

March 22, 2005

To: Nonprofit Organizations, Fundraisers & Friends

From: (alphabetically by organization)

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Paulette V. Maehara, Association of Fundraising Professionals

Senny Boone, Direct Marketing Association - Nonprofit Federation

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Re: URGENT: New USPS Personalization Rule

If you are personalizing your Nonprofit Standard mailings now—you have a problem today!

Do you include any data fields in your Standard mailpieces other than the date and the name and address of the recipient? If so, your mailings may need to pay First-Class rates beginning on June 1.

A seemingly innocuous set of USPS rule changes, scheduled to take effect on that date, could disqualify your mailings from Nonprofit Standard rates if you use common and long-accepted techniques of mailpiece personalization. Even now—*less than six weeks before the new rules take effect*—the USPS has not answered some of the most obvious and basic questions about what the new rules permit and forbid.

Background

This regulatory train wreck is the unintended result of recent USPS efforts to “clarify” the longstanding rules governing the kinds of personalized information that can be mailed in Standard mail. For over a century, postal law has required mail with the character of “actual and personal correspondence” to be entered as First-Class Mail, not Standard (formerly third-class) mail. The phrase “actual and personal correspondence,” however, is a legal term of art, and has never been considered to cover all information personal to the addressee:

- It has always been understood, for example, that Standard mailpieces could include the specific name and address of the recipient, as well as the date of the mail piece.
- Similarly, the USPS ruled in the early 1980s that specific information about a donor—including the donor’s previous purchases, pledges, donations, or donation history—would not be considered a bill, statement of account, or any other form of “actual and personal correspondence” if mailpiece also contained a solicitation for an additional donation.

- Likewise, the USPS ruled in 1994 that a Standard mailpiece could include the addressee's account number, file number, polling place, congressional district, legislative district, school board district, election district, and precinct.

In April 2004, however, the USPS announced that “advances in technology,” including the widespread use of computers to generate letters customized for individual addressees, warranted “more explicit guidance” to mailers in this area. In October 2004, the Postal Service published new eligibility rules to take effect on June 1, 2005.

The revised rules, while written to “clarify” the existing rules, in fact alter them. The most important new provisions allow “personal information” in a Standard mailpiece only if *all three* of the following conditions are met:

1. The mail piece contains an “explicit solicitation” for a product or service for sale or lease, or an “explicit solicitation” for a donation.
2. All of the personal information is “directly related” to the advertising or solicitation.
3. The “exclusive reason” for including each item of personal information is to support the advertising or solicitation in the mail piece.

These restrictions immediately set off red flags among nonprofit mailers. While the new rules appeared to narrow the permitted use of personalized information, neither the rules nor the USPS notices of their promulgation gave clear definitions (or, in several instances, any definition at all) of the terms “personal information,” “explicit advertising,” “explicit solicitation,” “directly related” or “exclusive reason.”

In response to requests from nonprofit organizations and other mailers for clarification of the new rules, the USPS issued several “Customer Support Rulings” (i.e., interpretive rulings) during the past few weeks. These rulings, rather than allaying the concerns of the nonprofit community, have inflamed them further. We recognize and support the USPS’ efforts to protect the First-Class revenue stream – but we are especially concerned about the new interpretations of a Customer Support Ruling affecting nonprofit organizations. The USPS issued a revised version of Customer Support Ruling PS-262 earlier this month that eliminates the safe harbor for information in a fundraising solicitation about the addressee’s previous donation, pledge, or donation history. Under the revised version of PS-262, information of this kind in a solicitation may be out of bounds if the USPS decides that the information is not “directly related” to the solicitation.

Another new Customer Support Ruling, PS 322, states that an acknowledgement of a prior donation in a fundraising solicitation may not contain the language “keep this notice as a receipt for tax purposes.” Such language, the USPS asserts, would have an impermissible “dual use” as both a solicitation and a receipt.

The March 16 Meeting With the USPS

Alarmed by these developments, various sector representatives met at USPS headquarters on March 16 with the USPS officials responsible for drafting and implementing the new content restrictions. What they heard was even more disturbing than anticipated.

On issue after issue, the USPS officials suggested that personalization would be severely restricted. They said the decisions would only be made on a case-by-case basis upon the submission of actual mail samples and further review. The USPS made it clear that, at best, case by case decisions will be made by the USPS concerning the following matters:

- **Segmentation by age, gender, etc.:** Do you segment your mailings by age, gender, or other “personal” demographic characteristics? Segmented mailings of this kind may be forbidden on June 1st – even when the individual demographic segments would qualify for Standard rates if sent as separate stand-alone mailings.
- **Petitions and other issue advocacy material:** Do you use Standard mail to ask people to contact their representatives in Congress on an issue? You may be forbidden to identify the representative, the district, or the issue specific to their particular community or neighborhood, on the theory that this information is too personalized for Standard mail.
- **References to the addressee’s community:** You may be forbidden to personalize your solicitation by identifying in the body of the letter the community or metropolitan area where the recipient lives—even though the specific city and specific street address of the recipient typically appear in the address block of the same letter.
- **Tax receipt, tax information:** May you say “Keep this as a tax receipt” when you acknowledge a donation? Quite possibly not. Indeed, all references to “important tax information” (or variations on this theme) may be forbidden on June 1st.

What You Should Do Next:

The one thing that the USPS has promised is to respond promptly to requests for advance rulings on specific sample mailpieces. In fact, they insisted that since this was a “content-based” regulation, rulings can only be made by seeing the entire mailpiece.

Eligibility for mailing at Nonprofit Standard Rates will be based on the “Context” of the personalization and its relationship to the solicitation. ***In other words, they have not provided substantive guidance in the form of clear definitions and language in the rule nor their Customer Support Rulings.***

We strongly urge that you protect yourself by taking up the USPS on their offer. If you have any doubts about whether your mailpieces will continue to qualify for Standard Mail Rates after June 1, please send them to the one USPS classification office specifically assigned to answer these questions:

Mr. Greg Hall
USPS Pricing and Classification Service Center
1250 Broadway 14th Floor
New York, NY 10095-9599
(212) 613-8676
Fax: (212) 613-8752
Email: gregory.a.hall@usps.gov

Send a copy of your request (and mailpieces) to the Alliance of Nonprofit Mailers and the DMA Nonprofit Federation at the addresses shown below. When you hear back from the USPS we need to know as quickly as possible about any mail pieces denied the Nonprofit Standard rate after June 1. For those of you who might be concerned about past deficiencies, the USPS management policy is that they will not assess deficiencies on content based regulations without warning the mailer first. **So send your demographically segmented or personalized mail packages in now!**

We will continue our efforts to have the USPS either delay implementation of the rule until it can be revised or clarified and we will be meeting with the USPS to resolve our concerns as quickly as possible.

If we cannot resolve these matters with USPS Management, our next steps will be to work with Congress or through litigation. In either event we will need your help.

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