

**Statement of Thomas J. Marshall
General Counsel & Executive Vice President
United States Postal Service
before the New York State Senate Standing Committee on Elections,
Senate Standing Committee on Local Government, Assembly Standing
Committee on Election Law, Assembly Standing Committee on Local
Governments**

**Hearing on Elections in a Pandemic: A Review of the 2020 Primaries
August 11, 2020**

Thank you for the opportunity to provide written testimony to discuss the United States Postal Service's efforts for the 2020 election cycle, the issues that arose during the New York primary election and steps that could mitigate these issues moving into the general election.

Due to the impacts of the COVID-19 pandemic, the Postal Service anticipates that there will be an increased demand among voters to use the mail to participate in the 2020 general election, and that public policy makers will choose to increasingly utilize our services as part of their administration of elections. To the extent they do, the Postal Service remains fully committed to fulfilling our role in the electoral process by doing everything we can to handle and deliver Election Mail, including ballots, in a timely manner consistent with our operational standards. We have more than sufficient processing and delivery capacity to fulfill this role, but to the extent that states choose to use the mail as part of their elections, they should do so in a manner that realistically reflects how the mail works.

As part of our commitment to Election Mail, we have conducted and will continue to conduct significant outreach to election officials at the state and local levels, as well as other public officials, to ensure close coordination between the Postal Service and the policy makers who choose to use our services. Each election cycle, the Postal Service conducts outreach with state and local election officials, in which we explain our services and our delivery processes, and provide guidance on how election officials can design and send their mailings in a manner that comports with postal regulations, improves mailpiece visibility, and ensures timely and efficient processing and delivery. These outreach efforts, which we have significantly intensified this year, establish solid points of contact between election officials and Postal Service personnel to foster ongoing coordination, and also provide repeated opportunities for the Postal Service to address questions and discuss our delivery standards, postage-payment options, mailpiece design issues, tracking and mailpiece-visibility services, and other matters regarding Election Mail. The purpose of our outreach is to enable policy makers and election officials to (1) make informed decisions about how to effectively utilize the Postal Service in their administration of elections, and (2) educate the public about what they can expect when using the mail to vote.

The Postal Service has assigned an election mail coordinator to each election jurisdiction to facilitate outreach and serve as a clear point of contact for election officials. Our election mail coordinators consistently reach out to election officials in their assigned jurisdictions, and we have repeatedly encouraged election officials to contact their assigned election mail coordinators if they have questions and to discuss the services we offer and the logistics of their

planned mailings. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/political-election-mail-coordinators.pdf>.

In addition to the election mail coordinators, we have assigned mailpiece design analysts for each state who are available to assist election officials in designing and preparing envelopes that are consistent with postal regulations, increase mailpiece visibility, and allow officials to receive available postage discounts. We also strongly recommend that election officials reach out to a mailpiece design analyst *before* designing and printing any mailpieces for use in upcoming elections.

For the 2020 election cycle, the Postal Service began conducting initial outreach meetings with election officials in February. In March, the Postal Service prepared a 2020 Official Election Kit (Kit 600) and distributed it to roughly 11,500 election officials throughout the nation. A copy of the Election Kit is available at <https://about.usps.com/kits/kit600.pdf>. In May, I sent a letter to the same group of more than 11,500 election officials and to state political-party officials, highlighting some key aspects of the Postal Service's processes and delivery standards, and providing recommendations for steps that election officials can take to ensure the efficient and timely handling of Election Mail. A copy of that letter is available at <https://about.usps.com/newsroom/national-releases/2020/2020-05-29-marshall-to-election-officials-re-election-mail.pdf>. That letter also attached a copy of Publication 632, *State and Local Election Mail - User's Guide*, which is also available, along with other Election Mail resources, at the Postal Service's Election Mail website: <https://about.usps.com/election-mail/election-mail-resources.htm>. In addition, I recently sent a letter to the chief election officials in each state and the District of Columbia, noting instances in which, under our reading of that state's election laws, deadlines for requesting and casting mail-in ballots appear to be incongruous with the Postal Service's delivery standards.

Through this date, there have already been nearly 545 contacts between Postal Service personnel and New York state and local election, public, and political party officials in 2020 regarding Election Mail. Our outreach efforts are ongoing and will continue through the fall.

With respect to the primary, and facilitating the proper use of the mail for the November general election, there are two main issues I'd like to discuss: the incompatibility of mail entry dates with our delivery standards, and postmarking.

The Postal Service received notice that blank ballots destined for voters were entered into the mailstream by election officials through June 22, intended for use in the June 23rd primary election. Although we continued to process and deliver ballots as they arrived, overnight delivery is outside of our First-Class Mail delivery standards. Thanks to the efforts of the Postal Service, the majority of the ballots mailed by June 22 were nevertheless delivered before the June 23rd election. However, because of the entry of ballots so close to Election Day, there was a high probability that some ballots would not be delivered to voters prior to the election.

The Postal Service is committed to delivering ballots in a timely manner, consistent with our delivery standards. But, to the extent that states choose to use the mail as part of their elections, they should do so in a manner that adequately considers the time it takes to process and deliver mail through our system pursuant to our normal published timelines. The Postal Service cannot control when a ballot is entered into the mailstream, or state election law deadlines for requesting or returning a ballot. Election officials must understand that if they mail ballots to voters too close to the general election, as they did for the primary election, there is a

significant risk that a voter will not receive his or her ballot in time to use it to participate in the election.

The last-minute mailing of ballots during the primary election highlights a broader area of concern regarding the interplay between deadlines set by state law and the Postal Service's delivery standards, specifically as it involves the time for mailing blank and completed ballots. To ensure that voters who wish to use the mail to vote can do so successfully, it is critical that election officials and voters are mindful of the time that it takes for us to deliver ballots, whether it is a blank ballot going to a voter or a completed ballot going back to election officials. In other words, the time required for both legs of a ballot's delivery through the mail must be taken into account.

In this regard, the Postal Service does not guarantee, and has not previously guaranteed, a specific delivery time for its classes of mail. Specific transit times will vary based on the class of mail as well as the mailpiece's place of origin and destination. However, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.
- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that require mail-in ballots to be *both* postmarked by Election Day *and* received by election officials by a specific date that is one week or more after Election Day, voters may generally mail their ballot up until November 3. However, voters who mail in their ballots on Election Day must be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities, and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

As I stated in my July 30, 2020, letter to the Co-Directors of the New York State Board of Elections, under the Postal Service's reading of New York's election laws, as of July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a risk that, at least in

certain circumstances, ballots may be requested in a manner that is consistent with New York's election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a completed ballot must be postmarked by Election Day and received by election officials 7 days after the election. If that understanding is correct, voters who choose to mail their ballots in the 2020 general election may do so on or before Tuesday, November 3. However, it further appears that state law generally permits voters to apply by mail for a ballot as late as 7 days before the election. If a voter submits a request at or near the deadline, and the ballot is transmitted to the voter by mail, there is a risk that the voter will not receive the ballot before Election Day or have sufficient time to complete and mail the completed ballot back to election officials in time to satisfy the state's postmarking deadline. That risk is exacerbated by the fact that the law does not appear to impose a specific time period by which election officials must transmit a ballot to the voter in response to a request.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of New York's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

Another key area about which to be mindful to the successful use of the mail in an election is postmarking. The Postal Service does not postmark or cancel every piece of mail in our system in the normal course of operations, since the primary purpose of cancellation is to ensure that postage cannot be reused, and some categories of postage is pre-cancelled before it enters the mail stream. While it is the Postal Service's policy to try to ensure that every ballot receives a postmark, regardless of the postage-payment method, and we instruct our employees throughout the country to adhere to that practice in recognition of the importance that the election laws in some states place on postmarks, such practice deviates from normal procedures, and therefore we acknowledge that circumstances can arise that prevent ballots from receiving a legible postmark. To increase the operational likelihood that a mailpiece will receive a legible postmark, we advise election officials to use automation-compatible, letter sized envelopes for mail-in ballots.

Leading up to the June 23rd election, the Postal Service instructed employees in New York State about the Postal Service's ballot postmarking processes and procedures. All delivery units in New York reviewed the standard operating procedures for ballot postmarking. We are aware that some ballots were not postmarked and we have taken action to try to resolve the issue going forward. As noted above, however, election officials can take action to increase the operational likelihood that their mailpieces will receive a legible postmark by using automation-compatible, letter-sized envelopes.

Finally, in addition to the recommendations outlined above, the Postal Service strongly recommends that election officials include the Official Election Mail logo on their ballot envelopes and display Tag 191, used to identify ballots, when tendering ballots for mailing. We also recommend jurisdictions and election officials use the Intelligent Mail barcode (IMb), so that

they will be able track their election mail and gain greater transparency into the flow of their mail. The IMb is a 65-bar Postal Service barcode used to sort and track letters and flats. It allows mailers, in this case, election officials, to participate in multiple Postal Service programs simultaneously, expands the mailers' ability to track individual mailpieces, and see where ballots are within the mailstream.

The Postal Service remains fully committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. For the mail to be successfully used as part of an election, state and local election officials must understand and take into account our operational standards and recommended timelines. We will continue to provide outreach so that election officials have the information they need to make informed decisions and educate their voters accurately about what they can expect from the Postal Service. We look forward to continuing to partner with the state and local election officials in New York for the November general election.

###