

or all-volunteer. It seems to us difficult to impose a set of restrictions that should be universally applied to all of these organizations. However, that is what the comments suggest.

Third, even if the terms suggested by the commenters are reasonable, the need to impose them by regulation is not clear to the Postal Service. That is, although the need to ensure that nonprofit organizations are not subject to abuses by commercial entities is a laudable objective, it might be accomplished, or at least attempted, through alternatives to regulation. For example, education or training of nonprofits may prove to be sufficient, particularly if it is true that adherence to the suggestions is financially beneficial for the nonprofit. There are a number of interested entities that might provide this education and training: associations representing nonprofit organizations; associations representing fundraisers; and government entities that regulate professional fundraisers and nonprofits. The Postal Service encourages these associations and government agencies to undertake efforts to educate nonprofit organizations and to take other appropriate measures to protect nonprofits from potential abuses. We also encourage nonprofit organizations to utilize these resources and to review their existing and proposed fundraising arrangements and consider whether the terms of those arrangements are in their best interests. The Postal Service will be happy to assist, as appropriate, in these efforts.

Fourth, the Postal Service also has doubts that the procedures suggested by some of the comments are administratively feasible. The comments did not appear to suggest that the Postal Service undertake the difficult task of independently verifying mailers' compliance with the proposed conditions. Rather, they suggested that the parties each sign the postage statements certifying compliance with the new standards and that the Postal Service rely upon these statements. However, the Postal Service does not require all parties to sign the postage statement at this time and, when analogous proposals have been raised in the past, mailers have pointed out the logistical problems they would face if required to sign postage statements for mail prepared and entered by their agents. Moreover, even if it is not contemplated by the commenters that the Postal Service will seek to enforce the suggested conditions beyond ensuring that the parties sign the postage statement, it is unlikely that the Postal Service can avoid all other

enforcement activity. For instance, if it is alleged that parties are not in compliance, despite mailing at the nonprofit rates while certifying they did comply, it is likely that the Postal Service would be expected to investigate the assertions. Unlike violations of the current cooperative mail rule, which often can be determined by examination of the parties' contractual arrangements, some of the proposed conditions would likely require a more extensive investigation. For example, the restriction against officers and others with close ties to the ineligible participant (including the close relatives of these individuals) serving as officers, directors, or key employees of the nonprofit would require an exhaustive examination of the organization charts and employment rolls of each organization. Determining whether there is a violation of the IRS excess benefit transaction standard would require Postal Service employees to develop expertise in these standards and to obtain the information needed to apply them. Given the possibility of IRS investigations of the parties under the same standard, this requirement would create the risk of duplicative government efforts.

There is also the likelihood that the proposed conditions will create practical, administrative hardships for some nonprofits. For example, the requirement that the donated funds be deposited in a bank account controlled exclusively by the nonprofit could prove difficult for nonprofits that, because of size or other concerns, are ill-equipped to handle such accounts. Similarly, the requirement that the board members or officers sign fundraising agreements could create difficulties for organizations that delegate these responsibilities to other parties. As the Postal Service is aware from its own purchasing procedures, it is not unusual for employees that are not officers to be given authority to sign contracts.

Adoption of the proposed conditions also could work to the financial detriment of some nonprofits. The proposed rule provides additional options for nonprofits, thereby giving them additional choices in their efforts to find the arrangement that will maximize the benefit to the nonprofit. For instance, it may be beneficial for some nonprofits to consider arrangements concerning donor lists, intellectual property rights, and credit terms beyond those that would be permitted under the proposed conditions. Limiting the choices available to nonprofits might, in some instances, take away the option that

would be best for some organizations. Of course, it could be argued that increasing the options available to nonprofits will increase the likelihood that some, particularly the least sophisticated, will make the wrong choice. However, as observed above, the appropriate safeguard against this possibility would seem to be the education of nonprofits to make the best choices in their particular circumstances, rather than eliminating options that might be prove to be the best choice for some of them.

Finally, the Postal Service is concerned that adoption of the proposed conditions may create conflicts with state or federal statutes and that, if such conflicts occur, mailers would be placed in the untenable position of determining whether to comply with the statutes or with postal regulations. Indeed, as discussed in the notice announcing the proposed rule in 65 FR 23939, ensuring that our customers "do not unintentionally violate the laws of those states that regulate the financial arrangements between nonprofits and certain types of professional fundraisers" was one of the motives underlying the rulemaking. The Postal Service is aware that all states have agencies with oversight over charitable solicitations, including state Attorney Generals; Secretaries of State; and Departments of Consumer Protection, Consumer and Regulatory Affairs, Agriculture and Consumer Services, Commerce, Commerce and Consumer Protection, Professional and Financial Regulation, Business Regulation, or Regulation and Licensing, or a combination of such state agencies. The Postal Service is aware also that most states have laws regulating the relationship between professional fundraisers and their nonprofit clients. At the present time, it appears that at least 28 states have enacted some type of financial distribution requirement on charitable fundraisers and, if anything, we understand that the trend toward such state oversight is increasing. Additionally, there are a number of federal agencies with the authority and expertise to enact and enforce standards concerning these relationships, such as the Federal Trade Commission, Internal Revenue Service, and Department of Justice. Under an exemption of fundraising mailings from the cooperative mail rule, the states and federal agencies will be able to adopt and enforce their standards without concern that such action might be in conflict with postal rules.

As alluded to above, the Postal Service has determined to adopt a condition concerning donor lists (*i.e.*,