



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

May 9, 2022

Ms. Jessica Brewster-Johnson
Senior Ethics Counsel
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-110

Re: Comment in response to the United States Postal Service's *Proposed Rule: Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service* RIN 3209-AA51, 87 Fed. Reg. 12888 (March 8, 2022)

Dear Ms. Brewster-Johnson:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully submits this comment in response to the proposed rule issued by the United States Postal Service ("Postal Service") on March 8, 2022, to amend the Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service. The Postal Service issued the proposed rule to update and refine prohibited outside employment and activity provisions and add new requirements applicable to Postal Service Office of Inspector General employees and Postal Service Governors.

CREW submits this comment to urge the Postal Service to develop a strong ethics framework that meaningfully addresses conflicts of interest arising from the financial holdings of its Board of Governors, which includes the Postmaster General, the Deputy Postmaster General, and the nine members who are appointed by the President and confirmed by the Senate.

CREW strongly supports the Postal Service's efforts to establish firm prohibitions that bar the Board of Governors, their spouses, and their minor children from directly or indirectly acquiring or holding financial interests in postal competitors, such as United Parcel Service, Federal Express, Amazon and DHL, and from investments in publicly-traded companies that lease real estate to the Postal Service. These prohibitions will help restore public confidence in the integrity of Postal Service operations.

However, CREW believes additional reforms are necessary. Significant criticism was directed at Postmaster General Louis DeJoy when he first took office as a result of his failure to immediately divest his multimillion-dollar interest in XPO Logistics, a Postal Service contractor for which he previously served as its supply chain chief executive.¹ Although Mr.

¹ Marshall Cohen, [Financial disclosures reveal postmaster general's business entanglements and likely conflicts of interest, experts say](#), *CNN*, Aug. 12, 2020,

DeJoy ultimately divested his shares in XPO Logistics, which were worth between \$26 million and \$103.6 million, he continues to receive rental payments from XPO Logistics, which was awarded a \$120 million contract with the Postal Service during his tenure.² Mr. DeJoy's private businesses reportedly could receive rental payments from XPO Logistics that generate up to \$23.7 million over the next decade.³

First, to restore public trust in the integrity of Postal Service operations, it is imperative that the Postal Service's supplemental ethics regulations clearly prohibit the Postmaster General, the Deputy Postmaster General and the other members of the Board of Governors from holding any financial interest, directly or indirectly, in a Postal Service contractor or subcontractor. Because the Postal Service is increasingly outsourcing postal work to private industry, it is imperative that members of the governing board avoid any financial conflict of interest or even the appearance that they could profit from strategic decisions relating to the issue of privatization.

In particular, CREW recommends that the proposed rule prohibiting the Governors from holding certain financial interests, at 5 C.F.R. § 7001.104(a), be expanded to explicitly bar all members of the Board of Governors from holding, directly or indirectly, a financial interest in any Postal Service contractor or subcontractor. In addition, the proposed rule should not only prohibit holdings in publicly-traded entities engaged primarily in the business of leasing real property to the Postal Service, but also prohibit holdings in privately-held entities engaged primarily in the business of leasing real property to the Postal Service. If the Postal Service leases property from privately-held companies, there is no reasonable basis to treat those interests differently from the same interests in publicly-traded companies. Furthermore, to promote the highest standards of ethical conduct and ensure consistency and impartiality, the designated agency ethics official should be required to consult with the Office of Government Ethics ("OGE") before issuing any waivers of prohibited financial interests.

Second, the regulatory carve out proposed in Section 7001.104(a)(2), which excludes from coverage entities in which a Governor "merely" directs the investment strategy, hires the financial manager or designates another employee to select the investments, is unduly broad as applied to the Postmaster General and Deputy Postmaster General. Given their full-time management and operations responsibilities, the exclusion criteria for the Postmaster General and Deputy Postmaster General should be consistent with 5 C.F.R. § 2640.202(e), a regulatory exemption applicable to financial interests arising from tax exempt organizations. That exemption does not apply to all entities. Rather, it applies only to tax exempt organizations, pursuant to 26 U.S.C. § 501(c) (3) or (4), of which the employee is an unpaid officer, director, or trustee, or an employee; and for which the employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds. While it may make sense to apply less rigid standards to the nine Governors

<https://www.cnn.com/2020/08/12/politics/postal-service-dejoy-conflicts-amazon-trades-xpo-stake/index.html>.

² Jacob Bogage, [DeJoy maintains financial ties to former company as USPS awards it new \\$120 million contract](https://www.washingtonpost.com/business/2021/08/06/usps-dejoy-xpo-logistics/), *Washington Post*, Aug. 6, 2021, <https://www.washingtonpost.com/business/2021/08/06/usps-dejoy-xpo-logistics/>.

³ *Id.*

who are compensated on a part-time basis (i.e. a \$30,000 yearly retainer plus \$300 a day for not more than 42 days of meetings held each year),⁴ the Postmaster General and Deputy Postmaster General are full-time public servants whose 2021 compensation payout was \$480,985 and \$595,692,⁵ respectively, and should be held to greater accountability with respect to their outside positions. Their carve out should be no more generous than those permitted under the regulatory exemptions issued pursuant to 18 U.S.C. § 208(b)(2).

Third, given the Postmaster General's enormous responsibilities and influence over the day-to-day lives of every American, CREW recommends that the ethics review process for the position of Postmaster General be strengthened and enhanced to ensure greater consistency, accountability, and impartiality. To avoid the type of debacle that resulted from Postmaster General DeJoy's failure to immediately divest his XPO Logistics stock, an accelerated ethics review process should be established under the proposed rule for any incoming Postmaster General similar to the process used for appointees subject to Senate confirmation. Although the Postmaster General is not subject to Senate confirmation, CREW recommends that the Postmaster General be required to enter into a written ethics agreement with the designated agency ethics official within 30 days of taking office to timely identify all prohibited holdings and required divestitures and disqualifications. Since the Postmaster General is not Senate confirmed, the 90-day time limit for divestiture, referred to in Section 7001.104(c), should be addressed specifically in the ethics agreement. The Postmaster General's ethics agreement and any amendments should be made subject to review and approval by the Director of the Office of Government Ethics and made publicly available via OGE's website, along with the Postmaster General's public financial disclosure reports and any waivers issued pursuant to 18 U.S.C. § 208(b)(1) or by supplemental regulation.

In conclusion, CREW thanks you for your efforts to address conflicts of interest that arise from the holdings of individual members of the Board of Governors, including the Postmaster General and Deputy Postmaster General. For the reasons we discuss in this comment, we urge the Postal Service to take every measure necessary to restore public trust in this most important government institution.

Sincerely,



Virginia Canter

⁴ 39 U.S.C. § 202(a)(1).

⁵ United States Postal Regulatory Commission, 2021 Report on Form 10-K, at 101, <https://about.usps.com/what/financials/10k-reports/fy2021.pdf>.

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Chief Ethics Counsel

cc: Hon. Emory A. Rounds