



Postal Service sees these First-Class NSAs as one tool to help stem the diversion of First-Class statements and solicitations from the mail stream. Stemming such diversion, even in part, would retain First Class contribution to institutional costs.

Two other changes deserve note. First, DFS has acceded to the Postal Service's desire for an adjustable threshold, in order to take into account changes in the volume of its statement mail. Such a provision seemed reasonable and in the best interests of both parties. Second, DFS has negotiated a competitive cap with the Postal Service, in light of DFS's strong belief that such a cap best handles the public policy questions raised by having a federal government negotiate NSAs with competitors.

Any other differences in the NSAs are minor and reflect various business and legal concerns of DFS. Such differences are the outcome of arms-length negotiations between the two parties that have gone on for quite some time. These negotiations have been long and hard, and both parties are satisfied with the resulting agreement.

DFS believes the differences between its NSA and Capital One's do not raise any issue of material fact. Thus, since any question of law or policy may be raised on brief, DFS submits that a hearing is not necessary. Adjudicative hearings are to deal with disputed issues of material fact, not issues of law or policy, even when a statute calls for on-the-record adjudication. RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE §8.3 AT 542 (4<sup>TH</sup> ed. 2002).

Moreover, since DFS believes that this case does not raise any significant questions of law or policy, DFS believes that settlement is both appropriate and a distinct possibility. This is particularly true since DFS anticipates that the parties to this

