Postal Regulatory Commission
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

DISCOVER FINANCIAL SERVICES NSA	Docket No. MC2015-3
DISCOVER FINANCIAL SERVICES NSA	Docket No. R2015-2

NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING REQUEST TO ADD DISCOVER FINANCIAL SERVICES NEGOTIATED SERVICE AGREEMENT TO THE MARKET-DOMINANT PRODUCT LIST
(October 27, 2014)

In accordance with 39 U.S.C. § 3622 and § 3642, and 39 C.F.R. § 3010 and § 3020, *et seq.*, the United States Postal Service hereby provides notice that the Board of Governors has authorized the Postal Service to enter into a Negotiated Service Agreement ("NSA") with Discover Financial Services ("Discover" or "DFS"). The "Effective Date" of this Agreement shall be the one (1) business day following the day on which the Commission issues all necessary regulatory approval.[1] The "Implementation Date" of the NSA shall be December 1, 2014 or on a date mutually agreed upon by the Parties which, in any event, shall not be more than thirty (30) calendar days after final approval of this NSA by the Commission.[2] The Postal Service hereby requests that the Discover NSA be added to the market-dominant product list

[1] The "Effective Date" is the day after the Commission issues all necessary regulatory approval.
[2] The "Implementation Date" is the date on which the rebate structure detailed in the NSA will take effect, and revenue will begin counting towards the applicable thresholds. It defines when key NSA components will become active and as the term of the NSA shall expire three (3) years thereafter (except as otherwise provided in Articles IV.D and E thereof). The Postal Service refers the Commission to DFS for amplification regarding the business reasons for separate implementation and effective dates.

within the Mail Classification Schedule[3] ("MCS") and that the prior Discover NSA[4] be removed from the MCS. This is a market-dominant special classification within the meaning of 39 U.S.C. § 3622(c)(10).[5]

The Postal Service represents that it will inform customers of the new classification and associated price effects.[6] In addition to this Notice filed with the Commission today, Notice of the NSA will also be published in the *Federal Register*. Thus, public notice is being given more than forty-five (45) days prior to the planned implementation date.

The Postal Service identifies Bruce Allen, Manager of Pricing Innovation, as the official who will be available to provide responses to queries from the Commission.[7] Mr. Allen's contact information is as follows:

Bruce Allen
Manager, Pricing Innovation
475 L'Enfant Plaza S.W.
Room 4316
Washington, D.C. 20260-5015

The remainder of this request describes the NSA, identifies each operative component, and provides details regarding the expected improvements in the net financial position of the Postal Service accruing from it.[8] Attachment A is a copy of the Board of Governors' Resolution establishing the prices and classification and a

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[3] 39 C.F.R. § 3010.42(a)(2), § 3020.31(a), (c).
[4] Docket Nos. MC2011-19 and R2011-3) expired on March 31, 2014.
[5] *Id.* § 3020.31(d).
[6] *Id.* § 3010.42(a)(3).
[7] *Id.* § 3010.42(a)(4).
[8] *Id.* § 3010.42(b)-(f).

certification of the Board of Governors' vote.[9] Attachment B is a copy of the NSA between the Postal Service and DFS.[10] Attachment C contains the changes to the Mail Classification Schedule requested in association with this NSA.[11] Attachment D contains the Data Collection Plan.[12] Attachment E is a Statement of Supporting Justification for this request.[13] Attachment F contains the Calculations underlying the financial analysis of the NSA.[14]

As described below, and in the attached Statement of Supporting Justification (Attachment E), the Postal Service believes that the DFS NSA conforms to the policies embodied in the Postal Accountability and Enhancement Act of 2006 ("PAEA") and meets the statutory standards supporting the desirability of this special classification. 39 U.S.C. § 3622((c)(10). In particular, it has the potential to enhance the Postal Service's long-term financial position, and it will not cause unreasonable harm to the marketplace.

I. Background

Since 2006, First-Class Mail has been declining due to the convergence of technological and economic factors. This convergence has increased pressures on the Postal Service's financial stability. The Postal Service believes that, by using the flexibility granted to it in the PAEA through individualized contract arrangements, there is potential to stabilize First Class Mail and to grow contribution by increasing Standard Mail revenue and volume.

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[9] *Id.* § 3020.31(b).
[10] *Id.* § 3010.42(a)(1), (2).
[11] *Id.* § 3020.31(f).
[12] *Id.* § 3010.43.
[13] *Id.* § 3020.32.
[14] *Id.* § 3010.42(c).

DFS is one of the Postal Service's largest customers, generating over $300M in mail revenue annually. Pursuant to the Parties' prior NSA,[15] DFS mailed an approximate aggregate total of $861,700,000 in postage to DFS customers. During the course of the prior DFS NSA, DFS mailed an average of approximately $287,000,000 postage in First-Class Mail and Standard Mail letters to consumers annually. This resulted in approximately $63,100,000 in aggregate contribution minus rebates given.

Mailers like DFS routinely seek ways to reduce their mailing cost and constantly evaluate alternative channels for reaching their existing and prospective customers. In part as a result of the 2008 global recession, mailers have increasingly turned to digital media as a means to reduce advertising and communications costs. The Postal Service believes that mail, particularly Standard Mail, is a viable option for DFS and other financial services companies to communicate with their current and prospective customers.

To counter mounting market pressures from digital and other media channels, the new NSA with DFS sets forth parameters with the potential to stabilize DFS Eligible First Class Mail volume and increase the volume of DFS Eligible Standard Mail (collectively, "DFS Eligible Mail"), paid through a CAPS account.[16] In particular, this NSA provides DFS an aggregate gross revenue rebate using a tiered rebate structure built upon specific revenue and volume requirements. This structure is tied to non-

[15] Dated December 16, 2010 and filed with the Postal Regulatory Commission on January 14, 2011 under Docket Nos.MC2011-19 and R2011-3.

[16] For the purposes of the current NSA, DFS First-Class Mail and Standard Mail eligible for discounts ("DFS Eligible Mail") shall include all First-Class Mail Automation Presort letters ("DFS Eligible First Class Mail") and Standard Mail Automation and Enhanced Carrier Route letters ("DFS Eligible Standard Mail") sent by DFS and by entities in which DFS holds controlling shares, and by their vendors on their behalf, paid through a CAPS account (hereinafter collectively referred to as "DFS"). Since 2006, First-Class Mail has been declining due to the convergence of technological and economic factors. This convergence increased pressures on the Postal Service's financial stability and imposes continuing financial hardship on the Postal Service.

cumulative annual revenue growth thresholds and aggregate total DFS Eligible Mail volume.

By offering predictable postage rebates in return for firm commitments to increase postage revenue, the Postal Service believes that it can induce DFS to continue to rely upon mail as a viable and valuable marketing and communications medium. Simply put, this NSA will drive accelerated growth in DFS Eligible Mail and has the potential to positively impact the trajectory of First Class Mail and Standard Mail among other financial services industry mailers. Based on projected increased revenue, this NSA is expected to generate approximately $115.7 million in incremental contribution from additional business (primarily advertising mail) with DFS over its three-year term.

II. Description of the NSA

The objective of this market-dominant NSA is to increase the total aggregate contribution the Postal Service receives from DFS Eligible Mail volume and revenue by offsetting declines in First Class Mail with increased Standard Mail revenue and to stabilize First Class Mail volume and revenue. This NSA is also intended to provide contribution to postal institutional costs through non-cumulative annual revenue growth thresholds and specific eligibility criteria. In this regard, the NSA would provide a rebate for a portion of the postage paid for DFS Eligible Mail as a result of annual revenue and volume increases. As explained in more detail below, DFS would qualify for such rebates when DFS's Eligible Mail both (i) meets or exceeds specified annual revenue thresholds and (ii) exceeds the aggregate total volume for DFS Eligible Mail.

Although the NSA establishes revenue and volume baselines, the basic agreement consists of the following four key components detailed below: (A) annual revenue growth thresholds; (B) tiered rebates on aggregate gross revenue; (C) a baseline volume; and (D) a penalty.

A. Annual Revenue Growth Thresholds. In addition to exceeding aggregate total volume for DFS Eligible Mail, DFS must meet or exceed new revenue growth thresholds annually ("Annual Revenue Growth Threshold(s)") to qualify for specific rebate percentages under the tiered structure. The Baseline Revenue amount used to calculate the Annual Growth Thresholds is $304,053,073. Revenue growth is equal to the annual percentage growth above the Baseline Revenue and it is not cumulative from year-to-year.

B. Tiered Rebates on Aggregate Gross Revenue. The NSA rebate price structure set forth below applies only to DFS Eligible Mail under the NSA. Earned rebates will be credited to DFS's permit or CAPS account. Each year of the NSA, DFS shall be entitled to receive only one rebate regardless of tier, depending on whether DFS (1) meets or exceeds the applicable Tier 1 or the Tier 2 Revenue Threshold and (2) exceeds the corresponding Volume Threshold. All mail entered under the NSA will pay the applicable published prices in effect at the time of mailing. If DFS qualifies for rebates after all accounting adjustments have been completed and mutually agreed to in writing by the Postal Service and DFS, and after any and all penalty payments have been made by DFS, the Postal Service will pay all rebates earned by DFS, under the NSA on an annual basis, within sixty (60) calendar days to DFS in the form of credits to DFS' CAPS account, after the end of each Agreement Year.

1. Tier 1 Rebate Structure. To qualify annually for payment of a 2.25% rebate on aggregate gross revenue from DFS Eligible Mail, DFS must meet or exceed the corresponding Annual Revenue Growth Threshold commitments. Revenue growth is the annual percentage growth above the Baseline Revenue of $304,053,073 and it is not cumulative from year-to-year. In the event DFS does not achieve the Annual Revenue Growth Thresholds in any year, it will not receive any revenue rebate for that year and will be assessed a penalty. The Tier 1rebate structure is as follows:

Agreement Year	**% Revenue Growth Threshold**	**Minimum Gross Revenue Threshold**	**Rebate (2.25% of aggregate gross annual revenue)[17]**
Year 1	3%	$313,174,665	$7,046,430
Year 2	4%	$316,215,196	$7,114,842
Year 3	5%	$319,255,726	$7,183,254

a. *Year 1 Annual Revenue Threshold*. The revenue threshold for Year 1 is the Baseline Revenue plus three percent ("Baseline Revenue + 3%").

b. *Year 2 Annual Revenue Threshold*. The revenue threshold for Year 2 of the Agreement is the Baseline Revenue plus four percent ("Baseline Revenue + 4%").

c. *Year 3 Annual Revenue Threshold*. The revenue threshold for Year 3 of the Agreement is the Baseline Revenue plus five percent ("Baseline Revenue + 5%").

2. Tier 2 Rebate Structure. To qualify each Agreement Year of the NSA for payment of the 2.5% rebate on eligible aggregate gross revenue from DFS Eligible Mail, DFS must meet or exceed the Annual Revenue Growth Threshold commitments corresponding to each Agreement Year. In the event DFS does not achieve the Tier

[17] The rebates in the table reflect the minimum rebate amounts. The actual rebate amounts may vary depending on the exact revenue growth levels achieved.

2 Annual Revenue Growth Thresholds for any Agreement Year, it will not receive the Tier 2 rebate amounts for that year. Even if DFS fails to achieve the Tier 2 Annual Revenue Growth Thresholds, DFS remains eligible to meet the Tier 1 Annual Revenue Growth Thresholds discussed above. The Tier 2 rebate structure is as follows:

Year	% Revenue Growth Threshold	Minimum Gross Revenue Threshold	Rebate (2.50% of aggregate gross annual revenue)[18]
Year 1	4%	$316,215,196	$7,905,380
Year 2	5%	$319,255,726	$7,981,393
Year 3	6%	$322,296,257	$8,057,406

a. *Year 1 Annual Revenue Growth Threshold*. The revenue threshold for Year 1 is the Baseline Revenue plus four percent ("Baseline Revenue + 4%").

b. *Year 2 Annual Revenue Growth Threshold*. The revenue threshold for Year 2 is the Baseline Revenue plus five percent ("Baseline Revenue + 5%").

c. *Year 3 Annual Revenue Growth Threshold.* The revenue threshold for Year 3 is the Baseline Revenue plus six percent ("Baseline Revenue + 6%").

DFS is eligible to participate in other Postal Service incentive programs that are not tied to volume and revenue growth during the term of the NSA (e.g., incentive programs encouraging the use of innovative technologies with the mail). However, eligibility for such incentives must be mutually agreed upon in writing. Although the DFS volume and revenue associated with qualifying incentive programs will count towards the volume and revenue thresholds in the NSA, the payment received by DFS

[18] The rebates in the table reflect the minimum rebate amounts. The actual rebate amounts may vary depending on the exact revenue growth levels achieved.

as part of such incentive programs will be subtracted from the rebate amount payable to DFS under the NSA. Such rebates or incentives shall be realized and applied to the Agreement Year in which they were earned.

C. Baseline Volume. The Baseline Volume of DFS Eligible Mail during the three-year term of the NSA is 1,256,212,059 pieces. The Baseline Volume will not be used for rebate calculation purposes. In addition to meeting the Annual Revenue Growth Threshold(s), Discover must also exceed the Baseline Volume in contract Year 1, and for each subsequent contract year, in order to qualify for rebates. For purposes of meeting the baseline volume provision for Contract Years 2 and 3, (1) the aggregate total volume of DFS Eligible Mail for the contract year ending at midnight on the last day of Contract Year 1 shall be the baseline volume for Contract Year 2; and (2) the aggregate total volume of DFS Eligible Mail for Contract Year 2 (i.e., the contract year ending at midnight on the last day of Contract Year 2) shall be the baseline volume for Contract Year 3.

D. Penalty. If DFS does not meet the Annual Revenue Growth Thresholds in each year of the NSA, DFS shall pay the Postal Service a nonperformance penalty of ten percent (10%) of the difference between the Annual Revenue Growth Threshold and the annual revenue actually generated by DFS Eligible Mail in a particular Agreement Year. The Postal Service shall complete the penalty determination and notify DFS in writing of the penalty amount within sixty (60) calendar days, after the end of the each Agreement Year. The penalty payment shall be paid by DFS without offset, deduction, or set aside not later than thirty (30) calendar days after notice is given to DFS. At the end of any Agreement Year, if DFS has not met the Tier 1 Annual Revenue Growth

Threshold for that Agreement Year, the Postal Service may terminate the NSA upon thirty (30) calendar days' written notice, and such termination shall be effective as of the first day of the next fiscal quarter after notification.

In addition to provisions regarding annual revenue growth threshold, tiered rebates on aggregate gross revenue, baseline volume and penalty, the NSA contains the following provisions designed to incentivize DFS performance:

(1) termination provisions that (a) tie the continuation of the NSA to annual revenue and volume commitments; (b) allow the Postal Service to terminate the NSA upon thirty (30) calendar days written notice if DFS fails to meet the annual Tier 1 revenue growth threshold; (c) allow either party to end the NSA with ninety (90) calendar days written notice without penalty; and (d) allow the non-breaching party to terminate the NSA, if the other party fails to cure a material breach within thirty (30) calendar days after receiving written notice;

(2) sale provisions which provide for (a) written notice by DFS of any sale, transfer, divestiture or other disposition (collectively, "Sale") of any of its divisions, groups or entities that mails First-Class Mail or Standard Mail or both; and (b) for commensurate downward adjustment of Baseline Volume and Baseline Revenue thresholds equal to the corresponding total DFS Eligible Mail volume lost in the year preceding the Sale;

(3) acquisition or merger ("M&A") provisions which (a) require DFS to give the Postal Service written notice of any M&A activity and to provide full visibility of all First-Class Mail and Standard Mail generated by any and every acquired or merged entity (including any and all subsidiaries and affiliates thereof) during the term of the

NSA; (b) corresponding upward adjustment of the Baseline Volume and Baseline Revenue Thresholds to account for increased mailing activity that would qualify as DFS Eligible Mail, if that mail will be counted in the future as DFS eligible mail; (c) require all M&A related adjustments to the Baseline Volume threshold be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of acquisition or merger; and (d) give the Postal Service the right to periodically audit DFS and any and every entity (including any and all subsidiaries and affiliates thereof) acquired by or merged with DFS during the term of the NSA;

(4) representations and warranties provisions regarding the respective power, authority and ability of DFS and the Postal Service to enter into and perform their respective duties under the NSA;

(5) dispute resolution provisions requiring that (a) each party designate an appropriate representative to undertake the review and resolution of any NSA-related dispute which cannot be resolved informally; (b) the representatives promptly negotiate in good faith to resolve the dispute within thirty (30) calendar days; (c) if either or both representatives conclude they cannot resolve the matter within that period, to escalate it through the various management levels; and (d) before the parties avail themselves of the remedies at law or in equity provided under the NSA, including but not limited to injunctive relief;

(6) remedies provisions regarding (a) lack of an adequate remedy at law, and irreparable harm, in the event that the NSA provisions concerning Articles II (Eligible Mail Rebates and Calculations, VI (Penalty and Late Payment Terms), and XII (General Provisions) were not performed in accordance with their terms or were

otherwise breached; and (b) the parties' respective right to seek equitable relief in the event of any breach or threatened breach of those provisions, without having to post a bond or other security.

(7) sovereign acts provisions including but not limited to (a) USPS's status, privileges and immunities as an independent establishment of the United States Government; (b) DFS's acknowledgement and agreement that the NSA is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government; and (c) that the NSA in no way waives the USPS' authority to act in its sovereign capacity; and

(8) general provisions including but not limited to choice of law; consent to jurisdiction; force majeure; assignment; amendment; waivers; invalidity; relationship; trademarks; and survival.

The Postal Service regards the annual revenue growth threshold, tiered rebates on aggregate gross revenue, baseline volume, and penalty provisions as essential components of the NSA. The exact values for each of these elements were determined, based on the Postal Service's evaluation of DFS's volume trends, current and future economic conditions, DFS-specific business mailings, and negotiation between the Parties. Evaluation of these parameters supports the conclusion that the NSA will lead to significant additional revenue and contribution from DFS. As described above, the basic structure of the NSA with DFS was designed to generate additional contribution for the USPS and will assist the Postal Service in the negotiation of similar NSAs; however, there can be no assurance that other NSAs will achieve similar results.

In assessing the desirability of this NSA, the Postal Service believes that the defining characteristics of DFS are its size, large aggregate Standard Mail and First Class postage, its expanding Standard Mail advertising, which was over $300 million in 2013, and its declining First Class Mail billing and statement traffic. In offering a similar NSA to other similarly situated customers, the Postal Service will consider all of these characteristics. A similarly situated customer seeking a similar NSA should demonstrate that it has the resources and infrastructure to add significant incremental Standard Mail volume, to stabilize First Class Mail volume, and to add significant aggregate incremental revenue contribution.

III. Financial Analysis

Without an NSA, the total volume for First Class Mail and Standard Mail is projected to be approximately 1,030 million pieces, and total revenue is projected to be approximately $268 million in Year 1. With an NSA, the Postal Service believes that DFS would be incented to increase its aggregate mail volume to reach the volume and revenue thresholds to qualify for rebates. After deducting rebate payments, revenue in Year 1 of the agreement term is projected to be approximately $317 million, about $49 million higher than the projected revenue without incentives in Year 1.

The estimated unit costs in future years used in the Postal Service's calculations were based on the following inflation factors: ECI - Total Compensation - Civilian Workers, Air Freight, and Interstate Trucking Costs. These inflation factors were applied to cost components such as: mail processing, window costs, city carrier, rural carrier, vehicle service driver and transportation. The estimated annual average rate of inflation excluding transportation for Year 1, Year 2, and Year 3 is 4.9%, 2.9%, and 3.1%, respectively.

The calculations supporting the Postal Service's estimates are included as Attachment F in the attached Excel workbook "*DFS NSA Financials (Attachment F).xls*". These estimates are based on information published in the FY 2013 ACR, USPS-FY13-2, workbook "FY13 Public CS&C Report.xls", sheet "CS 14; ECI: Global Insight forecast USSIM/CONTOL0111; Air Freight and Interstate Trucking Costs: CISSIM/TRENDLONG0111; First-Class Mail Transportation: Average of Airfreight and Interstate Trucking Costs weighted by proportion of costs; Standard Mail Transportation: Average of Airfreight and Interstate Trucking Costs weighted by proportion of costs; Consumer Price Index; and USPS Business Customer Intelligence.

Based on DFS's volume and revenue trends, and the Postal Service's mail volume in Postal Fiscal Year 2014, the Postal Service estimates that the total volume of DFS's Eligible Mail will decrease by approximately 873 million pieces (23%) over the next three years in the absence of this NSA.[19] In order to qualify for a rebate under the NSA, DFS will have to increase the aggregate DFS Eligible Mail volume at a rate greater than these projections.

In the event DFS does not: (1) meet or exceed the Annual Aggregate Revenue Growth threshold commitment; and (2) exceed the aggregate total DFS Eligible Mail volume corresponding to each Agreement Year, DFS will incur a penalty of ten percent (10%) of the difference between the Annual Aggregate Revenue Growth threshold and

[19] Provided that projected current and future economic conditions do not deviate significantly from Postal Service projections.

the revenue actually generated by DFS Eligible Mail. The tiered rebate structure of the NSA factors in gross revenue rebates in order to make additional mail volume financially attractive. Furthermore, if the Annual Aggregate Revenue Growth threshold is not met is any Agreement Year, the Postal Service may terminate the NSA upon thirty (30) calendar days' written notice to DFS effective the first day of the next fiscal quarter thereafter.

Assuming actual CPI and cost inflation rates will be substantially similar to Postal Service estimates and corresponding projected postage increases, the anticipated incremental revenue gains over the three-year term of the NSA should result in an estimated aggregate contribution after rebate of $91.4 million and approximately $969.4 million in total revenue. Accordingly, the Postal Service's estimates project DFS would earn aggregate rebates totaling approximately $24.2 over the term of the NSA.

IV. Risk

The main risk to this NSA is with respect to projected growth in the absence of such an agreement. While DFS's mail will cover its attributable cost in virtually all cases, to the extent that the Postal Service may have underestimated baseline performance, the value of the NSA is at risk. Additionally, there is the possibility that volume increases may deteriorate in subsequent years without any penalty.

V. Conclusion

As explained above and in the statement of supporting justification, the Postal Service believes that this NSA will improve the net financial position of the Postal Service and that it is appropriate to add it to the market-dominant products list. The Commission should therefore approve this request as set forth in its rules.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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October 27, 2014

ATTACHMENT A TO REQUEST

BOARD OF GOVERNORS' RESOLUTION

RESOLUTION OF THE GOVERNORS

OF THE

UNITED STATES POSTAL SERVICE

Resolution No. 14-07

Price and Classification Changes

for Market Dominant Categories of Mail

RESOLVED:

Pursuant to section 404(b) and Chapter 36 of title 39, United States Code, the Governors establish price and classification changes for market dominant products. These changes establish a negotiated service agreement with Discover Financial Services ("DFS"), which provides DFS with a discount in the form of tiered revenue rebates for all DFS First-Class Mail and Standard Mail eligible for discounts including all First-Class Mail Automation Presort letters and Standard Mail Automation and Enhanced Carrier Route letters sent by DFS and by entities in which DFS holds controlling shares, and by their vendors on their behalf, paid through a Centralized Account Processing System (CAPS) account.

These changes shall be implemented on a date mutually agreed upon by the parties, and will be in effect for three (3) years after the implementation date, unless terminated sooner pursuant to the terms of the negotiated service agreement. Postal management is directed to provide the required public notice and to file with the Postal Regulatory Commission notice of the changes in prices and classifications, in accordance with Part 3010 of Title 39, Code of Federal Regulations.

The foregoing Resolution was adopted by the Governors on October 17, 2014.

Julie S. Moore

Julie S. Moore
Secretary, Board of Governors

ATTACHMENT B TO REQUEST

NEGOTIATED SERVICE AGREEMENT

NEGOTIATED SERVICE AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND DISCOVER FINANCIAL SERVICES

This Agreement (the "Agreement") is made as of September 29, 2014 by and between Discover Financial Services, a Delaware corporation, with its principal place of business located at 2500 Lake Cook Road, Riverwoods, IL 60015, and its subsidiaries and affiliates ("DFS"), and the United States Postal Service ("Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, as amended ("Postal Reorganization Act"), with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and DFS are referred to herein collectively as the "Parties" and each entity as a "Party."

WHEREAS, it is the intention of the Parties to enter into a Negotiated Service Agreement ("NSA") that will benefit the Postal Service, DFS, and the postal system as a whole, and that will comply with the requirements of the Postal Reorganization Act and the Postal Accountability and Enhancement Act, Public Law 109-435 ("PAEA");

NOW, THEREFORE, in consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Key Conditions for NSA Treatment. The Postal Service finds that the following key conditions, taken together, support this Negotiated Service Agreement:

A. Pursuant to the Parties' Negotiated Service Agreement dated December 16, 2010 filed with the Postal Regulatory Commission ("PRC") on January 14, 2011 under Docket Nos. MC2011-19 and R2011-3, DFS mailed an approximate aggregate total of eight hundred sixty-one million seven hundred thousand dollars ($861,700,000) in postage, or an average of approximately two hundred eighty-seven million dollars ($287,000,000) annual postage in First-Class Mail and Standard Mail letters to consumers, which include prospective and existing customers of DFS. This resulted in approximately sixty-three million one hundred thousand dollars ($63,100,000) aggregate contribution minus rebates given. For the purposes of this Agreement, DFS First-Class Mail and Standard Mail eligible for discounts ("DFS Eligible Mail") shall include all First-Class Mail Automation Presort letters ("DFS Eligible First Class Mail") and Standard Mail Automation and Enhanced Carrier Route letters ("DFS Eligible Standard Mail") sent by DFS and by entities in which DFS holds controlling shares, and by their vendors on their behalf, paid through a CAPS account.

B. DFS's Eligible Mail relates to its own direct banking and payment services business, including, but not limited to, sales and other promotions run in conjunction with DFS's strategic partners or as part of strategic alliances with other entities.

C. DFS agrees to document the volume and revenue of DFS Eligible Mail and the volume of other types of mailpieces DFS entered under its own, its partners', or its vendors' PostalOne!™ permit accounts (including pre-cancelled stamps, imprints, and postage evidencing indicia).

D. DFS shall be eligible to participate in other incentive programs which do not pertain to volume and revenue growth offered by the Postal Service during the term of this Agreement as mutually agreed by the Parties in writing. The Postal Service and DFS agree to consult with each other to confirm whether a given incentive program is a volume growth or a revenue growth incentive program, and to put that confirmation in writing. The Parties further agree that when DFS is eligible to participate in an incentive program which is not tied to volume growth or revenue growth, then the DFS volume and revenue associated with the promotion incentive program will count towards the volume and revenue thresholds for the NSA and that the amount of that specific promotion's rebate received by DFS shall be subtracted from the rebate amount payable to DFS under this NSA for the applicable year. It is the mutual intent of both parties that the DFS postage used to calculate thresholds in this Agreement shall be the net of any rebates or other incentives, and that such rebates or incentives shall be realized and applied for accounting purposes under this Agreement to the period in which they were earned.

E. Except to the extent different terms or prices are specified in this Agreement, applicable provisions of the Domestic Mail Manual and of other postal laws and standards apply to mail tendered under this Agreement.

F. Mailings under this Agreement will be subject to a quarterly audit of mail pieces to monitor compliance and eligibility. DFS will make necessary records and data available to the Postal Service within thirty (30) calendar days of the close of each quarter to facilitate and monitor compliance with this Agreement.

G. This Agreement is subject to approval by Postal Service senior management and the Governors of the Postal Service, as well as by the Postal Regulatory Commission ("the Commission"). In accordance with Title 39, United States Code, and the Commission's Rules of Practice and Procedure, 39 C.F.R. Chapter III, and upon approval of the Postal Service Governors, the Postal Service will make required filings with the Commission. The "Effective Date" of this Agreement shall be the one (1) business day following the day on which the Commission issues all necessary regulatory approval. DFS agrees that the "Implementation Date" of this NSA shall be December 1, 2014 or on a date mutually agreed upon by the Parties which, in any event, shall not be more than thirty (30) calendar days after final approval of this NSA by the Commission.

II. Eligible Mail Rebates and Calculations.

A. *Eligible Mail Rebates*. In consideration of the rebates available to DFS under this Agreement, for each corresponding contract year during the term of this Agreement, DFS shall enter an amount of DFS Eligible Mail which (i) meets or exceeds the specified annual revenue thresholds and (ii) exceeds the aggregate total volume for DFS Eligible Mail specified below in Articles II.C & D.

B. *Agreement Year*. For all purposes of this Agreement, the "Agreement Year" is the twelve (12) month period following the "Implementation Date" and each anniversary thereafter. The Implementation Date is as set forth in Article I.G. above, or a date mutually agreed upon by the Parties in writing.

C. *Revenue Growth Threshold and Baseline Revenue*. DFS must meet or exceed new revenue growth thresholds annually ("Annual Revenue Growth Threshold" or "Annual Revenue Growth Thresholds") to qualify for rebates under the tiered structure described below. The Baseline Revenue amount used to calculate the percentage revenue growth required to meet the Annual Growth Thresholds is three hundred four million fifty-three thousand seventy-three dollars ($304,053,073). Revenue growth is not cumulative from year-to-year. Revenue growth is equal to the annual percentage growth above the Baseline Revenue. In addition to meeting the Annual Revenue Growth Threshold(s) set forth in this Article II.C, to qualify for rebates described in Article II.A above, DFS must also exceed the volume commitments set forth in Article II.D below.

1. Tier 1 Rebate Structure. To qualify each year of this Agreement ("Agreement Year") for payment of a 2.25% rebate on aggregate gross revenue from DFS Eligible Mail, DFS must meet or exceed the Annual Revenue Growth Threshold commitments corresponding to each Agreement Year. Revenue growth is not cumulative from year-to-year. Revenue growth is the annual percentage growth above the Baseline Revenue. In the event DFS does not achieve the Annual Revenue Growth Thresholds for any Agreement Year, it will not receive any revenue rebate for that year and will be assessed a penalty (as defined in Article II.E). The Tier 1 rebate structure is as follows:

Agreement Year	% Revenue Growth Threshold	Minimum Gross Revenue Threshold	Rebate (2.25% of aggregate gross annual revenue)
Year 1	3%	$313,174,665	$7,046,430
Year 2	4%	$316,215,196	$7,114,842
Year 3	5%	$319,255,726	$7,183,254

a. Year 1 Annual Revenue Threshold. The revenue threshold for Year 1 is the Baseline Revenue plus three percent ("Baseline Revenue + 3%").

b. Year 2 Annual Revenue Threshold. The revenue threshold for Year 2 of the Agreement is the Baseline Revenue plus four percent ("Baseline Revenue + 4%").

c. Year 3 Annual Revenue Threshold. The revenue threshold for Year 3 of the Agreement is the Baseline Revenue plus five percent ("Baseline Revenue + 5%").

2. Tier 2 Rebate Structure. To qualify each Agreement Year of this Agreement for payment of the 2.5% rebate on eligible aggregate gross revenue from DFS Eligible Mail, DFS must meet or exceed the Annual Revenue Growth Threshold commitments corresponding to each Agreement Year. In the event DFS does not achieve the Tier 2 Annual Revenue Growth Thresholds for any Agreement Year, it will not receive the Tier 2 rebate amounts for that year. Even if DFS fails to achieve the Tier 2 Annual Revenue Growth Thresholds, DFS remains eligible to meet the Tier 1 Annual Revenue Growth Thresholds discussed above. The Tier 2 rebate structure is as follows:

Year	% Revenue Growth Threshold	Minimum Gross Revenue Threshold	Rebate (2.50% of aggregate gross annual revenue)
Year 1	4%	$316,215,196	$7,905,380
Year 2	5%	$319,255,726	$7,981,393
Year 3	6%	$322,296,257	$8,057,406

a. Year 1 Annual Revenue Growth Threshold. The revenue threshold for Year 1 is the Baseline Revenue plus four percent ("Baseline Revenue + 4%").

b. Year 2 Annual Revenue Growth Threshold. The revenue threshold for Year 2 of the Agreement is the Baseline Revenue plus five percent ("Baseline Revenue + 5%").

c. Year 3 Annual Revenue Growth Threshold. The revenue threshold for Year 3 of the Agreement is the Baseline Revenue plus six percent ("Baseline Revenue + 6%").

D. *Baseline Volume*. The Baseline Volume of DFS Eligible Mail, for all Agreement Years, shall be one billion two hundred fifty-six million two hundred twelve thousand fifty-nine (1,256,212,059) pieces. The Baseline Volume will not be used for rebate calculation purposes. In addition to meeting the Annual Revenue Growth Threshold(s) set forth in Article II.C above, in order to qualify for rebates described in Article II.A above, Discover must also exceed the Baseline Volume in contract Year 1 set forth in this Article II.D, and as set forth for each subsequent contract year described in the next sentence. For purposes of meeting the baseline volume provision for Contract Years 2 and 3, (i) the aggregate total volume of DFS Eligible Mail for the contract year ending at midnight on the last day of Contract Year 1 shall be the baseline volume for Contract Year 2; and (ii) the aggregate total volume of DFS Eligible Mail for Contract Year 2 (i.e., the contract year ending at midnight on the last day of Contract Year 2) shall be the baseline volume for Contract Year 3.

E. *Penalty*. In each year of the Agreement, if DFS does not meet the Annual Revenue Growth Thresholds (as defined in Article II.C.1), DFS shall pay the Postal Service a nonperformance penalty of ten percent (10%) of the difference between the Annual Revenue Growth Threshold and the annual revenue actually generated by DFS Eligible Mail, in a particular Agreement Year. The Postal Service shall complete penalty determination and notify DFS in writing of the penalty amount within sixty (60) calendar days after the end of the each Agreement Year. The penalty payment shall be paid by DFS not later than thirty (30) calendar days after notice is given to DFS. Payment shall be made without offset, deduction, or set aside.

III. REBATE CALCULATIONS AND PAYMENT

A. *Rebate Eligibility*. The NSA rebate price structure set forth below applies only to DFS Eligible Mail under this Agreement, as defined above. Rebates will be credited to DFS's permit or CAPS account. Each year of the NSA, assuming DFS is eligible for rebate consideration, DFS shall be entitled to receive only one rebate regardless of tier depending on whether DFS (i) meets or exceeds the applicable Tier 1 or the Tier 2 Revenue Threshold (specified in Article II.C above), and (ii) exceeds the corresponding Volume Threshold (specified in Article II.D above).

B. *Rebates*. After all accounting adjustments have been completed and mutually agreed to in writing by the Parties, and after any and all penalty payments have been made by DFS as provided in Article III.H below, the Postal Service will pay all rebates earned by DFS under this Agreement on an annual basis within sixty (60) calendar days after the end of each Agreement year provided that any and all penalty payments due from DFS to USPS shall have been paid in full prior to any such rebate payment being made. All mail that is entered under this Agreement will pay the applicable published prices in effect at the time of mailing.

C. *Failure to meet Annual Revenue Growth Threshold*. If, at the end of any Agreement Year, DFS has not meet the Tier 1 Annual Revenue Growth Threshold for that Agreement Year, as defined in Article II.B through II.D above, and Articles III.E and III.F below, the Postal Service may terminate the Agreement upon thirty (30) calendar days written notice, and such termination shall be effective as of the first day of the next fiscal quarter after notification.

D. *DFS Eligible Mail Accounting*. DFS will provide the Postal Service with a list of the PostalOne!™ permit accounts and their locations that will determine DFS's eligibility for discounts. Permit accounts will be used in determining eligibility for discounts only upon the Postal Service's written acknowledgement of their transmission from DFS. The data in these permit accounts will be used to determine whether the NSA Baseline Quarter volumes and Agreement Year Threshold volumes have been reached and the volumes that qualify for rebates in this Agreement. The Postal Service shall keep such data in a form auditable by DFS.

E. *Acquisition or Merger*. The parties agree that Baseline Volume and Baseline Revenue thresholds will be adjusted upward to the extent that DFS merges with or acquires any entity which mailed either First-Class Mail or Standard Mail or both that would qualify as DFS Eligible Mail, and only if that mail will be counted under this NSA in the future as DFS eligible mail. If any of the acquired entity's mail is kept apart from the mail of DFS and will not be counted as DFS Eligible Mail, then no adjustment need be made until such time as that mail will be integrated with DFS's mail for the purpose of this NSA. For purposes of Article III, DFS agrees to provide full visibility of all First-Class Mail and Standard Mail of any and every acquired or merged entity (including any and all subsidiaries and affiliates thereof) during the term of this Agreement. The adjustment shall be an amount equal to the total First-Class Mail presort letter and Standard Mail presort letter and Carrier Route letter postage paid by the acquired or merged entity in the twelve (12) months preceding the then-current Agreement Year. DFS shall notify the Postal Service of any merger or acquisition with an entity that mails First-Class Mail or Standard Mail or both. The notification must include:

1. the name of the acquired entity

2. the First-Class Mail and Standard Mail postage paid by the acquired entity for the twelve (12) months preceding the merger or acquisition
3. the postage paid for First-Class Mail presort letters and Standard Mail presort letters and Carrier Route letters during that period
4. a list of the meters and PostalOne!™ permit accounts and their locations through which the First-Class Mail and Standard Mail was processed.
5. a list of the CAPS accounts, if any, used by the acquired entity.

All adjustments to the Baseline Volume threshold due to mergers or acquisitions shall be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of acquisition or merger unless the mail from the merged or acquired entity is kept apart as described in the first paragraph of this article III.E. The Postal Service reserves its right to periodically audit DFS and any and every entity (including any and all subsidiaries and affiliates thereof) acquired by or merged with DFS during the term of this Agreement.

F. _Sale_. The parties agree that the DFS Baseline Volume and Baseline Revenue thresholds will be adjusted downward to the extent that DFS sells, transfers, divests or otherwise disposes of a division, group or entity that mailed First Class Mail or Standard Mail or both. The adjustment shall be an amount equal to the total DFS Eligible Mail volume lost from that particular entity, group or division in the year preceding the sale, transfer, divestiture or disposition.

DFS shall notify the Postal Service of any sale, transfer, divestiture or other disposition of any of its divisions, groups or entities that mails First-Class Mail or Standard Mail or both. The notification must include:

1. the name of each division, group or entity which is sold, transferred, divested or otherwise disposed;
2. the DFS Eligible postage of each division, group or entity which is sold, transferred, divested or otherwise disposed for the twelve (12) months preceding such sale, transfer, divestiture or disposition;
3. the meters and PostalOne!™ permit accounts and their locations through which the First-Class Mail and Standard Mail was processed; and
4. an indication of whether those accounts and meters will continue to be used for DFS First Class Mail and Standard Mail.

All adjustments of the Baseline Volume threshold due to sale, transfer, divestiture or other disposition shall be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of such sale, transfer, divestiture or disposition. The parties expressly agree that, in the event DFS closes any division, group or entity that mailed First Class Mail or Standard Mail or both, DFS shall not be entitled to any upward or downward adjustment whatsoever for that volume of mail affected by any and all division, group or entity closures. Furthermore, the parties expressly agree that the DFS Baseline Volume stated in this Agreement shall remain in effect and DFS shall be responsible for meeting the Baseline Volume threshold regardless of any and all DFS division, group or entity closures of any kind whatsoever.

G. _Rebate Payments._ If DFS qualifies for rebates, the Postal Service will pay such rebates as mutually agreed upon by the Parties in writing, to DFS in the form of credits to DFS' CAPS account within sixty (60) calendar days after the end of each Agreement Year. Late rebate payments shall not incur any late payment penalty of any kind or in any amount whatsoever. No rebate payment of any kind or in any amount whatsoever may be made to DFS unless and until any and all non-performance penalty fees owed by DFS to Postal Service are paid in full without offset, set-aside, reduction, or deduction before any such rebate payment, if any, may be made to DFS by the Postal Service.

IV. Compliance and Other Issues.

A. *Compliance*. In addition to the duty created by Article I.F above, DFS will make necessary records and data, including, but not limited to IMb-related documentation, available to the Postal Service if it is necessary to facilitate and monitor compliance with this Agreement.

B. *Appeals*. DFS may appeal a Postal Service decision regarding the following: any payment made pursuant to Article II.A, Article II.B, Article II.C, Article II.D, and Article II.E of this Agreement. Any such appeal must be made in writing to the Pricing and Classification Service Center in New York, within thirty (30) calendar days of receiving notice of the Postal Service decision. The decision of the Manager, PCSC, will be final. Any decision that is not appealed to the Manager, PCSC, within the thirty (30) calendar day time period becomes the final Postal Service decision. This appeal process relates only to the issues identified above that arise as a result of the implementation of this Agreement.

C. *Regulatory Review*. As provided for in Article I.G above, this Agreement is subject to approval by Postal Service senior management and the Governors of the Postal Service as well as by the Postal Regulatory Commission ("the Commission"). The Postal Service will make the required filings with the Commission as provided in Article I.G above.

D. Expiration. This Agreement shall expire three (3) years from the implementation date, unless (i) terminated or cancelled by one of the Parties pursuant to Article IV.E, (ii) renewed by mutual agreement in writing, and subsequent approval by the Governors of the Postal Service and the Commission, (iii) superseded by a subsequent contract between the Parties, (iv) ordered by the Commission or a court, or (v) otherwise required to comply with subsequently enacted legislation. It is further agreed that should the expiration date of this Agreement fall prior to the end of a Postal Service fiscal quarter, then for the period of time between the end of the preceding Postal Service fiscal quarter and the expiration date, the applicable adjusted volume threshold will be pro-rated as mutually agreed by the Parties.

E. *Termination*. Each Party reserves the right to terminate this Agreement for convenience prior to the last ninety (90) calendar days of each Agreement Year, without penalty, with ninety (90) calendar days written notice to the other Party. Each Party may terminate this Agreement in its entirety upon written notice if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) calendar days after receipt by the breaching Party of written notice from the non-breaching Party describing such breach. The right to terminate shall be in addition to and shall not be in lieu of any other remedies available to the parties hereunder or by law.

V. Representations and Warranties. Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction, and this Agreement when duly executed and delivered will constitute a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, liquidation or other similar laws affecting generally the enforcement of creditors' rights. Each Party further represents and warrants as follows:

A. Such Party has full power and authority to do and perform all acts contemplated by this Agreement.

B. None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, the fulfillment of, or compliance with, the terms and provisions hereof, nor the performance of its obligations under this Agreement will conflict with, or result in a breach of any of the terms, conditions or provisions of any law applicable to such Party, the governing documents of such Party or of any agreement to which any such Party may be bound.

C. Prior to the performance of any of its obligations pursuant to this Agreement, such Party will have obtained and/or made any consent, approval, waiver or other authorization of or by, or filing or registration with, any court, administrative or governmental agency that is required to be obtained in connection with the execution, delivery or performance by such Party, or the consummation by such Party, of the transactions contemplated by this Agreement.

D. The party providing services ("Servicing Party") represents and warrants that none of the services nor the provision or utilization thereof as contemplated under this Agreement, do or will infringe, violate, trespass or in any manner contravene or breach or constitute the unauthorized use or misappropriation of any intellectual property of any third party.

VI. Penalty and Late Payment Terms.

A. _Penalty._ In each year of the Agreement, if DFS does not meet the Annual Revenue Growth Thresholds (as described in Articles II.C and II.E above), DFS shall pay the Postal Service a nonperformance penalty (as set forth in Article II.E above).

B. _Late Payment Terms._ Unless otherwise set forth in a Schedule, if DFS fails to make a payment of the undisputed Fees when due, DFS shall pay to Postal Service a late payment charge equal to the lesser of the then-current prime lending rate as published in the Wall Street Journal or three percent (3.0%) of the unpaid amount of such undisputed Fees for each month beyond the original payment due date during which such amount remains unpaid.

VII. Dispute Resolution. In the event of a dispute between the Postal Service and DFS, or its subcontractors, involving any matter with respect to this Agreement (including, without limitation, any dispute regarding fees) which cannot be resolved informally, each Party will designate an appropriate representative to undertake the review and resolution of the dispute. The representatives shall promptly in good faith, and with all due diligence, negotiate to resolve the dispute within thirty (30) calendar days. If either or both of the representatives conclude that they are unable to agree on an appropriate resolution of the dispute within such thirty (30) calendar day period, they shall escalate the dispute to the next highest level of management for review and resolution. If necessary, this process shall be repeated through to the most senior level of management. Only after such process may the parties avail themselves of the remedies listed in Article VIII below.

VIII. Remedies. USPS and DFS acknowledge and agree that the other would not have an adequate remedy at law and would be irreparably harmed in the event that the provisions of Articles II, VI, and XII hereof were not performed in accordance with their terms or were otherwise breached. Accordingly, it is agreed that in the event of any breach or threatened breach of these provisions, USPS and DFS, in addition to any other remedies at law or in equity that each may have, shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including but not limited to injunctive relief.

IX. Sovereign Acts. The USPS and DFS acknowledge and agree that this Agreement is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. The USPS and DFS further acknowledge and agree that this Agreement in no way waives the USPS' authority to act in its sovereign capacity. The USPS shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may directly or indirectly affect the terms of this Agreement. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under this Agreement, either Party may give notice of termination pursuant to Article IV.E immediately or on the effective date of such requirement, whichever is later. The parties agree that in the event that this Agreement is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with this Agreement by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. Further, the USPS will evaluate the impact on this Agreement of alterations to the PAEA, and may give notice of termination pursuant to this Agreement based upon such alterations, which termination (notwithstanding Article IV.E hereof) shall be effective immediately or as determined by the USPS. To the extent of termination on this basis, the USPS shall not be subject to any liability by reason of such termination.

X. Public Communications. The form, substance, and timing of any press release or other public disclosure of matters related to this Agreement shall be mutually agreed to by DFS and the Postal Service in writing which consent shall not be unreasonably withheld. Reasonable efforts will be made by the Parties to reach a prompt and satisfactory agreement for such communications. When DFS or the Postal Service are required by law to publically disclose matters related to this Agreement, the non-disclosing Party shall be consulted and the Parties shall use their reasonable efforts to cause a mutually agreeable disclosure to be issued. The Postal Service specifically acknowledges and agrees that any use of the DFS's Marks pursuant to this Agreement shall not create for the Postal Service any right, title or interest in the DFS's Marks. The Postal Service's use of DFS's Marks, if so approved by DFS, shall display only the official name, logos, colors, trademarks, service marks, or other identifying features of DFS's Marks.

XI. Notices. Except as otherwise provided, all notices that are permitted or required under this Agreement shall be in writing, in English, and shall be deemed given when delivered by U.S. Certified Mail, return receipt requested, postage paid, addressed to the Party to be served notice, or to such other person or address as may be designated by notice to the other Party, at the following addresses. All such notices and communications shall be effective upon receipt.

United States Postal Service

Chief Marketing & Sales Officer
United States Postal Service
475 L'Enfant Plaza SW, Room 10229
Washington DC 20260-5127

Managing Counsel,
Pricing and Product Development Law
United States Postal Service
475 L'Enfant Plaza SW
Washington DC 20260-1135

Discover Financial Services

General Counsel
Discover Financial Services
2500 Lake Cook Road
Riverwoods, IL, 60015

Robert J. Brinkmann, Esq.
Ford & Huff LLC.
1101 17th Street N.W.
Suite 1220
Washington, DC 20036-4721

Vice President
Production Services
Discover Financial Services
2500 Lake Cook Road
Riverwoods, IL 60015

XII. General Provisions.

A. *Choice of Law; Consent to Jurisdiction*. With respect to any suit, action or other proceedings relating to the Agreement that are not subject to the Dispute Resolution Mechanism set forth above (collectively "Proceedings"), USPS and DFS each irrevocably (a) submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and (b) waive any objection that it may have at any time to the laying of venue of any Proceedings brought in such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have personal jurisdiction over such Party.

B. *Force Majeure.* Neither Party will be liable for delays or failure to perform the Services if due to any cause or conditions beyond its reasonable control, including delays or failures due to acts of God, natural disasters, acts of civil or military authority, fire, flood, earthquake, strikes, wars, utility disruptions (shortage of power), disruption of the postal system, labor dispute, judicial or governmental action, act of God or any other substantially similar causes beyond the control of the Party, that Party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes; provided that the Party whose performance or attempts to cure is delayed or prevented gives the other Party written notice thereof within five (5) business days of any such event or occurrence and exercises its best efforts to resume performance or cure as soon as possible.

C. *Assignment.* No Party to this Agreement shall be permitted to assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party; except that (i) any Party may, without such consent, assign all such rights and obligations to any Person who acquires, directly or indirectly, all or any substantial portion of the assets or securities of such Party provided that no such assignment shall relieve the assigning Party from its obligations hereunder. In addition to the foregoing, DFS may assign, delegate or sublicense all of its rights and obligations under this Agreement to (i) the acquiring entity of a sale or other disposition of all or substantially all of the assets of any line of business or division of DFS , or (ii) any other Party that is created as a result of a spin-off from, or similar reorganization transaction of, DFS or any line of business or division of DFS, provided that no such assignment shall relieve DFS from its obligations hereunder. In the event of an assignment pursuant to this Article XII.C DFS and Postal Service shall, at either Party's request, use good faith, commercially reasonable efforts to take such actions as may be reasonably required to assure that the rights and obligations under this Agreement are preserved. This Agreement will be binding upon the Parties hereto and their respective permitted assigns and successors in interest and will inure solely to the benefit of such Parties and their respective permitted assigns and successors in interest, and no other Person.

D. *Entire Agreement; Amendment; Waivers.* This Agreement, together with all Schedules hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. This Agreement shall not be amended except expressly, in writing, by authorized representatives of the Parties.

E. *Invalidity*. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and the invalid, illegal or unenforceable provision shall be deemed modified so as to be valid, legal and enforceable to the maximum extent allowed under applicable law. The Parties agree that the arbitrator, arbitration panel or court of competent jurisdiction making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable.

F. *Relationship.* The relationship between a Servicing Party and a party receiving services ("Receiving Party") hereunder is that of independent contractor. Nothing herein contained shall be construed as constituting a partnership, joint venture or agency between any of the Parties.

G. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original but all of which will constitute one and the same agreement.

H. *Trademarks.* Neither Party may use the other Party's or its affiliates' name, logo, trademarks, service marks or trade names without the other Party's prior written consent.

I. *Headings.* The Section and Article headings are provided for the convenience of the parties only and shall not be construed to limit or vary the terms of the Agreement in any way.

J. *Survival.* The definitions of this Agreement and the respective rights and obligations of the parties relating to governing law, dispute resolution, remedies, rebate calculation and payment, and contractual construction shall survive any termination or expiration of this Agreement.

K. *Execution.* This Agreement may be executed by facsimile signatures and such signature will be deemed binding for all purposes of this Agreement, without delivery of an original signature being thereafter required.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

UNITED STATES POSTAL SERVICE

By: [signature]

Name: Cliff Rucker

Title: VP Sales

Date: 10/3/14

DISCOVER FINANCIAL SERVICES

By: [signature]

Name: Harit Talwar

Title: EVP, President US Card

Date: October 2, 2014

ATTACHMENT C TO REQUEST

MAIL CLASSIFICATION CHANGES

MAIL CLASSIFICATION CHANGES

(Additions are underlined, and deletions are marked by strike-through.)

PART A

MARKET DOMINANT PRODUCTS

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1600 NEGOTIATED SERVICE AGREEMENTS

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1601.3 Discover Financial Services

1601.3.1 Eligible Mail

The below listed categories of mail sent by Discover Financial Services ("DFS"), entities in which DFS holds controlling shares, or by their vendors on their behalf, shall be eligible for rebates under this Agreement. The eligible mail categories shall be limited to First-Class Mail Automation Presort Letters ("Eligible First-Cass Mail") and Standard Mail Automated and Enhanced Carrier Route Letters that are eligible for the Full-service Intelligent Mail Barcode discount ("Eligible Standard Mail"). All Eligible First-Class Mail and Eligible Standard Mail (collectively, "DFS Eligible Mail") shall be paid for using Centralized Account Processing System ("CAPS") accounts agreed upon by the parties.

1601.3.2 Size and Weight Limitations

Same as automation compatible letter-shaped First-Class Mail and Standard Mail

1601.3.3 Rebate Eligibility

DFS must meet or exceed new revenue growth thresholds annually ("Annual Revenue Growth Threshold" or "Annual Revenue Growth Thresholds") to qualify for rebates under the tiered structure described below. The Annual Revenue Growth Thresholds are calculated as a percentage revenue growth above a specified Baseline Revenue. In addition to meeting or exceeding the Annual Revenue Growth Threshold(s), to qualify for rebates under this Agreement, DFS must also exceed a Volume Baseline.

a. *Baseline Revenue*

The Baseline Revenue amount used to calculate the percentage revenue growth required to meet the Annual Growth Thresholds is $304,053,073. Revenue growth is not cumulative from year-to-year. Revenue growth is equal to the annual percentage growth above the Baseline Revenue.

b. *Baseline Volume*

The Baseline Volume of Eligible First-Class Mail and Eligible Standard Mail, for all Agreement Years, shall be 1,256,212,059 pieces. In addition to meeting or exceeding the Annual Revenue Growth Threshold(s), in order to qualify for rebates, Discover must also exceed the Baseline Volume in contract Year 1, and as set forth for each subsequent contract year described in the next sentence. For purposes of meeting the baseline volume provision for Contract Years 2 and 3: (i) the aggregate total volume of DFS Eligible Mail for the contract year ending at midnight on the last day of Contract Year 1 shall be the baseline volume for Contract Year 2; and (ii) the aggregate total volume of DFS Eligible Mail for Contract Year 2 (i.e., the contract year ending at midnight on the last day of Contract Year 2) shall be the baseline volume for Contract Year 3.

1601.3.4 Rebate Structure

a. Tier 1 Rebate Structure

To qualify each year of the Agreement (“Agreement Year”) for payment of a 2.25% rebate on aggregate gross revenue from DFS Eligible Mail, DFS must meet or exceed the Annual Revenue Growth Threshold commitments (set forth below) that correspond to each Agreement Year. In the event DFS does not achieve the Annual Gross Revenue Threshold for any Agreement Year, it will not receive any revenue rebate for that year and will be assessed a non-performance penalty as further described in the Agreement. The Tier 1 rebate structure is as follows:

Agreement Year	**% Revenue Growth Threshold**	**Minimum Gross Revenue Threshold**	**Rebate (2.25% of aggregate gross annual revenue)**
Year 1	3%	$313,174,665	$7,046,430
Year 2	4%	$316,215,196	$7,114,842
Year 3	5%	$319,255,726	$7,183,254

Year 1 Annual Revenue Threshold – The revenue threshold for Year 1 is the Baseline Revenue plus three percent ("Baseline Revenue + 3%")

Year 2 Annual Revenue Threshold – The revenue threshold for Year 2 of the Agreement is the Baseline Revenue plus four percent ("Baseline Revenue + 4%")

Year 3 Annual Revenue Threshold – The revenue threshold for Year 3 of the Agreement is the Baseline Revenue plus five percent ("Baseline Revenue + 5%")

b. Tier 2 Rebate Structure

To qualify each Agreement Year for payment of the 2.5% rebate on aggregate gross revenue DFS Eligible Mail, DFS must meet or exceed the Annual Revenue Growth Threshold commitments (set forth below) that correspond to each Agreement Year. If DFS fails to achieve the Tier 2 Annual Revenue Growth Thresholds, for any Agreement Year, it will not receive the Tier 2 rebate amounts for that year; however, DFS remains eligible to meet the Tier 1 Annual Revenue Growth Thresholds discussed above. The Tier 2 rebate structure is as follows:

Year	**% Revenue Growth Threshold**	**Minimum Gross Revenue Threshold**	**Rebate (2.50% of aggregate gross annual revenue)**
Year 1	4%	$316,215,196	$7,905,380
Year 2	5%	$319,255,726	$7,981,393
Year 3	6%	$322,296,257	$8,057,406

Year 1 Annual Revenue Growth Threshold – The revenue threshold for Year 1 is the Baseline Revenue plus four percent ("Baseline Revenue + 4%").

Year 2 Annual Revenue Growth Threshold – The revenue threshold for Year 2 of the Agreement is the Baseline Revenue plus five percent ("Baseline Revenue + 5%").

Year 3 Annual Revenue Growth Threshold – The revenue threshold for Year 3 of the Agreement is the Baseline Revenue plus six percent ("Baseline Revenue + 6%").

1601.3.5 Penalty

a. In each year of the Agreement, if DFS does not meet the Tier 1 Annual Revenue Growth Thresholds (as defined above), DFS shall pay the Postal Service a nonperformance penalty of ten percent (10%) of the difference between the Annual Revenue Growth Threshold and the annual revenue actually generated by Eligible First-Class Mail and Eligible Standard Mail, in a particular year of the Agreement. The Postal Service shall complete penalty determination and notify DFS in writing of the penalty amount within sixty (60) calendar days after the end of the each year of the Agreement. The penalty payment shall be paid by DFS not later than thirty (30) calendar days after notice is given to DFS. Payment shall be made without offset, deduction, or set aside.

b. Unless otherwise set forth in a Schedule, if DFS fails to make a payment of the undisputed Fees when due, DFS shall pay Postal Service a late payment charge equal to the lesser of the then-current prime lending rate as published in the Wall Street Journal or three percent (3%) of the unpaid amount of such undisputed Fees for each month beyond the original payment due date during which such amount remains unpaid.

c. Late rebate payments made by the Postal Service to DFS shall not incur any late payment penalty of any kind or in any amount whatsoever.

1601.3.6 Baseline Revenue Adjustments

a. Acquisitions or Mergers

As set forth in the Agreement, DFS shall notify the Postal Service of any merger or acquisitions with any entity that mails First Class Mail or Standard Mail or both. Baseline Volume and Baseline Revenue thresholds will be adjusted upward to the extent that DFS merges with or acquires any entity which mailed either First-Class Mail or Standard Mail, or both, that would qualify as DFS Eligible Mail under this Agreement. Baseline Volume and Baseline Revenue shall only be adjusted if that mail from the acquired entity will be counted under this Agreement in the future as DFS Eligible Mail. If any of the acquired entity's mail is kept apart from the mail of DFS and will not be counted as Eligible First-Class Mail or Eligible Standard Mail, then no adjustment need be made until such time as that mail will be integrated with DFS's mail for the purpose of this Agreement. DFS will provide full visibility of all First Class Mail and Standard Mail of any and every acquired or merged entity (including any and all subsidiaries and affiliates thereof). The adjustment shall be an amount equal to the total Eligible First-Class Mail and Eligible Standard Mail postage paid by the acquired or merged entity in the twelve (12) months preceding the then-current Agreement Year.

b. Sale, Transfer, Divestiture or Other Disposition

As further set forth in the Agreement, DFS shall notify the Postal Service of any merger or acquisition with an entity that mails First Class or Standard Mail or both. The parties agree that the DFS Baseline Volume and Baseline Revenue thresholds will be adjusted downward to the extent that DFS sells, transfers, divests, or otherwise disposes of a division, group or entity that mailed Eligible First-Class Mail or Eligible Standard Mail, or both. The adjustment shall be an amount equal to the total DFS Eligible Mail volume lost from that particular entity, group, or division in the year preceding the sale, transfer, divestiture, or disposition. All adjustments of the Baseline Volume threshold due to sale, transfer, divestiture, or other disposition shall be made on a pro-forma quarterly basis beginning in the contract quarter immediately following the date of such sale, transfer, divestiture, or disposition. The parties expressly agree that, in the event DFS closes any division, group, or entity that mailed Eligible First-Class Mail or Eligible Standard Mail, or both, DFS shall not be entitled to any upward or downward adjustment whatsoever for that volume of mail affected by any and all division, group or entity closures. Furthermore, the parties expressly agree that the Baseline Volume stated in this Agreement shall remain in effect and DFS shall be responsible for meeting the Baseline Volume regardless of any and all DFS division, group, or entity closures of any kind whatsoever.

1601.3.7 Termination

a. For Convenience

Either Party reserves the right to terminate this Agreement for convenience prior to the last ninety (90) calendar days of each Agreement Year, without penalty, with ninety (90) calendar days written notice to the other Party. Each Party may terminate this Agreement in its entirety upon written notice if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) calendar days after receipt by the breaching Party of written notice from the non-breaching Party describing such breach. The right to terminate shall be in addition to and shall not be in lieu of any other remedies available under the Agreement or by law.

b. For Failure to meet Annual Revenue Growth Threshold

If, at the end of any year of the Agreement, DFS has not meet the Tier 1 Annual Revenue Growth Threshold, the Postal Service may terminate the Agreement upon thirty (30) calendar days' written notice, and such termination shall be effective as of the first day of the next fiscal quarter after notification.

1601.3.8 Term

This Agreement shall expire three (3) years from the implementation date.

1601.3.9 Implementation Date

The Implementation Date shall be December 1, 2014 or a date mutually agreed upon by the parties which, in any event, shall not be more than thirty (30) calendar days after final approval of this Agreement by the Postal Regulatory Commission.

~~1601.3 Discover Financial Services 1~~

~~1601.3.1 Eligible Mail~~

~~Eligible First-Class Mail and Standard Mail under this section are defined as all letter-shaped First-Class Mail Presorted Letters/Postcards, Standard Mail High Density and Saturation Letters, Standard Mail Carrier Route, and Standard Mail Letters which are eligible for the Full-service Intelligent Mail Barcode discount sent by Discover Financial Services, Inc. and by entities in which Discover Financial Services, Inc. holds controlling shares, and by their vendors on their behalf. Eligible mail under this section sent by Discover Financial Services, Inc. will be for the purpose of direct banking and payment services business, including, but not limited to, sales and other promotions run in conjunction with Discover Financial Services' strategic partners or as part of strategic alliances with other entities.~~

~~1601.3.2 Size and Weight Limitations~~

~~Same as automation compatible letter-shaped First-Class Mail and Standard Mail~~

~~1601.3.3~~ ~~Revenue Thresholds~~

~~The following adjusted revenue threshold for otherwise eligible letter-shaped First-Class Mail Presorted Letters/Postcards, Standard Mail High Density and Saturation Letters, Standard Mail Carrier Route, and Standard Mail Letters must be met before any rebates are payable:~~

~~a. Baseline Revenue~~

~~The baseline revenue is the total postage from Discover Financial Services, Inc.'s eligible mail less any sales rebates from February 2010 through January 2011.~~

~~b. Year 1 Revenue Threshold~~

~~Baseline Revenue plus 10 percent~~

~~c. Year 2 Revenue Threshold~~

~~Baseline Revenue plus 15 percent~~

~~d. Year 3 Revenue Threshold~~

~~Baseline Revenue plus 20 percent~~

~~e. Adjusted Revenue Threshold~~

~~For every one dollar that Discover Financial Services, Inc.'s total eligible First-Class Mail postage for the current contract year falls below the total eligible First-Class Mail postage for the preceding year, the revenue threshold for the current contract year for all of Discover Financial Services Inc.'s, total eligible mail will be adjusted upward by sixty-five cents. Any rebates received on the preceding year's First-Class Mail postage shall be excluded from the calculation of that year's total eligible First-Class Mail postage. For contract year 3, the total eligible First-Class Mail postage may include an amount that represents the revenue value of eligible First-Class Mail that Discover Financial Services, Inc. shifts to Priority Mail. The revenue value of the Priority Mail will be calculated by multiplying the volume of Priority Mail by the average postage per piece for eligible First-Class Mail for contract year 3.~~

~~1601.3.4~~ ~~Price Structure~~

~~Discover Financial Services, Inc. will be eligible for a rebate of 75 percent of the cumulative postage increase resulting from any price change for its eligible First-Class Mail letters, and 37.5 percent of the postage increase resulting from a price change for Standard Mail letters if Discover Financial Services, Inc. meets or exceeds its revenue threshold in that year. The average price increase for Discover Financial Services, Inc.'s eligible First-Class Mail and Standard Mail will~~

~~be calculated as the change in a Laspeyres index of the relevant price categories for each class, using Discover Financial Services Inc.'s volumes in the preceding contract year as weights.~~

~~1601.3.5~~ ~~Penalties~~

~~Discover Financial Services, Inc. will pay the Postal Service 10 percent of the difference between the adjusted revenue threshold for the year and their actual postage if Discover Financial Services, Inc. fails to meet the adjusted revenue threshold in the first year of the contract. Penalties for the second and third years of the contract will be agreed between the Postal Service and Discover Financial Services, Inc. 90 days before the end of each previous contract year, with notification to the Commission, to allow room for adjustment based on economic and market conditions.~~

~~1601.3.6~~ ~~Baseline Revenue Adjustments~~

~~a. Mergers and Acquisitions~~

~~The baseline revenue will be adjusted upward to the extent that Discover Financial Services, Inc. merges with or acquires any entity which mailed either First-Class Mail or Standard Mail or both. The adjustment shall be an amount equal to the total First-Class Mail presort letter and Standard Mail presort letter and Carrier Route letter postage paid by the acquired or merged entity in the twelve months preceding the current contract year.~~

~~b. Sale or Closure~~

~~The baseline revenue will be adjusted downward to the extent that Discover Financial Services, Inc. sells or closes a division or entity that mailed First-Class Mail or Standard Mail or both. The adjustment shall be an amount equal to the total Discover Financial Services, Inc. eligible mail revenue lost from that particular entity or division in the year preceding the sale or closure.~~

~~1601.3.7~~ ~~Termination~~

~~Either the Postal Service or Discover Financial Services, Inc. can terminate this agreement with no penalty within the first nine months of any contract year. At the end of the ninth month, both parties are locked into the contract for the rest of that contract year.~~

~~1601.3.8~~ ~~Expiration Date~~

~~March 31, 2014~~

ATTACHMENT D TO REQUEST

DATA COLLECTION PLAN

DATA COLLECTION PLAN

Not later than 90 days after the end of each contract year, the Postal Service shall provide to the Postal Regulatory Commission a report of:

1. The rebate paid to or penalty paid by DFS (if any) and the calculations underlying their determination.
2. Calculation of the change in net financial position of the Postal Service as a result of the DFS NSA, using the Commission’s methodology. 39 C.F.R § 3010.43(b)(1)
3. DFS Specific costs, volumes, and revenues by qualifying price category for the contract year. If DFS specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of these costs, and their suitability as a proxy for mailer-specific costs. 39 C.F.R. § 3010.43(b)(1)(A),(C)
4. An analysis of the effects of the Agreement on the net overall contribution to the institutional costs of the Postal service. .39 C.F.R. § 3010.43(b)(1)(B)
5. A discussion of the changes in operations of the Postal Service that result from the Agreement. 39 C.F.R. § 3010.43(b)(2)
6. An analysis of the impact of the agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm. 39 C.F.R. § 3010.43(b)(3)
7. A list of all (if any) DFS’s acquisitions and divestitures that occurred during the contract year, and the volumes and threshold impacts associated with any such acquisitions or divestitures.

ATTACHMENT E TO REQUEST

STATEMENT OF SUPPORTING JUSTIFICATION

I, Bruce Allen, Manager of Pricing Innovation, am sponsoring this request that the Commission add the Discover Financial Services NSA to the list of market-dominant products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. In addition, this statement provides the information required by 39 C.F.R. § 3010.42(b)-(e). I attest to the accuracy of the information contained herein.

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

As demonstrated below, the change complies with the applicable statutory provisions.

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).

The objectives of section 3622(b) are as follows:

(b) Objectives.—Such system shall be designed to achieve the following objectives, each of which shall be applied in conjunction with the others:

(1) To maximize incentives to reduce costs and increase efficiency.
(2) To create predictability and stability in rates.
(3) To maintain high quality service standards established under section 3691.
(4) To allow the Postal Service pricing flexibility.
(5) To assure adequate revenues, including retained earnings, to maintain financial stability.
(6) To reduce the administrative burden and increase the transparency of the ratemaking process.
(7) To enhance mail security and deter terrorism.
(8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.
(9) To allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.

To a large extent, this NSA does not substantially alter the degree to which Standard Mail and First-Class Mail prices already address these objectives, or they are addressed by the design of the system itself (Objectives 1, 2, 3, 6, 7, 8, and 9). The NSA itself is an important example of the increased flexibility allowed the Postal Service under PAEA (Objective 4), and the fact that the NSA will provide an incentive for profitable new mail will enhance the financial position of the Postal Service (Objective5).

In addition to the objectives specified and discussed above, section 3622(c) enumerates fourteen factors, or considerations, that must be taken into account, which are as follows:

(c) Factors.—In establishing or revising such system, the Postal Regulatory Commission shall take into account—

(1) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery;

(2) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;

(3) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail matter other than letters;

(4) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;

(5) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service;

(6) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services;

(7) the importance of pricing flexibility to encourage increased mail volume and operational efficiency;

(8) the relative value to the people of the kinds of mail matter entered into the postal system and the desirability and justification for special classifications and services of mail;

(9) the importance of providing classifications with extremely high degrees of reliability and speed of delivery and of providing those that do not require high degrees of reliability and speed of delivery;

(10) the desirability of special classifications for both postal users and the Postal Service in accordance with the policies of this title, including

NSAs between the Postal Service and postal users, when available on public and reasonable terms to similarly situated mailers, that—

(A) either—

(i) improve the net financial position of the Postal Service through reducing Postal Service costs or increasing the overall contribution to the institutional costs of the Postal Service; or

(ii) enhance the performance of mail preparation, processing, transportation, or other functions; and

(B) do not cause unreasonable harm to the marketplace.

(11) the educational, cultural, scientific, and informational value to the recipient of mail matter;

(12) the need for the Postal Service to increase its efficiency and reduce its costs, including infrastructure costs, to help maintain high quality, affordable postal services;

(13) the value to the Postal Service and postal users of promoting intelligent mail and of secure, sender-identified mail; and

(14) the policies of this title as well as such other factors as the Commission determines appropriate.

As with the Objectives of section 3622(b), the NSA does not substantially alter the degree to which Standard Mail and First-Class Mail prices address many of the Factors of section 3622(c) (Factors 1, 4, 5, 6, 8, 9, 11, 12, and 14). The NSA does encourage increased mail volume (Factor 7) by requiring DFS to maintain or increase the amount of contribution the Postal Service receives from its mail and by providing an opportunity to moderate price increases (Factor 3). In addition, the discounts provided in the NSA will not imperil the ability of Standard Mail or First-Class Mail (or this NSA as a whole) to cover its attributable costs (Factor 2). The approval of this NSA will encourage retention of First-Class Mail and growth of Standard Mail which has the additional benefit of increasing the overall proportion of USPS mail volume containing the Intelligent Mail barcode (IMb) as DFS has proven itself to be a leader in the adoption. During the recently expired DFS NSA, more than 95% of the eligible volume contained an IMb (Factor 13). Finally, the NSA addresses the desirability of special classifications (Factor 10). As demonstrated in the attached financial model, the NSA will generate significant additional contribution to the Postal Service, thus improving its net financial position. In addition, the Postal Service stands ready to negotiate and implement functionally equivalent deals with similarly-situated mailers, as described in the body of this notice, so that there will be no unreasonable harm to the marketplace from a competitive advantage granted solely to DFS.

In *Newspaper Association of America v. Postal Rate Commission*,[1] the court, in applying the rational basis test to the Commission's interpretation of the meaning of "unreasonable harm to the marketplace"[2] found that, "so long as that meaning is rational and one the statutory language can bear", it must defer to the Commission. As the Commission concluded that "harm to the marketplace was "unreasonable" only if it was the result of anticompetitive pricing" (e.g., pricing below cost) and that "it was not obligated to protect individual competitors of the Parties to the Agreement from the harms of fair competition . . . , as long as the Postal Service is not pricing its products below costs to drive its competitors out of the business, it is not creating an unreasonable level of harm in the marketplace."[3] As in the case of Valassis Direct Mail, Dkt. MC2012-14, at 27 (Postal Regulatory Comm'n Aug. 23, 2012) (order) [hereinafter "Order No. 1448"], available at http://www.prc.gov/Docs/85/85014/Order_No_1448.pdf, the present Agreement does not create an unreasonable level of harm in the marketplace. As noted in Order No. 1448, as the terms of the present Agreement price all postage above cost, the rates in the NSA therefore are neither anticompetitive nor is the Agreement unreasonably harmful to the marketplace. Furthermore, "as long as the Postal Service is not pricing its products below costs to drive its competitors out of the business, it is not creating an unreasonable level of harm in the marketplace." [4] Since the terms of the Agreement price all postage above cost, the rates in the NSA are neither anticompetitive nor unreasonably harmful to the marketplace. In addition, the Commission is "not obligated to protect individual competitors of the Parties to the Agreement from the harms of fair competition".[5]

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[1] *Newspaper Association of America v. Postal Rate Commission*, No.12-1367 (D.C. Cir. 2013), *available at* http://www.cadc.uscourts.gov/internet/opinions.nsf/1FFFEEF0188407A485257C240054FBA2/$file/12-1367-1466329.pdf.
[2] Ibid at 11-12, citing *Capital Network Sys. v. FC*C, 28 F.3d 201, 204 (D.C. Cir. 1994).
[3] Ibid at 12, citing *Valassis Direct Mail*, Dkt. MC2012-14, at 27 (Postal Regulatory Comm'n Aug. 23, 2012) (order) [hereinafter "Order No. 1448"], *available at* http://www.prc.gov/Docs/85/85014/Order_No_1448.pdf.
[4] Ibid,
[5] Ibid. The Court also noted in Order No. 1448, that fair competition is good for consumers even when it leads to "injury inflicted upon rivals." Citing Robert H. Bork, *The Antitrust Paradox* 136-44 (1978).

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.

Not applicable. The Postal Service is proposing that this NSA be added to the market-dominant product list. See (e) below.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs; (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

Not applicable. The Postal Service is proposing that this NSA be added to the market-dominant product list. See (e) below.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696 subject to the exceptions set forth in 39 U.S.C. § 601.

The NSA applies to pieces mailed as Standard Mail and First-Class Mail; therefore, all volume under the NSA is subject to the postal monopoly.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

None.

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this NSA with the Postal Service, DFS supports adding this product to the product list so that the contract terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The Postal Service is unaware of any small businesses that could provide a similar service to DFS.

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional information is provided in the body of this request.

ATTACHMENT F
SUPPORTING CALCULATIONS

See Excel workbook "*DFS NSA Financials (Attachment F).xls*" filed simultaneously with this pleading.