

Nonprofit Postal Rates: Action Alert

01.22.20 | Linda J. Rosenthal, JD



In September 2018, we reported the alarming news that some of the most popular postal-rate discounts long enjoyed by nonprofits may be on the chopping block. See [*Possible Rate Hike for Some Nonprofits' Mail*](#).

What was only a strong possibility back then has turned into a near-certainty now. And there's just a short window – on or before February 3, 2020 – for the nonprofit community to act to avert or mitigate it.

Taking the lead in this uphill battle is the [Alliance of Nonprofit Mailers \(ANM\)](#). This organization was formed by and for nonprofits in 1980. It “exclusively represents and informs nonprofits that rely on affordable, effective postal mail to raise funds, communicate with donors, advocate, deliver publications, and achieve our missions.” ANM “asserts ... the sector's ... postal rights at the USPS, via the Postal Regulatory Commission, on Capitol Hill, and in federal court.”

The ANM staff, assisted by outside experts, have waded through the legal quicksand on this urgent issue on behalf of the nonprofit sector. Having emerged from this deep and almost incomprehensible muck, the Alliance of Nonprofit Mailers now continues to focus heavily on the preparation and presentation of the critical legal-argument prong of the opposition.

But there is an important *direct-action* task ANM now urges the nation's nonprofit organizations to take. The Postal Regulatory Commission wants and needs to hear, by the February 3rd deadline, from individual organizations about how much they rely on reasonably discounted postal rates to accomplish their goals that are so important to American society. (More about the action steps, including sample letters, below.)

Postal Rates: Setting the Stage

The most well-known and highly prized perk offered to 501(c)(3)s is, of

course, the federal tax deduction. For many organizations, though, discounted postal rates are nearly as important as the donation write-off incentive to their overall success.

Unfortunately, the fate of these special reduced rates for nonprofits is trapped in an epic tug-of-war between a “regulated monopoly” – the United States Postal Service (USPS) – and an “independent” executive-branch oversight agency – the Postal Regulatory Commission (PRC). And there has long been – (what else?) – a strong political-ideology undercurrent to this battle.

Traditionally, the important “obligation to provide postal services to bind the Nation together” was carried out by the (cabinet-level) United States Postal Office Department. After a huge labor strike, Congress made a big change, enacting the Postal Reorganization Act of 1970. That statute created the United States Postal Service (USPS), a “corporation-like independent agency with an official monopoly on the delivery of mail.”

The 1970 Act also authorized a newly formed Postal Regulatory Commission (PRC) to oversee the USPS. The president appoints five commissioners, on a staggered basis, to serve six-year terms each. At any given time, no more than three commissioners may be from the same political party.

There were major changes again a few decades later with the amendment of the 1970 Act by the Postal Accountability and Enhancement Act of 2006 (PAEA). The latter is peppered with terms like “competitive product” and “market-dominant product.” While PAEA includes initial safeguards and cost-of-living-increase caps to safeguard the mailing public (including the nonprofit sector), that law also mandates a review of this “Market Dominant rate and classification system” after ten years. Depending on the findings about the financial sustainability of the USPS, the Postal Regulatory Commission has power to approve significant changes including big rate hikes.

A controversial provision plunked down in the 2006 Act – requiring the USPS to pre-fund its future retirees’ health benefits – makes the sustainability goal much more difficult than it would be without that requirement that isn’t generally imposed on other entities.

Postal Rate Hikes: Now

The mandatory ten-year review began in December 2016.

There were earlier trial balloons from the Postal Regulatory Commission; most notably, these preliminary proposals included smashing through the cost-of-limit caps established in PAEA in 2006. There were opportunities for public comment; the response was overwhelmingly negative.

This takes us to right now.

On December 5, 2019, the Postal Regulatory Commission formally issued its latest (and likely) final “Revised Notice of Proposed Rulemaking.” The full text of *Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products*” is here.

It’s a 354-page monster.

To a large extent, this length and complexity is understandable. There are, after all, decades of complex legal precedent governing generally how regulated monopolies and their watchdog-agency

overlords interact. Overlaying all that are the specific federal statutes and regulations comprising modern postal law, a daunting legal niche if ever there was one.

Jump in at your own risk; the jargon alone will drag you down into unrescuable depths. You may never be heard from again.

Instead, take a quick look at the helpful trove of materials from the Alliance of Nonprofit Mailers:

- ANM Alliance Report, December 12, 2019: [*Postal Regulator Again Proposes Massive Surcharges*](#) (7 pages, including a comparison of the earlier proposals with the current one)
- [*Comments of Alliance of Nonprofit Mailers, Association for Postal Commerce, and MPA – The Association of Magazine Media*](#) (March 20, 2017) (at 86 pages, this comprehensive package in response to the earlier proposal is a heavy lift. Skim it to get an idea of what's at stake, then turn to the much more manageable action items for right now)

Action Steps

The Alliance of Nonprofit Mailers prepared and sent to its members on January 15, 2020, an updated analysis and plan for action. While “at first blush,” according to ANM executive director Stephen Kearney and his staff in December, the current Postal Regulatory Commission proposal appeared just as bad for the nonprofit sector as the earlier one, they now conclude it’s “worse.”

“There are two differences this time,” he writes. “First, the PRC seems very confident it has the votes, with three new Commissioners, to push the anti-mailer proposition through. And second, they added some complicated formulas to enable potentially even higher increases if mail volume falls more, and to try to make it appeal-proof by feigning expertise that the court would defer to. Because of the formulas, the rate hikes could easily range higher than the five-year increases of 28% to 40% of the first proposal.”

According to Mr. Kearney, the PRC staff “want to hear directly from nonprofit mailers.” He adds: “There is evidence that the Commissioners do read and are affected by individual letters.”

ANM has provided three sample letters from the last round, [here](#), [here](#), and [here](#). (“Some are very detailed, others not so. But, each helps illustrate the unique place of nonprofits in the mailing community.”)

ANM’s suggested bullet points include:

- Briefly describe the organization’s mission and beneficiaries
- Describe the organization’s reliance on mail for fundraising and communication
- Relate the impact of the recession on the organization’s fundraising, membership, publications, and programs and the role of predictable, modest price increases in aiding recovery
- Most important, describe in real-world terms what immodest price increases and reductions in funds raised would do to those you serve (fewer animals saved; fewer meals

provided; shorter clinic hours; etc)

Conclusion

Be sure to cite Docket No. RM 2017-3.

Letters submitted via U.S. mail should be addressed to: Postal Regulatory Commission, 901 New York Avenue, NW, Suite 200, Washington, DC 20268. They must be received by February 3, 2020, so ensure enough time for delivery. Alternatively, they can be submitted online on or before the deadline, but you'll need to apply for a temporary account with the PRC, [here](#).

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