

raised by nonprofit representatives concerning application of the cooperative mail rule on fundraising mail and potential effects on nonprofit organizations; and proposed legislation to exempt certain fundraising mail from application of the rule. The proposal also explained the Postal Service's reluctance to propose a rulemaking on these issues since expansion of eligibility for nonprofit rates has traditionally been accomplished through legislation. Nevertheless, as the proposal discussed, the Postal Service determined to embark upon this rulemaking with the understanding that it represented the consensus of parties with an interest in nonprofit issues, including bipartisan Congressional support, representatives of both nonprofit organizations and professional fundraisers, and the Postal Service; that it was needed to assist nonprofit organizations in obtaining support necessary to fund their programs; and that this result could be accomplished more quickly administratively than legislatively.

The Postal Service received 67 comments concerning its proposal, including one that was received late but was considered. The commenters were diverse, including nonprofit organizations and organizations representing such organizations; professional fundraisers and organizations representing these commercial entities; Congressional representatives; private individuals; and an organization representing state officials that regulate charities. The comments also presented a broad range of views. A significant majority of the comments urged the Postal Service to adopt the rule as proposed. A small number of comments, concerned with potential abuses, recommended limitation of the proposed rule. Of these commenters, a small number recommended that the Postal Service withdraw the proposal, while the remainder recommended that it be adopted with additional restrictions. In contrast, a lesser number of comments recommended that the exemption from application of the cooperative mail rule be expanded even further. Additionally, several comments recommended that the rule should be retroactive.

One of the comments that urged withdrawal of the rule argued that the rule would primarily benefit commercial fundraisers, rather than nonprofit organizations, while the other spoke more generally of potential abuse. If the former assertion were proven to be true, it would give the Postal Service reason to consider withdrawing the proposal. That is, the Postal Service

understands that the primary concern of Congress and the nonprofit industry in seeking changes in this area was to benefit nonprofit organizations.

Admittedly, the Postal Service does not have independent knowledge to verify the accuracy of the commenter's claims, since the Postal Service does not monitor or regulate the business relationships between nonprofit organizations and professional fundraisers. The comment did not provide evidence to substantiate its claim. Moreover, both nonprofit organizations and associations representing them, who obviously have an interest in this question, urge adoption of the proposal or a modified version of it. This suggests, and some of these comments specifically state, that the change will benefit at least some nonprofit organizations. Accordingly, the Postal Service does not find it appropriate to reject the proposal, as urged by this comment.

The comments that urge the imposition of restrictions narrowing the proposed exemption from the cooperative mail rule do so for reasons related to those raised by comments seeking withdrawal of the proposal. That is, although they do not urge rejection of the new policy, these comments express concern that some professional fundraisers may use the new rules to take advantage of inexperienced or unsophisticated nonprofit organizations.

At the outset, it should be noted that the proposed rule does not dictate the terms of the relationship between nonprofit organizations and fundraisers. If anything, it increases the options available to the parties. For instance, it does not prevent nonprofits from entering the type of principal-agent relationship with fundraisers contemplated by the cooperative mail rule. And, as urged by the numerous parties that sought the Postal Service rulemaking in this area, it allows the nonprofits to consider other relationships to retain the services of professional fundraisers.

The Postal Service does not doubt that the proposed change in its standards will provide individual nonprofit organizations the freedom to enter agreements that, in hindsight, at least a few will conclude to have been unwise. However, the Postal Service does not believe that this provides the justification, at least at this time, to adopt the additional restrictions urged by some comments. Those proposals recommend that the Postal Service require nonprofits and fundraisers to adhere, and certify their compliance, to a variety of conditions concerning their

relationship. The conditions suggested include: (1) A restriction against any officer, director, principal, or fiduciary of the party that is ineligible to mail at nonprofit rates (hereafter "ineligible participant") or a corporate affiliate or close relative of the ineligible participant serving as an officer, director, or key employee of the nonprofit; (2) a requirement that the arrangement between the nonprofit and ineligible participant be governed by a written contract, and that this contract be signed by a board member or officer of the nonprofit; (3) a requirement that the donations be deposited in a bank account under the nonprofit's exclusive control; (4) a requirement that the ineligible participant have no ownership or control over the list of donors responding to the solicitation, beyond a limited contingent security interest; (5) a requirement that the ineligible participant not retain ownership rights to intellectual property in the fundraising package developed at the nonprofit's expense; (6) a requirement that, in instances where the ineligible participant extends credit to the nonprofit, the credit terms are not conditioned upon the continued employment of the ineligible participant; and (7) a requirement that the mailing not constitute an excess benefit transaction as defined by the Internal Revenue Service. As explained, the Postal Service has determined to adopt the fourth suggestion, in part. Other than that item, for the reasons discussed below, the Postal Service has determined not to adopt the restrictions suggested by these commenters.

First, based on comments received by the Postal Service, it is clear there is significant disagreement as to whether any, much less these, additional restrictions should be adopted. As discussed above, and in the earlier **Federal Register** notice, the Postal Service proposed its rule change reluctantly, based on an understanding there was a broad consensus among interested parties supporting it. Although there appears to remain a general consensus in support of the proposal, there is no consensus supporting any of the suggested additional restrictions.

Second, even if the Postal Service found it appropriate to consider additional postal standards in this area, it is not convinced that the standards suggested are necessarily appropriate. The Postal Service understands the nonprofit universe to be diverse. For example, nonprofits may be large or small, well-established or relatively new, relatively well-funded or not well-funded, run by a permanent paid staff