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(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

To amend title 39, United States Code, to modernize the Postal Service regulations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LATURNER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 39, United States Code, to modernize the Postal Service regulations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MODERNIZING POSTAL REGULATIONS.**

4 (a) COST AND EFFICIENCY REFORMS.—

5 (1) IN GENERAL.—Section 3622(d) of title 39,
6 United States Code, is amended—

7 (A) in paragraph (1)(A), by striking “to be
8 set by” and all that follows and inserting the

1 following: “equal to the amount that is the dif-
2 ference between—

3 “(i) the percentage change in the
4 Consumer Price Index for All Urban Con-
5 sumers unadjusted for seasonal variation
6 over the most recent available 12-month
7 period preceding the date the Postal Serv-
8 ice files notice of its intention to increase
9 rates; and

10 “(ii) a percentage determined by the
11 Commission to be sufficient to ensure that
12 the rate of cost growth of the Postal Serv-
13 ice will be significantly less than the per-
14 centage change described in clause (i) (but
15 not less than zero);”; and

16 (B) by amending paragraph (3) to read as
17 follows:

18 “(3) REVISIONS.—In revising the system as
19 permitted by subsection (a), the Postal Regulatory
20 Commission shall make no change which would
21 cause the revised system to be inconsistent with this
22 section.”.

23 (2) REGULATIONS.—Not later than 60 days
24 after the date of the enactment of this Act, the Post-
25 al Regulatory Commission shall issue such regula-

1 tions as are necessary to carry out section
2 3622(d)(1)(A) of title 39, United States Code, as
3 amended by this subsection.

4 (b) SANCTIONS FOR CERTAIN FAILURES OF SERV-
5 ICE.—

6 (1) IN GENERAL.—Subchapter VII of chapter
7 36 of title 39, United States Code, is amended by
8 adding at the end the following new section:

9 **“§ 3693. Sanctions.**

10 “(a) IN GENERAL.—If, pursuant to section 3653 or
11 a complaint proceeding conducted pursuant to section
12 3662, the Postal Regulatory Commission determines that
13 the Postal Service failed to meet a target established
14 under section 3692 and that such failure is a covered fail-
15 ure, the Commission may reduce the maximum amount
16 by which the Postal Service may adjust the rates for the
17 market-dominant products affected by such failure under
18 section 3622, except that such reduction may not cause
19 such maximum amount to be less than zero. In making
20 such determination, the Commission shall consider evi-
21 dence of losses incurred by users of the product or prod-
22 ucts concerned as a result of the failure.

23 “(b) APPLICABILITY.—

24 “(1) IN GENERAL.—A reduction under sub-
25 section (a) to the maximum amount by which the

1 Postal Service may adjust the rates for a market-
2 dominant product under section 3622 shall apply
3 only with respect to—

4 “(A) the first implementation of such an
5 adjustment for such market-dominant product
6 occurring during the period beginning on the
7 date on which the Postal Regulatory Commis-
8 sion makes such reduction and ending on the
9 date on which Commission determines that the
10 Postal Service is meeting the target established
11 under section 3692 with respect to which the
12 Commission made such reduction; and

13 “(B) each subsequent implementation of
14 such an adjustment for such market-dominant
15 product occurring during such period to the ex-
16 tent determined appropriate by the Commis-
17 sion.

18 “(2) SUBSEQUENT IMPLEMENTATION DETER-
19 MINATION.—In making the determination described
20 in paragraph (1)(B) with respect to a reduction for
21 a failure described in subsection (a), the Postal Reg-
22 ulatory Commission shall consider evidence of losses
23 incurred by users of each product affected by such
24 failure.

1 “(c) COVERED FAILURE DEFINED.—In this section,
2 the term ‘covered failure’ means a failure to meet a target
3 established under section 3692—

4 “(1) that is not the result of a natural disaster
5 or another disruptive event the cause of which was
6 outside the control of the Postal Service;

7 “(2) that has persisted for a material period of
8 time; and

9 “(3) with respect to which the Postal Service
10 does not have a credible plan for achieving and
11 maintaining performance sufficient to meet the tar-
12 geted level within a reasonable time.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
14 tions for chapter 36 of title 39, United States Code,
15 is amended by inserting after the item relating to
16 section 3692 the following:

“3693. Sanctions.”.

17 (c) IMPROVING CHANGE-IN-SERVICE PROCEDURES.—
18 Section 3661 of title 39, United States Code, is amend-
19 ed—

20 (1) in subsection (b)—

21 (A) by striking “When the” and insert
22 “(1) When the”;

23 (B) by striking “advisory opinion” and in-
24 serting “a decision”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(2)(A) In the absence of a decision with re-
4 spect to a proposal under paragraph (1), if the Com-
5 mission determines that a plan or initiative of the
6 Postal Service clearly indicates the need for a
7 change described in such paragraph but such plan or
8 initiative does explicitly make such a change a pur-
9 pose or goal of such plan or initiative, the Commis-
10 sion shall order the Postal Service to explain why
11 the Postal Service determined that the Postal Serv-
12 ice did not need to submit a proposal to the Com-
13 mission under such paragraph with respect to such
14 plan or initiative.

15 “(B) An order under subparagraph (A)
16 pursuant to a determination of the Commission
17 described in such subparagraph shall include an
18 explanation of the reasoning for such deter-
19 mination.

20 “(C)(i) If the Commission determines that
21 the explanation of the Postal Service provided
22 pursuant to subparagraph (A) is not sufficient
23 to support the determination of the Postal Serv-
24 ice that the Postal Service did not need to sub-
25 mit a proposal to the Commission under para-

1 graph (1) with respect to a plan or initiative,
2 the Postal Service shall justify the change in
3 the nature of postal services implied by the plan
4 or initiative and, to the extent necessary, justify
5 the underlying plan or initiative in a hearing
6 before the Commission.

7 “(ii) Each hearing under clause (i)
8 shall be conducted in accordance with sec-
9 tions 556 and 556 of title 5.

10 “(3) Each decision of the Postal Regulatory
11 Commission under this subsection shall be trans-
12 mitted to the Governors of the Postal Service. The
13 Governors may accept the decision or, by unanimous
14 written decision, reject the decision and adopt the
15 original proposal of the Postal Service, in the case
16 of a request by the Postal Service for a decision, or
17 approve the plan or initiative found by the Commis-
18 sion to have required a decision under paragraph
19 (2). The decision of the Governors shall be a final
20 order for purposes of section 3663 of this title. If
21 the Governors have not acted upon a Commission
22 decision within 60 days of receiving it, the Commis-
23 sion decision will be deemed a final order for pur-
24 poses of section 3663 of this title.”; and

25 (2) in subsection (c)—

1 (A) by inserting “designated pursuant to
2 section 505 of this title” after “officer of the
3 Commission”; and

4 (B) by striking “his judgment” and insert-
5 ing “the judgment of such Commissioner”.

6 (d) ONE RATE INCREASE ANNUALLY.—Section
7 3622(d)(1)(B) of title 39, United States Code, is amended
8 by inserting after “amounts” the following: “, except that
9 rates may not change more frequently than once every 12
10 months”.

11 (e) LIMIT ON UNDERWATER SURCHARGES.—Section
12 3622(d)(2) of title 39, United States Code, is amended
13 by adding at the end the following new subparagraph:

14 “(D) USE OF RATE AUTHORITY FOR NON-
15 COMPENSATORY CLASSES.—

16 “(i) LIMITATION.—Notwithstanding
17 paragraph (1)(A), the Commission may au-
18 thorize the Postal Service to increase the
19 rates for a non-compensatory class in ex-
20 cess of annual limitation under paragraph
21 (1)(A) if—

22 “(I) the change in the attrib-
23 utable cost (as such term is defined in
24 section 3631) per piece of mail for
25 such class does not exceed the annual

1 limitation under paragraph (1)(A), as
2 determined using year-to-year com-
3 parable costing methodologies;

4 “(II) in the immediately pre-
5 ceding fiscal year, the Postal Service
6 has—

7 “(aa) pursuant to section
8 3652 and without the use of any
9 proxy data not approved by the
10 Commission, directly measured
11 and reported the compliance of
12 the Postal Service with the tar-
13 gets established under section
14 3692 for each product in such
15 class for such fiscal year; and

16 “(bb) met each such target
17 for such fiscal year; and

18 “(III) no target described in sub-
19 clause (II) for the immediately pre-
20 ceding fiscal year was reduced from
21 the preceding fiscal year.

22 “(ii) NON-COMPENSATORY CLASS DE-
23 FINED.—In this subparagraph, the term
24 ‘non-compensatory class’ means a class of
25 mail for which the attributable costs (as

1 defined in section 3631(b)) of the Postal
2 Service exceed revenues of the Postal Serv-
3 ice attributable to such class of mail.”.

4 (f) CASE-SPECIFIC OBJECTIVES.—Section 3622 of
5 title 39, United States Code, is amended—

6 (1) in subsection (b), in the matter preceding
7 paragraph (1), by inserting “, and all of which shall
8 be applied to each class or type of mail service and
9 product” after “others”; and

10 (2) in subsection (c), in the matter preceding
11 paragraph (1), by inserting after “such system,” the
12 following: “or when evaluating whether a class or
13 type of mail service or product complies with the ap-
14 plicable provisions of this chapter and the regula-
15 tions issues under such provisions,”.

16 (g) RETAINED EARNINGS FROM COST SAVINGS.—
17 Section 3622(b)(5) of title 39, United States Code, is
18 amended by inserting after “retained earnings” the fol-
19 lowing: “resulting from improvements in efficiency or re-
20 ductions in cost only”.

21 (h) OFFICE OF THE CUSTOMER ADVOCATE.—

22 (1) IN GENERAL.—Section 505 of title 39,
23 United States Code, is amended to read as follows:

1 **“§ 505. Office of the Customer Advocate**

2 “(a) IN GENERAL.—The Postal Regulatory Commis-
3 sion shall establish in the Postal Regulatory Commission
4 an Office of the Customer Advocate (in this section re-
5 ferred to as the ‘Office’).

6 “(b) REPRESENTATION.—

7 “(1) IN GENERAL.—The Office shall represent
8 the interests of the general public in all public pro-
9 ceedings of the Commission, including the interests
10 of customers of market-dominant products and
11 classes.

12 “(2) RIGHTS AND LIMITS.—

13 “(A) IN GENERAL.—The Office—

14 “(i) shall have the same right as any
15 interested person to lodge a complaint with
16 or petition the Commission, or otherwise
17 seek to have the Commission initiate a
18 public proceeding, including rulemakings;
19 and

20 “(ii) is subject to the same ex parte
21 rules and limitations as any other litigant
22 with respect to communication with the
23 Commission, Commissioners, and the advi-
24 sory staff of the Commission.

25 “(B) REPRESENT CONFLICTING INTER-
26 EST.—

1 “(i) IN GENERAL.—The Office may
2 represent conflicting interests of the gen-
3 eral public in a public proceeding of the
4 Commission to the extent that the head of
5 the Office determines necessary for the Of-
6 fice to effectively represent the interests of
7 the general public in such proceeding.

8 “(ii) SEPARATE REPRESENTATIVES.—
9 If the Office is representing conflicting in-
10 terests of the general public in a public
11 proceeding of the Commission, the head of
12 the Office shall ensure that such con-
13 flicting interests are represented by dif-
14 ferent individuals to the extent and in such
15 manner as the head of the Office deter-
16 mines necessary for the Office to effec-
17 tively represent the interests of the general
18 public in such proceeding.

19 “(3) OFFICE AUTONOMY.—The Commission
20 may not terminate or otherwise take adverse employ-
21 ment action against any employee of or individual
22 detailed to the Office based on the representation of
23 the interests of the general public by such employee
24 or detailee as an employee of or detailee to the Of-

1 fice, respectively, in a public proceeding of the Com-
2 mission, except for cause.

3 “(c) RESEARCH AUTHORITY.—The Office may—

4 “(1) conduct research and policy development
5 for the purposes of representing the interests of the
6 general public, including research and policy develop-
7 ment that is unrelated to a specific proceeding of the
8 Commission; and

9 “(2) subject to the availability of funds, obtain
10 the temporary or intermittent services of experts or
11 consultants for such purposes.

12 “(d) OUTSIDE CONSULTATION.—The Office shall
13 consult with outside persons and organizations whose
14 postal interests are relevant to the mission of the Office,
15 including those persons and organizations that are actual
16 or potential litigants before the Commission.

17 “(e) RATE AND CLASSIFICATION INQUIRY.—The Of-
18 fice shall inquire into the rates and classifications of com-
19 petitive products only to the extent necessary to evaluate
20 compliance with sections 3622(b)(8) and 3622(b)(9) of
21 this title, subchapter II of chapter 36 of this title, and
22 the regulations issued under such subchapter.

23 “(f) OFFICE STAFF.—The Commission shall ensure
24 that, to the extent practicable, the Office has employees
25 of a sufficient quantity and quality for the Office to effec-

1 tively carry out the responsibilities of the Office under this
2 section, including by maximizing the duration of the detail
3 of individuals detailed to the Office.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
5 tions for chapter 5 of title 39, United States Code,
6 is amended by striking the item relating to section
7 505 and inserting the following:

“505. Office of the Customer Advocate.”.

8 (i) COMPLAINT PROCESS IMPROVEMENT.—Section
9 3662 of title 39, United States Code, is amended—

10 (1) in subsection (b)—

11 (A) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A)—

14 (I) by striking “The Postal” and
15 inserting “With respect to a complaint
16 received under subsection (a), the
17 Postal”; and

18 (II) by striking “, within 90 days
19 after receiving a complaint under sub-
20 section (a)”;

21 (ii) in subparagraph (A)—

22 (I) by striking clause (i) and in-
23 serting the following:

24 “(i) begin proceedings on such com-
25 plaint—

1 “(I) immediately after the expira-
2 tion of the period described in para-
3 graph (3) if the Commission finds
4 that such complaint raises material
5 issues of fact or law and no motion
6 described in clause (ii) with respect to
7 such complaint is filed in such period;

8 “(II) immediately after the Com-
9 mission denies all motions described
10 in clause (ii) with respect to such
11 complaint that were filed during the
12 period described in paragraph (3) if
13 the Commission finds that such com-
14 plaint raises material issues of fact or
15 law and all such motions are denied
16 not later than 45 days after the date
17 on which the Commission received
18 such complaint under such subsection;
19 or

20 “(III) not later than 45 days
21 after the date on which the Commis-
22 sion receives such complaint under
23 such subsection if subclause (I) and
24 (II) do not apply with respect to such
25 complaint; or”; and

1 (II) in clause (ii)—

2 (aa) by inserting before
3 “issue” the following: “if the
4 Commission finds that, after con-
5 sideration of any motion assert-
6 ing that such complaint raises no
7 material issues of law or fact,
8 that such complaint raises no
9 such issue, upon making such
10 finding”; and

11 (bb) by inserting “within 45
12 days after receiving such com-
13 plaint under such subsection”
14 after “dismissing the complaint”;
15 and

16 (B) by adding at the end the following new
17 paragraph:

18 “(3) PROMPT MOTIONS.—A motion described in
19 subparagraph (A)(ii) with respect to a complaint
20 may only be filed during the 25-day period begin-
21 ning on date on which such complaint is filed, or
22 during such shorter period as the Postal Regulatory
23 Commission may prescribe by regulation.”; and

24 (2) in subsection (c)—

1 (A) by striking “or requiring” and insert-
2 ing “requiring”; and

3 (B) by inserting after “competitive prod-
4 ucts” the following: “or, upon a finding that
5 the Postal Service has unreasonably delayed the
6 proceeding, ordering reimbursement consistent
7 with section 3681”.

8 (j) REIMBURSEMENT OF UNLAWFUL RATES; PEN-
9 ALTY FOR UNREASONABLE DELAY.—Section 3681 of title
10 39, United States Code, is amended—

11 (1) by striking “No mailer” and inserting “(a)
12 No mailer”;

13 (2) by striking “through 3664 of this title, or
14 is superseded by a lower rate or fee established
15 under subchapter II of this chapter”; and

16 (3) by adding at the end the following new sub-
17 section:

18 “(b)(1)(A) If the Postal Regulatory Commissions de-
19 termines that a rate or fee for a product is unlawful in
20 a review conducted pursuant to section 3653 of this title
21 or in a complaint proceeding conducted pursuant to sec-
22 tion 3662 of this title, the Commission shall order the
23 price increase authority for such product and all other
24 products in the class of mail containing such product to
25 be reduced (but not below zero) for the next following

1 price adjustment and each succeeding price adjustments
2 until the amount of foregone revenue is equal to amount
3 of revenue received by the Postal Service from the portion
4 of such rate or fee that exceeded the lawful amount such
5 rate or fee.

6 “(B) In this paragraph, the term ‘foregone rev-
7 enue’ means the difference between—

8 “(i) the revenue that the Postal Service
9 would have received from the sale of the prod-
10 ucts subject to an order under subparagraph
11 (A) during the period that the Postal Service is
12 unable to increase the prices of such products
13 pursuant to such order if—

14 “(I) the Commission had not issued
15 such order; and

16 “(II) the rate or fee for the product
17 with the unlawful rate or fee for which the
18 Commission issued such order was the
19 maximum lawful rate or fee for such prod-
20 uct at the time the Commission issued
21 such order; and

22 “(ii) the revenue the Postal Service re-
23 ceives from the sale of the products subject to
24 such order during such period.

1 “(2)(A) In a complaint proceeding conducted pursu-
2 ant to section 3662 of this title, if the Postal Regulatory
3 Commission finds that the Postal Service has unreason-
4 ably delayed the proceeding, the Commission may order
5 a reduction in the price increase authority for the product
6 or products whose rate or fee it has determined to be un-
7 lawful to the extent that the unreasonable delay caused
8 by the Postal Service has extended the time during which
9 users of such product or products have paid the unlawful
10 rate or fee.

11 “(B) A reduction under subparagraph (A) shall
12 be in addition to any reduction under paragraph (1).

13 “(C) The Commission shall include in an order
14 under subparagraph (A) with respect to the unrea-
15 sonably delay of a proceeding an explanation of the
16 basis for the determination of the Commission re-
17 garding the time such proceeding would have re-
18 quired absent such unreasonable delay.”.

19 (k) MAIL VOLUME SYSTEM OBJECTIVE.—Section
20 3622(b) of title 39, United States Code, is amended—

21 (1) by redesignating paragraph (9) as para-
22 graph (10); and

23 (2) by inserting after paragraph (8) the fol-
24 lowing new paragraph:

1 “(9) To maintain and, to the extent practicable,
2 increase the volume of market-dominant mail, with
3 due regard to total contribution to the institutional
4 costs of the Postal Service.”.

5 (l) NEW PRODUCT DEFINITION CRITERIA.—Section
6 3642(b)(3) of title 39, United States Code, is amended—

7 (1) in subparagraph (B), by striking “and”;

8 (2) in subparagraph (C), by striking the period
9 at the end and inserting “; and”; and

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(D) the importance of paragraphs (7),
13 (8), and (11) of section 3622(e) of this title in
14 the appropriate definition of market-dominant
15 products.”.

16 (m) MAIL VOLUME ESTIMATION MODEL.—

17 (1) IN GENERAL.—Not later than 120 days
18 after the date of the enactment of this Act, the Post-
19 al Regulatory Commission shall develop a model for
20 estimating the demand for postal services.

21 (2) INDEPENDENT DEVELOPMENT.—The Com-
22 mission may not consider any models for estimating
23 demand developed by the Postal Service when devel-
24 oping the model required under this subsection.

1 (3) PUBLIC COMMENT.—In developing the
2 model required under this subsection, the Postal
3 Regulatory Commission shall solicit and provide ade-
4 quate opportunity for public comment regarding the
5 model.

6 (4) REGULATIONS.—The Postal Regulatory
7 Commission may issue such regulations, after notice
8 and comment in accordance with section 553 of title
9 5, United States Code, as the Commission deter-
10 mines necessary to develop the model required under
11 this subsection.

12 (5) EXPERT ADVISORS.—The Commission may
13 obtain the temporary or intermittent services of ex-
14 perts or consultants to facilitate the development of
15 the model required under this subsection.

16 (n) LABOR DISPUTE ARBITRATION CONSIDER-
17 ATIONS.—Section 1207(c)(2) of title 39, United States
18 Code, is amended by inserting after “they may elect.” the
19 following: “When making a decision, the arbitration board
20 shall consider the current and, to the extent practicable,
21 projected financial condition of the Postal Service in addi-
22 tion to any other relevant considerations.”.

1 **SEC. 2. INVESTMENT OF THE POSTAL SERVICE RETIREE**
2 **HEALTH BENEFITS FUNDS.**

3 Section 8909a(c) of title 5, United States Code, is
4 amended—

5 (1) by striking “(c) The Secretary” and insert-
6 ing “(c)(1) Subject to paragraph (2), the Sec-
7 retary”; and

8 (2) by adding at the end the following:

9 “(2)(A) The Secretary of the Treasury shall im-
10 mediately invest a specified percentage of the Fund,
11 using one or more qualified professional asset man-
12 agers, in index funds modeled after those established
13 under subparagraphs (B), (C), (D), and (E) of sec-
14 tion 8438(b)(1). The Secretary shall ensure, to the
15 maximum extent practicable, that the investment
16 replicates the performance of the longest-term target
17 date asset allocation investment fund established by
18 the Federal Retirement Thrift Investment Board.

19 “(B) In exercising authority under sub-
20 paragraph (A), including in the selection of spe-
21 cific qualified professional asset managers and
22 in the development of specific investment guide-
23 lines to meet the requirement of such subpara-
24 graph, the Secretary shall consult with the
25 Postal Service Retiree Health Benefits Fund
26 Investment Committee.

1 “(C)(i) There is established a Postal Serv-
2 ice Retiree Health Benefits Fund Investment
3 Committee that shall consist of—

4 “(I) the Secretary;

5 “(II) the Chair of the Board of
6 Governors of the United States Postal
7 Service;

8 “(III) the Chairman of the Fed-
9 eral Retirement Thrift Investment
10 Board; and

11 “(IV) two members, appointed by
12 the President, who—

13 “(aa) shall represent the in-
14 terests of Postal Service employ-
15 ees and annuitants;

16 “(bb) have experience and
17 expertise in the management of
18 financial investments and Postal
19 Service employee benefits; and

20 “(cc) shall serve for a term
21 of 3 years.

22 “(ii) Subsections (b)(1) and (c)(2) of
23 section 8477 shall apply with respect to
24 the Postal Service Retiree Health Benefits
25 Fund Investment Committee and each

1 member of the Postal Service Retiree
2 Health Benefits Fund Investment Com-
3 mittee in the same manner as such sub-
4 sections apply to a fiduciary with respect
5 to the Thrift Savings Fund.

6 “(D)(i) The Secretary shall annually en-
7 gage an independent qualified public accountant
8 (as defined in section 8439) to audit and pro-
9 vide a report on the financial statements of the
10 investments made pursuant to subparagraph
11 (A).

12 “(ii) Not later than 180 days after
13 the end of each fiscal year beginning after
14 the date of the enactment of this para-
15 graph, the Secretary shall submit to Con-
16 gress an annual management report re-
17 garding the Fund that includes—

18 “(I) a statement of financial po-
19 sition;

20 “(II) a statement of operations;

21 “(III) a statement of cash flows;

22 “(IV) a statement on internal ac-
23 counting and administrative control
24 systems;

1 “(V) the most recent report re-
2 sulting from an audit of the financial
3 statements of the investments con-
4 ducted under clause (i); and

5 “(VI) any other comments and
6 information the Secretary determines
7 necessary to inform the Congress
8 about the operations and financial
9 condition of the investments.

10 “(E) In this paragraph—

11 “(i) the term ‘specified percentage’
12 means 25 percent of the currently available
13 portions of the Fund as are not imme-
14 diately required for payments from the
15 Fund, except that the Postal Service Re-
16 tiree Health Benefits Fund Investment
17 Committee may specify a higher percent-
18 age, not to exceed 30 percent, not earlier
19 than 5 years after the date of enactment
20 of the Postal Service Financial Improve-
21 ment Act of 2019, and as appropriate
22 thereafter; and

23 “(ii) the term ‘qualified professional
24 asset manager’ has the meaning given that
25 term in section 8438(a).”.