



UNITED STATES COMMISSION  
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

The Honorable Carolyn N. Lerner  
Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

September 16, 2013

Re: OSC File No. DI-12-3628

Dear Special Counsel Lerner:

This is in response to your April 16, 2013, referral of allegations of wrongdoing made to your office regarding the U.S. Commission for the Preservation of America's Heritage Abroad. The allegations were made by Commission employee Katarina A. Krzysztofiak.

*Allegations of Non-Compliance with Workplace Regulations*

Ms. Krzysztofiak alleged that former Commission Chairman Warren Miller improperly appointed and reappointed Mr. Jeffrey Farrow as Executive Director of the Commission. She further charged that in his role as a contractor Mr. Farrow, wrongfully performed inherently governmental functions such as approving various financial transactions, supervising her as a federal employee and serving as the Commission's Designated Ethics Official.

*Allegations of Personal Misconduct*

Ms. Krzysztofiak also alleged that Mr. Miller and Mr. Farrow used Commission resources to conduct private businesses. She further charged that Mr. Miller improperly received gifts from foreign governments that he converted to his personal use, and that Mr. Farrow unlawfully authorized bonuses to himself exceeding \$23,000.

*The Commission's Initial Response to the Referral*

Pursuant to discussions between our respective staffs, OSC agreed that further investigation of the allegations of non-compliance with federal workplace regulations

was unnecessary because, as the new Chair of the Commission, I was taking corrective action in these matters. OSC and the Commission further agreed that the allegations of personal misconduct would be referred for investigation to the Office of the Inspector General of the General Services Administration.

### *Corrective Actions Considered and Taken*

#### *1. Non-federal employee performing inherently governmental functions*

##### *Background*

I have been a member of the Commission since April 20, 2011, and on January 25, 2013, I was designated Chair of the Commission. As you note in your letter, the Commission is a small and unique institution. In preparing to respond to your office over the past months, I have learned much about the history of the Commission and the many concerns detailed in your letter.

As you point out, the Commission is authorized to appoint federal employees. Since its inception, however, the Commission has been severely limited in its ability, based on budgetary restrictions, to appoint federal employees to support its mission. In the early years, The Office of Management and Budget, (OMB) determined that the Commission should raise private funds for its work. As a result, from 1985 to 1990, all of the Commission's expenditures, including contractor fees, were paid by a 501(c)(3) entity known as The Associates of the U.S. Commission for the Preservation of America's Heritage Abroad.

Except for the appointment of Ms. Krzysztofiak as a federal employee in 2004, the Office of Management and Budget had refused to grant the Commission FTEs for the appointment of other federal employees. The Commission's budget, which by then included limited appropriated funds, still could not support the hiring of a full time federal employee to serve the critical functions of an Executive Director. It was under these budgetary restraints that former Chairman Miller in 2001 engaged Mr. Farrow, through Mr. Farrow's firm, to provide essential services to the Commission and named him Executive Director.

In proceeding in this way, Mr. Miller was continuing practices that were well established at the Commission. Mr. Farrow's predecessor had served previous Chairmen under similar arrangements and with the same title for more than twelve years prior to Mr. Farrow's engagement with the Commission. Moreover, in the first four years of his service, Mr. Farrow's compensation was paid entirely from the Associates' funds.

## *Implications*

For more than two decades, because of funding and FTE limitations, the Commission has used contractors to perform functions that otherwise would be performed by government employees under the direction of the Commission Chair. Mr. Miller and his predecessors raised these management issues and the problems associated with this approach multiple times with officials at the General Services Administration, the Office of Management and Budget, and the Office of Government Ethics. Each of these agencies agreed that without further Congressional action, the Commission had no viable alternative to the way in which it was proceeding. The Commission also regularly reported to the Congressional Appropriations Committees its use of contractors for the Executive Director, Designated Agency Ethics Officer (DAEO) and other positions. (For examples of efforts by the Commission to address some of these issues please see Appendix A to this report which consists of communications between the Commission and OMB).

## *Actions Taken*

### *1. Supervision of federal employees and signing of documents*

On June 5th of this year Mr. Farrow and I met with the Senate Appropriations Subcommittee staff member who oversees the Commission's account. We reiterated the history of the Commission and briefed her regarding the difficulties faced by the Commission discussed above. We further discussed the possibility of a legislative solution to some of the problems. We will continue these efforts to encourage legislative action.

Additionally, I am pleased to report that, at the urging of the Commission, the President's Budget for Fiscal Year 2014, addresses some of the problems discussed in your letter and herein. The proposed budget, which has been approved by the Committees on Appropriations of both houses of Congress, would increase the FTE for the Commission from one to three and provide appropriate funding for these positions. This will allow the Commission to convert the two positions that are currently filled by full-time contractors into positions for full-time federal employees.

Finally, these personnel will be supervised by the Commission Chair and I have also taken over the responsibility of signing financial and other Commission documents.

### *2. The Commission's Designated Agency Ethics Official*

Considering the concerns raised in your letter, the Commission contacted the Office of Government Ethics to ask for review of the Commission ethics program. The OGE has recommended that I designate myself or another Commission member to serve as the Commission's Designated Agency Ethics Official. Accordingly, I have relieved Mr. Farrow of this duty and have designated myself as the DAEO. I will also designate another member of the Commission to serve as Alternate DAEO.

### *3. Limitations on use of contractors*

You question the designation of Mr. Farrow as Commission Executive Director for the past eleven years. The possible problem with his annual reappointment appears to stem from confusion about the authority under which Mr. Farrow has worked for the Commission. It seems that either the Federal Acquisition Regulation or 5 U.S.C. §3109 would have applied to the agreement between Mr. Farrow's firm and the Commission.

Under 48 C.F.R. § 37.104 of the FAR, "a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel." This section of the FAR sets forth the guidelines for such personal services contracts, including §37.104 (d)(5): "The need for the type of service provided can reasonably be expected to last beyond one year." Arguably, this is the regulation under which Mr. Farrow was retained once appropriated funds were used to pay for his services.

You note, however, that 5 U.S.C. §3109, regarding the procurement of temporary and intermittent services of experts and consultants, is the appropriate authority for the Commission's arrangement with Mr. Farrow. In this context, you question whether his work for the Commission can be considered intermittent under this statute.

Assuming that §3109 applies in this case, I can attest that during my eight months as Chair, Mr. Farrow's work has fit within the definition of intermittent services under 5 C.F.R. §304.102. That is, Mr. Farrow does not work a regularly scheduled tour of duty. Rather his services are used at the will of the Chair depending on Commission workload and considering his availability in light of his employment outside of the Commission. This arrangement is identical to that used throughout Mr. Miller's tenure as Chairman.

Although the agreement between Mr. Farrow's firm and the Commission was unwritten, the evidence set forth in the OIG report, including the testimony of Ms. Krzysztofiak, indicates that both Mr. Miller and Mr. Farrow understood that the intermittent services provided by Mr. Farrow would never exceed 1000 hours per year. Mr. Farrow has informed me that, while his hours vary greatly from week to week, he spends no more than forty percent of his time on Commission business, has never worked on Commission business for more than 1000 hours in a service year, and has

worked fewer than 800 hours per year since 2007. Pursuant to 5 C.F.R. §304.103(c)(2), “an agency may reappoint an expert or consultant who works *on a part-time or intermittent schedule* [italics added]” as long as the arrangement meets the guidelines of one of two options. In the case of Mr. Farrow, Option 1 - Annual Service appears to apply:

*(i) Option 1 - Annual service* - An agency may reappoint an expert or consultant with no limit on the number of reappointments, as long as the individual is paid for no more than 6 months (130 days or 1, 040 hours) of work . . . in a service year.

There seems to be no dispute that Mr. Farrow has worked and continues to work part-time for the Commission and, as mentioned above, the nature of his service meets the regulatory definition of intermittent. Nonetheless, the absence of a written contract has proven to be problematic. To remedy this, on behalf of the Commission I am in the process of negotiating an appropriate contract which will set forth the terms of Mr. Farrow’s service. The contract will provide that Mr. Farrow will serve the Commission on a part-time, intermittent schedule to be determined based on the needs of the Chair of the Commission.

In order to guarantee that the arrangement between the Commission and an Executive Director meets statutory and regulatory requirements, I will be seeking legal guidance from OPM and GSA in the drafting of this contract. Given the fact that the Chair of the Commission is a part-time and uncompensated position, one of my concerns is the need to provide the Commission with sufficient, reliable and knowledgeable executive leadership. I know this was also a concern of my predecessors. The challenge will be for the Commission to maintain such institutional stability and continuity of operations under current law and regulations.

### *The Office of Inspector General Investigation*

On August 15, 2013, the OIG issued its Report of Investigation to the Commission. (Appendix B) The OIG report indicates that investigators reviewed GSA and Commission documents, including electronic documents, and interviewed all of the pertinent witnesses including Ms. Krzysztofiak, Mr. Miller and Mr. Farrow. The complete list of witnesses and schedule of meetings is listed on pages 2 and 3 of the OIG Report.

#### *1. Alleged unlawful gifts*

With respect to the allegation that Mr. Miller received unlawful gifts from foreign governments that he kept for his personal use, the evidence showed that, although Mr. Miller received multiple gifts in the course of his chairmanship, none of them were above the value level that would require a report or divestiture. I believe it is noteworthy that,

as to one of the gifts in particular, the OIG reported that in 2006 Mr. Miller had called the U.S. Embassy in Croatia to ascertain the value of a lithograph he had received as a gift. The OIG further reports that the U.S. Embassy responded in an email to Ms. Krzysztofiak informing her that the gift was evaluated between \$120-\$150, an amount that she knew was below the threshold value requiring a report. The OIG found that all allegations of improper receipt of gifts were unsubstantiated.

*[Page 4 of the OIG Report states that I testified that Mr. Miller told me he had received two gifts while serving as Chairman. I do not recall identifying any exact number of gifts, nor do I recall whether Mr. Miller ever identified any specific number to me.]*

## *2. Alleged bonuses*

As to the allegation that Mr. Miller and Mr. Farrow authorized bonuses exceeding \$23,000 for Mr. Farrow, the OIG found that there was no evidence that Mr. Farrow received any bonuses and that this allegation was also unsubstantiated.

## *3. Alleged misuse of government resources*

The OIG report did not substantiate the allegation that Mr. Farrow used government resources to conduct his private business. Mr. Farrow testified that he used his own phone and internet connection when working on his private business in the Commission offices. Mr. Farrow also testified that he never met in the Commission offices with clients or others related to his private business. I have instructed Mr. Farrow to conduct only Commission business when he is present in the Commission's offices. No action beyond that seems indicated.

Regarding the allegations that Mr. Miller used government resources to conduct private businesses, the OIG found evidence that he used "limited" government resources (including limited services of contractor employees) in his private law practice. Mr. Miller testified that he had a limited law practice which he conducted principally from his home. He also stated that he had limited client meetings at the Commission offices, but was unaware that this was not permitted.

The OIG noted evidence from Mr. Miller's accountant that Mr. Miller billed, on average, 3.76 hours per month for his law practice during the period from 2007 to 2012. The evidence also showed that Mr. Miller's use of Commission employees for secretarial support was minor. For example, Ms. Molton said she spent ten to fifteen minutes per month working on legal documents for Mr. Miller.

Although the OIG reports that Ms. Krzysztofiak testified that she learned from Ms. Roosa that Ms. Molton resigned from the Commission because she was "asked to do things that were immoral and illegal," this testimony is contradicted by Ms. Molton's December 16, 2011, resignation letter in our files [Attachment A]. Moreover, I have

spoken to Ms. Roosa about this matter and she denies that Ms. Molton ever told her this. She further denies that she herself ever reported such a statement to Ms. Krzystofiak.

With respect to Mr. Miller's conduct, therefore, I conclude that any transgressions of government regulations by him were *de minimus*, and that, in any event, he is no longer the Chairman and no longer occupies a Commission office, so no further corrective action is warranted.

It is my hope that the work we have done in answer to your concerns will meet the standards for reasonable resolution of these matters under the statute. The raising of these issues has resulted in important clarification of procedures at the Commission. It is my goal to ensure compliance with all regulations in carrying out the work of the Commission.

Please call me at [REDACTED], if you wish to discuss this matter.

Sincerely,



Lesley Weiss  
Chair

# Appendix A

**Date:** October 4, 2004 10:02:00 PM EDT

**To:** "Parikh Shah", Khushali

**Subject: RE: Budget submission**

The numbers for our FY06 request are attached. I am working on the narrative explanation/formal request. In the interim, there are important points of explanation you should be aware of in looking at the numbers.

\* The major change that came from Chairman Miller Sept. 30 primarily impacted FY05 but also substantially affected FY06. It was an insistence that I become a full-time and federal employee in FY05. He has been seeking this for a few years and it is needed but we have heretofore operated on the premise that it will require a budget over \$500,000. We have been held under that level so as not to appear on budget scoring (\$500,000 and under is rounded down to zero for this purpose). To accommodate this change, FY05 plans are changed to (1) not fill the recently vacated (and even more needed) staff assistant position until FY06 and (2) delay work on one of our two statutory mandates, identifying cultural properties in other countries. These essential costs appear in the FY06 numbers, although there is a domino effect in the survey costs with some previously planned FY06 survey work further postponed until FY07.

\* The request would not permit us to do as much survey work as we should.

\* FY04 survey costs (Other contractual services) were much lower than normal because much of the actual work was covered by obligations made prior to FY04 due to field work and reporting delays.

\* In the little more than three years Warren has been chairman, we have gone from four bilateral cooperation agreements (our other statutory mandate) to 19. Negotiating the agreements has increased travel costs; implementation will more so. Implementation also increases survey responsibilities. The increase in the FY06 request is notable percentage-wise (although it is a miniscule amount of money) but it is minor in comparison to the explosion in our workload and costs and is substantially less than really needed. (In addition to accomplishing much more diplomatically and doing more in surveying, we have also greatly increased the amount of funds raised from outside government for site preservation projects.)

\* We are in danger of losing our first-rate but also part-time research (including surveys) director because we pay him so much less than the non-profits for which he also does work.

\* In addition to increases in costs from private vendors, other agencies (primarily GSA, which provides our fiscal services, and State, which provides translating and foreign in-country negotiating assistance) are charging us more.

\* Some of the increased GSA cost is due to personnel costs with the federalization of our few staff slots.

\* The costs of our personnel has also increased substantially due to federal benefits.

The bottom line is that the FY06 request is for an amount that will be tight. We have been held to roughly the same level of funding for several years as our work and costs have increased. We really need to break through our arbitrary ceiling if we are to continue our work and fulfill our statutory mandate and our country's international commitments.

Jeffrey L. Farrow

**Date:** October 13, 2004 8:25:00 PM EDT

**To:** "Parikh Shah", Khushali

**Subject:** RE: Budget submission

Sorry to get back to you late. I had to go out of town yesterday for the funeral of a cousin who died suddenly. I also had to spend much of the last week and a half on non-Commission work – the tax bill Congress completed action on yesterday (why it would help the Commission for me to be full-time).

1. The FY06 request covers four FTE – the program manager, the administrative officer, a staff assistant, and the executive director. The program manager has finally become a federal employee. We would convert the other positions.
2. In recent years, Other Contractual Services has paid for all staff in addition to survey contracts. Also a few other specialists on an ad hoc basis, such as IT and Web technicians, etc. In FY06, it would continue to pay for our research director, who is part-time, and pay for an additional contract staffer, to help with the backlog on survey reports, archiving (which has not been done since the Commission was established) etc.
3. The Commission and State have agreed to seek 28 bilateral agreements pursuant to the law. I hope we can get all or most all by the end of FY06.
4. In FY2005, survey fieldwork is scheduled to be completed on: Holocaust sites in Latvia; Jewish and Holocaust sites in Moldova; and Jewish, Protestant, Roma and Muslim sites in Bulgaria. Fieldwork is to begin and be completed on Jewish and Holocaust sites in Macedonia, Serbia and Montenegro and Roma sites in Poland. Fieldwork is planned to begin on Jewish and Holocaust sites in Belarus and Croatia. Survey reports are to be published and/or Web-posted on: Jewish and Holocaust sites in Bosnia and Herzegovina, Estonia, and Ukraine; Jewish cemeteries and Holocaust sites in Lithuania, Jewish sites in Romania and Slovenia; and Jewish cemeteries in Latvia. Preliminary reports are to be completed and posted to our Web site on Jewish and Holocaust sites in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and Slovakia. The FY2006 request would fund completion of fieldwork on the survey of Jewish and Holocaust sites in Croatia. Fieldwork on Jewish and Holocaust sites in Hungary would begin. It would also continue work on the survey of Jewish and Holocaust sites in Belarus. Reports would be published on: Jewish, Muslim, Protestant, and Roma sites in Bulgaria; Jewish and Holocaust sites in Macedonia, Moldova, and Serbia and Montenegro; Holocaust sites in Latvia; and Roma sites in Poland. We would like to -- and should -- do more in 06 but I arbitrarily held down the request so it would not seem like too great a percentage increase. The real problem is that we should have been higher at least in FY05.

**Date:** February 19, 2009 8:28:00 PM EST

**To:** 'Pond, "Ruxandra I."

**Subject:** FY10 Request

Ruxandra,

Attached is a chart outlining the Commission's planned FY10 spending with comparisons to FY09 and FY08.

The following explains the noteworthy changes in spending;

**Travel:** I expect that we can make some economies (\$6,000) with a new Chairman who will presumably devote less time to the Commission. (Spending was unusually low in 2008 because Members absorbed most of the meeting expenses.)

**Communications:** We should be able to pare some delivery expenses (\$1,000).

**Printing:** A slight increase (\$2,000) is anticipated because a new Chairman will probably want to reprint some material. (Most of the cost this year will relate to a soon-to-be-printed report to the President and the Congress.)

**Contractual Services:** IT - \$8,000; Web-posting - \$6,000; Auditing - \$18,000; Report-writing and public information, including press - \$18,000; Administrative Officer and Secretary, including benefits - \$115,000; full-time Executive Director or part-time Executive Director and Research Manager, beginning with the replacement of the Chairman mid-year - \$151,000.

**Government Account:** Costs should decrease since refurbishment of the Commission's new government office space by GSA is being completed this year (with most expenses earlier) leaving only GSA financial management and State Department foreign location and translation assistance expenses.

**Equipment:** The major purchase would be a digital phone system, which should cost less than the major purchase this year, a new copier.

Please tell me if you need any further information.

Thanks.

Jeff

**From:** Jeffrey L. Farrow <[farrow@heritageabroad.gov](mailto:farrow@heritageabroad.gov)>  
**Date:** September 25, 2012 10:01:16 PM EDT  
**To:** "Bryant A. Jones" <[Bryant.A.Jones@omb.eop.gov](mailto:Bryant.A.Jones@omb.eop.gov)>  
**Subject:** Edited Explanation of FY14 Request

Bryant, I have made a few edits in the narrative sent earlier.

The attached chart breaks down the draft Fiscal Year 2014 Commission request and compares it to the past, current, and coming fiscal years. This e-mail will help explain it.

The submission complies with the guidance to request five percent less than the amount in the President's Fiscal Year 2013 Budget, a decrease from \$602,000 to \$572,000. But, as per the guidance, it also includes and proposes addbacks to the FY2014 level in the FY13 Budget, \$600,000.

Personnel Compensation and Benefits:

[REDACTED]

[REDACTED]. [REDACTED] the request would increase the FTE to two and convert one of the two full-time contractors to be a full-time, permanent government employee. This would be accomplished by using some of the funds spent in the past under Other Contractual Services, and this is reflected in the request's amount for Personal Compensation and Benefits. [REDACTED]

[REDACTED] the Commission would hope to convert the other full-time contractor to become a government employee. The Commission has only two hiring authorities: to hire government employees and to hire contractors on a temporary and intermittent basis. One of the full-time contractors has been working for the Commission for nearly five years; the other for nearly a year. They cannot reasonably be considered temporary and intermittent. They should also be permanent employees and have the normal benefits and tax status of employment. Even with the proposed add-backs, it will only be possible financially to have them be government employees [REDACTED]

[REDACTED]. Without the proposed add-backs, it will only be possible in the budget to have the contractor with the most seniority become a government employee.

The Chairman's priority in terms of government employment remains for me, as

Executive Director, to become full-time and a government employee. I believe that it would be preferable for the Commission to have a full-time, government employee Executive Director. The need for this may be even greater if there is a new Chairman who is otherwise employed and does not work for the Commission on an almost full-time basis without compensation, as is likely. But the guidance for the request would not afford the hiring of me or another senior level Executive Director in addition to the spending that is imperative for the Commission.

#### Contractual Services and Supplies:

Spending for transportation this year was approximately half what it was last year, which was a more typical year. This year, there was no travel to eastern and central Europe, the Commission's area of responsibility. For various reasons, planned trips were postponed or canceled. Most other travel is for Members of the Commission to attend Commission meetings and for the Chairman in connection with projects, fundraising, and speaking to groups.

Payment for Members to attend Commission meetings is a statutory requirement, although some Members pay for their own travel. [REDACTED]

[REDACTED] and the likely need for the Commission to move its offices, the FY13 Budget amount may not permit any foreign travel. The FY 13 amount reflects a slight (\$2,000) increase from this year (to \$24,000) but this may need to be devoted to Commission meeting travel, particularly because some of the newer appointees to the Commission do not have the personal means to forego Commission payment or reimbursement for travel. It is difficult to conceive of the Commission accomplishing as much as it has without any travel to its region of responsibility. This is a particular handicap for one of the two statutory missions of the Commission: to negotiate agreements with foreign governments on the protection and preservation of sites associated with the cultural heritage of Americans. The guidance level for the FY14 request would only permit an additional \$1,000 for travel and transportation costs.

The Commission was informed last week by the General Services Administration that it may well have to move from its current office space midway into FY13 because the current lease is up and its neighbor Federal agency that occupies most of the floor on which the Commission has its offices has decided to give up all space on the floor. The landlord will, consequently, probably not want to renew the lease for the Commission alone. The GSA has advised that, in any case, market rates are 38% higher than the current rent paid by the Commission.

Based on this, a rental cost of \$112,000 in FY14 is projected. The chart reflects this increased cost. It also shows an unusual (\$12,000) increase in cost from last fiscal year to this one. This is because GSA deducted too little from the Commission account for rent in the past, an error that was corrected with increased deductions this year.

The Commission reduced spending for communications, utilities, and other charges from last year to this (\$16,000 to \$12,000). The spending will increase during the coming fiscal year to institute 'cloud' computing for security of information purposes and increase because of the expected move of the Commission's offices (\$3,000 each). The increased cost of 'cloud' computing would continue into FY14.

Identifying and reporting on sites in eastern and central Europe associated with the cultural heritage of Americans is one of the two statutory missions of the Commission. The constraints of the amounts of the FY13 Budget and the FY14 guidance will not permit further survey work. The burdens of the FY13 budget will only permit printing of a survey report that is ready to go to press now and will not permit printing of survey reports in FY14. In the future, such reports will have to be posted online only. There will also not be funds during the next two years for a Commission report to the President and the Congress. The last such report was done in 2009.

The bulk of the ongoing costs in the other contractual services object class are for the Commission contract staff. Additional ongoing costs are for the firm that audits the Commission's accounts (\$13,000), and the company that provides IT services for the Commission (\$5,000). Other intermittent contractors provide writing, photographic, Internet and other services. The FY13 Budget and FY14 guidance amounts are not adequate to enable further hiring of intermittent contractors. This will require a change in operations. [REDACTED]

[REDACTED]. No such costs are anticipated for FY14. [REDACTED]

[REDACTED]. This would especially place a burden on the Commission staff if the Chairman of the Commission is replaced, as is likely, since the current Chairman works for the Commission on an almost daily basis even though Commission Members are not paid and a successor is not expected to be able to devote nearly that amount of time, leaving a gap in work performed, [REDACTED] is a part-time contractor..

The Commission expects extraordinary costs next year for goods and services from other government agencies. The largest single additional cost would be to have GSA prepare and wire new office space for the Commission (\$30,000) but a substantial unusual cost would be for [REDACTED]. These costs would not be factors in FY14. The costs are in addition to the Commission's usual costs for financial services by GSA (\$29,000), security services from the Department of

Homeland Security (\$2,000), and services by the Department of State related to travel and translating (only \$1,000 is expected for translating in the future). The Commission had higher costs for reimbursements to other agencies last year than it has had this year because some costs related to travel to eastern and central Europe required reimbursements to the Department of State, funds were budgeted for required archiving services by the National Archives and Records Administration, and for employee training.

The Commission reduced spending on supplies and materials substantially this year in comparison to last year (\$27,000 to \$19,000) and will make further reductions next fiscal year (\$15,000). The FY14 guidance would only afford an amount for supplies and materials that reflects an additional substantial reduction that is included in the request (\$10,000) but would probably impose an impediment to Commission functioning.

Because of equipment purchases last year and preceding years, the Commission made no equipment purchases this year. The FY13 Budget amount would not afford purchases next year either. The FY14 request includes a minimal amount for equipment (\$1,000) to be prudent, which would, hopefully, be enough.

Addbacks:

The Commission's priority request for adding back funds to reach the FY14 level in the FY13 Budget is to enable the Commission to retain GSA to provide human resources services for Commission government employees. [REDACTED]

[REDACTED]

The second priority for adding back funds would be for first, essential travel, and, second for supplies and materials, both of which would be inadequately funded by the request due to other mandatory costs and the constraints of the guidance amount.

Thank you for your patience. Please let me know of any questions.

Jeffrey L. Farrow  
Executive Director  
U.S. Commission for  
the Preservation of America's Heritage Abroad

**From:** "Jeffrey L. Farrow" <[farrow@heritageabroad.gov](mailto:farrow@heritageabroad.gov)>  
**Date:** October 8, 2012 4:17:40 PM EDT  
**To:** "Jones, Bryant A." <[Bryant A. Jones@omb.eop.gov](mailto:Bryant.A.Jones@omb.eop.gov)>  
**Subject:** Re: Exec Director conversion

Bryant,

Friday, the President designated a new Chairman -- although neither the new nor old Chairmen know it yet. I was working with White House Personnel Friday on the notifications but I think it will now be tomorrow. The FY14 Budget is one of the first matters I want to raise with the new Chairman. She may well not want to make any changes but I want to make sure.

If not, quick answers to your questions from home are that:

- conversion would add \$103,000;
- an about equal amount would be subtracted from contracting; and
- the total would be around \$700K, presuming a \$600,000 base -- but I will go over all the numbers when in the Commission office. (It could be up to \$45,000 less if it were someone newer and more junior.)

Jeff

On Oct 8, 2012, at 2:12 PM, Jones, Bryant A. wrote:

Jeff,

What is the additional cost to convert the Executive Director from a contract employee into a full-time government FTE? As it stands, the FY 2014 Budget you submitted shows \$170K for contract staff. I am assuming this would go down to offset the Executive Director becoming an FTE. Would additional funds over \$600K be needed to do this conversion?

Thanks.

**Bryant A. Jones**

Executive Office of the President  
Office of Management and Budget  
International Affairs Division

[REDACTED]  
[REDACTED]  
[REDACTED]

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UNITED STATES COMMISSION  
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

WARREN L. MILLER  
CHAIRMAN

February 2, 2009

Hon. Peter Orszag  
Director  
Office of Management and Budget  
Room 252 Eisenhower Executive Office Building  
Washington, DC 20503

Dear Director Orszag:

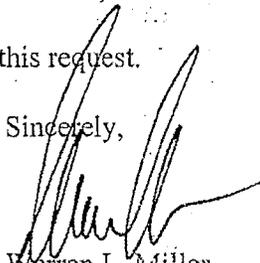
I am writing to appeal the FY 2010 Passback for the Commission. The Passback is a good assumption based on the FY 2009 request. It does not, however, account for two personnel changes. The most substantial in terms of cost relates to me. I have spent most of my work-time since June 18, 2001 on Commission business, although Members are not compensated. My term on the Commission expires July 13, 2010 ... and I may not remain as Chairman much longer. It is highly unlikely that my successor will devote the time that I have to the Commission supplementing the paid staff. The work that I do can be compensated for by making the part-time contractor Executive Director a full-time employee. Another option a new Chairman may choose is to add an assistant to the Commission staff. In either case, the cost should be budgeted for in FY10.

The other personnel change concerns the Commission's two administrative staff. They are in permanent positions although they have been hired as temporary contractors and they and I expect that they will remain with the Commission. Their current employment does not provide benefits that normally are provided long-term employees and should be provided, such as partial coverage of health insurance and retirement.

Most – but not all – of these costs can be accommodated within the Passback amount. I estimate that at an additional \$30,000-\$50,000 would be needed.

Thank you for your consideration of this request.

Sincerely,



Warren L. Miller

**UNITED STATES COMMISSION FOR**  
**THE PRESERVATION OF AMERICA'S HERITAGE ABROAD**

**SALARIES AND EXPENSES**

**Object Classification (in thousands of dollars)**

	<b><u>2007 Actual</u></b>	<b><u>2008 Est.</u></b>	<b><u>2009 Est.</u></b>
<b>Personnel Compensation and Benefits:</b>			
Full-time Permanent	89	91	418 <i>A</i>
<b>Contractual Services and Supplies:</b>			
Travel and Transportation of Persons	33	48	52 <i>B</i>
Rental Payments to Others	53	78	93 <i>C</i>
Communications, Utilities and Misc. Charges	10	12	13
Printing and Reproduction	5	4	6
Other Contractual Services	183	231	131 <i>D</i>
Other Purchases of Goods and Services from Government Accounts	111	18	20 <i>E</i>
Supplies and Materials	9	11	12
<b>Acquisition of Assets:</b>			
Equipment	0	6	4
<b>Total Obligations</b>	<b>493</b>	<b>499</b>	<b>749</b>

**NOTES**

*A* The Commission is authorized to appoint staff as government employees and hire temporary contractors. It has operated with five permanent 'staff' members: a full-time, program manager, who is a government employee; a full-time administrative officer, who is a contractor; and three part-time personnel – the executive director, a researcher, and another administrative staffer. (Costs of the non-governmental staff are reflected in the Other Contractual Services Object Class.)

The part-time personnel should be full-time government employees to meet program and legal requirements. The proposed amount would make the executive director and additional administrative positions full-time government positions. The research position would remain a part-time contractor to hold down costs and because the current researcher would prefer that.

Costs could be held down further than is proposed by not making the second administrative staffer and/or the executive director full-time employees but these economies would leave the Commission in the current situation of having insufficient personnel to meet minimum operational requirements. (E.g., This late request, the new requirement to do a Performance Accountability report, the never-met need to archive Commission files.) Some costs could also be held down by replacing the current executive director with a more junior person as a full-time government employee but that would hamper diplomatic operations in particular.

**B** Actual travel costs in FY06 were \$52,000.

**C** The Commission office has been in subtenant space at below-market rents. The increases reflected for FYs08 and 09 are to meet GSA rates.

**D** Major increased costs in this Object Class are to hire a firm to audit the never-audited Commission financial reports (prepared by GSA, which handles all Commission financial transactions) and to retain (or replace) the current researcher, an expert in the field who has more lucrative competing work.

The Commission will have substantial one-time contracting expenses in FY08 related to the movement of its office.

**E** The unusually large expense in FY07 was to fund GSA work associated with the new Commission office.

## Appendix B



U.S. GENERAL SERVICES ADMINISTRATION  
Office of Inspector General

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August 15, 2013

MEMORANDUM FOR: LESLEY WEISS  
Chairwoman, U.S. Commission for the Preservation of America's  
Heritage Abroad

FROM: GEOFFREY CHERRINGTON   
Assistant Inspector General for Investigations (JI)

SUBJECT: Report of Investigation Pursuant to Memorandum of  
Understanding Between the Office of Inspector General of the  
General Services Administration and the United States  
Commission for the Preservation of America's Heritage Abroad

OIG File No. I-13-H-4520

This memorandum presents our Report of Investigation concerning the captioned matter.

Attachment: Report of Investigation

REPORT  
OF  
INVESTIGATION



OFFICE OF INSPECTOR GENERAL  
U. S. GENERAL SERVICES ADMINISTRATION

## **Basis for Investigation**

By letter dated May 10, 2013, the Chair of the U.S. Commission for the Preservation of America's Heritage Abroad (Commission) requested that General Services Administration (GSA) Inspector General conduct an investigation into three allegations made by a complaining witness:

- (1) Former Commission Chairman Warren Miller improperly received gifts in the course of his duties that he kept for personal use;
- (2) Mr. Miller and/or Commission Executive Director Jeffrey Farrow improperly issued bonus payments to Mr. Farrow; and
- (3) Mr. Miller and Mr. Farrow used Commission equipment to conduct private businesses.

The letter noted that additional allegations (relating to non-compliance with federal workplace regulations) could be resolved without an Inspector General investigation, and this report accordingly does not address them.

The complaining witness's allegations were further detailed in a September 13, 2012, letter (enclosed by Ms. Weiss) from the U.S. Special Counsel, which also provided background information regarding the Commission.

## **Conduct of Investigation**

On June 17, 2013, the GSA Office of Inspector General (OIG) and the Commission entered into a Memorandum of Understanding under which the Commission would compensate the GSA OIG for investigating the above-described allegations. Thereafter, GSA OIG investigative activities included the following.

- On June 18, 2013, a GSA OIG Special Agent contacted GSA's Office of Financial Policy and Operations to obtain information on GSA's contract to provide support services to the Commission. GSA provided copies of the interagency agreements between GSA and the Commission for 2008 – 2013.
- On June 19 and July 15, GSA provided Commission related financial data for 2008 through 2013.
- Between June 19 and August 12, a Special Agent reviewed Commission invoice information submitted by the Commission to the GSA External Services Branch.
- On June 21, two GSA OIG Special Agents interviewed Ms. Weiss in connection with the allegations.
- A Special Agent then began collecting relevant documents, including a copy of the Commission's organic legislation and any law enforcement reports on Mr. Miller and Mr. Farrow.
- On June 24, a Special Agent reviewed materials provided by Ms. Weiss regarding the allegation of improper bonuses.
- A Special Agent traveled to the Commission offices to obtain further information from Ms. Weiss and to speak with other Commission staff who were present.

- On June 26, a Special Agent contacted GSA's Agency Liaison Division to request information on human resources-related services provided to the Commission by GSA. GSA provided two Memoranda of Understanding between GSA and the Commission. The first was a 2013 agreement for human resources services. The second was a 2012 agreement for employee relations services.
- On July 1, two GSA OIG Special Agents interviewed Katarina Ryan (formerly Katarina Krzysztofiak), the Commission's project manager and only full-time federal employee.
- On July 16, 19, and 24, a Special Agent had follow-up discussions with Ms. Ryan.
- On July 18, a Special Agent interviewed Jamie Molton, a former administrative assistant for the Commission.
- On July 22 and 30, a Special Agent had follow-up discussions with Ms. Molton.
- Between July 1 and July 31, Ms. Weiss and Mr. Farrow provided additional materials regarding payments to contractor employees.
- On July 31, Mr. Farrow provided additional information regarding gifts to Mr. Miller, among other matters.
- On August 1, a Special Agent visited the Commission offices to review the Commission's electronic files.
- On August 6, two GSA OIG Special Agents interviewed Mr. Farrow.
- On August 7, two GSA OIG Special Agents interviewed Mr. Miller.

## Summary of Findings

### *Commission Personnel*

**Warren Miller** served as the Chairman of the Commission (by appointment of the President) from 2001 through 2012. He remains a member of the Commission.

**Lesley Weiss** is the Commission's current Chair.

**Jeffrey Farrow** is a contractor employee (employed by his family's firm The Oliver Group, Inc., formerly known as Lisboa Associates), who serves as the Commission's Executive Director on a part-time basis.

**Katarina Ryan (née Krzysztofiak)** is the Commission's project manager and only full-time federal employee.

**Grace Mlay** is a contractor employee who provides administrative and financial services to the Commission.

**Sarah Roosa** is a contractor employee who provides secretarial services to the Commission.

**Jamie Molton** served as a contractor providing secretarial services to the Commission, in which role she was Ms. Roosa's immediate predecessor.

### *Alleged Receipt and Personal Use of Gifts by Mr. Miller*

As explained in the September 13, 2012, letter from Special Counsel Carolyn Lerner, the complaining witness reported that Mr. Miller has taken gifts received from foreign officials for personal use, including a painting and a lithograph that he took to his home.

Pursuant to 5 U.S.C. § 7342(c)(1)(A), a federal employee may “accept[] and retain[] . . . a gift of minimal value tendered and received as a souvenir or mark of courtesy” from a foreign government or the representative of a foreign government. If the gift is of more than minimal value, within 60 days after accepting it, an employee must “deposit the gift for disposal with his or her employing agency” or “deposit the gift with that agency for official use,” if the agency approves. *Id.* § 7342(c)(2). Such a deposit must be accompanied by a statement regarding the gift. *Id.* § 7342(c)(3), (f). “Employees” include presidential appointees. *Id.* §§ 7342(a)(1)(A), 2105(a)(1), 2101(1). As of May 26, 2011, “minimal value” was defined as \$350 (most recently raised from \$335). 5 U.S.C. § 7342(a)(5); 41 C.F.R. § 102-42.10; 76 Fed. Reg. 30,550, 30,551 (May 26, 2011).

Interviews with Commission personnel (including contractors) yielded the following information; those interviews did not substantiate the allegation.

- Ms. Weiss stated that Mr. Miller was the Commission’s Chairman from 2001 to 2012. She stated that according to Mr. Miller, he received two gifts while he was Chairman; one had no value, and the other was located in the Commission’s office.
- Mr. Farrow stated that he is aware of only a few gifts received by persons affiliated with the Commission, most of which were made to Mr. Miller. They generally consist of “books, caps, some pictures, and the like,” and all have little value. Mr. Farrow stated that he was aware of three gifts Mr. Miller received as Chairman, all of which were pictures, and that all three were of minimal value. Mr. Miller left two in the Commission’s office when he ceased to act as Chairman. Mr. Miller had informed Mr. Farrow that a third was at his home, but that it is a gift of minimal value that he is permitted to keep. Mr. Farrow stated that the value of the third picture was “checked” at the time Mr. Miller received it. He specified that on one occasion when Mr. Miller received a gift from an official of Croatia, Mr. Farrow advised him that he would need to determine the value of the item. The Commission contacted the official, who responded that the gift was worth between \$150 and \$200. Mr. Farrow explained that most of these gifts are still located in the Commission’s office, though Mr. Miller has or has had possession of one (which he has offered to return, and which may now be in storage at the Commission’s offices).
- On a visit to the Commission offices on August 1, 2013, a Special Agent observed a framed picture hanging on the wall in the kitchen located in the Commission’s offices. Mr. Farrow stated that the picture was one of the gifts he had previously mentioned. The Special Agent also observed a picture on thick paper, located in the bottom drawer of a piece of furniture located in the Chair’s office. Mr. Farrow stated that this was another of the gifts he had mentioned.
- Mr. Farrow showed the Special Agent a bookshelf located in the Chair’s office, which contained numerous books. He stated that Mr. Miller often received books as gifts, and some of those might be located on the shelf.

- A January 13, 2006, email from Amy Bliss of the Public Affairs Section of the U.S. Embassy in Croatia to Ms. Krzysztofiak stated that Mr. Miller had called the Embassy to request assistance in ascertaining the value of a lithograph by Croatian artist Edo Murtic, which the Croatian Ministry of Culture presented to Mr. Miller. Ms. Bliss stated that “the estimated value would be between \$120 - \$150.”
- Mr. Miller stated that he had received a number of mementoes in connection with his work for the Commission, including a commemorative coin from the Finance Ministry of Italy, a Romanian medal depicting Vlad the Impaler, a Hungarian medal, and a wooden box from Israel (all of which he produced). He stated that he had received other gifts in the nature of pens, commemorative coins, and books relating to countries or their historic sites. Conversely, he gave knickknacks, such as cuff links and paperweights, to those with whom he met. He also received three artworks on paper. One depicts castles, and is hanging in the kitchen of the Commission’s offices; the second was given him by Israel’s Tel Hai College, and is in storage with the Commission; and the third is rolled up and stored in a Commission bookcase. In addition, he received a lithograph from the Croatian Culture Minister in December of 2005. Mr. Miller stated that he researched the value by contacting the U.S. Embassy in Croatia. This was the first gift for which he sought a valuation, and after he learned that it met the “minimal value” threshold, he brought it home, where he still has it. Mr. Miller considered the lithograph a personal gift from the Croatian Culture Minister. He stated that he was never given an oil painting. He did, however, purchase a \$1000 Lithuanian oil painting from an auction house, which hangs in his home.
- Sarah Roosa, a contractor employee who provides secretarial services to the Commission, stated that she was not aware of any gifts Mr. Miller received as Chairman, though at some point during the holiday season someone might have given him a gift basket. Ms. Roosa stated that she had worked directly with Mr. Miller for approximately one year and three months.
- Ms. Ryan stated that Mr. Miller had received gifts, including paintings and lithographs. In particular, he received a lithograph of a medieval scene with buildings, on heavy paper, presented by an official of Lithuania.
- Ms. Molton stated that Mr. Miller received honorary medals, and possibly a bottle of wine during the winter holiday season. She was not aware of any other gifts he received.

*Alleged Bonus Payments to Mr. Farrow*

The complaining witness reported that Mr. Farrow authorized the payment of bonuses to himself from the Commission in the amount of \$5,884 in 2010 and \$17,826 in 2011. The witness alleges that Mr. Miller is implicated in this conduct because he appointed Mr. Farrow as Executive Director, has authorized his services and compensation for approximately 11 years, and has directed or permitted him to perform actions in violation of statute and regulation.

The Federal Acquisition Regulation restricts contractors from providing services to the government when a conflict exists between the interests of the contractor and those of the government. Avoidance of such conflicts follows two underlying principles, one of which is the need to “[p]revent[] the existence of conflicting roles that might bias a contractor’s judgment.” FAR 9.505(a). This would necessarily include a contractor awarding bonuses to itself. Moreover, if a personal services contract does not include a bonus as part of the negotiated price, a federal agency may not pay the contractor a bonus for the work included in the contract. The arrangement to pay a bonus would effectively be a contract modification, which would be void as lacking in consideration.

Interviews with Commission personnel and the review of relevant documents yielded the following information, which did not substantiate the allegation that Mr. Farrow was paid bonuses.<sup>1</sup>

- Ms. Weiss stated that Mr. Farrow was “hired” as the Executive Director in 2001, and has been in the position since. He is a contract employee, but she has never seen a contract between Mr. Farrow and the Commission. Mr. Farrow told Ms. Weiss that he had never received a bonus from the Commission.
- Mr. Farrow stated that no written contract had ever existed between the Commission and him, and that his employment agreement was a matter of verbal discussions with Mr. Miller. According to those discussions, Mr. Miller secured Mr. Farrow’s services for approximately one day a week (or 20% of his time). At first Mr. Farrow was paid \$5,000 per month, then \$8,500 per month, and ultimately it was agreed that Mr. Farrow would not bill more than \$104,000 per year. (On another occasion, Mr. Farrow stated that his annual price ceiling was \$103,000.) Mr. Farrow characterized this as a temporary or intermittent agreement on an “at will” basis, undertaken because the Commission did not have the authority to hire him full time.
- An unsigned “Memorandum of Understanding” between the Commission and Mr. Farrow states that effective October 29, 2001, Mr. Farrow would serve as the Commission’s Executive Director for at least three years, working for 1,000 hours per year, at the rate of \$60 per hour (to be increased by \$3 each year). Mr. Farrow stated that Mr. Miller drafted the document, but it was not signed because Mr. Farrow did not agree to the hourly billing rate. He stated that, though he had submitted invoices to the Commission containing hourly billing rates, his agreement was not based on hourly rates, and he billed based upon the agreed-upon ceiling each year. He noted that he did not always bill \$104,000; in one year, for example, he billed \$99,000.

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<sup>1</sup> The evidence indicated, however, that the Commission had written contracts with neither Mr. Farrow nor its other contractor employees, and that some contractor rates were temporarily increased at the end of each fiscal year to consume unexpended appropriations. In this report, we will discuss the absence of a written contract for Mr. Farrow’s services, but we are referring the matter of no written contracts and increased rates at the end of the year – and other allegations we received that are outside the scope of this review – to the Commission by separate letter for appropriate handling.

- Ms. Ryan stated that there had been documentation appointing Mr. Farrow as the director of the Associates of the U.S. Commission for the Preservation of America's Heritage Abroad (the "Associates"). She recalls the document being a single page, between the Associates and Mr. Farrow's company (Lisboa Associates, which changed its name to in 2008 to The Oliver Group, Inc.), and providing that Mr. Farrow was to spend 25% of his time on the Commission's work, for a total of 1000 hours.
- Mr. Farrow stated that all of the Commission's contractor personnel initially held contracts with and were paid by the Associates, a formerly-existing 501(c)(3) corporation created to fund Commission surveys from the Commission's private donations. The Associates began to wind down in 2007, however.
- Commission invoices (maintained by GSA) reflect that The Oliver Group was paid as follows:
  - 2008 – \$102,621.08
  - 2009 – \$99,538.54
  - 2010 – \$100,677.00
  - 2011 – \$104,842.37
  - 2012 – \$101,921.18
  - 2013 (through July 24) – \$83,192.34.
- A document provided by the Commission in response to a Special Agent's question on the annual compensation for Commission personnel (contractor and employee) stated that "The Oliver Group" received "weekly" payments "based on \$103,000/yr."
- Mr. Miller stated that he became the Commission's Chairman in January of 2001, whereupon the Executive Director announced that he would be leaving. The prior chairman persuaded the Executive Director to stay until Mr. Farrow answered an advertisement for the position in September of 2001. Mr. Miller could not remember whether there was ever a signed agreement between the Commission and Mr. Farrow. He stated that the Commission did not have the funds to hire Mr. Farrow full time; by the time Mr. Miller left the chairmanship, Mr. Farrow was paid approximately \$104,000, or a little more or less. Mr. Miller stated that Mr. Farrow was not an hourly employee. Mr. Miller never paid Mr. Farrow a bonus and was not aware of Mr. Farrow ever receiving one.
- Mr. Farrow stated that he had never received a bonus from the Commission.
- Ms. Molton did not know whether Mr. Farrow ever received a bonus.
- Grace-Anne Mlay, a contractor employee who provides administrative and financial services to the Commission, stated that she was not aware of anyone at the Commission ever receiving a bonus.
- Ms. Roosa stated that she was not aware of anyone at the Commission receiving a bonus.

- Ms. Weiss provided Forms 300 and 2951 obtained from GSA’s finance center (which provides financial services to the Commission), including a September 14, 2010, order for \$5,885 in “contractor labor”; a September 17, 2010, list of payments made, including \$5,885 to “The Oliver Group,” and \$150 to “Warren L. Miller”; and an August 8, 2011, list of payments made, including \$17,827 to “The Oliver Group,” and \$600 to “Warren L. Miller.”
- Mr. Farrow stated in an email of July 25, 2013, that the forms were “used to reserve funds for possible future expenditures (vs. to actually authorize payments),” and that they did not indicate the payment of bonuses.<sup>2</sup> He obtained from GSA a record of payments to the Oliver Group from September and October of 2010, and August and September of 2011. These did not include any payments in the amounts on the Forms 2951. As reflected on these forms, the largest single payment to the Oliver Group was \$1,981.

*Alleged Use of Commission Resources for Private Business by Mr. Miller and Mr. Farrow*

The complaining witness alleged that Mr. Miller conducted activities related to his private law practice from the Commission’s office, using government equipment, supplies, and personnel. She also alleged that approximately 90% of Mr. Farrow’s weekly time is devoted to his lobbying practice, which he predominantly conducts from the Commission’s office, using government resources such as printers, fax machines, and supplies.

The Standards of Ethical Conduct for Employees of the Executive Branch provide that “[a]n employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.” 5 C.F.R. § 2635.704(a). For purposes of this prohibition, “[g]overnment property includes . . . the services of contractor personnel.” *Id.* § 2635.704(b)(1). Thus, among other things, employees “are prohibited from engaging in . . . outside employment on Government time or using Government resources.” OGE Informal Advisory Letter 00 x 11 (Oct. 4, 2000). The prohibition on “allowing [the] use” of government property for non-authorized purposes would also prohibit a federal employee from permitting a contractor employee to use government property for outside employment. Likewise, “[a]n employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.” 5 C.F.R. § 2635.705(b).

Interviews with Commission personnel and the review of relevant documents yielded the following information, which generally showed that Mr. Miller used a limited amount of government property (including the services of contractor employees) for his personal businesses. However, there was insufficient evidence to show any violation by Mr. Farrow.

- Ms. Weiss said that both Mr. Miller and Mr. Farrow have Commission-owned computers at the Commission’s office to conduct Commission-related work. She has no knowledge of either of them using Commission resources for side businesses.

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<sup>2</sup> This matter will also be referred to the Commission in a separate letter.

- Mr. Farrow stated that Mr. Miller did not have a full-time job outside his (unpaid) Commission work.
- Mr. Miller stated that he had a limited law practice, which he conducted principally out of his home. He received personal telephone calls on the phone the Commission pays for, possibly including calls from legal clients. He accessed his personal email account through the Commission computer, and did not bring a personally-owned computer to the Commission to do legal work. Mr. Miller stated that he had limited client meetings at the Commission offices, but was unaware this was not permitted.
- Mr. Farrow stated that Mr. Miller did not understand how federal agencies operate. According to Mr. Farrow, Mr. Miller occasionally had meetings at the Commission offices relating to his investments, or meetings with his legal clients. On one occasion, Mr. Farrow realized that Ms. Molton was working on a letter for Mr. Miller relating to his law practice. Mr. Farrow advised Mr. Miller not to ask Ms. Molton to perform non-Commission work. Mr. Farrow recently learned of other instances of Mr. Miller making similar requests of Ms. Molton. [It is not clear whether these instances occurred before or after Mr. Farrow advised Mr. Miller not to do so.] Mr. Farrow noted that in general, Mr. Miller did very little legal work – perhaps four billable hours per month.
- Mr. Miller’s accountant stated that Mr. Miller billed an average of 3.76 hours per month for his legal practice during the period from 2007 to 2012.
- Mr. Miller noted that he supported himself by substantial distributions from his individual retirement account, not through his law practice. Mr. Miller also stated that he did Commission work outside the Commission offices, including from his home. He stated that Commission travel sometimes involved 16 to 18 days per trip.
- Mr. Miller stated that in his early years as chairman, he had a part-time assistant prepare documents for his law practice, but this took a limited amount of time, and she billed him for the time. He stated that Ms. Molton also did some work related to his law practice (preparing bills and letters), but that she did the work on her own time or after work hours, and thus did not do the work at the expense of the Commission, because she would do the Commission work first. (He did not pay her separately for the work.) This occurred on a very infrequent basis between 2009 and 2011. He stated that Ms. Molton left the Commission because she missed her family and wanted to move back to Florida. Mr. Miller never asked Ms. Mlay or Ms. Krzysztofiak to do work related to his law practice.
- The Commission’s network drive includes an electronic folder named “Warren Miller P.C.,” which included 55 documents (some of which appeared to be successive drafts of the same document) and three sub-folders, one of which was named “Warren Miller, P.C Templates.” The documents included demand letters, bills, and retainer agreements. Some of the documents were labeled as being authored by Ms. Molton.

- Mr. Miller stated that he did not create this folder, and did not create documents related to his legal practice at the Commission offices. He assumed that the documents came from Commission staff members who accessed his Gmail account, accessible through his Commission computer. He stated that Ms. Molton might have generated the documents, or might have scanned documents and saved the images to the network folder. He stated that Ms. Molton would not have done so on her own, however.
- Ms. Mlay stated that Mr. Miller never requested that she work on his personal (non-Commission) business-related activities.
- Ms. Roosa stated that Mr. Miller never asked her to assist him with his law practice, and she never witnessed Mr. Miller discussing his law practice in the Commission office.
- Ms. Molton stated that she worked for the Commission (as a contractor employee) between approximately February 2009 and December 2011, and that during that time, she helped Mr. Miller with billing documents related to his outside law firm. This occurred approximately once a month, and took approximately ten to fifteen minutes to complete. Ms. Molton stated that she resigned from the Commission in order to move back to Florida.
- Ms. Ryan stated that Mr. Miller directed Ms. Molton (Ms. Roosa's predecessor) to type memos for Mr. Miller's non-Commission work. This included a May 2011 eulogy for Mr. Collins, a personal friend of Mr. Miller, and a significant amount of legal and personal correspondence. Ms. Molton resigned in approximately December 2012. Ms. Ryan stated that Ms. Molton had told Ms. Roosa (and Ms. Roosa had told Ms. Ryan) that Ms. Molton resigned because she was asked to do things that were immoral and illegal.
- Ms. Ryan stated that on May 25, 2011, Mr. Miller used the Commission offices to perform work for his law practice for most of the day; between approximately 10:00AM and 3:30PM, he met with a legal client and another attorney. During the same two-week period, Mr. Miller met with the client at the Commission offices on another occasion as well. On approximately August 15, 2011, Mr. Miller met with the client at the Commission offices from approximately 10:30AM to 2:45PM. Ms. Ryan stated that Mr. Miller did not have a separate law office (other than his home).
- Ms. Ryan stated that Mr. Miller used Commission funds to purchase a copy of Black's Law Dictionary, a second copy of the Encyclopedia of the Holocaust, and a five-volume history of Auschwitz; she saw Ms. Molton loading the latter into Mr. Miller's car so that he could take it home.
- Ms. Ryan stated that from approximately May 29, 2012, through May 31, 2012, Mr. Miller took a trip to New York City to meet with a biographer named Oren Rawls, which was not work-related; however, his travel costs were paid out of the Commission's funds. Mr. Rawls then met with Mr. Miller at the Commission's offices for approximately two and a half days, billing the Commission for his services; however, the work he provided was for Mr. Miller, not the Commission.

- Mr. Farrow stated that Oren Rawls was hired by the Commission to assist with writing and editing projects, and he had no knowledge of Mr. Rawls writing a biography of Mr. Miller.
- On September 13, 2010, Mr. Rawls sent Mr. Miller an email that stated (among other things), “Your Romania speech is coming along. I’m about half way through writing the first draft . . . .” On October 8, 2009, Mr. Rawls sent Mr. Miller an email discussing an Associated Press article on a monument in Bucharest for which Mr. Rawls had provided information on the Commission and quotes from Mr. Miller. Mr. Rawls stated that he was including an invoice for 50% of his billable rate because though he had done the work to get coverage for the Commission’s project, “the desired result was not achieved.”
- Mr. Farrow stated that he began working for the Commission as a contractor in 2001, and was not a registered lobbyist during most of the time he has worked for the Commission (though he now is). He stated that Mr. Miller required him to maintain his own phone and internet connection when working on his lobbying business from the Commission offices. He stated that he also uses his personal laptop for this work. He stated that he never met with anyone at the Commission offices who was not associated with Commission business, and that he did not use the Commission credit card for purchases related to his lobbying business.
- Mr. Miller stated that Mr. Farrow has had a side business since he began working for the Commission, but he brought in his own computer and phone.
- Ms. Ryan stated that Mr. Farrow was a registered lobbyist for Puerto Rico and Palau. Ms. Ryan stated that between 2001 and 2008, Mr. Farrow used the Commission’s office space and equipment for his lobbying practice (until lobbying rules changed, at which point Mr. Farrow purchased his own laptop). Mr. Farrow is “always on his personal laptop or cell phone.”
- Ms. Ryan stated that she was told by Ms. Roosa that Mr. Farrow directed Ms. Roosa to give Oliver Group financial documents to Ms. Mlay.
- Ms. Ryan also stated that Commission funds were used to purchase a number of publications that she did not believe were for Commission use, including the *Congressional Quarterly*, the *National Journal*, *The Hill*, the *Leadership Dictionary*, and *Media Book*. In particular, Ms. Ryan stated that Mr. Farrow uses *The National Journal* for his lobbying practice, and that copies of this publication are kept in Mr. Farrow’s private office at the Commission.
- Mr. Farrow stated that Mr. Miller authorized the subscriptions to the *Congressional Quarterly* and the *National Journal*, and that the publications were for Commission use and readily available to Commission staff.

- Mr. Miller stated with respect to the *National Journal* and *Congressional Quarterly* subscriptions that Mr. Farrow believed these were relevant to the Commission as regards the federal budget and other congressional matters, and that Mr. Miller approved these expenses.
- Ms. Ryan stated that between October 3, 2009, and October 9, 2009, Mr. Farrow traveled to Puerto Rico to do work for his lobbying practice; however, he submitted an invoice to the Commission during this period. He also submitted an invoice during a period when he was in Palau for his lobbying work. Ms. Ryan also stated that the Associates made a \$500 donation to the Palau Community College.
- A memorandum dated December 28, 2010, bearing the letterhead of the “Associates of the United States Commission for the Preservation of America’s Heritage Abroad,” from Jeffrey Farrow to Rubin, Kasnett & Associates, directs that firm to “prepare the following checks”: one to Palau Community Hospital and one to Palau Community College, each in the amount of \$500. The memorandum is not signed.
- A printed copy of the February 18, 2011, edition of the Palau Community College Mesekiu’s News states: “Jeffrey L. Farrow, the architect for the Associates of the United States Commission for the Preservation of America’s Heritage Abroad, Inc. donated \$500.00 to PCC Endowment Fund. Thank you for your generous support and contributions toward Palau’s education.” (It appears the newsletter is a digital publication; recent editions are available at <http://www.palau.edu/mesekiu.htm>.)
- Mr. Farrow provided a copy of a cashed check made out from his personal account to “Associates of the U.S. Commission for the PAHA” for \$1000, dated December 28, 2010. Mr. Farrow stated that he had made the donation to the Associates and then directed the Associates to donate the funds to institutions in Palau because the Associates was a tax-exempt organization and he wanted to make his end-of-the-year donation a deductible one.

The GSA OIG has completed its investigation of this matter and is providing this report to the Chairwoman of the U.S. Commission for the Preservation of America’s Heritage Abroad for any appropriate action.

# Attachment A

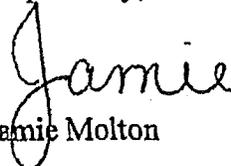
December 16, 2011

Hon. Warren L. Miller  
Chairman  
U.S. Commission for the Preservation of  
America's Heritage Abroad  
1400 K Street, NW; Suite 401  
Washington, DC 20005

Dear Chairman Miller,

It is with a sense of sadness that I have decided to leave my position at the Commission. Being a part of this outstanding agency for almost three years was an experience I will always cherish. The opportunity to know and work with the Members of the Commission, most of whom are truly exceptional individuals, was very special. I would like to thank you, Mr. Farrow, and the staff for your strong support, patient guidance and continuous encouragement. You have been such a wonderful boss and your intrepid leadership is an inspiration. I admire you so much. The Commission is a very special place and the noble work it accomplishes is remarkable. Thank you for everything. I will miss you all.

Respectfully,

  
Jamie Molton



2013 NOV -1 PM 12: 46

UNITED STATES COMMISSION  
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

The Honorable Carolyn N. Lerner  
Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

November 1, 2013

Re: OSC File No. DI-12-3628

Dear Special Counsel Lerner:

This is in further response to your referral in the above-referenced matter. I wish to provide some additional information and clarify a few points addressed in my September 16 report.

The Commission's Designated Agency Ethics Official

Re: Mr. Farrow's service as DAEO

As I noted in my report, Mr. Farrow, at the request of then Chairman Miller and with the acquiescence of OGE, performed the duties of the DAEO because the Commission did not have a federal employee who could do so. Based on the concerns raised in your referral, earlier this year Mr. Farrow informed me that he would not perform these duties until the issue was resolved. The review conducted by the OGE was a routine review and was not initiated by the Commission, as I recounted in my report to you, it was during this routine review that Mr. Farrow asked OGE to reconsider the DAEO question.

Alleged Misuse of Government Resources

Re: Mr. Farrow's use of Commission office

My report indicated that I instructed Mr. Farrow to conduct only Commission business while in Commission offices. I think the record should reflect the way in which this conversation came about. It was in June of this year, also in response to your referral, that Mr. Farrow sought a legal opinion from the General Counsel of the General Services Administration concerning the conduct of non-Commission business on an incidental basis in the Commission office.

The Office of the General Counsel found that, despite the uniqueness of the Commission, there was no exception to the FAR regulation regarding the use of federal offices. Mr. Farrow and I both determined that only Commission business would be conducted at the office.

Re: My *de minimus* finding with respect to Mr. Miller's alleged misuse of government resources

I would like to add the following information. In my report, I noted evidence that Mr. Miller conducted his limited law practice principally from his home. I cited evidence from Mr. Miller's accountant that he billed 3.76 hours per month pursuant to his law practice. It may be important to note that the 3.76 hours represent the *total* number of monthly hours during which Mr. Miller attended to his law practice in *all* locations (home, at other attorneys' offices, corporate offices, etc.); it does not represent the number of hours he conducted legal work at the Commission.

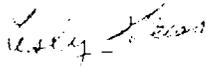
Re: the reference to Mr. Miller's use of an assistant in his legal practice

At page 9, bullet point 6 of the OIG report, it is noted that in Mr. Miller's early years as Chairman he had a part-time assistant prepare documents for his law practice and that she billed him for her time. Lest there be any confusion on this point, I believe the record should reflect that this assistant was not a Commission employee or contractor and did not do any of this work at the Commission office.

If you wish to discuss any of these points or need further clarification, please call me at 202-255-4277.

I thank you for your consideration of this additional information.

Sincerely,



Lesley Weiss  
Chair