

August 21, 2020

Mr. Louis DeJoy  
Postmaster General and Chief Executive Officer  
United States Postal Service  
475 L'Enfant Plaza, SW, Room 4012  
Washington, DC 20260

Dear Mr. DeJoy:

We write on behalf of Citizens for Responsibility and Ethics in Washington (“CREW”) to express concern that you are at significant risk of violating the primary criminal conflict of interest statute. As Postmaster General, you have assumed extraordinary risk, both for yourself and for the American people, by holding investments in companies affected by the activities of the U.S. Postal Service (“USPS”). With the USPS Inspector General, Congress, and the good government community investigating your conduct, we urge you to immediately divest your conflicting financial interests.

Based on your financial disclosure reports, it appears you retained stocks and stock options worth tens of millions of dollars in a USPS contractor, XPO Logistics, Inc. (“XPO”).<sup>1</sup> After you came into government, you spent between \$50,001 and \$100,000 to buy a stock option in Amazon.<sup>2</sup> Because you hold these interests, the conflict of interest law prohibits you from participating in any particular matter affecting either XPO or Amazon. As Postmaster General, however, your recusal from all particular matters affecting these companies is unworkable because XPO is a major USPS contractor and Amazon is a competitor and top USPS customer.

The risk of a violation of the conflict of interest law should be obvious to you. Reporting raises a question as to whether you may already have violated the law. The Inspector General may uncover enough details of your activities to facilitate a thorough analysis of whether you are participating in particular matters affecting these companies. Whether or not that is the case, your continued retention of these assets exposes you to a risk of violating the law, jeopardizes the integrity of services the public is entitled to expect from USPS, and sets a bad example for the postal workforce. It is imperative that you divest your interests in these companies at once.

## **I. Applicable Legal Standard**

As Postmaster General, you are expected to avoid any violation of conflict of interest laws and even the appearance of violating those laws.<sup>3</sup> The primary criminal conflict of interest law, 18 U.S.C. § 208(a), prohibits you from participating personally and substantially in any

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<sup>1</sup> Office of Gov’t Ethics, New Entrant Financial Disclosure Report (OGE Form 278e) of Louis DeJoy, June 15, 2020 (Part 6, Lines 10.1, 10.4, 10.5, 10.6, 19.5.1, 19.5.2, 19.5.3 and 19.5.4), <https://bit.ly/2QdOKsy> (“DeJoy New Entrant Report”).

<sup>2</sup> Office of Gov’t Ethics, Periodic Transaction Report (OGE Form 278-T) of Louis DeJoy, July 21, 2020 (Line 56), <https://bit.ly/34hZs1e> (“DeJoy PTR”).

<sup>3</sup> 5 C.F.R. § 2635.101(b)(14).

particular matter in which you know you have a financial interest, if that particular matter directly and predictably affects your financial interest. In the case of stock, the law bars you from participating in any particular matter affecting the financial interests of the company that issued the stock, whether or not the stock price is affected.<sup>4</sup> The same analysis applies to stock options.<sup>5</sup>

The conflict of interest law requires only recusal from particular matters affecting your financial interests, but divestiture becomes necessary whenever recusal would restrict your ability to perform essential functions of your job. The Office of Government Ethics (“OGE”) has advised: “At the heart of the ethics program is the principle that public service is a public trust. Government officials must put the public’s interests before their own interests. As a result, taking a senior federal position may require significant financial sacrifices by you and your immediate family.”<sup>6</sup> In your case, that means divesting your conflicting financial interests.

## II. Your Conflict of Interest with XPO Logistics, Inc.

Because you have retained a financial interest in XPO, you are obligated to recuse from particular matters affecting that company. But XPO is a major USPS contractor, and recusal is not realistically feasible. In fact, you may already have participated in particular matters affecting XPO because you have implemented changes at USPS that appear to affect XPO.

*Reuters* describes XPO as “a global provider of supply chain solutions,” with a transportation segment that “provides freight brokerage, last mile, less-than-truckload (LTL), full truckload and global forwarding services” and a logistics segment that “provides a range of contract logistics services, including highly engineered and customized solutions, value-added warehousing and distribution, cold chain solutions and other inventory solutions.”<sup>7</sup> Perhaps most importantly, the company transports packages for the postal service and other customers. Over the past three years, USPS has paid XPO over \$130 million.<sup>8</sup>

Your financial disclosures indicate that you have retained an investment in XPO, a USPS contractor. In the disclosure you filed upon entering government, you reported holding stock worth between \$30 and \$75 million.<sup>9</sup> You also reported holding stock options of unknown value for up to 270,000 shares of XPO stock.<sup>10</sup> There is no indication you have divested either of these financial interests.<sup>11</sup> Your retention of these assets creates a potential for conflicts of interest.

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<sup>4</sup> Office of Gov’t Ethics, Conflict of Interest Analysis for Stocks under 18 U.S.C. § 208, Legal Advisory LA-20-03, May 1, 2020, <https://bit.ly/3iVRBup>.

<sup>5</sup> Office of Gov’t Ethics, *Conflicts of Interest Considerations: Assets*, at 11, June 22, 2018, <https://bit.ly/3kQL59Y>.

<sup>6</sup> Office of Gov’t Ethics, *Nominee Guide*, 2020, <https://bit.ly/313RDKD>.

<sup>7</sup> *XPO Logistics Inc*, *Reuters*, <https://reut.rs/31atG4a> (last viewed Aug. 19, 2020).

<sup>8</sup> David P. Hendel, Husch Blackwell LLP (website), *Top U.S. Postal Service Suppliers*, <https://bit.ly/318TLAO> (2017); <https://bit.ly/326XYnR> (2018); <https://bit.ly/3aH7mCI> (2019).

<sup>9</sup> DeJoy New Entrant Report (Part 6, Lines 10.1 and 19.5.1).

<sup>10</sup> *Id.* (Part 6, Lines 10.4, 10.5, 10.6, 19.5.2, 19.5.3 and 19.5.4).

<sup>11</sup> You filed a periodic transaction report (“PTR”) on July 21 to report sales and purchases, but you did not report divesting these interests in XPO. See DeJoy PTR. On August 18, USPS advised us that it had no other PTRs from you to release. Agencies must release uncertified financial disclosure reports after 30 days, so this means you either have not filed another PTR or USPS has not had one from you for more than 30 days. 5 C.F.R. § 2634.603(c).

The potential for conflicts of interest is acute because XPO is a USPS contractor. A spreadsheet published by USPS reveals that XPO has Highway Contract Route (“HCR”) contracts with USPS at specified rates.<sup>12</sup> According to one law firm representing postal contractors, “[t]he U.S. Postal Service spends about \$3 billion per year to move the mail by truck and does so under a special type of contract called a Highway Contract Route (HCR) contract.”<sup>13</sup> The USPS Inspector General has explained: “The Postal Service contracts with supplier-operated HCRs to transport mail and equipment between plants, post offices, or other designated points that receive or dispatch mail.”<sup>14</sup>

Conflicts of interest appear to have arisen when you began making sweeping changes to USPS operations.<sup>15</sup> Cost has been prioritized over service, and postal customers are going without lifesaving medications and other urgently needed items.<sup>16</sup> The *Washington Post* reported that you have “drastically reduced overtime and banned extra trips to ensure on-time mail delivery,” “ousted several agency veterans in key operational roles,” and decommissioned mail-sorting machines.<sup>17</sup> A July 10 staff memorandum lays out highlights of some of your operational overhaul.<sup>18</sup> According to a USPS press release, the “new organization structure is focused on three business operating units,” including the “Logistics and Processing Operations,” whose mission is to “[p]rocess and move mail and packages efficiently to the delivery units, meeting service standards.”<sup>19</sup> They include zero-tolerance bright-line policies affecting “[a]ll operations” of the agency.<sup>20</sup>

Two examples highlight your conflicts of interest. First, any particular matter affecting USPS contractors necessarily affects XPO. Thus, the conflict of interest law appears to be implicated by your policy that “[t]here must be proper annotation in the scanner, if a Contractor Failure occurs.”<sup>21</sup> Second, any policy affecting HCR contracts necessarily affects XPO because XPO is an HCR contractor. Thus, the conflict of interest law appears to be implicated by your policy that “[a]ll PVS/HCR drivers must be notified that trips depart on time.”<sup>22</sup> This “on time” policy directly affects XPO and other trucking service suppliers. In one illustrative case, a news

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<sup>12</sup> U.S. Postal Serv., *HCR Listing*, July 2020 (rows 17 and 6672), <https://bit.ly/3204Tzi>.

<sup>13</sup> David P. Hendel, *The unique Changes clause in Postal Service HCR contracts*, Husch Blackwell LLP, May 19, 2017, <https://bit.ly/34bMOKg>.

<sup>14</sup> Office of the Inspector General, U.S. Postal Serv., *Oversight of Highway Contract Routes – Insurance*, Audit Report SM-AR-19-002, Mar. 22, 2019, <https://bit.ly/327Gk3h>.

<sup>15</sup> Jacob Bogage, *Postal Service overhauls leadership as Democrats press for investigation of mail delays*, *Washington Post*, Aug. 7, 2020, <https://wapo.st/316pumc>.

<sup>16</sup> Jake Bittle, *Louis DeJoy: is Trump’s new post office chief trying to rig the election?*, *The Guardian*, Aug. 17, 2020, <https://bit.ly/2YbFykC>; Zachary Cohen, *US Postal Service delays force Department of Veterans Affairs to shift prescription delivery methods*, *CNN*, Aug. 18, 2020, <https://cnn.it/2Y9AyuU>.

<sup>17</sup> Erin Cox, et al., *Postal Service warns 46 states their voters could be disenfranchised by delayed mail-in ballots*, *Washington Post*, Aug. 14, 2020, <https://wapo.st/316rk6t>.

<sup>18</sup> U.S. Postal Serv., *Pivoting for Our Future*, July 10, 2020, <https://cnn.it/3h7JudJ> (“DeJoy Memo”).

<sup>19</sup> U.S. Postal Serv., *Postmaster General Louis DeJoy Modifies Organizational Structure to Support USPS Mission*, *PR Newswire*, <https://prn.to/315pvXI>.

<sup>20</sup> DeJoy Memo, at 1.

<sup>21</sup> *Id.*

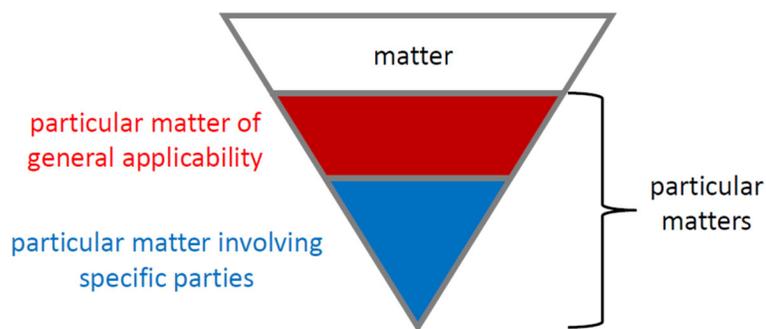
<sup>22</sup> *Id.*

report recounted that mail arrived 10 minutes late in Maine and was left for a future delivery under new protocols that prioritize trucks leaving on time over delivering the mail.<sup>23</sup>

Heightening concerns that you are at risk of violating the conflict of interest law, USPS provided *CNN* with an explanation that appears to show that your recusal arrangements are deficient. The USPS spokesperson stated: “No issues relating to XPO’s Postal Service contracts have been presented to Postmaster General DeJoy, nor would any such issues be expected to rise to that level.... Decisions regarding XPO contracts are made at much lower levels in the organization.”<sup>24</sup> This explanation is deeply troubling because it appears to indicate that you have not established effective recusals from all particular matters affecting XPO.

One problem with the explanation USPS provided *CNN* regarding your conflicting stake in XPO is that it focused only on “[d]ecisions” affecting XPO. But the coverage of the conflict of interest law is not limited to decisions. The law covers any personal and substantial “participation” in a particular matter, including “decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise.”<sup>25</sup> By addressing only decisions, rather than more broadly addressing any participation in “particular matters,” you are exposing yourself to a risk of violating the criminal conflict of interest law.

The other problem with this explanation is that it addresses only one of two types of matters that the conflict of interest law covers. The law bars you from participating personally and substantially in any “particular matter” directly and predictably affecting XPO. “Particular matter” is a term of art defined in OGE’s regulations that refers to a matter focused on either the interests of specific persons or those of a discrete and identifiable class of persons.<sup>26</sup> Therefore, as illustrated in the diagram below, there are two types of particular matters: “particular matters involving specific parties” and “particular matters of general applicability.”<sup>27</sup> The explanation USPS provided *CNN* focuses only on “XPO contracts,” which are particular matters involving specific parties; it fails to address particular matters of general applicability.



<sup>23</sup> Curt Devine, Bob Ortega and Paul P. Murphy, Postal Service removes some mail-sorting machines, sparking concerns ahead of election, *CNN*, Aug. 13, 2020, <https://cnn.it/323KFVd>.

<sup>24</sup> Marshal Cohen, Financial disclosures reveal postmaster general’s business entanglements and likely conflicts of interest, experts say, *CNN*, Aug. 12, 2020, <https://cnn.it/317Jyoa>.

<sup>25</sup> 18 U.S.C. § 208(a).

<sup>26</sup> 5 C.F.R. § 2640.103(a)(1).

<sup>27</sup> U.S. Office of Gov’t Ethics, “*Particular Matter Involving Specific Parties*,” “*Particular Matter*,” and “*Matter*,” Inf. Adv. Op. 06 x 09, Oct. 4, 2006, <https://bit.ly/321BZid>; 5 C.F.R. § 2640.102(l), (m).

The above diagram depicts an inverted triangle because the type of matter at issue depends on the breadth of its focus. The top rung of the triangle, in white, represents broad matters not covered by the conflict of interest law. The bottom rung in blue represents particular matters involving specific parties, which focus narrowly on the interests of specific persons. The explanation USPS provided *CNN* addressed only “contracts” to which XPO is a party, which are particular matters involving specific parties.<sup>28</sup>

The explanation USPS provided, however, failed to address particular matters of general applicability, represented in the diagram by the red rung in the middle. This category focuses on the interests of a discrete and identifiable class of persons.<sup>29</sup> Examples of discrete and identifiable classes of persons include USPS contractors<sup>30</sup> or a specific industry in which XPO operates (e.g., the trucking and delivery industry, etc.).<sup>31</sup> Your policies focusing on USPS contractors qualify as particular matters.<sup>32</sup> As discussed above, this includes the requirements recited in your July 10 memorandum that “[t]here must be proper annotation in the scanner, if a Contractor Failure occurs” and that “[a]ll PVS/HCR drivers must be notified that trips depart on time.”<sup>33</sup> Your failure to recuse from these “particular matters of general applicability” appears to implicate the conflict of interest law.

For both of these reasons, your recusal arrangements as to XPO appear to omit measures addressing key aspects of your recusal obligations under the conflict of interest law. These apparent omissions from your recusal arrangement could lead to severe consequences.<sup>34</sup>

### III. Your Conflict of Interest with Amazon

You also have an investment in Amazon, the well-known online retailer. On June 24, while serving as Postmaster General, you paid between \$50,001 and \$100,000 to buy an Amazon stock option with an expiration date of October 16, 2020.<sup>35</sup> Like your investment in XPO, this investment in Amazon poses a significant risk of conflicts of interest.

Amazon is one of your agency’s biggest customers and a burgeoning competitor.<sup>36</sup> It should be obvious that Amazon poses a conflict of interest for you. In fact, President Trump

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<sup>28</sup> 5 C.F.R. § 2641.201(h)(1).

<sup>29</sup> *Id.*

<sup>30</sup> 5 C.F.R. § 2641.201(h)(2), example 6 (illustrating that an agency’s contractors are a discrete and identifiable class of persons and, therefore, the creation of a standard form contract and clauses for use in agreements with agency contractors is not a “particular matter involving specific parties” but is a particular matter of “general applicability”).

<sup>31</sup> U.S. Dep’t. Justice, *Advisory Committees-Food & Drug Admin.-Conflicts of Interest (18 U.S.C. § 208)*, 2 U.S. Op. Off. Legal Counsel 151, 156 (1978); Office of Gov’t Ethics, *The Nettlesome Problem of Particular Matters*, at 1, Sept. 14, 2014, (“regulations establishing safety standards for the trucking industry would be a particular matter because they relate to a particular, distinct group, even though broader public safety concerns likely motivate the rules”), <https://bit.ly/3iTBMEo>.

<sup>32</sup> *Id.*

<sup>33</sup> U.S. Postal Serv., *Pivoting for Our Future*, July 10, 2020, <https://cnn.it/3h7JudJ> (“DeJoy Memo”).

<sup>34</sup> 18 U.S.C. § 216.

<sup>35</sup> DeJoy PTR (Line 57).

<sup>36</sup> Jason Del Rey, *Amazon’s new area of domination: its own package delivery*, *Vox*, Dec. 19, 2019, <https://bit.ly/2FIjdoF>.

pressured your predecessor to double Amazon's shipping rates in what appeared to be retaliation against Amazon for news coverage in the *Washington Post*, which is owned by Amazon CEO Jeff Bezos.<sup>37</sup> This history casts doubt on your ability to recuse from particular matters affecting Amazon. Recent events call into question whether you have even attempted to implement a recusal from particular matters affecting Amazon.

As one of the postal service's top customers, Amazon has negotiated agreements with USPS that contain strict confidentiality agreements.<sup>38</sup> USPS recently negotiated a coronavirus bailout loan from the Treasury Department, and the loan agreement requires USPS to provide the Treasury Department with copies of its agreements with its ten biggest customers, including Amazon.<sup>39</sup> Postal advocates have raised concerns that "the loan terms requiring USPS to disclose the contents of the service agreements would open the door to high parcel rates."<sup>40</sup> Significantly, the *Washington Post* reported that you participated in the negotiations: "During the USPS's quarterly board of governors meeting [on August 7,] DeJoy said he negotiated the loan terms with [Treasury Secretary Steven] Mnuchin."<sup>41</sup> This news suggests you may already have participated in at a particular matter affecting Amazon.

Aggravating these concerns about your financial interest in Amazon, your stock option expires in October.<sup>42</sup> You will soon have to sell or exercise it. That is a problem because you have access to information about governmental matters that may affect Amazon. As a result, you have created a situation in which the public—and possibly the Securities and Exchange Commission—will wonder whether the transaction was prompted by inside information.

#### IV. Conclusion

As head of America's postal workforce, which comprises roughly a half million employees, you are chiefly responsible for ensuring the integrity of your agency's operations.<sup>43</sup> Executive branch-wide regulations direct you to exercise "personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency."<sup>44</sup> As a supervisor, they further instruct that it "is imperative" for you and your subordinate supervisors to serve as "models of ethical behavior for subordinates."<sup>45</sup> Your conduct falls short of this standard for ethical conduct in government. The potential for conflicts of interest should have been readily apparent to you. Now, your failure to divest XPO and Amazon puts you at risk of committing a crime, puts members of the public at risk by

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<sup>37</sup> Damian Paletta and Josh Dawsey, Trump personally pushed postmaster general to double rates on Amazon, other firms, *Washington Post*, May 18, 2018, <https://wapo.st/3aCV7qw>.

<sup>38</sup> Jacob Bogage, Treasury agrees to lend Postal Service \$10 billion in trade for rivals' shipping contracts, *Washington Post*, July 29, 2020, <https://wapo.st/3g6mISh>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Jacob Bogage, Postal Service overhauls leadership as Democrats press for investigation of mail delays, *Washington Post*, Aug. 7, 2020, <https://wapo.st/3iXyCzH>.

<sup>42</sup> DeJoy PTR (Line 56).

<sup>43</sup> U.S. Postal Serv., *Number of Postal Employees Since 1926*, Feb. 2020, <https://bit.ly/3j5QA39>.

<sup>44</sup> 5 C.F.R. § 2638.107.

<sup>45</sup> 5 C.F.R. § 2638.103.

Mr. Louis DeJoy  
August 21, 2020  
Page 7

compromising mail service shortly before they mail ballots in the upcoming presidential election, and sets a bad example for the workforce you lead.

You are failing to live up to your ethical responsibilities and foster an ethical culture in USPS. Your ownership of interests in XPO Logistics, Inc. and Amazon compromises the integrity of postal operations and undermines public trust in government. We do not know how government ethics processes broke down so badly at USPS under your leadership, but it is critical that you resolve your ethics problems at once. You should immediately divest or forfeit your financial interests in these companies.

Sincerely,



Noah Bookbinder  
Executive Director



Walter M. Shaub, Jr.  
Senior Advisor

cc. The Honorable Carolyn B. Maloney  
House Committee on Oversight and Reform

The Honorable Ron Johnson  
Senate Homeland Security and Governmental Affairs Committee

Inspector General Tammy L. Whitcomb  
U.S. Postal Service