



***The Association of
Direct Response
Fundraising Counsel***

June 24, 2008

Mr. Steven W. Williams, Secretary
Postal Regulatory Commission
901 New York Ave, NW Suite 200
Washington, DC 20268-0001

Re: Docket No. PI2008-4, Inquiry into Cooperative Mail Rule Exception

Dear Mr. Williams:

As an aid to the Commission's inquiry, and to further inform it, I enclose a proposal for amending the existing cooperative mail rule ("CMR", found at *DMM* 703.1.6.3). This proposal is supported broadly and deeply throughout the nonprofit mailing and fundraising community, on whose behalf I submit the proposal.

More than five years ago, when USPS last had revision of the CMR under consideration, the mailing and fundraising community generally supported the idea of CMR reform. But it did not support the blanket removal of fundraising from CMR oversight that USPS eventually adopted. Instead, it proposed a finer balance that would protect legitimate fundraising but at the same time restrain overreaching by commercial third parties.

The following organizations have revived the "community proposal" from five years past and offer it, slightly modified, for the Commission's consideration:

Alliance of Nonprofit Mailers
Association of Direct Response Fundraising Counsel
Association of Fundraising Professionals
DMA Nonprofit Federation
The Direct Marketing Association
Independent Sector
National Catholic Development Conference

Thank you for your attention. I would be pleased to respond to any question the Commission may have, as would, I am sure, representatives from any of the organizations listed above.

Sincerely,

Robert S. Tigner
General Counsel

We propose to revise Domestic Mail Manual 703.1.6.3 to read as follows:

1.6.3 Cooperative Mailings

1.6.3.1 General rule

A cooperative mailing may be made at the Nonprofit Standard Mail rates only when each of the cooperating organizations is individually authorized to mail at the Nonprofit Standard Mail rates at the post office where the mailing is deposited. A cooperative mailing involving the mailing of any matter on behalf of or produced for an organization not itself authorized to mail at the Nonprofit Standard Mail rates at the post office where the mailing is deposited must be paid at the applicable Regular or Enhanced Carrier Route Standard Mail rates. The mailer may appeal the decision under 607.2.0.

1.6.3.2 Exception for Fundraising Mailings

A mailing described in the second sentence of 1.6.3 may nevertheless be made at the Nonprofit Standard Mail rates provided --

- (a) The mailing solicits monetary donations and does not promote or otherwise facilitate the sale or lease of any goods or service; and
- (b) The nonprofit organization certifies in writing, on the Form 3602 or other entry statement for the mailing, that any arrangement between the nonprofit organization and any professional fundraiser or other participant in the solicitation who is ineligible for nonprofit rates ('ineligible participant') satisfies all of the following requirements:
 - (1) No officer, director, principal, or fiduciary of any ineligible participant or corporate affiliate thereof, or any close relative of any such individual, serves the nonprofit organization as officer, director, or key employee;
 - (2) The arrangement is governed by a written contract; the contract separately states by amount, formula, or otherwise (A) the fees payable to the ineligible participant for its services and (B) the amounts that the nonprofit organization will be charged for expenses incurred by the ineligible participant; and the contract has been signed by a board member or officer of the nonprofit organization;
 - (3) The ineligible participant that provides professional fundraising services has no financial interest in any product provided to the recipient with the solicitation or offered in response to a recipient's donation (e.g., a premium such as return address labels, lapel pins, or greeting cards);
 - (4) The contributions received from recipients of the solicitation are deposited in a bank account under the exclusive control of the nonprofit organization;
 - (5) The ineligible participant has no ownership or control of the use of the donor list generated by responses to the solicitation, other than the right to a contingent security interest in the donor list rental income in case the nonprofit organization fails to perform its obligations under the contract;
 - (6) The ineligible participant has no property rights in the fundraising package developed at the nonprofit organization's expense, or in a fundraising package developed

by the ineligible participant once it has been mailed, that would restrict the nonprofit organization from employing the package for its own fundraising;

(7) If the ineligible participant extends credit to the nonprofit organization, the arrangement is in writing and the repayment period, interest rate, and other material terms of the credit are not conditioned on the continued employment of the ineligible participant by the nonprofit organization; and

(8) The arrangement under which the mailing was prepared or produced is not an excess benefit transaction, within the meaning of Section 4958 of the Internal Revenue Code and the regulations thereunder, except that, for purposes of this paragraph, (A) the regulations shall be deemed to apply to all nonprofit organizations (not just §501(c)(3) and §501(c)(4) organizations) and (B) the rule in 26 CFR §53.4958-4(a)(3)(relating to an initial contract) shall not apply.