NONPROFIT

Bad News on Nonprofit Postal Rates

08.31.21 | Linda J. Rosenthal, JD

A special, reduced postal-rate schedule is "… a perk for nonprofits that doesn't get as much attention or fanfare as the tax deduction for charitable contributions," but it is "… an important aid to the success of the mission of many organizations."

When, three years ago, we wrote about the first valiant efforts to push back against a proposed "historic" hike in nonprofit preferred postal rates, we had hoped for a better outcome than the bad-news result that happened over this past weekend. On August 29, 2021, new and record-high rates went into effect across the board.

An appeal had been filed and there were hopes for a stay from the Court of Appeals for the D.C. Circuit, but it didn't happen. See *Moving ahead to slow down the mail* (August 6, 2021) Report, Alliance of Nonprofit Mailers and *Record rate hike coming Aug 29, unless the Court grants a "stay"* (August 20, 2021) Report, Alliance of Nonprofit Mailers.

Background

The roots of the postal service date back to the year before the Declaration of Independence; its importance to the new country's welfare and growth as a democracy was highlighted by its inclusion in the U.S. Constitution.

In *Possible Rate Hike For Some Nonprofits' Mail* (September 12, 2018) and again in *Nonprofit Postal Rates: Action Alert* (January 22, 2020), we explained the pertinent history of this critical institution including the major reorganization in 1970 and then a key setback in 2006 when Congress imposed a proverbial "solution in search of a problem."

Since then, it's been mostly downhill for the United States Postal Service and an uphill battle for the nonprofit sector in its attempts to thwart imposition of devastating – and way above the rate of inflation – "preferred" postal rates.

Nonprofits "use the established 'preferred postal rate' schedules to make important budgetary decisions for current and upcoming fiscal periods." The United States Postal Service increases one or more of these rates from time to time. "Ordinarily, though, a change like that happens only after the USPS follows a standard procedure that gives the affected stakeholders a chance to weigh in on any proposal as well as enough lead time to minimize the negative budgetary impact of any price hike."

When the USPS first announced in 2018 the possibility of a large rate jump for certain types of mailings, the "… initial reaction" was "swift and negative." There were "concerns and questions" not only about the rate hike itself, but "also by the irregular procedure being followed…." The nonprofit community began its offensive against this dangerous proposal by participating in the customary public-comment period following that announcement. By our January 2020 post, though, it was clear the protests had not halted movement by the USPS towards its unpopular goal.

There have been developments since then, despite the active and ongoing opposition. In January 2021, a small rate increase went into effect, but that's not the end of this story. The massive pending increases still loomed on the horizon.

From the beginning, the Alliance of Nonprofit Mailers (ANM) has been leading the charge against these devastating proposals, complemented by news stories from The Nonprofit Times and other sector publications as well as action alerts from leadership groups including the National Council of Nonprofits (NCN). The reports from these sources, particularly in recent months, explain the nuts and bolts of what's at stake here. See, e.g., *USPS announces its long-sought above-CPI rates* (June 1, 2021) Report, Alliance of Nonprofit Mailers and *Nonprofit Postal Rates Set To Skyrocket* (June 2, 2021) *The Nonprofit Times*.

There was crucial support along the way by many nonprofits around the nation including members of the Alliance of Nonprofit Mailers and the National Council of Nonprofits. See, for example, *Unprecedented Mail Rate Hike Could Hit Co-ops and Statewides Hard* (June 8, 2021) by Cathy Cash for the National Rural Electric Cooperative Association "NRECA joined with the Alliance of Nonprofit Mailers and fought against these rate increases, arguing that they're not needed because of the influx of COVID-19 relief funds received by the U.S. Postal Service. The comments filed by NRECA and ANM called on the USPS to return to its policy of indexing increases to the rate of inflation, which is currently below 3%." The "unprecedented rate hike … for not-for-profits will penalize the organizations that need the U.S. Postal Service most for key communications…."

There are pending legal challenges and at least 21 members of Congress from both parties have also expressed "serious concern" to the USPS about the pending action.

The Stay Request

But on July 19, 2021, the Postal Regulatory Commission issued its order, raising rates for "nonprofit marketing mail by an average of 7.8%. This includes 5.7% for first-class letters, 10.4% for large envelopes, newsletters and magazines and 8.6% for parcels." Particularly troublesome is the fact that the Postal Regulatory Commission in November 2020 expressly gave the United States Postal Service "authority to raise rates well above general inflation." On top of that, the USPS "decided to use all of its authority, even though it has the right to 'bank' or defer a portion for later years."

On July 23, 2021, the Alliance of Nonprofit Mailers, representing the nonprofit sector, joined several commercial mailer associations in requesting a "stay" of the new rates." (An earlier request seven months before was denied as premature.) In the renewed stay request, the petitioners asked that the appellate judges put a hold on the rate increases until the full appeal on the merits of the lawsuit are decided. At that point, oral arguments had already been scheduled for September 13, 2021.

In ANM's August 20th update to its members, officials expressed the hope that the appeals court would act before August 29th: "It is too early to say whether we will get one, but we are optimistic that we will get a [stay] ruling one way or the other before the 29th."

August 29th came and went. The appellate court remained silent. The new rates went into effect as scheduled.

Conclusion

The increases now in full force will continue, unless and until there are further court developments either on a stay or on the merits.

The icing on this rancid cake is that there's another possible rate increase in the cards for January 2022. ANM officials note that "[w]ith January only five months away, mailers have started asking whether there will be another CPI-based rate increase then. The answer is, 'maybe.' USPS has so far refused to show its cards about the timing of next year's pricing changes…."

Stay tuned.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director