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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-207547

July 28, 1982

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

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Dear Mr. Chairman:

This responds to your request of May 11, 1982, for our views on S. 1407, a bill entitled, "Mail Order Consumer Protection Amendments of 1982."

S. 1407 is designed to strengthen the U.S. Postal Service's investigatory and enforcement powers. The bill's key provisions would grant the Postal Service authority to issue written inspection demands relating to matters under investigation, issue cease and desist orders regarding fraudulent activities conducted through the mail, and commence civil actions to obtain penalties of up to \$10,000 per day for certain violations. */

We have not conducted any recent reviews of the mail fraud matters addressed by the bill, and, therefore, are not in a position to comment on the problem of mail order fraud or the extent to which enactment of S. 1407 would combat it. However, we do have several recommendations for clarifying those provisions of S. 1407 that deal with Postal Service inspection demands and cease and desist orders.

Inspection Demands

Section 2 of the bill would authorize the Postal Service to require, pursuant to a written demand, the production of records deemed relevant to investigations of postal offenses and postal civil matters. This inspection demand authority apparently would be available to the Postal Service for the purpose of conducting criminal and civil investigations before presentment of a case to

*/ An enforcement matter not addressed by S. 1407 is the authority of Postal agents to carry firearms and make warrantless arrests for the commission of Federal felony offenses. These matters are covered, however, by S. 1630, the pending version of the comprehensive revision of the Federal Criminal Code.

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the grand jury or the filing of a civil complaint. The inspection demand authority contained in S. 1407 is analogous to the pretrial investigative demand authority available to the Department of Justice for conducting antitrust investigations. See 15 U.S.C. §1311 et seq.

The Justice Department's investigative demand authorization is subject to a number of statutory safeguards and standards, including specific provisions that prohibit demands for records that would be exempt from disclosure or otherwise privileged if subpoenaed by a grand jury or sought for discovery under the Federal Rules of Civil Procedure. Although S. 1407 directs the Postal Service to promulgate regulations governing inspection demands and prohibits demands that are "unreasonable," it is not clear whether these provisions are intended to assure the adoption of standards such as those described above that govern investigative demands issued by the Justice Department. We recommend the Committee address the standards that are intended to apply to inspection demands issued under S. 1407.

Cease and Desist Orders

Section 3 of S. 1407 would provide the Service with authority to issue cease and desist orders for certain illegal uses of the mail. This would supplement the Service's authority under existing law to issue so-called stop mail orders. See 39 U.S.C. §3005.

Section 4 of the bill, quoted in part below, explains what will constitute a violation of a cease and desist order issued under section 3:

"The resumption through the use of any instrumentality of interstate commerce of any activity with respect to which a cease and desist order has been issued * * * shall * * * be considered to be a failure to comply with such order."
(Emphasis added.)

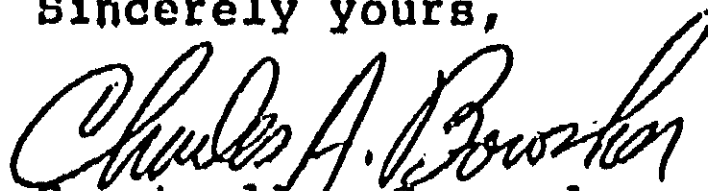
As presently drafted, section 4 seems to cover fraudulent activities not involving the mails that could not have been the subject of a cease and desist order under section 3. For example, a cease and desist order could properly issue for a fraudulent mailing, but the Service would not be similarly empowered to order the cessation of fraudulent

activity not involving the mails. Nevertheless, section 4 may be read to provide that once the Service orders the cessation of a particular fraudulent or other illegal use of the mails (e.g., engaging in conducting a lottery, fraudulent solicitations), a resumption of the activity by telephone, television, or other form of interstate communication not involving the mails would be deemed a violation of the original cease and desist order. The Postal Service could file a civil action and seek the imposition of civil fines if this were to occur.

If section 4 is not intended to operate in this manner, we recommend the bill be clarified. However, if our interpretation of section 4 is consistent with the intent of the provision, we recommend the Committee consider whether existing Postal Service resources are adequate to assume a monitoring and enforcement role for fraudulent and related activities that do not involve the use of the mails. In addition, we recommend that provision be made for the Postal Service to coordinate the exercise of this expanded authority with agencies such as the Justice Department, the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Communications Commission. These agencies have jurisdiction over the instrumentalities of commerce not involving the mails that might be used in connection with the violation of a Postal Service cease and desist order.

We hope this expression of views will be of assistance to the Committee in its deliberations on S. 1407.

Sincerely yours,


Comptroller General
of the United States