

# CLIENT ALERT

May 4, 2005

Dear Client:

We are writing to inform you of changes to US Postal Service rules that may affect your mailing costs. Specifically, the new rules limit the types of mail that may be sent using Standard rate (formerly Third Class mail), and require that many mailings that used to be sent at Standard rate must now be sent using the more expensive First Class rate.

## Background:

Many nonprofit mailings contain “personally identifiable information”; that is, unique information about the recipient, such as their name and address (other than for mailing purposes), history of past donations or contacts with the sender, and other personal information. It has always been understood that mailings sent using Standard rates could contain personally identifiable information, so long as that information was inserted into mailings that were otherwise indistinguishable in content.

## The new rules:

**Effective June 1, 2005**, the US Postal Service (“USPS”) is changing the rules which govern nonprofit mailings to limit the kinds of pieces that may be sent using Standard rate postage. The new rules require that any mailing which includes personally identifiable information must be sent by First Class mail *unless*:

- a. the piece includes an explicit solicitation or advertisement for a product or service for a donation; and
- b. all of the personally identifiable information in the piece is “directly related” to the solicitation or advertisement; *and*
- c. the “exclusive reason” for including each item of personal information in the mailing is to support the solicitation or advertisement.

Attached is a copy of the flow chart entitled “Determining Standard Mail Eligibility” that outlines the methodology the Postal Service will use.

This week, the Postal Service attempted to clarify some of its rule making by issuing another Customer Support Ruling which attempts to define and give examples of “personal information,” advertising, soliciting and whether the personal information is “directly related” to the advertising or solicitation. The Customer Support Ruling clarifies many of the issues as follows:

### 1. Personal Information

Personal information consists of information specific to the addressee, other than the date of the letter; the name and address of the sender; and the name, address, and alphanumeric information that constitutes the sender’s internal routing numbers sometimes labeled “membership,” “account,” “file,” “case,” or “control”). The following items are cited as examples of personal information:

- (a) The amount of the addressee’s previous contribution or contributions.
- (b) The total amount of donations by the addressee for the previous year.
- (c) The duration of the addressee’s membership (“member since 1979” or “graduating class of 1979”) or contribution history (“loyal donor since 1979”).
- (d) The expiration date of the addressee’s membership.
- (e) The birth date, occupational title, and similar personal information about the addressee.
- (f) The age, ethnicity, gender, or other demographic characteristics of the addressee, or a medical condition of the addressee or a family member.
- (g) The region, metropolitan area, or neighborhood where the addressee lives.
- (h) The addressee’s polling place, precinct, electoral district, or elected political representatives, and listings of political candidates, ballot propositions, or initiatives recommended by the sender for the precinct or other electoral district of the addressee.
- (i) The number of members or supporters of the mailer in the area where the addressee lives.

The following items are examples of information that are not considered to be personal for mail classification purposes:

- (a) Markings that qualify as “written additions” under DMM 243.2.7<sup>1</sup> or “enclosures and attachments” permitted under DMM 243.2.6<sup>2</sup> are not considered personal information.

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<sup>1</sup> **2.7 Written Additions**

(b) The name and mailing address of the addressee are not considered to be personal information. This is true whether that information, or a discrete element of the name and address, is used in the body of a letter, the heading, envelope, or any component of the mailpiece.

(c) Markings such as “Personal – Do Not Throw Away” or “Important – Open Immediately” appearing on the envelopes of a mailing are not themselves personal information.

## 2. Does the mailpiece advertise the sale or lease of a product or service, or solicit for a donation?

The term “solicitation for a donation” encompasses a request for any monetary or non monetary support for a nonprofit purpose of the mailer. The following items were cited as examples of the kinds of requests for donations, by the addressee that satisfies this test:

(a) A request for a new or additional donation of funds.

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Markings that have the character of personal correspondence require, with certain exceptions, additional postage at the First-Class rates. The following written additions and enclosures do not require additional First-Class postage:

- a. The sender’s and the addressee’s names, occupations, and addresses, preceded by “From” or “To,” and directions for handling.
- b. Marks, numbers, names, or letters describing the contents.
- c. Words or phrases such as “Do Not Open Until Christmas” and “Happy Birthday, Mother.”
- d. Instructions and directions for the use of the item mailed.
- e. A manuscript dedication or inscription not having the nature of personal correspondence.
- f. Marks to call attention to words or passages in the text.
- g. Corrections of typographical errors in printed matter.
- h. Manuscripts accompanying related proof sheets and corrections of proof sheets including corrections of typographical and other errors, changes in the text, insertions of new text, marginal instructions to the printer, and corrective rewrites of parts.
- i. Hand stamped imprints, unless the added material is in itself personal or converts the original matter to a personal communication.
- j. Matter mailable separately as Standard Mail printed on the wrapper, envelope, tag, or label.

### <sup>2</sup> **2.6.2 Incidental First-Class Attachments and Enclosures**

Incidental First-Class matter may be enclosed in or attached to Standard Mail merchandise (including books but excluding merchandise samples) without payment of First-Class postage. Incidental First-Class matter may not be enclosed in or attached to matter mailed as Customized Market Mail under [705.1.0](#). An incidental First-Class attachment or enclosure must be matter that, if mailed separately, would require First-Class postage, is closely associated with but secondary to the host piece, and is prepared not to encumber postal processing. An incidental First-Class attachment or enclosure may be a bill for the product or publication, a statement of account for past products or publications, or a personal message or greeting included with a product, publication, or parcel. Postage at the Standard Mail or Package Services rate for the host piece is based on the combined weight of the host piece and the incidental First-Class attachment or enclosure.

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(b) A request that the addressee joins the mailer's membership organization or renews an existing membership.

(c) A request that the addressee complete and mail an opinion survey, feedback or evaluation form, petition, open letter, or note or card (e.g., "please sign the enclosed Get Well card, which we will distribute to children with cancer" or "please return this postcard to your Member of Congress").

(d) A request that the addressee contribute other services in kind to the organization (e.g., donate time as a volunteer).

(e) A request that the addressee advance a nonprofit purpose of the mailer by performing services for third persons (e.g., "please volunteer to \_\_\_\_\_" or "please pray for \_\_\_\_\_").

(f) A request or recommendation that the addressee read literature enclosed in the mailpiece or take any other action that relates to the nonprofit purpose of the mailer. For example, a nonprofit healthcare organization might send the following solicitations:

"Because you have a new baby in your household, we ask that you read the free enclosed booklet or look at the following Web site, [www.xxxxxx.org](http://www.xxxxxx.org), on how to raise a healthy child" or "Because you have a new baby in your household, you should consider the proper diet for a newborn. Our research has determined that Mickey's Company makes excellent baby food products."

(g) An offer or solicitation, enclosed in a mailpiece acknowledging the payment of a contribution or membership dues, that invites the addressee to purchase goods or services available from the mailer or offered as a membership benefit through a third party (e.g. "Thank you for your donation of \$20.00 to our organization. This entitles you to a 10 percent discount on the products offered in our catalog" or "Thank you for sending in your annual dues. Membership in our organization entitles you to a 10 percent discount at Speedy's Rent-a-Car. To take advantage of this benefit, call Speedy's at 800-XXXXXXX and mention that you are a member.").

(h) A request that the addressee applies to, enroll in, or contact the mailer to obtain more information about the mailer's educational institution or program.

(i) A request that the addressee attend a seminar or event sponsored by the mailer that relates to the educational or other nonprofit purpose of the organization (e.g., a retirement seminar or a health care conference).

(j) An invitation for the addressee to contact the mailer for additional information that relates to the education or other nonprofit purpose of the organization (e.g., a catalog of courses or a list of publications).

A solicitation need not contain the exact phrases such as “please contribute,” “please purchase,” “please volunteer,” or “please read”; however, there needs to be content that indicates the action requested. This content may be located in any component of the mailpiece. For example, a reply envelope including the endorsement “additional gift” will be considered a solicitation for a donation.

The same mailpiece may contain more than one solicitation. For example, a mailpiece may contain both a request for a monetary contribution and a request that the addressee sign and return a petition for forwarding by the mailer to an elected official.

### 3. Is all of the personal information directly related to the advertising or solicitation?

The last step is to consider whether all of the personal information is related directly to the advertising or solicitation. This factor requires the presence of content that ties the personal information to the solicitation or advertisement. Examples considered to be directly related to a solicitation are:

- (a) The expiration date of the addressee’s membership
- (b) The addressee’s previous history with the organization, or the amount of the addressee’s past gift or gifts (e.g., “generous supporter,” “thank you for your donations in previous campaigns,” “loyal member since 1999”).
- (c) A reference to the neighborhood, county, metropolitan area, or region of the addressee shall be considered to be directly related to a solicitation for a donation raised from or benefiting the same neighborhood, county, metropolitan area, or region.
- (d) Information about the addressee’s polling place, precinct, or electoral district shall be considered to be directly related to a solicitation requesting that the addressee vote at that location concerning a specific cause, candidate, ballot referendum, ballot proposition, or initiative. Information about the addressee’s elected political representatives or political candidates, or ballot propositions or initiatives, shall be considered to be directly related to a request to the addressee to support or oppose those individuals, propositions, or initiatives, or to provide support for a political cause of the mailer.

### 4. The Question of Tax Receipts

Another example of problems created by the new rules is a Customer Support Ruling which states that mail stating that the information about the addressee's previous donation could serve as a receipt or be used for a tax record, that statement would indicate that

there is a purpose for the information in addition to supporting the charitable solicitation. In other words that piece of mail is both a solicitation *and* a receipt, rendering it unacceptable for Standard mailing rates. This week's Customer Support Ruling (attached) attempts to clarify this issue by stating that the mention of the following words in a mailpiece as the use of the piece would render the mail piece ineligible for standard mail rates:

“Tax Receipt”

“Receipt”

“Keep this notice as a receipt for tax purposes”

“Keep this for your records”

The Customer Support Ruling, however, will allow standard rate postage for mail pieces containing the following statements:

“Your contribution may be tax deductible”

“No goods or services were provided in exchange for this gift

“The IRS requires written substantiation of charitable gifts of \$250 or more”  
(provided that nothing else in the piece indicates that the piece shall serve as substantiation of the gift)

#### What does this mean to you?

Postal officials have said that the determination as to whether personalized mailings can be sent using Standard rates -- or whether First Class must be used -- will be made on a case-by-case basis.

If you are unsure whether your mailings will be accepted for Standard rate mailing after June 1, we recommend you submit the mailing piece to the USPS for an advance ruling. You can do this by sending a specimen of the entire piece to the classification office which has been specifically assigned to make such determinations along with a letter (a sample of which is attached) to:

Mr. Greg Hall  
USPS Pricing and Classification Service Center  
1250 Broadway, 14<sup>th</sup> Floor  
New York, NY 10095-9599  
(212) 613-8676

Fax (212) 613-8752

If you have any questions about the new rules or how they will affect you, please do not hesitate to call our office.

Very truly yours,

Seth Perlman, Esq.  
For the firm

P.S. The Alliance of Nonprofit Mailers 1211 Connecticut Ave, NW, Suite 620 Washington, DC 20036-2701 (202/462-5132) and the DMA Nonprofit Federation, 1111 19th Street NW, Suite 1180 Washington, DC 20036 are requesting that mailers send them a copy of pieces submitted to USPS so that they can monitor the rulings that result.

**Mail Piece Attachment**

[Package Description/Job #]

Mr. Greg Hall  
USPS Pricing and Classification Service Center  
1250 Broadway 14<sup>th</sup> Floor  
New York, New York 10095-9599

Dear Mr. Hall,

Please find attached a direct mail package from (**Organization's Name**) public outreach and fundraising program. This was mailed last year at the standard nonprofit rate. We are sending you this package and our request that you indicate whether or not a similar package is approved to mail at the standard mail nonprofit rates in accordance with the new regulations which take effect June 1, 2005.

[ ] This mail piece is approved as is to mail at the standard mail nonprofit rates.

(USPS signature)\_\_\_\_\_ (date)\_\_\_\_\_

(USPS title)\_\_\_\_\_

[ ] This mail piece is NOT approved to mail at the standard mail nonprofit rates.

Reason for denial:

\_\_\_\_\_  
\_\_\_\_\_

Changes necessary to qualify for standard nonprofit mail rates

\_\_\_\_\_  
\_\_\_\_\_

Please return the direct mail piece with this document in the envelope provided. Should you have any questions, please contact \_\_\_\_\_ of \_\_\_\_\_ at \_\_\_\_\_.

(USPS signature)\_\_\_\_\_ (date)\_\_\_\_\_

(USPS title)\_\_\_\_\_