

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-001

**MARKET TEST OF EXPERIMENTAL PRODUCT-
GIFT CARDS**

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Docket No. MT2011-2

COMMENTS OF THE AMERICAN BANKERS ASSOCIATION

(February 4)

I. Introduction

In its Notice and Order Concerning Market Test of Experimental Product, issued January 5, 2011, the Postal Regulatory Commission (Commission) solicited comments pursuant to its determination schedule. Specifically the Commission asked for comments on whether the Postal Services filing regarding the proposed market test of gift cards is consistent with 39 USC 3641.

The American Bankers Association (ABA) welcomes the opportunity to provide comment on the USPS proposal to sell gift cards as an experimental product. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

On January 5, 2011, the United States Postal Service (USPS, Postal Service, or Service) provided notice that it intends to offer gift cards as an experimental Postal product pursuant to 39 USC 3641. Specifically, the USPS will test open loop gift cards

with fixed and variable amounts. The market test is planned for two full years, beginning in May 2011, concluding in May 2013. To sell the experimental product, the Postal Service will enter into an agreement “with one (or more) Issuing Bank, Retail Electronic Payment Network or Service Provider.”¹

The ABA recognizes that a number of its members may have competed to enter into an experimental gift card agreement with the USPS, and that one or more may benefit should the Commission approve gift cards as an experimental product. The ABA further acknowledges that there are differing views within its membership on this issue.

II. Discussion

Gift Cards as a Postal Service, As Proposed, Expands Statutory Language and Congressional Intent.

Gift cards, at least as proposed as a *postal service* by the USPS under this docket, expands statutory definitions and would move the USPS beyond its actual purpose. As a government created entity, Congress saw fit in the PAEA to limit the USPS in the offering of postal and non-postal services.² Since passage of the PAEA, the Commission has made various rulings interpreting the statutory provisions.³ This is to ensure that the USPS remains committed to its primary mission of binding “the nation together through the personal, educational, literary and business correspondence of the people.”⁴

¹ Notice of the United States Postal Service of Market Test of Experimental Product-Gift Cards (Notice of USPS), at 2, January 5, 2011.

² See 39 USC 102 (5) and 404 (e).

³ See Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, Order No. 154, Docket No. MC2008-1, as discussed herein (Order 154).

⁴ 39 USC 101 (a)

While the ABA does not object to the USPS selling gift cards, the ABA does oppose the selling of gift cards pursuant to the rationale that gift cards are like greeting cards and cash equivalents sent through the mail (money orders). This analysis would expand product and service offerings by the USPS beyond statutory definitions, later leading to the potential of products that compete with financial services. A Commission analysis should solely be under the definitions provided by statute. Either gift cards are a postal service as Congress intended or they are not, **and not because they are cash equivalents or like greeting cards.**

Although it may be a leap from gift cards to banking, a stretch in statutory interpretation today could build the first steps that later lead to direct competition with the financial sector. Indeed, in the past the USPS has indicated a desire to replicate banking services provided by other postal services around the world.⁵

The proposed definitional extension of *postal service* does more than simply provide the opportunity for the USPS to sell gift cards. The proposal creates the opportunity for the USPS to offer what would otherwise be non-postal products as *postal services*. The USPS cannot use 39 USC 3641 as a vehicle to achieve statutory changes in its mission, but must seek the consult and approval of Congress.

The ABA urges the USPS to amend its filing sans the analogy to greeting cards and cash equivalents, requesting that the Commission approve the selling of gift cards pursuant to sections 102 (5) and 102 (6) of the PAEA. The ABA would likely not oppose a proposal that does not make gift cards a *postal service* because they are cash equivalents (money orders) that would likely be sent through the mail, or are like greeting cards.

⁵ Washington Post, October 25, 2010

Should the USPS not amend its Notice, and the Commission evaluates the proposal as presented, the ABA would remain opposed and may offer future comments.

The ABA thanks the Commission for the opportunity to address the USPS proposal, and is available for further comment should the Commission deem appropriate.

Respectfully Submitted

American Bankers Association

By:

Vincent J. Barnes
Senior Counsel

1120 Connecticut Avenue NW
Washington, DC 20036
202-663-5230
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