



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

The Special Counsel

December 2, 2020

Mr. Michael Pack
Chief Executive Officer
U.S. Agency for Global Media
330 Independence Avenue, SW
Washington, DC 20237

VIA ELECTRONIC MAIL

Re: OSC File Nos. DI-20-1086, DI-20-1087, DI-20-1088, DI-20-1157, DI-20-1158, DI-20-1159, DI-20-1160, DI-20-1161, DI-20-1162, DI-21-0015, DI-21-0031

Dear Mr. Pack:

I am referring to you for investigation a whistleblower disclosure that officials at the U.S. Agency for Global Media (USAGM) may have engaged in conduct that constitutes a violation of law, rule, or regulation, an abuse of authority, and a substantial and specific danger to public health and safety. We anticipate that you will delegate the responsibility to investigate these allegations to the Inspector General of the U.S. Department of State, and that the investigation will result in a report of findings, as per 5 U.S.C. § 1213. The report responding to these allegations and any related matters is due to the Office of Special Counsel (OSC) by February 1, 2021.

USAGM, formerly known as the Broadcasting Board of Governors, consists of five international broadcasting networks—Voice of America (VOA), Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), the Middle East Broadcasting Networks (MBN), and the Office of Cuba Broadcasting (OCB) (“USAGM-funded networks” or “networks”)—whose goal is to “inform, engage and connect people around the world in support of freedom and democracy.”¹ The Open Technology Fund (OTF), a non-profit organization also supported by USAGM, “advances internet freedom in the world’s most repressive environments” by funding privacy and internet firewall circumvention tools to audiences and journalists in closed societies so that they can access uncensored information.² According to the whistleblowers, these networks broadcast in approximately 62 languages to over 100 countries and approximately 350 million people every week.

Six of the eleven whistleblowers—all members of USAGM’s Senior Executive Service (SES)—consented to the disclosure of their names: [REDACTED], [REDACTED]; [REDACTED]

¹ <https://www.usagm.gov/who-we-are/>.

² <https://www.usagm.gov/networks/otf/>.

[REDACTED]; and [REDACTED]. The remaining five whistleblowers chose to remain anonymous.³ The whistleblowers allege that since June 2020, USAGM leadership has illegally undermined the agency's ability to carry out its mission.⁴

Allegations to be investigated include, since June 2020, USAGM:

- Repeatedly violated the VOA firewall—the law that protects VOA journalists' “professional independence and integrity”;⁵
- Engaged in gross mismanagement and abuse of authority by:
 - Terminating the Presidents of each USAGM-funded network—RFA, RFE/RL, MBN, and OCB⁶—as well as the President and the CEO of OTF;
 - Dismissing the bipartisan board members that governed the USAGM-funded networks, replacing those board members with largely political appointees, and designating the USAGM CEO as Chairman;
 - Revoking all authority from various members of USAGM's SES and reassigning those authorities to political appointees outside of the relevant offices;
 - Removing the VOA Editor for News Standards and Best Practices (“Standards Editor”)—a central figure in the VOA editorial standards process and a critical component of the VOA firewall—from his position and leaving that position vacant;
 - Similarly removing the Executive Editor of RFA;
 - Suspending the security clearances of six of USAGM's ten SES members—the named whistleblowers in this referral—and placing them on administrative leave; and

³ Each allegation in this referral was made by one or more of the eleven whistleblowers. To simplify, I use the term “whistleblowers” in this letter, regardless of which of the eleven whistleblowers made the relevant allegations, unless otherwise specified.

⁴ On November 20, 2020, Chief Judge Beryl A. Howell of the U.S. District Court for the District of Columbia issued a preliminary injunction in *Grant Turner, et al. v. USAGM*, Civil Action No. 20-2885, preliminarily enjoining USAGM “from making or interfering with personnel decisions with respect to individual editorial or journalistic employees” at the networks; “from directly communicating with editors and journalists, aside from the appointed Presidents and Directors of [the networks], regarding journalistic or editorial matters without the consent of the President or Director” of the relevant network; and “from conducting any and all investigations into journalistic content, individual editors or journalists, or alleged editorial lapses or breaches of journalistic ethics at [the networks], except as provided in the *USAGM Procedures for Violations of the Principles, Standards, or Journalistic Code of Ethics*. . . .”

⁵ 22 C.F.R. § 531.1(a). See also U.S. International Broadcasting Act of 1994 (IBA), as amended, Sec. 303(a)(5) (codified at 22 U.S.C. § 6202(a)(5)); VOA's 2020 Best Practices Guide; and 22 C.F.R. § 531.4 (stating that “[n]etwork’ [as used here and in the IBA] . . . does not include any officer or employee of USAGM not within VOA or OCB, including the Advisory Board or the Chief Executive Officer.”).

⁶ The Director and Deputy Director of VOA—USAGM's fifth and largest network—resigned on June 15, 2020, immediately prior to your arrival.

- Prohibiting several offices critical to USAGM’s mission—including the Offices of General Counsel, Chief Strategy, and Congressional and Public Affairs—from communicating with outside parties without the front office’s express knowledge and consent;
- Improperly froze all agency hiring, contracting, and Information Technology migrations, and either refused to approve such decisions or delayed approval until the outside reputation and/or continuity of agency or network operations, and at times safety of staff, were threatened;
- Illegally repurposed, and pressured career staff to illegally repurpose, congressionally appropriated funds and programs without notifying Congress; and
- Refused to authorize the renewal of the visas of non-U.S. citizen journalists working for the agency, endangering both the continuity of agency operations and those individuals’ safety.

The USAGM CEO has oversight of the networks and OTF. This includes the ability to “direct and supervise all broadcasting activities [pursuant to the IBA and related authorities],” “review and evaluate the [networks’] mission and operation[s]. . . .,” and “ensure that United States international broadcasting is conducted in accordance with the standards and principles contained in [the IBA].”⁷

However, USAGM’s and its CEO’s oversight has legal limits. Specifically, Congress created a statutory firewall “around USAGM-funded networks, their products, and staff in order to protect their professional independence and integrity.”⁸ This firewall exists “between the newsroom of a USAGM-network; everyone else in the organization; and the Executive Branch of the U.S. Government,” and is “violated when any person . . . outside the newsroom, attempts to direct, pressure, coerce, threaten, interfere with, or otherwise impermissibly influence any of the USAGM networks, including their leadership, officers, employees, or staff, in the performance of their journalistic and broadcasting duties and activities.”⁹ It is also violated when “someone inside the newsroom acts in furtherance of or pursuant to such impermissible influence.”¹⁰ In sum, the networks “enjoy full editorial independence, as that term is defined and understood by best practices of journalism.”¹¹ USAGM oversight must be “conducted in a manner consistent with that conducted by other media organizations which operate editorially independent news divisions. . . .”¹²

A. *Violations of the VOA and RFA firewall.*

⁷ 22 U.S.C. § 6204.

⁸ 22 C.F.R. § 531.3 (a).

⁹ 22 C.F.R. § 531.3 (b) and (c).

¹⁰ 22 C.F.R. § 531.3 (c).

¹¹ 22 C.F.R. § 531.2 (a); *see also* (b).

¹² 22 C.F.R. § 531.1.

The whistleblowers allege that USAGM's removal of the VOA Standards Editor, [REDACTED], and the RFA Executive Editor, [REDACTED], violated both of those networks' firewalls and left them uniquely vulnerable to USAGM's abuses of authority and editorial interference. According to the whistleblowers, the Standards Editor or equivalent—as with every other major news organization—is an integral component to a network's journalistic integrity, providing guidance to senior management and other staff on ethics, accountability, fairness, and accuracy in news coverage. [REDACTED], for example, according to the whistleblowers, had been VOA Standards Editor for a decade and had authored many of the network's policies and trainings on the firewall. USAGM reassigned him, effective immediately, on June 18, 2020, without his management's knowledge and told him to report to the USAGM front office, according to the whistleblowers, where he was given no new duties or assignments and no indication that the reassignment was performance-based.

In [REDACTED] absence, the whistleblowers allege that USAGM again violated the VOA firewall by directing a USAGM political appointee to investigate VOA journalists and other editorial staff after the network's Urdu Service posted a video on its Facebook page appearing to inappropriately depict Joe Biden in late July 2020 in a favorable way. According to the whistleblowers, an investigation is often warranted when a network journalist posts alleged unbalanced content, but such an investigation, consistent with the firewall, is done by someone within the network—typically the Standards Editor—or an otherwise independent party with experience in journalistic standards and best practices. Here, in contrast, according to the whistleblowers, USAGM instead directed a political appointee with no relevant background to investigate the journalists, ultimately resulting in the termination of four of those journalists and the proposed termination of another, despite warnings from USAGM's Office of General Counsel (OGC) and others that these actions violated the VOA firewall. The whistleblowers allege that USAGM political leadership has also launched an investigation into the VOA's White House Bureau Chief for “anti-Trump bias.”

The whistleblowers further allege that USAGM violated the VOA firewall by dictating the location of editorial content on the VOA website. A USAGM press release on June 24, 2020, stated: “CEO Pack directed [that] . . . VOA Editorials will be featured at the top of VOA's home page. . . .”¹³ The whistleblowers allege that this USAGM decision is akin to editorial interference because the decision of what content to ‘headline’ on a news website, as with a newspaper, is an editorial one.

B. Improper staffing decisions and improper ban on external communications.

Moreover, the whistleblowers allege that the staffing decisions made within days to weeks after your arrival in June 2020—removing the network and OTF heads; disbanding the networks' bipartisan boards; replacing those board members with political appointees and naming yourself

¹³ <https://www.usagm.gov/2020/06/24/usagm-ceo-michael-pack-moves-to-restore-voa-editorials-to-former-prominence/>.

as Chairman; placing more than half (six of ten) of the agency's SES employees on administrative leave; and removing, without replacing, the VOA Standards Editor—were improperly motivated. For example, one allegation is that you stated to a whistleblower prior to your confirmation that you believed USAGM senior staff and other network officials were not loyal enough to the White House and thus could not be trusted. (The whistleblower notes that these are not politically appointed positions and so should not be loyal or disloyal to the White House; further, the firewall protects the networks and their bipartisan boards from political pressure, coercion, and retaliation.) Another whistleblower, ██████████, alleges that a senior USAGM appointee informed him that that appointee had been asked to research ██████████ and other senior USAGM employees' voting histories.

The whistleblowers also allege that USAGM leadership has enacted a nearly agency-wide ban on external communications with outside parties without the direct knowledge and consent of a member of the USAGM front office. According to the whistleblowers, this has impeded OGC from defending the agency in already-scheduled court hearings or communicating with opposing counsel when an employee is suing the agency. In one example, the whistleblowers allege that the new ban nearly caused the agency to miss a hearing before an Administrative Judge in a case where an employee had brought a gun to work and the agency needed to defend the employee's removal. According to the whistleblowers, USAGM leadership only gave OGC permission to attend this hearing approximately ten minutes before it began. The whistleblowers further allege that USAGM has stopped responding to Freedom of Information Act requests because USAGM leadership will not give the approval it now requires for employees to do so—resulting in enhanced litigation risks and the agency's failure to fulfil its obligations under that law. This ban has also allegedly prevented the Office of Congressional Affairs from responding to approximately 70 outstanding congressional inquiries because the office is unable to get approval to respond, despite repeated requests to USAGM leadership.

C. Indefinite freeze on spending, hiring, and contracting.

The whistleblowers also allege that USAGM has frozen all spending and contract renewals since approximately June 10, 2020, authorizing expenditures only through the front office, rather than following normal contracting and financial control channels, and only on a limited case-by-case basis. This freeze is alleged to have harmed the agency's ability to fulfill its mission, put its employees at risk of harm, and possibly violated the law. For example, ██████████ alleges that the spending freeze impeded OTF's ability to support internet freedom tools in Hong Kong amidst a crackdown by China, putting at risk the safety and access to information of both network journalists and their audiences. ██████████ further alleges that OTF's Internet Freedom tools have been significantly reduced overall due to USAGM's funding restrictions, again endangering network journalists in high-risk areas by making them more exposed to hostile government officials. ██████████ estimated that, without these OTF tools, VOA and RFE/RL risk losing 84 percent of their audience in Iran, a critical area where the network is currently the number one international broadcaster. According to the whistleblowers, there have also been multiple instances, since June 2020, of RFE/RL and RFA nearly running out of funding to pay

their employees because of the spending freeze.

In VOA's Urdu Service Office of Business Development, for example, despite repeated attempts by the network to get the USAGM front office's approval to renew its contract with the facility in Pakistan which airs its programs, the whistleblowers allege, USAGM approved renewal of the contract on the day it expired. The whistleblowers contend that this resulted in the network not knowing if it would be able to air programs the following day, harmed the network's hard-built local relationships, and caused extraordinary distress to local staff who had already assumed political risk by agreeing to work with the American network.

The whistleblowers also allege that the freeze has prevented VOA from extending the employment of approximately several hundred Personal Service Contractors who provide essential support to VOA daily operations including technical assistance, regional subject matter expertise, and language translation services.

D. Misuse of approximately 20 million dollars of appropriated funds.

Further, the whistleblowers allege that USAGM either has refused to make more than \$20 million of congressionally appropriated funds available or has repurposed those funds without notifying Congress in violation of the law.¹⁴ For example, the whistleblowers allege that USAGM has reduced the budget for its Office of Policy and Research by at least \$1.4 million without notifying Congress, despite multiple whistleblowers urging USAGM leadership to do so as required. The whistleblowers further allege that USAGM moved the Office of Policy and the Office of Internet Freedom out from under the Chief Strategy Officer, and transferred at least \$3.5 million from federal grantees to alternate purposes, again without making legally mandated notices to Congress or to the Office of Management and Budget.

██████████ further alleges that USAGM refused to disburse funds to OTF despite the agency's Fiscal Year (FY) 2020 congressionally approved Internet Freedom Spend Plan explicitly designating \$19.825 million for OTF. Also, ██████████ alleges that USAGM, again disregarding congressional notification requirements, ordered RFA, RFE/RL, and MBN to—within hours of USAGM's request—return funding they had already received for internet freedom initiatives during FY 2019 without explanation. According to ██████████, this resulted in the networks sending millions of dollars in paper checks to USAGM's front office, without the CFO's knowledge or use of any other agency financial controls to secure or document the transaction. ██████████ further alleges that USAGM leadership pressured his office to withhold \$7 million in already appropriated funding from OCB, which could have led to a violation of the Anti-Deficiency Act.

¹⁴ See Sections 7015 and 7062 of the agency's annual appropriations bill (P.L. 116-94—Dec. 20, 2019, act 133 STAT. 2823, for FY 2020), available at <https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf>, which outlines Congressional Notice requirements and others.

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E. Denial of J-1 Visas.

Finally, the whistleblowers assert that USAGM's decision not to renew the J-1 Visas for non-U.S. citizen journalists, which it announced in early July 2020, endangers agency operations and the safety of those journalists. Many J-1 visa holders, the whistleblowers allege, are from countries where working for the U.S. government puts them at risk of political persecution at home. For example, there are allegedly 76 VOA journalist J-1 Visa holders, and approximately 33 of those journalists' visas have already expired or will expire by the end of 2020. One whistleblower estimates that approximately 22 language service operations will be threatened by the loss of J-1 Visa-holding employees between now and 2021. The whistleblowers further allege that USAGM is targeting these J-1 Visa holders for political reasons and because of their national origins.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, an abuse of authority, and gross mismanagement. Please note that specific allegations and references to specific violations of law, rule, or regulation, or other enumerated wrongdoing, are not intended to be exclusive. If, in the course of the investigation, the investigators discover additional violations, please include those findings on these additional matters in the report to OSC. As previously noted, USAGM must have these matters investigated and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the report, along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees, and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the Appendix. If the investigators have questions regarding the statutory process or the report required under section 1213, they may contact Elizabeth McMurray, Chief of the Retaliation and Disclosure Unit, at (202) 804-7089 for assistance. I am also available for any questions.

As discussed above, your investigative report, including any remedial actions, if warranted, is due to OSC by February 1, 2021.

Sincerely,



Henry J. Kerner
Special Counsel

Enclosure

cc: Mr. Matthew Klimow, Acting Inspector General, U.S. Department of State

APPENDIX
AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/PublicFiles>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

February 16, 2021

Ms. Kelu Chao
Acting Chief Executive Officer
U.S. Agency for Global Media
330 Independence Avenue, SW
Washington, DC 20237

VIA ELECTRONIC MAIL

Re: OSC File Nos. DI-20-1086, DI-20-1087, DI-20-1088, DI-20-1157, DI-20-1158, DI-20-1159, DI-20-1160, DI-20-1161, DI-20-1162, DI-21-0015, DI-21-0031

Dear Ms. Chao:

I am referring to you for investigation an additional whistleblower disclosure that officials at the U.S. Agency for Global Media (USAGM) may have engaged in conduct that constitutes a gross waste of funds. This referral constitutes an addendum to my December 2, 2020, referral of whistleblower disclosures to former Chief Executive Officer (CEO) Michal Pack in the above-captioned matters (enclosed). We anticipate that you will delegate the responsibility to investigate these allegations, along with those in my previous letter, to the Inspector General of the U.S. Department of State, and that the investigation will result in a report of findings, as per 5 U.S.C. § 1213. The report responding to these allegations and to those in my December 2, 2020, letter is due to the Office of Special Counsel (OSC) by April 19, 2021.¹

The whistleblower, [REDACTED], who consented to the release of his name, alleges that USAGM has paid over 2 million dollars to a private law firm for work that should have been performed by federal government employees. Specifically, [REDACTED] alleges that, on August 12, 2020, former CEO Pack retained the law firm McGuireWoods to conduct an internal investigation of several current and former USAGM and network employees (“the employees”) – including [REDACTED] and other known whistleblowers – regarding alleged misconduct by the employees.² The whistleblower alleges that Mr. Pack later expanded the scope of McGuireWoods’ work to cover “gather[ing] information for use against [the Open Technology Fund (OTF)]” including for use in ongoing litigation. The whistleblower alleges that McGuireWoods billed thousands of hours to USAGM during the last quarter of 2020

¹ USAGM’s deadline for responding to my December 2, 2020, letter was originally February 1, 2020, but OSC has granted an extension.

² The whistleblower noted that Mr. Pack hired McGuireWoods the same day that he placed the employees on administrative leave and alleges that Mr. Pack belatedly used the McGuireWoods investigation to justify that decision.

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at rates exceeding \$700 per hour and that the work should have been performed by federal employees in the normal course of duty.³

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a gross waste of funds. Please ensure that the investigation and report that you order in response to my December 2, 2020, letter includes this allegation, as well.

As discussed above, your investigative report, including any remedial actions, if warranted, is due to OSC by April 19, 2021. If the investigators have questions regarding the statutory process or the report required under section 1213, they may contact Elizabeth McMurray, Chief of the Retaliation and Disclosure Unit, at (202) 804-7089 for assistance. I am also available for any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a large initial "H" and "K".

Henry J. Kerner
Special Counsel

Enclosure

cc: Ms. Diana Shaw, Acting Inspector General, U.S. Department of State

³ For example, according to the whistleblower, USAGM's Office of Human Resources, Labor and Employee Relations Division routinely performs administrative investigations of employee misconduct and performance comparable to the investigation performed by McGuireWoods here. Further, the whistleblower alleges, the U.S. Department of State Office of Inspector General "has broad jurisdiction over criminal, civil, and administrative investigations of alleged violations of Federal laws, regulations, and policies relating to Department/USAGM programs and operations"—and routinely performs such investigations—which, again, encompass the scope of the work performed by McGuireWoods. *See also* <https://www.stateoig.gov.inv>.