an option not found in any of the pending state DNM bills. The private efforts, however, may not stop mail from direct mail marketers who do not use — or refuse to heed — the mailing lists provided by Greendimes, DMA, optoutprescreen.com, or DirectMail.com. Also, companies or organizations that continue to send advertising mail to those who have signed a registry are often not penalized. Additionally, according to DirectMail.com, the company “cannot guarantee that you will not receive mail addressed to ‘Occupant’ or ‘Resident.’”⁵⁹

When using the private opt out services, a consumer must contact multiple organizations to ensure his or her name is removed from any number of marketing lists. Because private companies cannot offer a centralized, one-stop, direct-mail-blocking service, consumers may spend substantial time finding the correct ways to curb unwanted advertising mail. Private DNM initiatives are available, but may be only minimally effective in curbing the delivery of unwanted advertising mail.

Direct Contact. While DNM registries allow consumers to remove themselves from larger mailing lists used by direct mail marketers, contacting individual mailers by telephone or mail may curtail the delivery of specific pieces of advertising mail. Additionally, to stop bulk mail coupons, consumers can visit the appropriate websites. For example, many households receive bulk mail coupons from companies such as those sent by Valpack, ADVO, and Shop-Wise mailings.⁶⁰

A consumer who has existing business-by-mail relationships with entities such as individual magazine publishers, credit card companies, gardening supply companies, or clothing stores may call or write to these organizations and request his or her personal information — including home address, demographic information, and name — not be shared with other solicitors.

Contacting the marketers themselves can be an effective method of stopping individual solicitations, but it can also sometimes become a time consuming effort. Because the consumer must contact each organization individually, which can sometimes require navigating automated telephone systems before his or her name

⁵⁸ (...continued)
one’s risk of identity theft.

⁵⁹ Directmail.com, “Frequently Asked Questions about the DirectMail.com National Do Not Mail List, available at [https://www.directmail.com/directory/mail_preference/faq.aspx], viewed Sept. 23, 2008.

⁶⁰ For Valpack mailings, consumers can visit Cox Target Media, “Mailing List Removal Request,” available at [<http://www.coxtarget.com/mailexpression/MailexpressionForm.jsp>], viewed July 25, 2008. Cox Target Media send the Valpack coupons to more than 45 million households and businesses; and for ADVO and Shop-Wise mailings, consumers can visit Valassis, “Consumer Support,” available at [<http://www.advo.com/consumersupport.html>], viewed July 25, 2008.

can be removed from the mailing list, consumers may decide that removing their address requires too much effort — especially if the effort culminates in removal from just one mailer’s list.

Refuse Receipt. A customer receiving mailings may refuse them by writing “Refused — return to sender” on the outside of the envelope or catalog, and then leaving the item in his or her mailbox for their mail carrier. Depending on the size of the mail item, USPS will return it to the sender or will dispose of it. Mailers who receive mail marked “refused” may remove the names and addresses of recipients from their mailing lists.

Other Options. A recipient of unwanted advertising mail can ask his or her letter carrier for further suggestions, or the consumer may visit websites like the Privacy Rights Clearinghouse’s “Reducing Junk Mail” website.⁶¹ Privacy Rights, as an example, offers additional tactics to reduce advertising mail. In addition, consumers should be mindful that participating in certain activities can result in their names being placed on mailing lists. For example, individuals who sign up for sweepstakes offers may receive additional advertising mail. These solicitations often serve to create address databases for direct mail marketers.

Private Sector and USPS Efforts to Reduce Paper Waste

Private sector organizations and the USPS have been increasing efforts to recycle unwanted advertising mail and use certified paper providers. DMA, for example, requires its members to progress toward a “Green 15” — 15 business practices “that are well understood to deliver environmental benefits, with sensitivity toward an organization’s bottom line.”⁶² Included among the guidelines are requirements to “encourage paper suppliers to increase wood purchases from recognized forest certification programs” and “encourage packaging suppliers to submit alternate solutions for environmentally preferable packaging.” While the DMA requires its members to follow the guidelines, it does not have a penalty for those who ignore them.

Other organizations, including the National Recycling Coalition, Verso Paper, and Time, Inc., have joined forces to create the Recycling Magazines is Excellent

⁶¹ Privacy Rights Clearinghouse, “Fact Sheet 4: Reducing Junk Mail,” available at [<http://privacyrights.org/fs/fs4-junk.htm>], viewed June 17, 2008.

⁶² Direct Marketing Association, “The Green 15,” available from the DMA. See also “DMA ‘Green 15’ Toolkit,” available at [<http://www.the-dma.org/Green15Toolkit/>], viewed on June 17, 2008.

(ReMix) campaign in five U.S. cities.⁶³ The effort, according to a GAO report, increased the recycling of magazines and catalogs in one city 19%.⁶⁴

USPS generates nearly \$7.5 million per year through recycling efforts — recycling about 1 million tons of waste paper per year. USPS also hosts a website [<http://www.usps.com/green/greenmail.htm>] that includes information on how customers can reduce, reuse, and recycle their mail.⁶⁵ The USPS greenmail website includes a link to the DMA's Mail Preference Service. A recent GAO report that examined USPS recycling efforts stated that the service recently established “annual goals to increase its revenue from mail-related recycling from \$7.5 million in fiscal year 2007 to \$40 million in fiscal year 2010.”⁶⁶

USPS also is increasing recycling efforts related to undeliverable-as-addressed (UAA) mail. According to a GAO report, “USPS treatment of UAA mail depends on the mail class.”⁶⁷ First Class Mail is returned to the addressee if a return address is available. If no return address is available, the item is sent to a USPS Mail Recovery Center.⁶⁸ Generally, according to GAO, all Standard Mail that is undeliverable — including UAA mail — is treated as waste, most of which is recycled. Nearly 317,000 tons of Standard Mail was UAA mail in 2006.⁶⁹ Beginning March 2009, USPS will begin using the Intelligent Mail Barcodes to tally the amount of UAA mail created by organizations that send large quantities of mail.⁷⁰

⁶³ National Recycling Coalition, “ReMix: Recycling Magazines is Excellent,” available at [<http://www.nrc-recycle.org/remix.aspx>], viewed June 17, 2008.

⁶⁴ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 27.

⁶⁵ Thrifty Fun, offers a blog on which users can list alternative uses for unsolicited advertising mail, which include bringing it to the local veterinarian for use as animal cage lining or using it for compost. See Thrifty Fun, “Uses for Junk Mail,” available at [<http://www.thriftyfun.com/tf480799.tip.html>], viewed June 17, 2008.

⁶⁶ [<http://www.advo.com/consumersupport.html>], p. 4.

⁶⁷ *Ibid.*, p. 8.

⁶⁸ According to GAO, “USPS operates two First Class Mail recovery centers” — one in St. Paul, Minnesota, and another in Atlanta, Georgia. The facilities determine how to dispose of UAA First Class Mail. See U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 8.

⁶⁹ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 8.

⁷⁰ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 35. Currently, organizations that send large quantities of mail must have a unique barcode to measure their frequency of mail use to determine whether they qualify for worksharing rates.

Concluding Observations

State-level DNM bills inherently generate issues of federalism because such bills could affect the operations and revenue stream of a federal quasi-governmental agency: the USPS. Moreover, the bills may raise constitutional questions related to post offices and postal roads as well as the regulation of interstate commerce, powers that the U.S. Constitution grants to Congress.⁷¹

The national impact of state-level legislation may be of concern to lawmakers at all levels of government. Efforts to protect both the environment and consumer identity may negatively affect job creation and USPS self-sustainability requirements. Existing private-sector efforts that allow a consumer to tailor the solicitations that arrive in his or her mailbox may significantly reduce the amount of unsolicited advertising mail he or she receives. The mail registries, however, have no authority to fine or otherwise penalize organizations that do not heed the lists.

Congress may consider potential legislative options related to reduction of unsolicited advertising mail. One option would be to seek legislation that is nearly identical to many of the pending state DNM bills. The bill might specify which agency would manage the DNM registry and/or whether its maintenance could be awarded as a private contract. Direct mail marketers would need to access the list at intervals determined by the legislation. The bill could also determine the penalties for direct mail marketers who fail to heed the list — or leave that determination to the entity managing the list. Creating such legislation would have costs and benefits. Constituents with concerns about environmental waste or identity theft could sign up for the registry and reduce unsolicited advertising mail from their mailboxes. Organizations that rely on advertising mail for revenue, however, could suffer economic losses that prompt a rise in pricing or lead to the elimination of jobs.

Congress may also consider other legislative action to help USPS generate revenues to replace those lost, including increasing federal building flexibilities for USPS. Current statutes and USPS policies place restrictions on renting space in post offices to private vendors like banks and coffee shops. By allowing USPS greater flexibility to rent some of its retail space, the service could collect additional revenue to help close its current budget shortfall and possibly replace revenue that could be lost if state or federal level DNM legislation were passed.

In regard to resource usage concerns, Congress may consider policies that would provide mailers with incentives to use environment-sensitive products and methods. A GAO report suggested the creation of a Green Rate, or “discounted postal rate ... for mailers that use recycled and/or certified paper.”⁷² The report states that “stakeholders in the environmental advocacy industry” suggested the idea, which “would help mailers offset the increased costs associated with using recycled paper

⁷¹ U.S. Constitution, Article I, Section 8, Clause 7; and Article I, Section 8, Clause 3.

⁷² U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 34.

and would provide an incentive for mailers to use certified paper.”⁷³ A Green Rate could also be used to reward direct mail marketers who heed existing private Do Not Mail registries. If marketers demonstrated that they did not contact consumers who opted out of receiving unsolicited marketing, the company could be deemed eligible for the Green Rate.⁷⁴ Additionally, the Green Rate could also be made available to “demonstrate measurable reductions in the amount of [undeliverable-as-addressed] UAA mail they send” and “use mail materials efficiently.”⁷⁵ GAO stated that a Green Rate could increase USPS revenue, but added that USPS would have to conduct a variety of “feasibility studies” to ensure that the service had the technology and resources needed to create a new mail class.⁷⁶ USPS may need both congressional and Postal Regulatory Commission approval to create a new class of mail.

Congress could equally choose to not take any legislative action, but instead provide constituents and governmental entities guidance on how to manage the volume and impact of direct mail. Members could inform constituents of the previously discussed private registries available to manage advertising mail as well as other options that could reduce it.

⁷³ Ibid. According to the report “certified paper is produced from forests that are managed according to a verity of environmentally preferable practices.”

⁷⁴ As discussed earlier in this report, USPS can use unique barcodes to determine which organizations send the smallest quantity of UAA mail.

⁷⁵ U.S. Government Accountability Office, *U.S. Postal Service: Mail-Related Recycling Initiatives and Possible Opportunities for Improvement*, GAO Report GAO-08-599, June 2008, p. 34.

⁷⁶ Ibid., p. 41. USPS, for example, would have to create a methodology to quickly determine if certain products — like paper or envelopes — qualified for the Green Rate.