

June 30, 2022

Submitted electronically

Postal Regulatory Commission
901 New York Ave NW, Suite 200
Washington, DC 20268-0001

Re: Modification of Special Services Product List (Docket No. MC2022-60)

Dear Sir or Madam:

The American Bankers Association¹ (ABA) appreciates the opportunity to comment on the Postal Regulatory Commission's (Commission) Notice and Order Concerning Potential Modification of Special Services on the Competitive Product List, issued May 16, 2022 (the Notice). The Notice requests feedback on the Postal Service's check cashing pilot program to determine whether the gift cards price category may be categorized as a nonpostal product. The program allows customers to exchange payroll and business checks for stored value gift cards at certain post offices (Pilot Program).

ABA does not support the program and believes it is inconsistent with Congressional intent. We do not believe that the Postal Service's current proposal to offer check cashing services is consistent with the statutory definition of "postal services" or Congress' intent to prohibit new nonpostal services.² In 2011, the ABA responded to the Commission's notice that it intended to allow the Postal Service to sell gift cards as an experimental product. In the comments, the ABA "oppose[d] the selling of gift cards pursuant to the rationale that gift cards are like greeting cards and cash equivalent sent through the mail (money orders)." ³ It should be noted that the ABA did not oppose the Postal Service selling gift cards, but opposed extending the definition of postal services to do so.

At the time, the ABA argued that the expansion of the statutory definition of "postal services" by likening the sale of gift cards to the sale of greeting cards, would only invite the Postal Service to push the boundary even further to offer "postal services" that compete with banking and other financial services. Regrettably, the Postal Service's decision to initiate the Pilot Program in 2021

¹ The American Bankers Association is the voice of the nation's \$24 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$19.9 trillion in deposits and extend \$11.4 trillion in loans.

² 39 U.S.C. § 102(5) and 39 U.S.C. § 101.

³ See Letter from Vincent J. Barnes, American Bankers Association, to Postal Regulatory Commission (February 4, 2011),

<https://www.prc.gov/docs/71/71849/ABA%20Comments-Gift%20Cards.pdf>.

and this current proceeding proves the concerns expressed in 2011 were prescient.

As a threshold matter, any policy changes to the Postal Service's mission, including any entrance into financial services, should follow express Congressional direction, not increasingly strained and unsupported interpretations of what is a "postal service." We urge that Commission to take a more active role in regulating new product offerings by the Postal Service, including requiring the Postal Service to provide advance notice and seek approval before offering a new product.

A. The Postal Service cannot offer the Pilot Program as a nonpostal service.

The Postal Accountability and Enhancement Act (PAEA) repealed the Postal Service's authority to offer "special nonpostal or similar services" and limited the Postal Service's authority to offer nonpostal services to those it offered as of January 1, 2006.⁴ Therefore, a "threshold question for any nonpostal service is whether that service was offered by the Postal Service as of January 1, 2006."⁵ Further, the PAEA defines "nonpostal service" to mean "any service that is not a postal service defined in 39 U.S.C. § 102(5)."⁶ As the Commission notes in this proceeding, to the extent by which the gift cards price category can be construed as a nonpostal product, would require its termination. The record clearly establishes that the Postal Service was not offering its check cashing pilot program as of January 1, 2006, and, accordingly, should be prohibited under section 404(e)(2).

In addition, the ABA notes that the Pilot Program runs afoul of section 404(e)(3)(B), which requires that all nonpostal services meet a public need that the private sector cannot satisfy.⁷ The Postal Service has not offered any evidence to suggest that the Postal Service's entry into this market is necessary to satisfy unmet consumer demand. To the contrary, the response to the Pilot Program has been underwhelming with a total of six gift cards purchased from September 13, 2021, to January 12, 2022.⁸

There are clearly many other avenues for consumers to access banking services, including from traditional insured depository institutions. While the Postal Service's attention to the issue of unbanked and underbanked individuals is honorable, it should be noted that many financial institutions, including banks, are already actively addressing this inequity by offering checking accounts with low (or no) monthly maintenance fees, often in close coordination with trusted nonprofit community partners who can help to develop trust with unbanked households. This creates a more sustainable pathway to inclusion than encouraging consumers to find piecemeal solutions outside of the security of an insured depository institution.

It may interest the Commission that one such initiative, Bank On, promotes access to low-cost checking accounts, which feature no overdraft fees and ample consumer protections.⁹ ABA has worked closely with the Cities for Financial Empowerment Fund, the nonprofit organization that

⁴ 39 U.S.C. § 404(e).

⁵ See PRC Docket No. MC2008-1, Order No. 154, at 47.

⁶ 39 U.S.C. § 404(e)(1).

⁷ 39 U.S.C. § 404(e)(3)(B).

⁸ See Docket No. ACR2021, Response to CIR No. 1, questions 1.d., 1.g., 1.h.

⁹ "Bank On's Goal Is to Ensure That Everyone Has Access to a Safe and Affordable Bank or Credit Union Account." BankOn, <https://joinbankon.org/>.

manages the national Bank On account standards, to encourage banks to offer and promote these affordable bank accounts. Since ABA became involved in this work, the number of accounts offered nationwide has jumped nearly five-fold, with scores more expected in the coming months. Bank On accounts are available in over 39,000 branches nationwide and 95% of low to moderate income (LMI) census tracts are nearby a branch offering a Bank On account.

B. The Pilot Program is not a “postal service.”

The Postal Service is authorized to conduct “market tests of experimental products” pursuant to section 3641.¹⁰ To qualify as an experimental product, however, the product must be consistent with the statutory definition of a “postal service.” The term, “postal service”, according to section 102(5), “refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.”¹¹ The Postal Service makes no attempt to justify that the Pilot Program, or even the sale of gift cards, as a service directly relates to any basic functions of the carriage of mail. Rather, the Postal Service’s stated rationale is that the Pilot Program will help the agency gain insight into the financial services market, noting specifically that it considered a 2019 survey by the FDIC entitled, “How America Banks: Households Use of Banking and Financial Services.”¹² This alone should be disqualifying.

C. The Pilot Program cannot be justified by further expansion of the definition of postal services.

The Postal Service cannot justify the Pilot Program by making vague references to the similarities of other retail products that “bear a close nexus to the mail,” as the Postal Service previously contended in justifying the sale of gift cards.¹³ As the ABA previously warned, this type of justification is problematic because it invites future iterations of products that are further and further removed from the statutory definition of postal services. The Commission previously approved the introduction of the Postal Service’s sale of gift cards, finding that it was a product “likely to be mailed, similar to greeting cards and stationery,” and was often involved in the sale of other postal retail products such as greeting cards.¹⁴ In this case, however, there is no evidence on the record to justify the Pilot Program on the basis that customers may link such transactions to mailable items. In fact, as the Commission pointed out in this notice, the evidence demonstrates that “none of the transactions involved the sale of other postal products.”¹⁵

An additional example of the disconnect between the Pilot Program and actual postal services is highlighted in this proceeding when the Commission pointed out that “the Postal Service does

¹⁰ 39 U.S.C. § 3641.

¹¹ 39 U.S.C. § 102(5).

¹² See Docket No. ACR2021, Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 1, January 14, 2022, question 1.b. (Docket No. ACR2021, Response to CIR No. 1).

¹³ See Docket No. MC2008-1, Statement of Tina M. Lance on Behalf of the United States Postal Service (Lance Stmt.), Mar. 19, 2008.

¹⁴ See Docket No. MC2014-26, Order Granting Request to Add Gift Cards to the Competitive Product List, August 8, 2014 (Order No. 2145).

¹⁵ See Docket No. MC2022-60, Notice and Order Concerning Potential Modification of Special Services on the Competitive Product List, May 16, 2022 (Order No. 6174).

not track whether gift cards are mailed (regardless of the method of purchase) and has not made an attempt as of yet to determine via survey or other tools whether customers are likely to mail the gift cards purchased under the Pilot Program.”¹⁶ For the same reasons, the Postal Service’s attempt to justify the Pilot Program as simply another means of payment to purchase an existing product is circular and unavailing. The clear intent of the Pilot Program is the cash checking service. Approval of check cashing services as a “postal service” would set a troubling precedent that would expand the definition of postal service to cover retail activities that include banking and financial services products. As such, the Commission should reject *post hoc* rationalizations to further expand the definition of postal services. The Commission even notes in this Notice, that in connection with its request to obtain approval of gift cards, the Postal Service stated that it “d[id] not intend to use th[e] filing as a step into offering banking services,” and yet the Postal Service now cites the gift card case as the basis for offering a check cashing pilot program.¹⁷ As the ABA warned previously, further expansion beyond the plain meaning of the term “postal services” will invite even more expansive interpretations in the future.

In summary, the ABA opposes the Postal Service’s Pilot Program allowing customers to exchange payroll and business checks for stored value gift cards as an unauthorized expansion of Congressional intent beyond 39 U.S.C. § 102(5) and an impermissible encroachment into banking and financial services. The ABA appreciates the Commission consideration of these comments. If you have any questions about these comments, please contact the undersigned at dandrophy@aba.com.

Sincerely,

David Androphy

David Androphy
Senior Manager
Prudential Regulation & Asset Management

¹⁶ *Id.*

¹⁷ *Id.*