



U.S. AGENCY FOR
GLOBAL MEDIA

330 Independence Avenue SW | Washington, DC 20237 | usagm.gov

February 15, 2023

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M St., NW Suite 300
Washington, DC 20310-0101

VIA ELECTRONIC MAIL

SUBJECT: Office of Special Counsel Referral Letter of December 2, 2020, and Supplemental Letter of February 16, 2021

Dear Mr. Kerner,

I am hereby transmitting U.S. Agency for Global Media's response to the referral letter of December 2, 2020, and the Supplemental Letter of February 16, 2021. The investigation report and Corrective Actions summary were prepared pursuant to 5 U.S.C. sections 1213(c) and (d). This report is a product of an independent investigation, informed by the review and findings of reports issued by the U.S. Department of State Office of Inspector General and the U.S. Government Accountability Office, addressing the allegations contained in both letters.

Sincerely,

James McLaren
Acting Deputy General Counsel

ENCLOSURES: Review of Management Actions, June 2020 – January 2021
 USAGM Corrective Actions
 Delegation of authority for transmittal letter (OSC use only)



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February 15, 2023

The Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Mr. Kerner:

By this letter, I hereby authorize James McLaren, Acting Deputy General Counsel, to transmit the attached report, Review of Management Actions June 2020 - January 2021, and the attachment describing actions taken or planned as a result of the investigation pursuant to 5 U.S.C. § 1213(d)(5). Mr. McLaren was present in the Agency during the relevant period and reviewed the report. This report was authored by an independent review team and was substantially complete prior to my appointment as Chief Executive Officer.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Amanda Bennett
Chief Executive Officer





U.S. AGENCY FOR
GLOBAL MEDIA

**Review of Management Actions
June 2020 – January 2021**

February 2023

Introduction

On June 4, 2020, the U.S. Senate confirmed Michael Pack as the U.S. Agency for Global Media's (USAGM) first presidentially nominated chief executive officer (CEO). CEO Pack's tenure at the head of USAGM ended on January 21, 2021. Despite its brevity, his nearly eight-month tenure led to bipartisan criticism that he and his team of appointees evaded federal laws, rules, and regulations; hindered congressional oversight of his decision-making; and put Agency missions at risk.

CEO Pack assumed leadership of USAGM at a time of major organizational change for the Agency. The National Defense Authorization Act for Fiscal Year 2017 (2017 NDAA) overhauled the governance structure for the USAGM, which oversees and funds six journalism and journalism-related organizations. The 2017 NDAA created a new CEO vested with a broad suite of executive powers to govern and make changes at the Agency. The new law retained statutory protections for journalistic independence of USAGM-funded networks by directing the CEO to "respect their professional independence and integrity."

During CEO Pack's tenure, at least 11 Agency employees filed complaints with the U.S. Office of Special Counsel (OSC) regarding an array of actions the Agency carried out under his leadership. After examining the allegations made by these employees, OSC wrote CEO Pack on December 2, 2020, that it had made a determination that there was a "substantial likelihood" that "officials at the 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." Pursuant to 5 U.S.C. 1213(c), Special Counsel directed USAGM, or a designee, to investigate the allegations. Special Counsel also directed that any additional violations discovered in the course of the investigation be included in the report to OSC.

On January 20, 2021, CEO Pack wrote to Special Counsel Henry J. Kerner to reject OSC's December 2, 2020, referral. He summarily dismissed the request by asserting the OSC was "unconstitutional as presently constituted and administered," rejecting OSC's oversight authority and claiming that the whistleblowers' allegations did not merit investigation because they "have an axe to grind." CEO Pack stated that USAGM "did not intend to take any action based on the Letter." (See [Appendix D](#) for the full text of CEO Pack's response.)

On February 6, 2021, OSC supplemented its initial referral of December 2, 2020. OSC requested that USAGM's Acting CEO Kelu Chao investigate additional whistleblower allegations, including allegations that the previous leadership had engaged in gross waste of funds when it hired an outside private law firm for work that should have been performed by federal employees.

In subsequent communications, OSC noted that USAGM's response might benefit from potentially relevant findings and information contained in reports issued by the Government Accountability Office (GAO) and the State Department Office of Inspector General (OIG) on related matters. USAGM, OIG, and GAO assumed responsibility for investigating specific aspects of OSC's referrals.

OSC Directs USAGM to Investigate Specific Allegations

Specifically, OSC directed USAGM to investigate whether the Agency, under CEO Pack’s leadership, engaged in conduct that:

1. Repeatedly violated the Voice of America (VOA) firewall—the law that protects VOA journalists’ “professional independence and integrity”;
2. Engaged in gross mismanagement and abuse of authority:
 - a. Terminated the presidents of each USAGM-funded network—Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), Middle East Broadcast Networks (MBN), and Office of Cuba Broadcasting (OCB)—as well as the president and the CEO of the Open Technology Fund (OTF);
 - b. Dismissed the bipartisan board members who governed the USAGM-funded networks, replacing those board members with largely political appointees, and designating the USAGM CEO as Chairman;
 - c. Revoked all authority from various members of USAGM’s Senior Executive Service (SES) and reassigned those authorities to political appointees outside of the relevant offices;
 - d. Removed the VOA Editor for News Standards and Best Practices (“Standards Editor”)—a central figure in the VOA editorial process and a critical component of the VOA firewall—from his position, leaving that position vacant;
 - e. Removed the Executive Editor of RFA;
 - f. Suspended the security clearances of six of USAGM’s 10 SES members—the named whistleblowers in this referral—and placed them on administrative leave; and
 - g. Prohibited 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;
3. 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, network operations, and, at times, the safety of staff were threatened;
4. Illegally repurposed—and pressured career staff to illegally repurpose—congressionally appropriated funds and programs without notifying Congress; and
5. 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 the safety of those individuals.
6. In the February 2021 supplemental referral, OSC requested Acting CEO Chao to investigate allegations that USAGM, under CEO Pack’s leadership, may have engaged in conduct that constituted gross waste of funds by paying an outside law firm more than \$2 million to perform work should have been performed by federal employees in the normal course of duty.

Appointment of an Independent Review Team to Investigate and Report Findings

Consistent with OSC's direction, in the summer of 2021, USAGM hired a team of three outside subject matter experts to conduct an independent review. The Review Team conducted 78 interviews with 64 current and former employees of USAGM and its networks and grantees who might have knowledge and perspectives relevant to its review. Interviewees included all named whistleblowers, current and former executives, and employees of USAGM, the federal and grantee networks, the Open Technology Fund, and members of the former Broadcasting Board of Governors (BBG) and grantees.

Formal requests for interviews were sent to CEO Pack, 13 senior political appointees who worked at USAGM or in its federal networks, three individuals CEO Pack named to grantee leadership positions, and a career detailee who worked on CEO Pack's leadership team. Most, including CEO Pack, either declined to be interviewed or did not respond to interview requests. The Review Team recognizes that those individuals (except for the career detailee) were not under any legal obligation to consent to an interview. Two former political appointees participated in voluntary interviews. Further, the team reviewed thousands of related documents and records.

Key Findings

OSC requested that USAGM specifically review and report back on a series of allegations (listed in the [Introduction](#)) that CEO Pack and/or members of USAGM's senior management team engaged in actions constituting gross mismanagement, abuse of authority, or gross waste. OSC and USAGM leadership also requested that the Review Team investigate and report on relevant related matters. The findings that follow include matters referred by OSC and other related relevant matters for which the Review Team found gross mismanagement, abuse of authority, or gross waste.

The Review Team found that CEO Pack abused his authority when he:

- **improperly suspended the security clearances of six senior executives and another management employee and placed them on administrative leave** without a legitimate basis after they made protected disclosures, thus violating Presidential Policy Directive 19 (PPD-19);
- **attempted to debar the Open Technology Fund** to prevent them from receiving any federal funding, in violation of federal rules;
- **violated the International Broadcasting Act of 1994 by attempting to enshrine a provision into grantee bylaws and employment contracts imposing limitations on removal of CEO-appointed board members and presidents**, specifically by restricting the grounds for their removal to conviction(s) for a felony or misdemeanor requiring imprisonment; and
- **directed employee-related materials covered by the Privacy Act be sent to individuals outside of the government** against the advice of an external law firm that stated this could violate the law.

The Review Team found that CEO Pack engaged in gross mismanagement when he detailed VOA's Standards Editor into a position with no assigned duties or functions. The Standards Editor was barred from answering questions from VOA staff regarding editorial standards during this period, and CEO Pack did not allow VOA to backfill this position. CEO Pack provided no explanation for this action.

The Review Team found that CEO Pack engaged in gross mismanagement and gross waste when he spent \$1.6 million to engage a private law firm to perform work that did not produce the benefit reasonably expected and could have been performed by federal employees.

The Review Team found that CEO Pack took actions that were inconsistent with the statutory mandate that he respect the networks' journalistic independence and integrity (commonly referred to as the "firewall") and other parts of law related to journalistic independence, although those statutory provisions do not clearly define the limits of CEO authority.

The Review Team found that CEO Pack did *not* engage in gross mismanagement or abuse of authority when he:

- terminated the presidents of the USAGM-funded networks and the president of the Open Technology Fund;
- dismissed and replaced the board members that governed the USAGM-funded networks and designated the USAGM CEO as Chairman;
- revoked all delegated authority from various members of USAGM's SES and reassigned those authorities to political appointees;
- removed the Executive Editor of RFA;
- prohibited several USAGM offices critical to USAGM's mission from communicating with outside parties without the Front Office's express knowledge and consent;
- froze all Agency hiring, contracting, and information technology migrations;
- repurposed congressionally appropriated funds; and
- refused to approve applications or renewals of the J-1 visas of non-U.S. citizen journalists participating in the Agency's authorized Exchange Visitor Program.

The Review Team found that CEO Pack violated laws, rules, or regulations in the following instances:

- In a directive restricting employee communications outside USAGM, CEO Pack failed to exempt legally protected disclosures such as to Congress, the State Department Office of Inspector General, and the Office of Special Counsel. Thus, the directive violated 5 U.S.C. 2302(b)(13).
- On January 19, 2021 (one day before CEO Pack left office), [REDACTED], a senior advisor to CEO Pack, violated the Privacy Act by distributing investigative materials on six senior executives to non-government individuals.
- [REDACTED] (referred to hereafter as [REDACTED], as she was known professionally), Acting Vice President for Legal, Compliance, and Risk, violated regulations of the National Archives and Records Administration requiring that official business be conducted in a government record-keeping system and that documents be preserved.

Table of Contents

Introduction	2
Key Findings.....	5
Table of Contents	7
Executive Summary	10
1. Background and Context.....	21
Journalistic Independence as a Fundamental Principle.....	21
Creation of an Empowered CEO	22
Clarifying Journalistic Independence and CEO Oversight: March 2020 Procedures and June 2020 Firewall Rule.....	23
Evaluating CEO Pack’s Decision-Making.....	25
2. CEO Pack’s Early Actions and Effect on Agency Operations	27
Groundwork Laid by CEO Pack Prior to Arrival	29
J-1 Visas.....	35
Delegations of Authority and External Communication Policy.....	39
Freedom of Information Act Processing	39
Litigation	40
Congressional Requests	40
Interagency Coordination.....	41
CEO Pack’s Appointees Sought Greater Delegation of Authority to Restore Agency Workflow	41
CEO Pack Terminates Board Members and Grantee Leaders	42
CEO Pack’s “To-Do List”	44
3. Career USAGM Executives	47
June: Laying the Groundwork to Fire Career Employees	48
July and Early August: Efforts to Fire Career Executives Move Forward.....	50
Declination of Appearance Request Before the House Foreign Affairs Committee.....	57
Actions Targeting Whistleblowers Continue Post-Election	60
4. Personnel Suitability and Security	63
Personnel Security.....	64
CEO Pack’s Actions Concerning USAGM’s Personnel Security Issues	68

2021 OIG Review	70
5. Journalism and Journalistic Independence.....	71
Journalistic Independence	72
CEO Pack and the “Firewall”	75
6. The Open Technology Fund and Internet Freedom Funding	92
OTF Background and Discussion.....	94
CEO Pack’s Initial Actions Regarding OTF.....	95
CEO Pack Revives the Office of Internet Freedom	95
Issues Concerning Congressional Notification.....	96
USAGM-OTF Oversight Controversies.....	97
CEO Office Interactions with Groups and Individuals Advocating Against OTF	98
OTF’s Creation and Congressional Authorization	99
Debarment Proposal	100
7. Grantee Network Governance	104
CEO Pack Convenes Board Meetings in December 2020.....	106
CEO Pack’s Proposed Limitation on Removal of New Grantee Presidents.	109
8. Use of External Law Firms	110
Use of FAR Exempt Authority Was Problematic and the Contract Award Violated the Applicable USAGM Directive	113
Contract Oversight Was Lax and Ineffective	115
Award of a Contract Supporting the McGuireWoods Investigation Was Irregular and Oversight Was Ineffective.....	116
Work Contracted to McGuireWoods Could Have Been Performed by Federal Employees	117
The Hiring of McGuireWoods Constituted Gross Mismanagement and a Gross Waste of Funds	118
Appendix A: Glossary and Congressional Commitment of Jurisdiction.....	120
Appendix B: Definitions of Gross Mismanagement, Abuse of Authority, and Gross Waste.....	123
Appendix C: Office of Special Counsel Referral and Supplemental.....	125
Appendix D: CEO Pack Response to Office of Special Counsel Referral	134

Appendix E: March 2020 Procedures for Violations of Principles, Standards, and Journalistic Code of Ethics 143
Appendix F: Bios of Expert Review Team..... 145

Executive Summary

This executive summary is intended as a narrative of the actions and allegations OSC directed USAGM to address, along with relevant related matters.

1. Background and Context for Evaluating CEO Pack’s Actions

To put CEO Pack’s tenure in context, it is important to understand the Agency’s mission, its emphasis on journalistic independence, its role in public diplomacy, and recent laws changing its governance scheme.

Journalistic Independence as a Fundamental Principle

Dating back to the founding of VOA during World War II, the Agency emphasized that its journalistic independence is key to its credibility. Several decades of laws reflect a congressional consensus that USAGM best serves the United States’ “broad foreign policy objectives” by modeling a free and independent press as a foundation of democracy.

VOA’s charter stated that:

The long-range interests of the United States are served by communicating directly with the peoples of the world by radio. To be effective, the Voice of America must win the attention and respect of listeners.

These principles will therefore govern VOA broadcasts:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively and will also present responsible discussions and opinions on these policies.”

Newer laws further reinforced the importance of journalistic independence in the Agency’s mission, and Congress codified the need for this professional independence when it enacted a “firewall” in the International Broadcasting Act of 1994.

In 1998, Congress sought to enhance the Broadcasting Board of Governors (BBG) independence by enacting the Foreign Affairs Reform and Restructuring Act. This Act abolished the U.S. Information Agency (USIA) and established the BBG as an independent agency. The bipartisan BBG was composed of nine presidentially appointed and Senate-confirmed members.

Creation of an Empowered CEO

Observers frequently expressed concern that the board governing structure fell short when it came to effective oversight and management. In response, the BBG created a

CEO position in 2015; the CEO would be appointed by and report to the BBG. The BBG delegated to the CEO the authority to manage day-to-day operations of the five networks to provide unity of strategic direction and increase efficiency and effectiveness across the component entities.

In December 2016, Congress took a further step. The 2017 NDAA established a presidentially appointed and Senate-confirmed CEO position to oversee and manage the Agency. The law abolished the nine-member bipartisan BBG. Proponents of the legislation believed it would streamline decision-making and improve efficiency. The 2017 NDAA, which enjoyed bipartisan support, authorized the CEO to exercise authority over a variety of management areas. President Barack Obama said the new provisions empowering the CEO would streamline agency operations and reduce inefficiencies and duplication while “retaining the longstanding statutory firewall, protecting against interference with and maintaining the professional independence of the Agency’s journalists and broadcasters and thus their credibility as sources of independent news and information.” Critics of the legislation expressed concern that USAGM might be more vulnerable to political influence and that the change could lead to the erosion of the protections of the statutory firewall.

Clarifying Journalistic Independence and CEO Oversight: March 2020 Procedures and June 2020 Firewall Rule

In March 2020, the BBG approved “USAGM Procedures for Violations of the Principles, Standards, or Journalistic Code of Ethics.” ([Appendix E](#) details the procedures.) The procedures outline a hierarchy of lapses, how they should be dealt with, and at what level they should be dealt with. This was the first instance of the BBG adopting new procedures affecting the statutory firewall.

The procedures represented an attempt to reconcile the statutory requirement that USAGM respect the editorial independence of the networks as well as USAGM’s statutory mandate to provide oversight of the networks “to ensure that United States international broadcasting is conducted in accordance with the standards and principles as set forth in 22 U.S. Code § 6202.” The rule also sought to reconcile the USAGM oversight role with the need to respect the journalistic independence of the networks as part of the firewall rule.

The rule was adopted on June 4, 2020—the same day the Senate confirmed CEO Pack. It was effective June 11, 2020, and operative during most of CEO Pack’s tenure.

Evaluating CEO Pack’s Decision-Making as CEO

It was against this backdrop that CEO Pack took office. Over the next nearly eight months, CEO Pack aggressively put to the test the boundaries of the executive authorities granted this office. His decisions sparked scrutiny, debate, and legal actions questioning his management and the broader issue of the appropriate federal role in U.S.-funded international media.

2. CEO Pack's Early Actions and Effect on Agency Operations

Many of the disclosures referred to USAGM by OSC regarded actions undertaken by CEO Pack and his senior political team in his first weeks at the Agency. The Review Team found that:

- **CEO Pack did not engage in gross mismanagement or an abuse of authority by terminating the presidents of the networks on June 17, 2020.** He faced no legal restriction in taking these actions at the time. The law, amended in January 2021, stated that grantee network officers “shall serve at the pleasure of and may be named by the Chief Executive Officer.” (OTF is a special case and is addressed in a later section.) The actions attracted critical congressional attention in part due to the lack of prior notice provided to congressional committees of jurisdiction.
- **It was not gross mismanagement or an abuse of authority for CEO Pack to rescind CEO delegations of authority from senior USAGM career executives and then redelegate them to select senior members of CEO Pack's Front Office team, including himself.** Agency leadership has wide discretion regarding delegation of authority. However, these actions slowed internal operations.
- Simultaneous with the rescission of delegated authority, CEO Pack's Chief of Staff issued an Agency-wide directive prohibiting staff from communicating outside USAGM on any Agency matters without prior approval from CEO Pack's Front Office. This directive, combined with the rescission of delegations, slowed internal operations and complicated Agency decisions but did not significantly impact the Agency's ability to accomplish its mission. Key members of CEO Pack's Front Office took actions to mitigate the impact by authorizing personnel to engage in routine external interactions without preapproval. **The Review Team did not find that CEO Pack's approach rose to the level of gross mismanagement.**
- As a separate matter, the directive contained no carve-out for legally protected disclosures such as to Congress, the State Department Office of Inspector General, and the Office of Special Counsel. Thus, **the directive violated 5 U.S.C. 2302(b)(13).**
- **CEO Pack's directive freezing new procurement and hiring in the absence of his approval was not gross mismanagement or an abuse of authority.** It is routine for new Agency leadership to freeze such functions, with exceptions for critical operations, for short periods as they learn more about Agency operations. The freeze as it applied to the grantees was short-lived. However, it applied for a lengthy period at the federal networks and within USAGM. In conjunction with the lack of delegation by CEO Pack, it strained Agency operations, especially at the end of the fiscal year. While some contracts came close to expiring, ultimately approval was granted.

- **CEO Pack’s freeze on hiring absent his approval was felt most notably at VOA.** While CEO Pack approved a relative handful of VOA hires during his tenure, staffing needs compounded over time because he did not act on the vast majority of VOA requests. In January 2021, CEO Pack published memos explaining his actions. One of them addressed his hiring freeze and pointed to personnel security shortcomings at USAGM. Evidence also shows that CEO Pack did express an interest in the effect of the hiring freeze. A senior political appointee working for CEO Pack assessed VOA’s claims of operational impact as overstated. In conducting its fact-finding, the Review Team heard conflicting assessments from career staff regarding the severity of the impact of the hiring freeze. **The Review Team finds that CEO Pack’s inaction disrupted the normal course of Agency operations, but it did not rise to the level of gross mismanagement.**
- **The Review Team finds that CEO Pack’s suspension of reviewing applications and renewals of the J-1 Exchange Visitor Program visas did not constitute gross mismanagement or abuse of authority.** In making this determination, the Review Team balanced the negative impact on VOA and affected staff against CEO Pack’s perceived competing public policy concerns. Those concerns included: (i) significant longstanding deficiencies in USAGM’s personnel suitability and security programs; (ii) the need to comply with the Executive Order directing federal agencies to hire U.S. citizens; and (iii) his concerns with USAGM’s use of the J-1 Exchange Visitor Program authority to obtain the services of foreign journalists.
- VOA had long utilized an approved Exchange Visitor Program. Some Agency staff questioned whether CEO Pack and his staff were aware of the importance of the program to VOA and the history of its usage. **In suspending the program, CEO Pack did not mitigate the impact of the suspensions on VOA or offer a viable alternative for VOA to continue obtaining the services of foreign journalists.** CEO Pack could have taken steps to understand USAGM’s longstanding use of the J-1 authority and should have mitigated impacts. While he acknowledged the need to issue J-1 visa guidance, that guidance was never provided.

3. Career USAGM Executives

Concerning actions taken against senior USAGM career executives, the Review Team found that:

- **CEO Pack abused his authority by improperly suspending the security clearances of six senior executives and another management employee and placing them on administrative leave.** CEO Pack and key appointees targeted several senior USAGM career executives at the beginning of his tenure and sought to remove them from their positions. There is evidence that some of his acts against the executives were motivated by retaliatory animus.

- **CEO Pack’s revocation of delegations of authority to career senior executives complicated Agency operations but did not rise to the level of abuse of authority or gross mismanagement.**
- CEO Pack incurred more than \$1.6 million in expenses billed to the Agency by hiring a private law firm primarily to conduct investigations into the six senior executives. Career officials in the Agency’s Office of General Counsel (OGC) were unaware of the hiring of the law firm, a second law consultancy supporting the investigations, and a third group that also provided legal services to the CEO’s Office. **These actions constituted gross mismanagement and a gross waste of funds.**
- **CEO Pack used a USAGM administrative hearing associated with the suspension of the executives as a pretext to defy a congressional subpoena** to appear on September 24, 2020.
- **On January 19, 2021, [REDACTED], a senior advisor to CEO Pack, violated the Privacy Act by distributing to non-government individuals at a private law firm investigative materials on the six senior executives.** This violation occurred the day before the inauguration of a new President who had stated he would remove CEO Pack once in office. Just days earlier, the private law firm had advised CEO Pack and another appointee in writing that distributing these materials likely violated the Privacy Act.

4. Personnel Suitability and Security

CEO Pack and others who worked in his leadership team have said that USAGM had genuine personnel suitability and security shortcomings and cited those shortcomings as a basis for several actions. The Review Team found that:

- When CEO Pack assumed office, compliance with regulations governing personnel suitability and security had been a longstanding management challenge for USAGM. Although progress had been made in preceding years, many recommendations from oversight agencies remained open. **Improving USAGM’s compliance with regulations governing personnel suitability and national security determinations was an appropriate management focus for CEO Pack.**
- The Office of Personnel Management (OPM) and the Office of the Director of National Intelligence (ODNI) documented many personnel suitability and security recommendations for which corrective action had not been completed, and OPM directed that USAGM redo all investigations since the lapse of delegated authority in 2012. Neither OPM nor ODNI rescinded or invalidated any existing investigations or adjudications previously performed by USAGM. **During CEO Pack’s tenure, USAGM continued efforts to improve compliance with personnel suitability and security recommendations.** These efforts were hampered by CEO Pack’s lack of delegation to his appointees and delay in decision-making.

- **CEO Pack’s public release of OPM’s suitability agent report in July 2020 created unnecessary risks to the USAGM personnel security program and served no valid Agency purpose.**
- **A 2021 review by the Department of State Office of Inspector General found that USAGM had taken actions to address longstanding deficiencies identified by OPM and ODNI with the personnel suitability and national security determination processes.** OIG made no recommendations related to USAGM’s personnel security issues.

5. Journalism and Journalistic Independence

Among the highest-profile disclosures made regarding CEO Pack’s actions pertained to allegations that his actions violated legal provisions protecting the independence and integrity of USAGM-funded journalism entities. The Review Team found that:

- **CEO Pack took actions that were inconsistent with the statutory mandate that he respect the networks’ journalistic independence and integrity** and other parts of law related to journalistic independence, although those statutory provisions do not clearly define the limits of CEO authority.
- Immediately prior to CEO Pack’s arrival, the Agency published a rule that aimed to clarify those limits. It defined violations of journalistic independence when individuals in the Executive Branch (but outside of the Agency’s newsrooms) attempt “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.” This rule was designed to insulate the networks from political influence.
- **CEO Pack repealed this Agency rule on December 10, 2020, six weeks before the end of his tenure**, despite stating in his Senate confirmation hearing that he would “strengthen the journalistic practices and techniques inside the agency” that shield the networks from such interference.
- **While the repeal of that rule was within his authority and did not affect statutory language, it signaled to many inside USAGM, the networks, and in Congress that CEO Pack was hostile to the networks’ journalistic independence.** While it does not mitigate or excuse his actions, the Agency finalized the rule on the same day as CEO Pack’s Senate confirmation, contributing to his view that it was targeted at him, a fact that he cited in his repeal of the rule.
- **CEO Pack’s actions to direct VOA to suspend its internal investigation and due process procedures involving the broadcast of a partisan video were inconsistent with USAGM procedures.** The video in question was produced for an Urdu-language audience in Pakistan and ran for five days before being taken down. CEO Pack then tasked a political appointee with no previous journalism experience to conduct the investigation. A federal judge

found that CEO Pack’s actions were not “reasonably necessary” since there were “less intrusive means” of conducting oversight—i.e., the VOA investigation—and thus his actions were “likely to be found unconstitutional” under a First Amendment analysis.

- **CEO Pack apparently took no action nor expressed any concern when informed that the acting head of the Office of Cuba Broadcasting (OCB) provided a White House political appointee with a link to OCB content so the appointee could email it to a domestic U.S. audience two months before the 2020 election.** The White House event featured a group that had endorsed the incumbent president weeks earlier. “USAGM broadcasters have an affirmative obligation to take all steps to ensure that U.S. audiences are not being targeted” by Agency content, according to USAGM guidance. **The political nature of the event and the targeting of a U.S. audience with network coverage should have prompted concerns by CEO Pack.** CEO Pack was made aware of this situation via a weekly activity report provided by the acting head of OCB. There is no evidence that the acting head of OCB acted with improper intent.
- **CEO Pack did not express concern or intervene when, in January 2021, VOA leadership took employment-related action against a VOA journalist for asking legitimate reporting questions of the Secretary of State following a VOA event. Those VOA leadership actions ran contrary to VOA’s mission and should have been cause for alarm given CEO Pack’s statutory responsibility to ensure that VOA upholds the highest professional standards of broadcast journalism.** As opposed to journalistic lapses by rank-and-file employees, when the head of a USAGM-funded network appears to operate contrary to journalistic principles, a greater role for the CEO Office may be warranted, as is consistent with the Agency’s March 2020 procedures. Under a preliminary injunction in effect at the time, CEO Pack was allowed to communicate with network leadership.
- **CEO Pack’s reassignment of VOA’s Standards Editor for four months, without backfilling the position, increased the risk of journalism lapses and constituted gross mismanagement.** VOA eventually mitigated the risk, but it had to pivot and reallocate resources as it was not allowed to hire or backfill the Standards Editor position. One senior VOA official contemporaneously said in an email that the Urdu video incident could have been prevented had CEO Pack let the Standards Editor conduct his standard presidential campaign coverage training.
- **CEO Pack’s action to remove the VOA Standards Editor was at odds with his statements that he sought to ensure that the networks adhered to the highest standards of professional journalism.** The Review Team queried numerous interviewees, including employees in direct contact with CEO Pack, but was not able to learn why CEO Pack removed the VOA Standards Editor. Reassigning employees is within the discretion of the Agency head; however, this specific reassignment impeded the ability of VOA to

prevent substandard journalism and review reporters' editorial content, heightening operational risks. CEO Pack's action also heightened concern within VOA that CEO Pack was eroding its independence.

- Unlike CEO Pack's removal of the RFA president, CEO Pack's pressure on RFA's acting leadership to remove the Executive Editor was inconsistent with his statutory obligation to respect the professional integrity and independence of RFA's journalistic operations.

6. The Open Technology Fund and Internet Freedom Funding

CEO Pack took several actions affecting the leadership and funding of the Open Technology Fund (OTF). The Review Team found that:

- **CEO Pack's efforts to remove OTF leadership and board members was not an abuse of authority or gross mismanagement** given the genuine legal question regarding the legal relationship between USAGM and OTF and the limits of the CEO's authority that existed at the time of the action. However, in a lawsuit brought by OTF challenging the removal, the D.C. Superior Court ruled in October 2020 that the CEO's authority did not extend to the removal of OTF's leadership and board members.
- CEO Pack's direction to freeze hiring and procurement in OTF did not constitute gross mismanagement nor abuse of authority. **The freeze was short-lived and did not impair OTF's ability to continue to meet its mission.** It is not unusual for new Agency leadership to freeze contracting and hiring, with exceptions for critical activities, for short periods of time.
- **The withholding of and redirection of internet freedom appropriations put numerous internet freedom projects at risk, including in countries that are State Department priorities.** For a subset of the projects, USAGM mitigated impacts by having its "revived" Office of Internet Freedom (OIF) essentially take over two contracts from OTF; however, there was a lapse in one of those contracts that led to a significant drop in a key foreign audience for VOA. For 49 other OTF projects, emails show that CEO Pack and his leadership team put those internet freedom efforts at risk by not providing previously agreed upon funding in a timely way despite warnings from OTF and government stakeholders. CEO Pack's decision to change the Agency's approach for funding internet freedom projects lacked adequate planning since OIF had a skeletal staff and had no immediate capacity to perform the transferred functions. Further, USAGM failed to provide a plan to mitigate potential impacts from this transfer of function, nor were actions taken by USAGM to mitigate potential impacts.
- While USAGM's CEO had the authority to change the Agency's approach to funding internet freedom efforts, this authority is bounded by checks and balances among branches of government and within the Executive Branch. CEO Pack's approach to changing funding streams between OTF and OIF placed the Agency's internet portfolio at risk. Mitigation efforts by OTF largely prevented

significant lapses in funding important projects. **But for OTF's timely and effective efforts to secure third-party funding permitted by its 501(c)(3) status, CEO Pack's funding decisions could have had debilitating consequences for the Agency's critical internet freedom mission.**

- **CEO Pack's repurposing of internet freedom funds was not an action that required congressional notification.** CEO Pack's team did notify Congress regarding the repurposing of the internet freedom funds. Additionally, although it was unclear whether apportionment from the Office of Management and Budget (OMB) was required, CEO Pack's team obtained a reapportionment regarding changes to the Agency's use of internet freedom funding. However, CEO Pack's team approached OMB only after USAGM's Deputy Chief Financial Officer resigned after raising concerns that he was being asked to repurpose the funding without an OMB reapportionment.
- **CEO Pack abused his authority by attempting to debar OTF.** The CEO's proposal lacked sufficient evidence to justify the serious action (if successful, OTF would have been barred from receiving any new federal funding, typically for three years), persisted after Congress had made OTF a statutory grantee of USAGM. Evidence and circumstances show that CEO Pack's efforts to debar were inconsistent with the regulatory requirement that debarment "be imposed only in the public interest for the Government's protection and not for purposes of punishment."
- The CEO Office overruled federal career staff who recommended against the procurement of anti-circumvention tools from a contractor after CEO Pack revived OIF. The CEO's Office, including CEO Pack, had repeated email contact with representatives and associates of a group that advocated directing Agency funds toward that contractor. The group was critical of OTF, and they viewed OTF as posing an obstacle to the contractor in winning access to Agency funding. In an email, CEO Pack credited an associate of that group as benefiting his efforts to secure Senate confirmation. There is nothing inappropriate about the group's advocacy efforts or with the CEO Office's stakeholder engagement. However, **the act of overruling career staff to direct this contract action, coupled with this documentary evidence, created, at a minimum, the appearance that the procurement was not based solely on the merits of the contractor's proposal.**

7. Grantee Network Governance

CEO Pack took controversial actions regarding grantee networks throughout his tenure. The Review Team found that:

- **CEO Pack did not engage in gross mismanagement or an abuse of authority by dismissing the members of the bipartisan boards of the non-profit grantee networks and replacing them largely with current political appointees and naming himself as chairman of those boards.**

He faced no legal restriction in taking these actions (a new law passed in January 2021 has since created restrictions). The law at the time of CEO Pack’s actions stated that the grantee board members “shall serve at the pleasure of and may be named by the Chief Executive Officer.”

- However, **these actions did create the appearance that CEO Pack was compromising the independence of the grantee networks as well as politicizing them.** As journalism organizations—especially organizations funded by the U.S. government—it is critical to their credibility that they be seen as neither government controlled nor partisan. Prior to CEO Pack, these network boards had a balance of individuals with different political affiliations (including political independents) and substantial journalism, media industry, and/or foreign policy expertise. Current law now requires such expertise as well as a bipartisan balance on USAGM’s Advisory Board, which is distinct from the network boards, although their members have often overlapped.
- **CEO Pack’s effort to enshrine a provision into grantee bylaws and employment contracts requiring a criminal conviction to remove his appointed board members and grantee network presidents was an abuse of authority.** In the weeks before the change in presidential administrations, CEO Pack, his political appointees, and the board members changed grantee network bylaws and grant agreements to improperly insulate the board members and grantee network leadership from accountability and management. The grantee networks’ general counsels found that this language violated the applicable state laws under which the non-profit grantees are incorporated, the International Broadcasting Act, and OMB’s Uniform Guidance. Their concerns were made in writing and by a grantee network general counsel during a meeting of the grantees’ board members on January 15, 2021.

8. Use of External Law Firms

On August 26, 2020, CEO Pack awarded Richmond, Virginia-based law firm McGuireWoods a sole-source contract. The primary purpose of this contract was to perform an internal investigation of USAGM employees whom CEO Pack had recently suspended. USAGM paid McGuireWoods more than \$1.6 million under this contract. A legal consultancy supporting the McGuireWoods investigation invoiced USAGM for an additional \$138,965.50.

The Review Team found:

- **Contracting with McGuireWoods constituted gross mismanagement and a gross waste of funds.** None of the extensive investigatory work by McGuireWoods was relevant to issues of national security or of demonstrated value in making security determinations or supporting the suspension decisions. The expenditure meets the definition of gross waste: “more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.”

- **The contract award violated the applicable USAGM directive on the use of the statutory Federal Acquisition Regulation (FAR) exemption.** CEO Pack used a limited FAR-exempt statutory authority that does not appear to provide a basis for awarding the McGuireWoods contract. Although legislative history for the exemption is sparse, all the listed purposes concern a specific and circumscribed group of procurements generally relating to specialized broadcasting products and services often performed in foreign countries or by foreign entities. No USAGM employees with relevant expertise reviewed CEO Pack's decision to exempt this procure from the FAR. In addition, CEO Pack's use of the FAR exemption violated the applicable USAGM directive governing its use.
- **CEO Pack's oversight of the contract was lax and ineffective.** No federal employees with authority over contracting and subject matter expertise were substantially involved in the negotiation, award, or management of the contract. CEO Pack's lack of consideration of the fundamental principles of contract oversight to protect taxpayer funds, inadequate attention to internal controls, and failure to assign a contracting officer to the contract significantly increased the risk of waste. Major deficiencies in financial management beset the contract. Neither CEO Pack nor his appointees demonstrated concern about the cost to the government or whether funds were available and obligated to perform the work.
- **Work contracted to McGuireWoods could have been performed by federal employees.** If CEO Pack believed a conflict of interest would preclude use of any of USAGM's experts, he had ample alternative sources of expertise within the federal government. Personnel investigations could have been performed by the OIG or other knowledgeable and accountable federal personnel from other agencies. Contracting with McGuireWoods was unnecessary.
- The award of a contract to Consilio, LLC, a legal consultancy, to support the McGuireWoods investigation followed a similar pattern. The sole-source contract was awarded by one of CEO Pack's non-career appointees. Neither the Agency's Office of Contracting nor the Office of General Counsel was involved in or aware of the preparation or award of the contract. There is no evidence that CEO Pack or any of his appointees exercised any oversight over services performed or liabilities potentially incurred under this agreement.

1. Background and Context

On January 20, 2021, newly inaugurated President Joe Biden requested CEO Michael Pack's resignation as USAGM's Chief Executive Officer (CEO). CEO Pack served for nearly eight months. To put his tenure in context, it is important to understand the Agency's mission, the emphasis on journalistic independence and role in public diplomacy, and recent laws changing USAGM's governance scheme. This is particularly important as CEO Pack was the first presidentially appointed, Senate-confirmed (PAS) CEO in the Agency's history. It had previously been governed by the bipartisan Broadcasting Board of Governors (BBG), a multi-member body for which the Agency had previously been named. Previously, the BBG had created the position of CEO, with certain delegated authorities, but this position was not subject to presidential appointment or Senate confirmation. CEO Pack was the first independent, authorized PAS CEO.

Journalistic Independence as a Fundamental Principle

Dating back to the founding of the Voice of America 80 years ago, during World War II, the Agency has emphasized that its journalistic independence is key to its credibility. During its first broadcast in German in 1942, VOA told its audience that "the news may be good or bad. We shall tell you the truth."¹ Several decades of laws reflect a congressional consensus that USAGM best serves the United States' "broad foreign policy objectives"² by modeling a free and independent press as a foundation of democracy.

VOA's charter, written in 1960 and enshrined in statutory law in 1976, states that:

The long-range interests of the United States are served by communicating directly with the peoples of the world by radio. To be effective, the Voice of America must win the attention and respect of listeners.

These principles will therefore govern Voice of America (VOA) broadcasts:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively and will also present responsible discussions and opinions on these policies.³

¹ "The VOA Charter at 40," Voice of America, July 12, 2016, <https://editorials.voa.gov/a/voa-charter-at-40/3415204.html>, accessed October 22, 2022.

² *22 U.S. Code § 6202 – Standards and principles*, Legal Information Institute, <https://www.law.cornell.edu/uscode/text/22/6202>, accessed October 22, 2022.

³ "Legislation: VOA Charter," U.S. Agency for Global Media, <https://www.usagm.gov/who-we-are/oversight/legislation/voa-charter/>, accessed October 22, 2022.

Newer laws further reinforced the importance of journalistic independence in the Agency’s mission. The International Broadcasting Act of 1994 required Agency leadership to “respect the professional independence and integrity” of VOA, Radio Free Europe/Radio Liberty, Radio Free Asia, and the Office of Cuba Broadcasting.⁴ According to the Act’s legislative history, Congress recognized the “need for journalists and broadcasters to maintain their professional independence in order to produce factual, unbiased and balanced work products.”⁵ This and related statutory provisions are often referred to as the “firewall.”

In 1998, the Foreign Affairs Reform and Restructuring Act established the Broadcasting Board of Governors (BBG) as its own independent foreign affairs agency. The bipartisan BBG, which was the collective CEO of the Agency, was composed of nine presidentially appointed, Senate-confirmed members with responsibilities to oversee the federal and grantee networks and federal support operations.

Creation of an Empowered CEO

Observers have expressed concern that a board governance structure fell short when it came to effective oversight and management of the five networks and operations. A common theme of these critiques has been that a board, staffed by part-time appointees with frequent vacancies, cannot provide effective oversight nor efficiently make the day-to-day decisions required to direct an Agency. These concerns have been embodied in legislative proposals and a 2013 State Office of Inspector General review, with proposals for a centralized Agency executive with a strong authority to oversee federal and grantee news networks.⁶

In response, the BBG, in 2015, created a CEO position appointed by and reporting to the BBG and delegated to the CEO the authority to manage the day-to-day operations of the Agency and oversee its networks.⁷ The goal was to provide strategic direction and increase efficiency and effectiveness across the component entities.

Legislation in December 2016 took a significant further step. The 2017 NDAA established a PAS CEO position to oversee and manage the Agency. The law abolished the nine-member bipartisan BBG and replaced it with a five-member Advisory Board with a limited role. The goal, according to its proponents, was to streamline decision-making and improve efficiency.

These provisions granted the CEO the authority to direct broadcasting and reform efforts in the Broadcasting Board of Governors (which would later be renamed the U.S. Agency for Global Media) with a broad range of statutory powers to direct the Agency. The 2017 NDAA authorized the CEO to direct and supervise broadcasting activities, including allocation of appropriated funds among the federal and grantee elements of

⁴ “Legislation: VOA Charter.” At the time of the charter’s creation, the Middle East Broadcasting Network had not yet been created.

⁵ “Firewall,” U.S. Agency for Global Media, <https://www.usagm.gov/who-we-are/firewall/>, accessed October 22, 2022.

⁶ “U.S. International Broadcasting: Background and Issues for Reform,” Congressional Research Service, December 15, 2016. <https://crsreports.congress.gov/product/pdf/R/R43521/7>.

⁷ BBG’s first board-appointed CEO served for six weeks in early 2017. The second board-appointed CEO, John Lansing, served from September 2015 to September 2019.

USAGM. These authorities were circumscribed by the requirement that the CEO conduct activities in accordance with the statutory provisions that protected journalistic independence.

The 2017 NDAA amendments enjoyed bipartisan support. President Barack Obama said the new provisions empowering the CEO would streamline Agency operations while reducing inefficiencies and duplication and “retaining the longstanding statutory firewall, protecting against interference with and maintaining the professional independence of the Agency’s journalists and broadcasters and thus their credibility as sources of independent news and information.”⁸ Proponents argued that the Agency’s historic mission faced new challenges and that Agency leadership needed to be empowered to adapt to meet those challenges. Critics of the legislation expressed concern that USAGM might be more vulnerable to political influence with a Senate-confirmed CEO.⁹

Some Agency employees expressed concern that a strong PAS CEO, without significant institutional checks, could erode the protections provided by the statutory firewall. An April 2019 State Department OIG inspection report on USAGM journalism standards and practices noted that:

“[S]everal expressed concerns, which were shared by the [previous board-appointed] CEO and other senior USAGM staff, that the amended law potentially reduces firewall protections. Specifically, the amendments removed all but advisory authorities from future USAGM boards, thereby eliminating an institutional check on CEO authority.”¹⁰

The 2017 NDAA amendments did not provide guidance on how the expanded powers of the new CEO were to be harmonized with the existing statutory firewall. Within USAGM and the networks, and among observers, there are a wide variety of opinions about what the firewall prohibits and what actions constitute a breach.

Clarifying Journalistic Independence and CEO Oversight: March 2020 Procedures and June 2020 Firewall Rule

In March 2020, in consultation with the broadcasting networks, the BBG approved “USAGM Procedures for Violations of the Principles, Standards, or Journalistic Code of Ethics.” (See [Appendix E](#).) The procedures outline a hierarchy of editorial lapses and how they should be dealt with and at what level. While USAGM’s Office of the CEO is kept informed of lapses, they are generally expected to be handled within the networks by senior editors, management, and standards editors. In more severe systemic cases

⁸ “Statement by the President on Signing the National Defense Authorization Act for Fiscal Year 2017,” The White House, December 23, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/12/23/statement-president-signing-national-defense-authorization-act-fiscal>, accessed October 22, 2022.

⁹ Tara Palmeri, “Trump to inherit state-run TV network with expanded reach,” Politico, December 12, 2016, <https://www.politico.com/story/2016/12/donald-trump-voice-of-america-232442>, accessed October 22, 2022.

¹⁰ “Targeted Inspection of the Governance of the United States Agency for Global Media,” U.S. Department of State Office of Inspector General, April 2019, <https://www.oversight.gov/sites/default/files/oig-reports/ISP-IB-19-22.pdf>.

where there is a “pattern of violations,” USAGM takes on a greater role through mandated external reviews.

The procedures represent an attempt to reconcile the statutory requirement that USAGM respect the editorial independence of the journalists as well as USAGM’s statutory mandate to provide oversight of the networks “to ensure that United States international broadcasting is conducted in accordance with the standards and principles,” described in 22 U.S. Code § 6202. That statute requires adherence to the “highest professional standards of broadcast journalism,” but also that USAGM’s networks provide coverage that is “consistent with the broad foreign policy objectives of the United States,” among other requirements.

Another major effort to reconcile the USAGM oversight role with the need to respect the journalistic independence of the networks was the firewall rule. On June 4, 2020—the same day the Senate confirmed CEO Pack—the BBG finalized a rule titled “Firewall and Highest Standards of Professional Journalism” to “clarify the practical meaning and impact of the statutory firewall contained within the United States International Broadcasting Act of 1994, as amended, upon Agency operations.”¹¹ The rule was the BBG’s first instance of rulemaking concerning the statutory firewall. It was effective June 11 and published in the Federal Register on June 15.¹²

The purpose of the new rule was to “codify and memorialize definitions and practices associated with the firewall” and to “codify a common-sense definition of the firewall, consistent with the law, the highest standards of professional journalism, and longstanding practice.” The rule described the relationship between the firewall and CEO oversight as follows:

The existence of a firewall does not mean the absence of oversight. This firewall shall not be construed to limit USAGM oversight conducted in a manner consistent with that conducted by other media organizations which operate editorially independent news divisions that adhere to the highest standards of journalism.

The rule also described the circumstances constituting a breach of the firewall:

This ‘firewall’ is understood to be violated when any person within the Executive Branch or a Network, but 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.

This rule was adopted by the BBG just days before CEO Pack was sworn in and was operative for most of his tenure. In recent oversight reports, GAO and OIG reviewed issues relating to journalistic independence and the role of USAGM and CEO oversight. Both reports noted the lack of statutory clarity about the relationship between

¹¹ “Firewall and Highest Standards of Professional Journalism,” Broadcasting Board of Governors, June 15, 2020, <https://www.federalregister.gov/documents/2020/06/15/2020-12696/firewall-and-highest-standards-of-professional-journalism>.

¹² Because this involved a rule of agency organization, procedure, or practice, a public notice or comment period was not required under 5 U.S.C. 553(b)(B), although public comments were solicited.

journalistic independence granted to the networks and the appropriate level of USAGM oversight.

In an October 2021 report, GAO discussed varying interpretations of the Agency’s firewall principles and fundamental differences in the understanding of its meaning. GAO noted: “These varying interpretations may stem from the fact that the parameters of the firewall, including what is and is not permissible with regard to network independence, are not defined in legislation.”¹³

As a matter for congressional consideration, GAO noted the following:

Congress should consider legislation to define the parameters of USAGM’s firewall, such as by describing what is and is not permissible with regard to network editorial independence.¹⁴

In an October 2022 report¹⁵, OIG also noted the lack of statutory clarity concerning the perimeters of the firewall. OIG determined that “the legislation, regulations, grant agreements, and guidance governing network editorial independence did not clearly or consistently define editorial independence and the firewall.”¹⁶

OIG concluded that this lack of clarity continued during CEO Pack’s tenure when the Firewall Regulation was in effect (June 15–December 10, 2020):

OIG found that 22 C.F.R. Part 531 did not add sufficient clarity for USAGM and network staff to consistently define violations or ensure compliance during the short period of time the regulation was in effect. USAGM and network staff told OIG several actions by USAGM leadership during the period 22 C.F.R. Part 531 negatively impacted editorial independence and did not align with USAGM firewall principles. However, USAGM and network staff also said that unclear and inconsistent definitions of editorial independence and the firewall contributed to uncertainty about what constituted a firewall violation and to an uneven understanding at the working level about firewall protections, both in general and, in particular, when 22 C.F.R. Part 531 was in effect. OIG also found that USAGM’s internal procedures to address firewall issues and violations were outdated.¹⁷

Evaluating CEO Pack’s Decision-Making

It was against this backdrop of BBG actions taken on the eve of his Senate confirmation that CEO Pack, vested with significantly enhanced authorities, took office. CEO Pack had undergone a contentious and lengthy confirmation process, and congressional oversight bodies were anxious to see how he would comport himself. Over the next

¹³ “U.S. Agency for Global Media: Additional Actions Needed to Improve Oversight of Broadcasting Networks,” U.S. Government Accountability Office, October 2021, <https://www.gao.gov/assets/gao-22-104017.pdf>.

¹⁴ “Additional Actions Needed to Improve Oversight of Broadcasting Networks,” p. 45.

¹⁵ “Targeted Inspection of the U.S. Agency for Global Media: Editorial Independence and Journalistic Standards and Principles,” U.S. Department of State Office of Inspector General, October 2022, https://www.stateoig.gov/uploads/report/report_pdf_file/isp-ib-23-01.pdf.

¹⁶ “Editorial Independence and Journalistic Standards and Principles,” p. 7.

¹⁷ “Editorial Independence and Journalistic Standards and Principles,” p. 2.

nearly eight months, ending upon his resignation at the request of the newly inaugurated President Biden on January 21, 2021, CEO Pack exercised and interpreted the executive authorities granted this office. His decisions sparked scrutiny, debate, legal actions, and a referral by the Office of Special Counsel requiring investigation on a series of referred management allegations.

2. CEO Pack's Early Actions and Effect on Agency Operations

This section is relevant to the following items referred by the OSC:

- Gross mismanagement and abuse of authority (*OSC Referral Bullet 2*)
 - Terminating the presidents of each network (*OSC Referral Sub-Bullet A*)
 - Dismissing and replacing the boards of each grantee network (*OSC Referral Sub-Bullet B*)
 - Revoking and reassigning SES employees' authority (*OSC Referral Sub-Bullet C*)
 - Prohibiting offices critical to USAGM's mission from communicating with outside parties without permission (*OSC Referral Sub-Bullet G*)
- Freezing or delaying Agency hiring, contracting, and IT operations resulting in threats to Agency operations and/or employees' safety (*OSC Referral Bullet 3*)
- Refusal to authorize renewal of J-1 visas, endangering Agency operations and visa holders' safety (*OSC Referral Bullet 5*)

Key Findings

- **CEO Pack did not engage in gross mismanagement or an abuse of authority by terminating the presidents of the broadcasting networks on June 17, 2020.** CEO Pack faced no legal restriction in taking these actions (a subsequent law passed in January 2021 has since created restrictions). The law at the time of CEO Pack's actions stated that grantee network officers "shall serve at the pleasure of and may be named by the Chief Executive Officer."
- **It was not an abuse of authority for CEO Pack to rescind CEO delegations of authority from senior USAGM career executives.** Agency leadership has wide discretion in how to delegate authority. However, CEO Pack's actions undermined Agency operations.
- **CEO Pack's directive to USAGM staff requiring approval from his Front Office team to engage in outside communications did not constitute gross mismanagement.** Key members of his Front Office took actions to mitigate the impacts by authorizing career personnel to engage in routine external interactions without preapproval.
- As a separate matter, the directive requiring preapproval by CEO Pack's team prior to communicating externally contained no carve-out for legally protected disclosures such as to Congress, the State Department Office of Inspector

General, and the Office of Special Counsel. Thus, **the directive violated 5 U.S.C. 2302(b)(13).**

- **CEO Pack’s freeze on procurement and hiring did not rise to the level of gross mismanagement and abuse of authority. However, these actions increased employee uncertainty and operational risks for the Agency.** It is routine for new Agency leadership to freeze such functions, with exceptions for critical operations, for short periods as they learn more about Agency operations. The freeze as it applied to the grantees was short-lived. However, it applied for a lengthy period at the federal networks and support operations within USAGM.
- **CEO Pack’s freeze on hiring absent his approval was felt most notably at VOA.** Career VOA staff sent numerous emails and documents to CEO Pack and his Front Office team regarding staffing shortfalls beginning soon after his confirmation. In the ensuing months, through the end of his tenure in January 2021, the records document a continuing and growing need to hire staff throughout VOA. While CEO Pack approved a handful of VOA hires during his tenure, the situation had grown more acute by the time he left his position due to his inaction on the vast majority of VOA requests.
- In conducting its fact-finding, the Review Team heard conflicting assessments from career staff regarding the severity of the impacts of the hiring freeze at VOA. A senior political appointee assessed VOA’s claims of operational impacts as overstated. Further, CEO Pack pointed to personnel security shortcomings at USAGM, and he mitigated some negative aspects of the freeze by granting VOA, in specific circumstances, exemptions from the freeze. **The Review Team finds that, while CEO Pack’s inaction disrupted Agency operations, it did not rise to the level of gross mismanagement because CEO Pack did allow limited hiring activity to continue, and because there were conflicting assessments regarding the severity of the impacts.**
- **CEO Pack’s suspension of reviewing applications and renewals of the J-1 Exchange Visitor Program visas did not constitute gross mismanagement since CEO Pack’s decision could be a debatable difference of opinion among reasonable people.**
- **CEO Pack’s actions had a detrimental effect on the Agency.** He failed to mitigate the impact of the suspension on VOA or offer a viable alternative for VOA to continue to obtain the services of foreign journalists.
- CEO Pack explored accessing alternative visa programs; however, he never recognized that USAGM and VOA had long utilized an approved Exchange Visitor Program to obtain the services of foreign journalists to staff its various language services. CEO Pack should have taken steps to better understand USAGM’s longstanding and approved use of the J-1 authority. He acknowledged the need to issue J-1 visa guidance—guidance that was never provided.

- **In determining CEO Pack’s actions did not constitute gross mismanagement, the Review Team balanced the negative impact on VOA and affected staff against CEO Pack’s perceived competing public policy concerns.** CEO Pack justified his actions based at least in part on (i) a recent OPM audit critical of USAGM’s personnel security program, (ii) the need to comply with the Executive Order directing federal agencies to hire U.S. citizens, and (iii) his concerns with USAGM’s use of the J-1 Exchange Visitor Program authority.
- The security audit raised distinct issues separate from USAGM’s participation in the Exchange Visitor Program. The audit may have colored CEO Pack’s views of potential security threats and increased his concerns about USAGM’s use of foreign nationals to serve as journalists.

Groundwork Laid by CEO Pack Prior to Arrival

Many of the matters in the Review Team’s scope can be traced to CEO Pack’s Senate confirmation proceedings. Numerous interviewees cited specific developments in the run-up to CEO Pack’s confirmation as relevant to assessing allegations leveled against him during his tenure as Agency CEO. On June 4, 2018, President Donald Trump nominated CEO Pack as the CEO of USAGM, subject to Senate confirmation.¹⁸ CEO Pack’s nomination drew critical media coverage, in part because of the newly confirmed CEO’s expanded powers.¹⁹ The Senate Foreign Relations Committee held a hearing on September 19, 2019, to consider him for the role.²⁰

The hearing covered several matters that would be important during CEO Pack’s nearly eight-month tenure at the helm of USAGM. His statements acknowledge key challenges he would face if confirmed. His testimony on his top goals also provides a partial benchmark for evaluating his time in charge of the Agency, namely that he would raise employee morale, stop scandals from occurring, and make the Agency more effective.²¹

CEO Pack also testified that he would “strengthen” the “journalistic practices and techniques inside the agency” that shield the networks from political interference.²² (See [Journalism and Journalistic Independence](#).)

Because the Senate did not confirm CEO Pack before the end of the congressional session, on February 25, 2020, President Trump renominated CEO Pack.²³

¹⁸ “PN2052—Michael Pack—Broadcasting Board of Governors,” June 4, 2018, <https://www.congress.gov/nomination/115th-congress/2052>.

¹⁹ Arwa Mahdawi, “Michael Pack: the Bannon ally critics fear will become Trump’s global propagandist,” *The Guardian*, June 6, 2018, <https://www.theguardian.com/media/2018/jun/06/michael-pack-steve-bannon-ally-broadcasting-board-of-governors>, accessed October 22, 2022.

²⁰ “Hearings Before the Committee on Foreign Relations, First Session, Part II,” U.S. Congress, September 19, 2019—December 17, 2019, <https://www.govinfo.gov/content/pkg/CHRG-116shrg41448/html/CHRG-116shrg41448.htm>.

²¹ “Hearings Before the Committee on Foreign Relations, First Session, Part II,” U.S. Congress.

²² “Hearings Before the Committee on Foreign Relations, First Session, Part II,” U.S. Congress.

²³ “PN1590—Michael Pack—Broadcasting Board of Governors,” February 25, 2020, <https://www.congress.gov/nomination/116th-congress/1590>.

In the ensuing months, the White House repeatedly criticized VOA in public and put CEO Pack front and center in its efforts to speed Senate confirmation of pending Executive Branch nominees.²⁴ In May 2020, a group supporting CEO Pack’s nomination also publicly criticized the OTF after a contentious meeting with senior OTF leaders earlier that spring.²⁵ (See [The Open Technology Fund and Internet Freedom Funding.](#)) These developments—while not due to CEO Pack’s actions—heightened staff concerns about CEO Pack’s agenda once confirmed.

CEO Pack’s long-stalled nomination finally moved toward a confirmation vote. On May 21, the majority of a sharply divided Senate Foreign Relations Committee voted to advance CEO Pack to the full Senate for approval.²⁶

In advance of CEO Pack’s expected confirmation, the White House detailed two political appointees to USAGM to help transition the new Agency leadership. On June 3, those White House Liaisons met with CEO Pack and his Senate navigator.²⁷ In an interview with the Review Team, one of those White House Liaisons recounted that conversation as an early sign that CEO Pack and many of the political appointees advising him would have a contentious relationship with USAGM’s career staff.

According to the White House Liaison’s account, the Senate navigator—who would soon become CEO Pack’s Deputy Chief of Staff—told him and the other White House Liaison that senior USAGM career executives “are not people to be trusted” and that CEO Pack and the Senate navigator wanted to fire the head of VOA.²⁸ The White House Liaison also stated that the incoming CEO Pack staff had researched the political affiliations of the senior career executives and staff in the CEO’s office and identified several as Democrats. Days earlier, a career USAGM employee sent CEO Pack’s navigator a document the employee called a “Transition Memo for Michael Pack,” which called on CEO Pack to take action against senior career leaders within USAGM and VOA’s leadership. The career employee’s memo stated, “Failure to address their status will result in constant and virulent undermining of your leadership.”

²⁴ David Folkenflik, “White House Attacks Voice Of America Over China Coronavirus Coverage,” NPR, April 10, 2020, <https://www.npr.org/2020/04/10/831988148/white-house-attacks-voice-of-america-over-china-coronavirus-coverage>, accessed October 22, 2022.

²⁵ Katrina Lantos Swett, “The pandemic exposes realities of failing to combat global censorship,” *The Hill*, May 6, 2020, <https://thehill.com/opinion/technology/495557-the-pandemic-exposes-realities-of-failing-to-combat-global-censorship>, accessed October 22, 2022.

²⁶ “PN1590—Michael Pack—Broadcasting Board of Governors”; “Menendez Delivers Remarks Ahead of Confirmation Vote for Michael Pack’s Nomination to USAGM,” U.S. Senate Foreign Relations Committee, June 4, 2020, <https://www.foreign.senate.gov/press/ranking/release/video-menendez-delivers-remarks-ahead-of-confirmation-vote-for-michael-packs-nomination-to-usagm>, accessed October 22, 2022.

²⁷ Interview with former White House Liaison. A Senate navigator is an individual who helps a presidential nominee navigate the Senate confirmation process.

²⁸ The then-VOA Director had been outspoken in her defense of VOA’s independence in response to criticisms by the White House; Editorial Board, “No, Mr. Trump, VOA is not Chinese propaganda. Now don’t turn it into U.S. propaganda,” *The Washington Post*, April 10, 2020, https://www.washingtonpost.com/opinions/global-opinions/no-mr-trump-voa-is-not-chinese-propaganda-now-dont-turn-it-into-us-propaganda/2020/04/10/4bfd37f0-7b4a-11ea-a130-df573469f094_story.html, accessed October 22, 2022.

On June 4, 2020, CEO Pack was confirmed by the Senate.²⁹

First Days at USAGM

Once CEO Pack was confirmed, evidence gathered by the Review Team demonstrates that CEO Pack sought to take actions against senior career leaders from the beginning of his tenure. According to a calendar entry, the Deputy Chief of Staff scheduled a meeting between CEO Pack and the career employee who called for action against senior USAGM and VOA leaders. That meeting was scheduled to take place on June 5, the day after CEO Pack’s confirmation, according to Agency records. The Chairman of the House Foreign Affairs Committee (HFAC), Rep. Eliot L. Engel, issued a statement that said: “I have learned that Michael Pack, the new CEO of the U.S. Agency for Global Media, intends to force out a number of the agency’s career senior leadership tomorrow morning.”³⁰ That night, at 10:16 p.m., CEO Pack emailed one of his advisors about Chairman Engel’s statement: “So our plans have leaked. No surprise.” (See [Career USAGM Executives](#).)

The same day CEO Pack was confirmed, the BBG—whose bipartisan members had for years existed as an institutional firewall—finalized a new USAGM rule called, “Firewall and Highest Standards of Professional Journalism,” implementing the requirements set forth in the International Broadcasting Act. “Before reaching the end of its tenure, the Governing Board of the Agency wanted to codify and memorialize definitions and practices associated with the firewall,” according to the rule, published in the Federal Register later in June.³¹ “The impetus was to demystify the firewall, including by making clear what the firewall is not,” the rule states.

There is evidence that CEO Pack saw the rule as aimed at him, even though work had begun on the rule in 2016, more than a year before he was nominated. In one email, CEO Pack referred to the firewall rule as a “midnight regulation,” a phrase often used as a pejorative to describe an outgoing administration’s policymaking efforts. (See [Journalism and Journalistic Independence](#).)

Procurement and Hiring “Freeze”

On June 8, CEO Pack took his oath of office.

The next morning, he issued one of his first directives. CEO Pack emailed senior USAGM staff instructing them to put a “freeze on the following actions: (1) obligations for new contracts or extensions of any contract; (2) all personnel actions relating to hiring or promotion, and excluding retirements, and (3) all technical migrations.” He added that, “if you believe it is necessary to move on any of these matters immediately,

²⁹ “PN1590—Michael Pack—Broadcasting Board of Governors.”

³⁰ “Engel Raises the Alarm on Impending Firing Spree at USAGM,” House Foreign Affairs Committee, June 16, 2020, <https://foreignaffairs.house.gov/2020/6/engel-raises-the-alarm-on-impending-firing-spree-at-usagm>, accessed October 22, 2022.

³¹ “Firewall and Highest Standards of Professional Journalism,” Broadcasting Board of Governors, June 15, 2020, <https://www.federalregister.gov/documents/2020/06/15/2020-12696/firewall-and-highest-standards-of-professional-journalism>.

please bring the matter to the attention of the CEO, with a written justification for the basis for such action.”

CEO Pack directed that his freeze also applied to the “non-federal side of the agency,” which are the grantees: Radio Free Europe/Radio Liberty (RFE/RL), the Middle East Broadcasting Networks (MBN), Radio Free Asia (RFA), and OTF.

Such freezes are not uncommon in federal agencies during the first weeks under new leadership. But extended freezes—unless accompanied by a smooth review process to identify and exempt critical requirements—can slow and degrade Agency operations. A well-managed temporary freeze should clearly communicate its purpose, scope, and expected duration; provide for exceptions to maintain continuity of important Agency operations; ensure mission-critical contracts, services, and employees are maintained or acquired; and manage acquisition and workforce planning to mitigate risk.³²

The day after CEO Pack’s directive, VOA and OTF responded with concerns that the freeze could have a negative impact on their operations.

A managing director at VOA wrote to CEO Pack about exempting the conversion of certain kinds of contractor employees from the freeze, otherwise it could “compromise VOA’s continuity of operations” because of the substantial reliance VOA has on these employees.

The CEO of the Open Technology Fund wrote to various USAGM officials on June 10 with concerns that the freeze would disrupt OTF’s operations “because our entire mission is pretty much predicated on distributing funding via contracts to support time-sensitive internet freedom efforts.”

Career USAGM staff created a process for evaluating exceptions to the freeze. According to a June 11 email, “freezes in certain actions could cause harm or unjust results. Therefore, Agency management is working to compile a list of urgent/critical actions that we will submit to the CEO for review and possible exception.” A deadline of close of business June 12 was provided for submissions.

USAGM, VOA, and OCB initially identified 32 positions where candidates either already had been hired and had entrance on duty (EOD) dates, pending EOD dates, or tentative offers.

One of those positions was at OCB: a critical standards and best practices editor vacancy that Congress had put an emphasis on filling given high-profile systematic journalism lapses within OCB, namely publishing anti-Semitic pieces on George Soros, a lapse that CEO Pack had referred to during his confirmation hearing.³³ The individual chosen had an approved EOD less than two weeks away, on June 21, and it had taken a lengthy and

³² “Review of the Effects of the Department of State Hiring Freeze,” U.S. Department of State Office of Inspector General, August 2019, <https://www.oversight.gov/sites/default/files/oig-reports/ISP-I-19-23.pdf>, accessed October 22, 2022.

³³ “Embarking on Reform of the Office of Cuba Broadcasting,” U.S. Agency for Global Media, May 21, 2019, <https://www.usagm.gov/wp-content/uploads/2019/05/Embarking-on-OCB-Reform-English.pdf>, accessed October 22, 2022; The lapses at OCB also, in part, prompted the Agency to develop standardized procedures for handling failures to uphold journalistic standards and principles. These procedures were finalized by the BBG in March 2020.

difficult search to identify the candidate. The Acting OCB Director, who CEO Pack named that month, told the Review Team he rescinded the offer to the OCB Standards Editor candidate. For most of the other positions, the CEO Office did not approve them or took no action.

On the grantee side, the freeze and CEO approval requirement was short-lived. USAGM's Chief Financial Officer informed the grantees that the freeze was lifted on June 26. Numerous grantee interviewees said the freeze had no real impact on their operations, but the situation was different on the federal side.

The Federal Freeze Beyond the First Weeks: Procurement

The requirement for CEO approval on the federal side of USAGM continued well beyond his initial weeks. There also was confusion regarding the scope of CEO Pack's June 9 directive. More than two months after its issuance, the Deputy Chief of Staff emailed Agency staff on August 21 noting, "it has come to our attention that the directive has been misrepresented." She wrote that the procurement freeze only applied to new contracts and contract extensions, not already-obligated funds, "standard operating expenditures," and "necessary mission and life support functions."

Leaving aside any confusion regarding the scope of the freeze, there were many requests for new contracts and contract extensions that went to the CEO Office and languished. According to an Agency listing of "Critical Contract Requirements," many requests for new contracts and contract extensions identified throughout the Agency and sent to the CEO's office for approval went unanswered for extended periods, sometimes until the proverbial eleventh hour, putting certain Agency operations at risk.

For instance, USAGM's Office of Policy and Research submitted to the CEO's Office requests to approve the renewal of contracts for data analysts. The positions were not approved before the contracts expired. Their loss, and the inability to replace them in part due to the CEO's Office transferring funding to other parts of the Agency, impacted data-driven decision-making regarding language services. Among the CEO's explicit statutory responsibilities are reviewing, evaluating, and determining whether to add or delete language services.³⁴

The Federal Freeze Beyond the First Weeks: Personnel and Hiring

While procurement became less of an issue after September 2020 (the end of fiscal year 2020), frustration over CEO-level impediments in the hiring process, including for personnel service contractors, continued through the end of CEO Pack's tenure. Generally, a hiring freeze, without waivers and not tied to strategic goals, is a blunt management instrument. While potentially producing savings in the short run, a freeze can have long-term effects on the ability of an Agency to meet its mission.³⁵

³⁴ 22 U.S.C. § 6204(a)(4) – Authorities of Chief Executive Officer, <https://www.law.cornell.edu/uscode/text/22/6204>, accessed October 22, 2022; "The Chief Executive Officer shall have the following authorities... To review, evaluate, and determine, at least annually, after consultation with the Secretary of State, the addition or deletion of language services."

³⁵ "Review of the Effects of the Department of State Hiring Freeze," State OIG.

The overtures from VOA were numerous and sustained. In an email on September 1, 2020, a senior VOA manager wrote to CEO Pack's appointees, "VOA's vacancy needs are vast and far reaching. We have several divisions that will experience program disruption as the result of the freeze on hiring and personnel actions as well as the non-renewal of J-1 Visas." The employee attached a spreadsheet "of 57 important positions that we would like to fill right away," which provided "rationales that justify why each is on the Highest Priority List."

The email provided details on some of the specific impacts if CEO Pack did not approve more hiring and the extension of existing personnel contracts. If certain personnel contracts were not extended for existing staff in VOA Latin America, according to the email, "because of the loss of manpower, we will need to eliminate digital coverage for the weekends and substantially reduce digital coverage weeknights, as well as social media coverage." At that point, "Affiliate coverage has been cancelled for the weekends and we can only provide minimal coverage weeknights. We will also need to reduce some programming content," the email states, adding that, "This approval will only extend contracts with individuals who are currently working with VOA. This will not bring any new individuals on to work at the VOA."

On October 6, 2020, VOA's Acting Director submitted a memo to CEO Pack's leadership team outlining the impact of the freeze. The memo states:

The ongoing hiring freeze instituted in mid-June 2020 by USAGM leadership has effectively halted any forward movement on more than 75 personnel actions for VOA. This freeze, together with the non-renewal of a similar number of J-1 visas, and the non-approval of further PSC (Personal Services Contracts) contracts, is having an adverse impact on VOA's ability to successfully deal with daily content production challenges which have only intensified during the coronavirus pandemic. These challenges are more serious for small language services that have lost a significant percentage of their work force, placing the sustainability and continuity of programming in jeopardy and undermining the mission of VOA in regions of significant strategic importance for the United States.

The memo also notes that, "All told, VOA is down approximately 150 positions." That's a significant number given that VOA's government employee workforce has ranged around 1,000 full-time equivalents (FTEs) in recent years. The memo details operational, content, and other impacts.

Although interviewees said progress was made in halting fits and starts, the staffing situation continued to remain largely unresolved, with VOA pointing to the hiring freeze as the primary cause six months after CEO Pack issued his directive. On December 23, 2020, at the request of Director Robert Reilly, whom CEO Pack had appointed earlier that month, VOA career staff sent him a list of 53 "positions previously approved to hire that are in some stage of the process. Most have been frozen in place since last June," according to an email. The VOA staffer noted, "This is not a complete list of all our vacancies as we have lost many more staffers through retirements and non-extended J-1 visas. This list is for FTEs only and does not include any vacancies for Personal Services Contractors."

Among the factors hindering timely approval of critical contracts and, especially, new hires, as well as other actions, was CEO Pack's personal involvement in the process. A revocation of delegations of authority initially pulled authority from top career staff within the Agency and confused many managers and employees about the chain of command and decision-making authority. Ultimately, CEO Pack's own appointees called on him to delegate authorities and speed up decisions, according to emails months into his tenure.

J-1 Visas

Soon after his confirmation, CEO Pack ceased approving requests from VOA to authorize or renew J-1 visas for its foreign national journalists. VOA had long utilized an approved J-1 Visa Exchange Visitor Program to staff its various language services with foreign journalists. These journalists were chosen to participate in this program and the program was integral to VOA's ability to accomplish its mission. While VOA is required to make these jobs available to American citizens before turning to overseas talent, VOA has found it oftentimes difficult to identify and obtain qualified American citizens. These positions require fluency in languages other than English—and not just fluency, but up-to-date knowledge of idioms, slang, cultural references, and often active media industry contacts within the target audience's country.³² Further, all individuals applying for participation in the Exchange Visitor J-1 visa program go through a lengthy approval process with the State Department and the Department of Homeland Security (DHS) to come to the United States.

CEO Pack's decision to suspend requests to authorize or renew J-1 visas had an immediate impact on VOA language services and operations. Agency officials believed that suspending these reviews threatened VOA's ability to meet its mission. VOA lost at least 25 staffers who had to stop working as a result of this shift in policy. Certain language services were hit harder than others. In one case, VOA had hired a Thai journalist away from the *Wall Street Journal* but lost that journalist because CEO Pack did not renew their visa; the BBC hired away two others whose visas CEO Pack did not renew.

In some cases, the lives of reporters were placed at greater risk due to inaction. One case involved a Chinese individual who had published journalism critical of the Chinese government while serving as a VOA stringer. In an email, career staff wrote, "His work for VOA made him a target of the Chinese government and his life was threatened. With support from the highest levels of the State Department and the U.S. Embassy in China, we were able to get him a J-1 visa and have been working for months to get him out of China and into the U.S."

This case led one member of CEO Pack's Front Office team to tell CEO Pack in July 2020 that there was a "risk of horrible PR" if the Chinese government acted against this individual. The officer also emailed CEO Pack stating that "J-1s are vetted by the embassy, then state [sic], then DHS then CBP [Customs and Border Protection]. Only then are they granted."³³

The Review Team found that CEO Pack's actions to suspend the use of J-1 visas were influenced by criticisms of USAGM's personnel security program. Several days before

the officer's email to CEO Pack, the Office of Personnel Management had informed CEO Pack and his leadership team of highly critical security audit findings. Those findings addressed a broad array of issues and were not applicable to J-1 visas (the audit does not mention "J-1" or "visa"). However, foreign nationals can pose unique vetting challenges for investigators and VOA's substantial use of J-1 visas is relevant to the Agency's non-compliance with federal security regulations.

CEO Pack's team also expressed interest in how much VOA advertised job positions to U.S. citizens before turning to foreign nationals. A memo published by USAGM shortly before CEO Pack was removed by the new Biden Administration states that the Agency had been improperly granting J-1 visas as "USAGM is required to follow Presidential Executive Order 13788 on Buy American and Hire American."

The Review Team did not find evidence that VOA was not complying with statutes and regulations governing its use of J-1 visas.

According to the Office of Human Resources, USAGM will select a non-citizen for an FTE position over a U.S. citizen only if a justification is provided showing that the non-citizen is a far superior candidate than any of the U.S. citizens who were placed on the certificate of eligibles and that none of the U.S. citizen candidates demonstrated the knowledge, skills, and capabilities at the levels required for the position as specified in the vacancy announcement.

CEO Pack and his team also questioned whether the Agency's use of J-1s was proper on other grounds. According to U.S. Citizenship and Immigration Services (USCIS), "The J-1 classification (exchange visitors) is authorized for those who intend to participate in an approved program for the purpose of teaching, instructing, or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training." USCIS adds that "In carrying out the responsibilities of the Exchange Visitor Program, the Department of State designates public and private entities to act as exchange sponsors."

CEO Pack's memo states that, in the USCIS list of authorized J-1 exchange visitors, "notably missing are journalists."

The memo, posted publicly in mid-January 2021, recommended that the Agency use three other visa programs to employ foreign nationals as journalists, if necessary, and utilize laws for refugees and those seeking asylum for foreign journalists who fear persecution. However, USAGM does not meet the requirements to participate in these other programs without amending statutes and/or regulations. The Review Team also notes that CEO Pack's team told Agency staff that foreign national journalists could make asylum claims and offered to assist in connecting them with USCIS.

The Review Team recognizes that CEO Pack explored accessing alternative visa programs. However, these actions took place after VOA was in limbo and unclear about what direction CEO Pack wanted to go. In an email to his leadership team in October 2020, CEO Pack acknowledged the need to issue guidance, writing, "I think we need ASAP to promulgate our policy on J1 Visas, as we discussed at our meeting on this

subject. Ideally, we should do it this week.” Yet, the contours of CEO Pack’s J-1 policy were not forthcoming until January 2021, on the eve of his exit.³⁶

Based on information supplied by Agency officials, the Agency meets the eligibility requirements to participate in the J-1 Visa Exchange Visitor Program. Agency officials questioned whether CEO Pack was aware that VOA broadcasters have long been participants in an approved Exchange Visitor Program. They pointed out that for over five decades, VOA journalists, by design, have been afforded an opportunity to “demonstrate special skills” as journalists/specialists participating in a State Department–sanctioned Exchange Visitor Program to support America’s public diplomacy broadcasting programs. Middle East Broadcasting Networks, a USAGM grantee, was granted a private sector Exchange Visitor Program by the State Department to support its broadcasting when skills have not been available within the United States.

USAGM Participation in the Exchange Visitors Program

USAGM’s participation in the Exchange Visitor Program dates to the passage of the Smith-Mundt Act and the State Department’s 1949 promulgation of Exchange Visitor Program regulations. With the passage of the Fulbright-Hays Act of 1961, VOA broadcasters were recognized as a category of Exchange Visitor Program participation by the Bureau of Educational and Cultural Affairs, and individuals were granted up to 10 years to participate in the international broadcasting J-1 program. In 1978, the Exchange Visitor Program was moved from the State Department to U.S. Information Agency, further demonstrating transparent and clear intent of its relationship to support broadcasting activities.

Following a USIA regulation overhaul in 1993, the VOA Exchange Visitor Program eligibility was reduced to five years. Upon the 1999 merger of USIA’s Exchanges Bureau into the State Department, and the establishment of the Broadcasting Board of Governors (now USAGM) as an independent agency, the broadcaster exchange program was again considered. During the 1999 reorganization of the foreign affairs functions, the Department of State ensured the Broadcasting Board of Governors would continue as an Exchange Visitor Program Sponsor.

Foreign national broadcasters are categorized as Specialists with three years of program eligibility.³⁷ A Specialist is defined as a foreign national who is an expert in a field of specialized knowledge or skills who enters the United States for the purpose of observing, consulting, or demonstrating special knowledge or skills. The responsible officer within the Agency issues the Form DS-2019 to document the eligibility for the prospective participant to apply for the J-1 visa. USAGM’s DS-2019 requires that the applicant demonstrate extraordinary multimedia journalism skills.

³⁶ “J-1 Visas and the Hiring of Foreign Nationals,” U.S. Agency for Global Media, January 2021, <https://www.usagm.gov/wp-content/uploads/2021/01/J1-VISAS-AND-HIRING-FOREIGN-NATIONALS.pdf>, accessed October 22, 2022.

³⁷ 22 CFR § 62.4 - Categories of participant eligibility, <https://www.law.cornell.edu/cfr/text/22/62.4>.

The Foreign Affairs Manual specifically references USAGM participation in the “Specialist” category:

9 FAM 402.5-6(E)(10) (U) Specialist

(CT:VISA-1090; 06-24-2020)

a. **(U) Specialist:** This category is for a foreign national who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating their special skills except:

(1) **(U)** Research Scholars and Professors, who are governed by regulations set forth at 22 CFR 62.20;

(2) **(U)** Short-Term Scholars, who are governed by regulations set forth at 22 CFR 62.21; and

(3) **(U)** Alien Physicians in graduate medical education or training, who are governed by regulations set forth at 22 CFR 62.27.

b. **(U) Duration:** The duration of participation must not exceed 1 year. Within the Specialist category there are seven program numbers with approved exceptions to this one-year duration. They are for Japanese teachers and individuals affiliated with the Laurasian Institute (P-3-05588); Israeli Specialists under the World Zionist Organization (P-3-04530); Specialists under the U.S. Department of Energy (G-3-00348); Specialists under the East-West Center (P-3-10434); Specialists under the Institute of International Education (P-3-14039); **Specialists under the Middle East Broadcasting Network (P-3-13019)**; and **Specialists under the U.S. Agency for Global Media (G-3-00366)**. For these seven excepted program numbers, the **duration of participation is three years**, and the visa should be issued for the full three years. Both the Form DS-2019 and the SEVIS record will have a notation that the program has a three-year duration. The visa should be set to expire two years after the listed program end date found in Box 3 on the Form DS-2019. **[emphasis added]**

The Review Team finds that CEO Pack did not abuse his authority by suspending J-1 visa renewal and approval actions. CEO Pack’s actions created uncertainty, increased risks to the lives of VOA journalists who faced returning to their home countries’ repressive governments and were detrimental to VOA operations. His researching other visa authorities to replace the J-1 was done after he suspended the processing and application of the J-1s. Moreover, his J-1 policy memo (which was released just before President Biden took office) made no mention that USAGM had long been operating under an Exchange Visitor Program approved by the State Department.

These observations are balanced against the requirement for the Agency to comply with an executive order prioritizing the hiring of U.S. citizens and the highly critical OPM audit of USAGM’s personnel and security program. The audit raised distinct and separate issues apart from USAGM’s participation in the Exchange Visitor Program. The Review Team concludes that the audit may have colored CEO Pack’s views of potential security threats and raised perceived concerns about USAGM’s use of foreign nationals

to serve as journalists. The Review Team notes that CEO Pack’s decision could be a debatable difference of opinion, thus not rising to the level of gross mismanagement.

The Review Team notes that CEO Pack could have mitigated the negative management impacts through, at a minimum, clearer communication. Instead, VOA was only told that CEO Pack would evaluate J-1 visa requests on a “case-by-case basis.” His inaction—save for one denial—bred severe employee distrust in his administration of the Agency.

Delegations of Authority and External Communication Policy

On June 17, 2020, CEO Pack’s Chief of Staff emailed senior Agency staff that, “effective immediately, prior delegations of CEO authority have been revoked and re-delegated to the following individuals, until further notice.” It added that senior career staff would be realigned under various members of CEO Pack’s leadership team and that, “Until further notice, no actions are to be taken, and no external communications are to be made, without explicit approval” from CEO Pack or one of those senior team members.

These two directives served to centralize decision-making and control within CEO Pack’s political leadership team. While not improper per se, the directives slowed numerous Agency actions by elevating more responsibilities to the senior political leadership team, most of whom were new to the Agency. According to the emails by CEO Pack and his appointees (as cited later in this section), CEO Pack insisted on personally approving many actions.

The directives created more chokepoints for decision-making. This can be a benefit when there are high-consequence decisions to be made and there is sufficient time for further review, but can be a disadvantage for routine interactions, emergency situations, or circumstances where there are legal or other critical deadlines. A hallmark of successful leaders and managers in any organization, but especially large ones, is effective delegation and clear communication of responsibilities.

Freedom of Information Act Processing

The processing of Freedom of Information Act (FOIA) requests was impacted. Even the pro forma acknowledgement of requests—required by law within 20 business days³⁸—was impeded until an arrangement was worked out, according to two career government attorneys who worked in USAGM’s Office of General Counsel. Even with that arrangement, the processing of requests was slowed down significantly because those requests were also subject to a layer of review by a political appointee.

Problems with prompt FOIA processing began because, as one attorney recounted, the CEO’s Office was angry because the release of some documents under FOIA put “a bad light on CEO Pack” and, even after repeatedly asking whether a FOIA exemption should have applied, the attorney was never given an answer. CEO Pack’s team also threatened a career attorney with disciplinary action for processing the FOIA request that angered the Front Office, according to three career attorneys.

³⁸ “Freedom of Information Act Statute,” FOIA.gov, <https://www.foia.gov/foia-statute.html>, accessed October 22, 2022.

There are other factors that also explain the slowdown. According to the Agency’s Chief FOIA Officer’s Report, FOIA requests to USAGM in 2020 were more than double those received in 2019, and the requests were “more open-ended (and therefore burdensome) in nature.” The report also points out a sharp drop-off in the number of USAGM staff available to process FOIA requests. “The combination of an increase in FOIA load and a decrease in FOIA staff has resulted in an increase in the agency’s FOIA backlog,” according to the report.³⁹

Nonetheless, there is documentary evidence that the involvement of a political appointee did slow down the review process. A November 7, 2020, email by the Acting VP for Legal, Compliance, and Risk shows acknowledgement of problems in timely processing of FOIA requests, prompted by an impending deadline arising from a FOIA lawsuit for records regarding actions taken by CEO Pack.

Litigation

In the summer of 2020, the preclearance communication directive, coupled with the lack of timely clearance from the CEO’s Office, inhibited timely coordination and information exchanges with the Justice Department, administrative judges at the Equal Employment Opportunity Commission, and parties in active litigation and increased litigation risk.⁴⁰

Around September 2020, the Acting VP for Legal, Compliance, and Risk began to allow career attorneys to engage in routine communications without preclearance.

Congressional Requests

These policies also stymied timely USAGM responses to congressional requests for information. Internal emails show that career staff within the Agency’s Office of Congressional Affairs sought blanket approval to engage in routine exchanges of basic factual information in response to inquiries from Congress. They obtained approval several months into CEO Pack’s tenure, but his relationship with Congress suffered substantial damage after his termination of several network heads and the members of the grantee boards.

A burdensome internal review process continued to slow down CEO Office responsiveness to congressional inquiries for months to come, according to emails by CEO Pack’s appointees, who expressed frustration. As an email by the Acting VP for Legal, Compliance, and Risk to CEO Pack and his leadership team states, “The slow-moving clearance process is hurting us

³⁹ “USAGM’s 2021 Chief FOIA Officer’s Report,” U.S. Agency for Global Media, April 12, 2021, <http://www.usagm.gov/wp-content/uploads/2021/04/2021-Chief-FOIA-Officers-Report.4.19.2021.docx>, accessed October 22, 2022.

⁴⁰ For example, the directive impacted a multimillion-dollar employment case in settlement negotiations. A veteran government employment attorney at USAGM was prohibited from speaking to an assistant U.S. attorney (AUSA) at the Justice Department that was defending USAGM in the matter, which was in federal court. Due to the preclearance policy, “all of a sudden I couldn’t participate, which meant that the Justice attorney possessed no authority from the client” to approve or decline offers and positions made during the negotiations, said the USAGM attorney, who has since left the Agency, during an interview. “That case came to a grinding halt, which upset both the mediator, the opposing counsel, and, quite frankly, the judge,” the attorney said.

rather than helping get our legitimate points out to the hill [sic], the media, and the general public.”

Interagency Coordination

USAGM-funded journalists in the networks often face overseas threats that call for interagency coordination with other federal entities, such as the State Department or the National Security Council. USAGM’s Office of Policy and Research is a leading component engaging with interagency partners. Career staff said that the external communication preclearance policy put a halt to certain routine interactions with other federal entities, as employees were initially unsure of the chain of command and who had the authority to approve interagency communications.

In August 2020, CEO Pack’s Vice President for Strategy gave career staff in the Office of Policy and Research blanket approval to engage in external communications during emergency situations, mitigating some of the impacts of the preclearance policy. This decision came as journalists from RFE/RL faced threats in Belarus, according to a USAGM career employee directly involved in the matters.

CEO Pack’s Appointees Sought Greater Delegation of Authority to Restore Agency Workflow

By October 2020, CEO Pack’s Chief of Staff and his Vice President for Strategy exchanged emails with CEO Pack where they expressed frustration with CEO Pack’s lack of delegation. On October 7, the Chief of Staff emailed CEO Pack that, “as you have now rescinded prior delegations of authority on numerous time consuming administrative and operational matters, how would you like to proceed with managing the Agency’s workflow?” She noted that she was “particularly concerned about time sensitive and critical contractual and personnel matters, as well as legal and operational matters affecting broadcasting operations and security.”

CEO Pack’s response to his Chief of Staff shows that the decision-making structure within the CEO’s Office was not clear four months into his tenure, but he blamed others for the slow process. On October 8, CEO Pack emailed, “I too am worried about stopping important ongoing operational needs. Please draft a minimal policy that focuses only on these and does not include personnel, MOUs [memorandums of understanding], or journalistic issues. Those need my written approval.” CEO Pack also wrote, “What do you recommend for the review and approval process before getting to me? We have been discussing this for some time. I never got a clear process recommended by you. As you know, I always approve documents quickly, usually within an hour, except the few big items I am weighing. The process gets bogged down before getting to me.”

The Chief of Staff responded that his recommendation was to “delegate authorities necessary to run the Agency, consistent with your vision and past direction.” She preferred more expansive delegations, but, nevertheless, she sent CEO Pack a limited set of delegations “for minimal action by Front Office staff on matters other than ‘personnel, MOUs and journalistic issues’” for his approval.

According to an email by CEO Pack in October 2020, the Chief of Staff threatened to resign if he did not delegate more functions. The Chief of Staff departed USAGM weeks later, shortly after the November 2020 election.

CEO Pack Terminates Board Members and Grantee Leaders

In addition to the revocation of the delegations of authority, on June 17, 2020, CEO Pack dismissed the members of USAGM’s new Advisory Board (formerly the Broadcasting Board of Governors), the boards of the grantees, and the presidents of the grantees.⁴¹

Days earlier, a handful of USAGM entity leaders had submitted their resignations. On June 13, the CEO of the Open Technology Fund, one of USAGM’s grantees, submitted her resignation to OTF’s board. Her letter stated her resignation would be effective as of July 13. On June 15, VOA’s Director and Deputy Director announced their resignations—effective close of business the next day—in a letter to CEO Pack, which was sent across VOA and USAGM. They wrote to Agency staff, “As the Senate-confirmed CEO, he has the right to replace us with his own VOA leadership.”

Once informed of these resignations, career staff within USAGM’s Office of Congressional Affairs advised the CEO’s Office that it would be best to proactively inform Congress before press on the resignations became public. A career USAGM employee wrote to CEO Pack’s Deputy Chief of Staff suggesting “a short, basic note to our oversight committees to inform them of the change so that they are not caught off guard and we can proactively address any questions.” The career employee noted that she would not communicate with Congress unless she received authorization from the CEO’s Office. The Deputy Chief of Staff responded, “Please hold.”

Within an hour and a half, news stories began appearing. The career employee wrote to the Deputy Chief of Staff again, “My news alerts on VOA are blowing up, so I would really recommend we send something soon on this, or else our committees will begin to have broader questions/concerns. I can send the below message, or something different. Please let me know how we can help on this.”

Despite the experience the day before, where news of the VOA resignations got ahead of the CEO Office’s communications, the CEO Office did not inform Congress of actions CEO Pack was about to take.

At 6:22 p.m. on June 17, CEO Pack sent letters to all the grantees dismissing their bipartisan board members and replacing them. He named himself chair, his Chief of Staff as another member, and other political appointees to another three positions (thus, five out of six positions were filled by Trump Administration political appointees).⁴²

The partisan composition and professional backgrounds of the boards’ new members were substantially different from the prior membership, which included individuals with

⁴¹ Numerous media organizations dubbed this the “Wednesday Night Massacre” in their coverage of CEO Pack’s actions.

⁴² Months after CEO Pack’s actions, the FY 2021 National Defense Authorization Act prohibited naming current federal employees to the boards.

bipartisan backgrounds and substantial expertise in foreign affairs, journalism, and/or communications.⁴³ (See [Grantee Network Governance](#).)

Shortly after 7 p.m., CEO Pack—with the emailed concurrence of the board members he had just installed less than an hour earlier—dismissed the heads of the grantee organizations effective immediately, including OTF’s CEO, who had earlier submitted her resignation.

The actions angered members of Congress across the political spectrum, who cited the lack of advance notice. CEO Pack’s “termination of qualified, expert staff and network heads for no specific reason as well as the removal of their boards raises questions about the preservation of these entities and their ability to implement their statutory missions now and in the future,” stated a letter signed by four Republican Senators and three Democratic Senators. “These actions, which came without any consultation with Congress, let alone notification, raise serious questions about the future of the U.S. Agency for Global Media (USAGM) under your leadership,” wrote the senators, all members of the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs—a key congressional panel for USAGM.⁴⁴

In interviews with Agency and grantee staff, including the grantee heads and board members who CEO Pack fired, most did not dispute whether CEO Pack had the legal authority to remove network heads and the members of the boards of the grantees under the law in place at the time.⁴⁵ (In reaction to CEO Pack’s actions, Congress put restrictions on this CEO authority in January 2021. Also, the Open Technology Fund was a unique case. See [The Open Technology Fund and Internet Freedom Funding](#).)

However, several raised concerns about the impact of the terminations and questioned the wisdom of the decision-making. The former head of the Middle East Broadcasting Network (MBN), who CEO Pack had terminated, wrote, “The truth is that CEO Pack had every legal right to fire who he wanted and to take aggressive measures at USAGM, the actual wisdom and timing of such steps is something else altogether.” Notably, the former head of MBN also wrote that, after his termination, “A senior Trump White House official called me the next day to say that the firings were a surprise to the White House.”⁴⁶

The removal of the president of RFE/RL added to the many years of leadership instability at that network, where several predecessors served for short periods of time. Former members of the Broadcasting Board of Governors who participated in the search for a president of RFE/RL, as well as RFE/RL and USAGM employees, said that the

⁴³ CEO Pack also continued the practice of naming the same members to all of the grantee boards—known as mirror boards. More recently, this practice has ended.

⁴⁴ Letter to The Honorable Michael Pack, U.S. Senate, July 1, 2020, <https://www.rubio.senate.gov/public/cache/files/20db345a-a326-4a8e-91e7-be7a7f420137/EC533D38ED5702A49F6070DF40808FB3.20.07.01-letter-to-michael-pack-re-usagm.pdf>, accessed October 22, 2022.

⁴⁵ See footnote 59. Bay Fang did not recognize CEO Pack’s authority to remove RFA board members.

⁴⁶ Alberto M. Fernandez, “The Quiet Crisis In U.S. International Broadcasting,” MEMRI, December 2, 2020, <https://www.memri.org/reports/quiet-crisis-us-international-broadcasting>, accessed October 22, 2022; Note: Amb. Fernandez did not participate in an interview, but instead pointed the Review Team to his commentary, published in December 2020.

search was lengthy and difficult. The RFE/RL president had committed to serving for a lengthy amount of time and moved his family overseas to Prague in the Czech Republic where RFE/RL is based.

Senior employees from the networks—RFE/RL, RFA, and MBN—said operations continued as normal, with senior leadership within the grantee organizations taking on additional responsibilities in the wake of the terminations. (At OCB, a federal network rather than a grantee, CEO Pack switched the person filling the acting director position from a career federal employee to a Trump Administration political appointee who had been at OCB since 2018; CEO Pack did not remove the career employee from federal service.)

But the terminations were still jarring, as widespread removal of network leaders and board members had never happened before; there had never been a single person with the unilateral authority to take such actions at the Agency. In an interview, the individual CEO Pack named as the acting president of Radio Free Asia said CEO Pack’s removal of RFA’s president had no discernable impact on RFA operations. However, he said that her removal, along with actions to remove her from her contractually guaranteed job as executive editor weeks later, did negatively impact morale within RFA. (See [Journalism and Journalistic Independence](#).)

In line with these remarks, other grantee employees similarly remarked that morale and trust in the CEO Office dropped due to CEO Pack’s removal of leadership. Some grantee employees said those actions, most of which occurred on the evening of June 17, 2020, seemed at odds with the Agency-wide message CEO Pack sent at the start of that day. In that message, CEO Pack wrote, “I am fully committed to honoring VOA’s charter, the missions of the grantees, and the independence of our heroic journalists around the world.”

CEO Pack subsequently directed the removal of OTF’s president the day after removing OTF’s CEO. OTF refused to comply.⁴⁷ (See [The Open Technology Fund and Internet Freedom Funding](#).)

CEO Pack’s “To-Do List”

The flurry of actions taken by CEO Pack in his first few weeks led many inside and outside the Agency to speculate on his intentions and what he might further want to do at the Agency.⁴⁸ A “to-do list” created by CEO Pack’s Chief of Staff on June 23, 2020—days after the June 17 terminations, directives, and the detail of a key staffer out of VOA—shows that CEO Pack had a wide-ranging agenda for the Agency.

Among the agenda items:

- “Fix the News Room” [sic]
- “VOA reporters (send signal)”
- “Reorg in next phase/senior management”

⁴⁷ OTF would file a lawsuit in Federal District Court.

⁴⁸ Anne Applebaum, “The Voice of America Will Sound Like Trump,” *The Atlantic*, June 22, 2020, <https://www.theatlantic.com/ideas/archive/2020/06/voice-america-will-sound-like-trump/613321/>, accessed October 22, 2022.

- “Grand restructuring”
- “Strategic content review”
- “Move OTF”
- “Fix VOA Persian (signal change)”⁴⁹
- “Fix Mandarin”⁵⁰

In one email, CEO Pack writes of wanting to change USAGM’s mission. Several of his efforts involving VOA and OTF would spark further controversy, including repeated bipartisan rebukes from Congress.

Subsequent sections of this report will provide further detail regarding several of these initiatives.

Lack of proper documentation regarding front office staffing

The review team uncovered a lack of proper documentation regarding the employment status of several of CEO Pack’s front office staff. Agencies must have complete and accurate records of employee service while an employee serves at that agency. This requirement applies to political appointees, career employees and detailees (who are assigned from one agency to temporarily perform work at another agency).

Based on information supplied by the USAGM Office of Human Resources, there is no information or documentation in the agency’s HR databases for at least ten individuals who held positions in CEO Pack’s front office. Neither CEO Pack nor his front office ever informed USAGM HR that these individuals were holding positions with the agency. These positions included the significant and sensitive positions of: Chief of Staff, Deputy Chief of Staff, and Acting Vice President for Legal, Compliance and Risk

The lack of proper documentation, typically found in the federal government’s SF–50 (Notification of Personnel Action), violates federal rules requiring agencies to document an individual’s employment status and service. This lack of documentation can hinder an assessment of the individual’s suitability to engage in federal service.

The lack of documentation for information regarding possible detailees to the agency raises issues concerning compliance with the Anti-Deficiency Act.⁵¹ Typically, employee details are memorialized in a memorandum of understanding executed between the two

⁴⁹ A week before the Senate confirmed Pack as CEO, a senior State Department political appointee criticized the VOA’s Persian service in an op-ed in the *New York Post*; Brian Hook, “Why are US taxpayers funding a ‘Voice of the Mullahs’ in Iran?” *New York Post*, May 27, 2020, <https://nypost.com/2020/05/27/why-are-us-taxpayers-funding-a-voice-of-the-mullahs-in-iran/>, accessed October 22, 2022; With full knowledge of CEO Pack, one of his appointees—who formerly worked under the State Department official—was involved in an attempt to remove the head of VOA Persian, according to emails and interviews with career HR staff.

⁵⁰ This item also contains a reference to “M5”—shorthand for the “Mandarin 5,” who are five former VOA Mandarin Service employees who had been terminated in 2018 for failing to adhere to journalistic standards in April 2017 and flouting explicit instructions from senior VOA management. The employees were on paid leave for 19 months while four different probes evaluated different aspects of the case prior to their termination. CEO Pack would seek to reinstate these employees.

⁵¹ 31 U.S.C 1341

agencies to document the purpose, length, and terms of the detail, which agency pays the detailed employee's salary and other expenses. This information is important in assessing compliance with the Act.

The lack of documentation also raises questions whether the "undocumented" staff had proper authority to take official actions on behalf of USAGM and the validity of those actions.

3. Career USAGM Executives

This section is relevant to the following items referred by the Office of Special Counsel:

- Gross mismanagement and abuse of authority (*OSC Referral Bullet 2*)
 - Revoking and reassigning SES employees' authority (*OSC Referral Sub-Bullet C*)
 - Suspending the 6 SES whistleblowers' security clearances and placing them on leave (*OSC Referral Sub-Bullet F*)
- Supplemental referral of February 16, 2021, concerning retention of McGuireWoods to conduct an internal investigation of several USAGM employees regarding alleged misconduct by the employees.

Key Findings

- **CEO Pack abused his authority by improperly suspending the security clearances of six senior executives and placing them on administrative leave.** He and key appointees targeted several senior USAGM career executives at the beginning of his tenure and sought to remove them from their positions. There is evidence that some of these actions were motivated by retaliatory animus.
- **CEO Pack's revocation of delegations of authority to senior career executives did not rise to the level of abuse of authority or gross mismanagement.**
- **CEO Pack contracted with a private law firm, incurring \$1.6 million in expenses billed to the Agency, to conduct investigations into the six senior executives.** Career officials in the Agency's Office of General Counsel were unaware of the hiring of the law firm, a second law firm, and a third group that also provided legal services to the CEO's Office.
- The Review Team's interviews and examination of documents show that **CEO Pack used a USAGM administrative hearing associated with the suspension of the executives as a pretext to defy a congressional subpoena** to appear on September 24, 2020.
- **[REDACTED], a senior advisor to CEO Pack, violated the Privacy Act by distributing the investigative materials generated by the private law firm on six senior executives to non-government individuals on January 19, 2021—the day before the inauguration of a new president who had stated he would remove CEO Pack once in office.** Just days earlier, that private law firm had advised CEO Pack and another appointee in writing that distributing these materials to those individuals or by posting them online would possibly violate the Privacy Act.

On August 12, 2020, CEO Pack suspended the security clearances of six of the USAGM's senior career executives and the Director of the Office of Security. The suspended senior executives were the General Counsel, Chief Financial Officer, Director of Management Services, Deputy Director of Operations, Executive Director, and Chief Strategy Officer.

The six senior executives filed whistleblower complaints with the Office of Special Counsel (OSC) and the State Department Office of Inspector General (OIG).⁵² These suspensions were included in the OSC referral for investigation by USAGM to examine as potential findings of gross mismanagement or abuse of authority. The suspensions were also investigated by OIG pursuant to Presidential Policy Directive 19 (PPD-19), which prohibits the taking of any action affecting an employee's eligibility for access to classified information as reprisal for a protected disclosure.

PPD-19 requires that every Agency have a review process that permits employees to appeal actions affecting eligibility for access to classified information they allege to be in violation of the directive. As part of the review process, the Agency Inspector General must conduct a review to determine whether an action affecting eligibility for access to classified information violated the directive, whether the Agency should reconsider the action, and whether corrective action is warranted.

The OIG determined that the suspensions of each of the six senior executives were in retaliation for making protected disclosures. For the purposes of this report, we adopt the findings of the OIG PPD-19 reports. In addition to sustaining the referral, the OIG PPD-19 reports called attention to broader issues of possible mismanagement and failure to comply with law and regulation, which we discuss below.

There is substantial evidence that the August 12 suspensions were the culmination of an effort, dating from early in CEO Pack's tenure, to sideline or remove Agency career leadership without adequate consideration of the effect on Agency mission or the legality of the procedures used.

June: Laying the Groundwork to Fire Career Employees

On the day before CEO Pack's confirmation, two politically appointed White House Liaisons to USAGM who had been at the Agency for only a few weeks met with CEO Pack and his Senate navigator. One of the Liaisons spoke to us on the record and approved notes from our interview.

According to the Liaison, a fellow Liaison suggested to CEO Pack and his Senate navigator that they meet with the career staff to "make peace." This suggestion was rejected, according to the Liaison who spoke with the Review Team. The tone of the meeting was adversarial to career staff, the Liaison said. The navigator said CEO Pack's Senate navigator responded, "These are not people to be trusted" and "These are not our friends." The navigator also stated that the incoming CEO Pack team had researched the political affiliations of the senior career executives and career staff in the CEO's office and identified several as Democrats.

⁵² The Director of Security did not file a whistleblower complaint.

According to the Liaison, he and his fellow Liaison believed that a new CEO had the right to bring in his own people and to move people around. He said they tried to advise CEO Pack and his Senate navigator on how to do this the right way—effectively and in compliance with laws and regulations. He said their advice was rejected. According to the Liaison, they said: “We have our own ways; your way is wrong. These people are the deep state. We want to get rid of them; to terminate them.” That particular Liaison recounted CEO Pack’s navigator, who would become CEO Pack’s Deputy Chief of Staff, saying: “I am working on behalf of Michael Pack. Michael Pack is working on behalf of the President.”

On June 5, 2020, the day after his confirmation, the Deputy Chief of Staff scheduled a meeting between CEO Pack and a career employee who had called for action against senior USAGM and VOA leaders. CEO Pack accepted the invitation.

That career employee had sent a memorandum to the Deputy Chief of Staff days before CEO Pack’s confirmation. The memorandum identified targets for removal, recommending immediately removing many USAGM and VOA leaders and employees and stressing the need for “the swift removal or disempowerment of the individuals responsible for the current situation.” The memorandum and additional emails sent in early June—described as briefing papers—included statements concerning the suspected political affiliations of individual career USAGM employees whom the author identified as targets.⁵³

In early June, career employees located within the CEO suite were relocated. According to the former Director of Security, the Deputy Chief of Staff directed the codes to the card reader at the entrance to the CEO suite be changed so that no career SES employees had access to the suite.

Investigation of possible avenues for removal began as early as June 7. One of the “briefing papers,” addressed to the Deputy Chief of Staff and an appointee in the Presidential Personnel Office⁵⁴, stated: “MP [Michael Pack] needs a skilled attorney who knows HR [Human Resources] regs. This is dicey territory.” The memorandum identified the 120-day moratorium following the appointment of a new Agency head when agencies can’t involuntarily reassign SES members who don’t choose to be moved and asked if it applied to employees in their probationary period. The memorandum and

⁵³ Comments concerning individual employees included:

- [O]n probation that might expire THIS WEEK. NEED TO ACT
- Eliminate the entire ...team (anti-Trump)
- Hates Republicans
- Hates Republicans and Trump
- HATES Republicans and Trump
- [I]s very much opposed to President Trump
- Openly despises Trump and Republicans
- [R]epeatedly goes after Trump, ...openly speaks of his antipathy for Republicans and Trump
- He is not on the Trump team
- Openly hostile to Trump
- [A]ppears to have become very anti-Trump

⁵⁴ It is unclear why this email would have been addressed to an employee of the Presidential Personnel Office, which deals solely with political appointments, and has no role in hiring, managing, or removing career employees.

the briefing papers identified many employees who the author believed might be serving probationary periods. On July 12, the Deputy Chief of Staff requested the names of all SES employees and employees at GS-15 and GS-14 who were serving probationary periods.⁵⁵

On June 16, Chairman Engel of the House Foreign Affairs Committee issued a press release about the “impending firing spree” at USAGM that prompted CEO Pack to email later that day, “So our plans have leaked. No surprise.” CEO Pack’s Principal Director for Public Affairs replied: “We simply need to proceed with our plans...Let’s carry out the actions and consider congressional exchange for a later day.”

On June 17, CEO Pack’s Chief of Staff emailed senior Agency staff that, “effective immediately, prior delegations of CEO authority have been revoked,” including all delegations of authority then held by the six senior career executives. The memorandum stated that “no actions are to be taken, and no external communications are to be made, without explicit approval” from CEO Pack or one of his senior political team members. These two directives served to centralize decision-making authority and control within CEO Pack’s political leadership team.

As detailed in the OIG PPD-19 reports, from mid-June throughout July the SES whistleblowers expressed concerns about many of CEO Pack’s actions to CEO Pack and members of his CEO Office team. Subjects they raised included effects of the procurement and hiring freeze, lack of approval of J-1 visas, firing of the network heads, firewall violations, issues concerning network and OTF grantees, and ethics issues.

July and Early August: Efforts to Fire Career Executives Move Forward

During July, CEO Pack’s appointees moved forward to remove the career executives. Several aspects of their plans were atypical and problematic.

No Government Subject Matter Experts or Accountable Federal Personnel Were Involved

Under established Agency practice, matters concerning possible employee discipline, security clearances, or suitability determinations were handled collaboratively by the Offices of General Counsel, Human Resources, and Security. None of these offices were consulted or had any knowledge of CEO Pack’s plans. If Agency leadership believes there is a conflict of interest that would preclude the involvement of any of these offices, experts from other governmental agencies are often called upon to manage the matter independently. USAGM had an existing MOU with the General Services Administration (GSA) to conduct background investigations and adjudications in instances in which USAGM offices had a conflict. OPM, ODNI, or the State Department could have been consulted or called upon to advise about or handle these matters. There is no evidence that any of the government agencies with expertise in these matters were consulted.

The Acting VP for Legal, Compliance, and Risk circumvented the Agency offices with responsibility for these matters and relevant subject matter expertise—the Office of General Counsel, Office of Human

⁵⁵ During an employee’s probationary period, they have fewer protections against removal by the Agency.

Resources, and Office of Security. She consulted another advisor within the Agency for information and advice on ways to remove these employees. During July and early August, she was provided with information and advice on requirements for SES reassignment, procedures for employee discipline, and procedures for revocation of security clearances. ^{The Acting VP for Legal, Compliance, and Risk} told the advisor that USAGM needed to proceed against “bad actors” and that “all options were on the table.” She requested and was provided with a detailed options memorandum on: (a) SES disciplinary actions, and (b) how to place an employee on “administrative leave if that employee has a security clearance but that employee’s investigation was conducted by USAGM while USAGM did not have delegated investigative authority from OPM.” The advisor also produced a template for the placement of an employee on investigative leave.

After considering these options for removal of career employees, it appears that CEO Pack’s appointees narrowed their focus to suspension of security clearances and immediate placement on administrative and investigative leave. In an interview with the State OIG, CEO Pack said that his staff, particularly his Chief of Staff and ^{the Acting VP for Legal, Compliance, and Risk}, proposed the suspension of the six complainants’ security clearances and that he concurred with their proposal, but left the details of the suspensions up to them. Because each of their positions required a security clearance, this course of action had the advantages of being unilateral and of immediate effect, circumventing the procedural requirements for both performance- or conduct-based disciplinary actions and the 120-day moratoriums on involuntary SES reassignments. The seven employees included six SES executives whose positions were covered by the 120-day moratorium and the then-Director of Security, a non-SES career employee.

In August, immediately before the notices of suspension were transmitted, ^{the Acting VP for Legal, Compliance, and Risk} directed an employee to provide home addresses for 13 other employees, including the seven employees who were placed on administrative leave. ^{The Acting VP for Legal, Compliance, and Risk} said, “I need these ASAP.” The employee stated that help from HR would be required to get the addresses quickly but was concerned that the HR staffer might inform the executive who manages HR (one of the executives to be suspended). ^{The Acting VP for Legal, Compliance, and Risk} responded: “If she goes against a direct order of the CEO, then she will be subject to disciplinary action.” She reiterated: “Need all of these addresses within the next half hour.” She also stated, “The CEO wants it now.” On August 7, CEO Pack emailed ^{the Acting VP for Legal, Compliance, and Risk}, “Please give me a copy of the seven letters.”

USAGM Leadership Ignored Government-Wide Regulations and USAGM Procedures.

The OIG reports documented the results of this failure to consult with knowledgeable personnel, adhere to government-wide regulations, or follow the Agency’s established procedures. The following excerpt from one of the reports summarizes findings for the six executives:

Despite these policies, OIG found that no one who was trained in the adjudicative guidelines participated in the decision, preparation, or finalization of [executive’s] suspension letter... Even if USAGM officials had questions about the

ability of its Office of Security, they could have consulted with OPM and ODNI about the suspension, but they did not do so.⁵⁶

As a result, the suspensions were illegitimate. The following excerpt from one of the OIG reports is typical of its findings in all six cases:

OIG's examination of the three factors found that even though USAGM cited five different reasons to suspend the security clearance of [executive], none of them relate to the adjudicative guidelines and thus do not constitute a legitimate basis for the suspension...

Indeed, when USAGM presented similar facts to two trained security clearance adjudicators in December 2020, they determined that "there are no security issues that fall under the Security Executive Agency Directive (SEAD 4) and Executive Order 12968."

The adjudicators determined that "these issues are all performance issues which fall under the Office of Human Resources."

USAGM could not demonstrate by a preponderance of the evidence that it would have suspended [executive's] clearance absent his protected disclosures...In addition, OIG found some evidence of retaliatory motive by individuals involved in the suspension and no evidence that USAGM took action against similarly situated individuals who were not whistleblowers.

Work Was Outsourced to Private Law Firms

Rather than follow Agency procedures or consult with knowledgeable government personnel, CEO Pack instead retained outside law firms to advise him and manage these actions. (See [Use of External Law Firms](#).) Three firms handled various aspects of this matter for CEO Pack: Federal Employment Law Training Group (FELTG), McGuireWoods, and Caplin & Drysdale.

FELTG provided legal advice and drafted documents relating to the USAGM SES employees placed on administrative leave by CEO Pack.

McGuireWoods expended significant time and resources undertaking an investigation of the seven employees placed on leave. McGuireWoods reviewed these employees' emails and other documents (in some cases for the previous 10 years) and catalogued and cross-referenced these materials in large databases, both in-house and with an outside vendor. This undertaking involved a large document review, an outside document management vendor, numerous partners, associates and contract attorneys, interviews with USAGM employees and grantees, other law firms, and an in-house relativity database. One product of this undertaking was a series of memoranda titled "Investigative & Document Review—[Employee] Summary" for each of the suspended employees. Each of these documents included a timeline with multi-page summaries of

⁵⁶ The OIG further noted: USAGM's directive states that decisions regarding security clearances must be made by "appropriately trained adjudicative personnel" using the adjudicative guidelines. However, in [executive's] case, no one who was trained in those guidelines, such as the Chief of the Personnel Security Division who ordinarily has the responsibility to suspend security clearances, was even consulted about the suspension.

documents reviewed. These summaries were delivered to USAGM on December 9, 2020; their recommendations could not have been used in CEO Pack’s determination to suspend the clearances but were a post hoc attempt to shore up the original suspension.

The OIG reports concluded none of this extensive undertaking by McGuireWoods was relevant to issues of national security, and none of their work was of any demonstrated value in making security determinations.⁵⁷

USAGM paid McGuireWoods more than \$1.6 million. A substantial portion of the invoiced work (at least \$776,600) was related to the preparation of these investigative memoranda. (See [Use of External Law Firms.](#))

Plans Were Carried Out in Secrecy Using Encrypted Messaging

Many of the conversations between the Acting VP of Legal, Compliance, and Risk and the career employee described in the above paragraphs were carried out over the encrypted messaging app Signal. [REDACTED] had set a disappearing message timer on her Signal app. These actions violated regulations of the National Archives and Records Administration requiring that official business be conducted in a government recordkeeping system and documents be preserved and support the inference that the Acting VP of Legal, Compliance, and Risk used, and directed the use of, Signal to evade federal recordkeeping requirements.⁵⁸ According to the career employee, the Acting VP of Legal, Compliance, and Risk directed that his work be sent directly to her and only to her and that confidentiality be maintained. One of her Signal messages read, “No one can know. Just you.”

Pretextual Personnel Dossiers Were Created on Targeted Employees

The mission of the USAGM Office of Risk Management (ORM) was “identifying, assessing, managing, and monitoring all enterprise-wide risks.” The office was headed by the Chief Risk Officer. The office had no role or responsibility in employee discipline or individual personnel security determinations.

As one of his initial assignments from the Acting VP of Legal, Compliance, and Risk, the Chief Risk Officer was directed to develop a “risk analysis” for each of the six senior executives. These “risk analysis” documents were attached to the letters of suspension. Assignments to draft the documents were divided between the Chief Risk Officer and an ORM employee. The documents focused exclusively on each of the six individuals and did not include any standard risk analysis or measures, such as risk treatments or risk scoring. Before this assignment, ORM had never written risk documents for individuals.

The Acting VP of Legal, Compliance, and Risk tasked ORM with completing the “risk analysis” for the six individuals very quickly, within a day or a few days. The Acting VP of Legal, Compliance, and Risk directed that the work be conducted in

⁵⁷ OIG noted: “On December 21, 2020, adjudicators from USAGM’s Office of Security reviewed the report on [executive] prepared by the law firm and determined that all the issues identified, which were similar to the issues used by USAGM to suspend [executive’s] clearance, were performance based, unrelated to issues of national security as set forth in Security Executive Agency Directive (SEAD 4) and Executive Order 12968.”

⁵⁸ 36 CFR Part 1230 – Unlawful or accidental removal, defacing, alteration, or destruction of records, <https://www.law.cornell.edu/cfr/text/36/part-1230#:~:text=36%20CFR%20Part%201230%20-%20UNLAWFUL%20OR%20ACCIDENTAL,AND%20RECORDS%20ADMINISTRATION%20SUBCHAP%20B%20-%20RECORDS%20MANAGEMENT>, accessed October 22, 2022.

secret and without consultation or collaboration with any other USAGM offices, including the Office of Human Resources. At the direction of [the Acting VP of Legal, Compliance, and Risk], communications between her, the Chief Risk Officer, and the ORM employee were generally conducted in person and over private phones, sometimes using the encrypted Signal app. [The Acting VP of Legal, Compliance, and Risk] did not explain the purpose or expected use of the individual “risk analysis.”

[The Acting VP of Legal, Compliance, and Risk] directed that the documents include anything “heard in the halls,” regardless of whether they could verify the information. One of the OIG reports stated that some of the statements “appear to be a collection of rumors and gossip.” According to an OIG interview, the Chief Risk Officer stated that he did not imagine that the CEO would use these reports “to let people go.” He noted that none of the risk analyses address security clearance issues or the individuals’ abilities to hold security clearances.

For some of the executives, [the Acting VP of Legal, Compliance, and Risk] directed employees to provide additional derogatory material. [The Acting VP of Legal, Compliance, and Risk] asked a USAGM employee to prepare another memo regarding one of the executives to be suspended. According to an OIG report, this memorandum contained a collection of allegations, primarily about this executive’s management, that the drafter heard from “first-hand and second-hand accounts” and of which he acknowledged he did “not have direct knowledge.” USAGM officials performed no follow-up work to ascertain if these allegations had any basis in fact before relying upon them to suspend [executive’s] clearance. For another executive, [the Acting VP of Legal, Compliance, and Risk] contacted the ORM official who had drafted [executive’s] risk analysis and directed that ORM revise the “risk analysis” to add “harsher language” about [executive’s] leadership and to add that [executive] should be removed from their position. The ORM official revised the “risk analysis” document to include the recommendation that [executive] be removed as directed by [the Acting VP of Legal, Compliance, and Risk]. USAGM included this version as an attachment to [executive’s] suspension letter.

The OIG’s conclusion about the use of the “risk analysis” documents in one of its reports is typical of its findings for all six executives:

Because of [the Senior Vice President for Legal Affairs’] selection of the employees as to whom risk profiles were to be prepared and her indifference as to whether the information to be included was truthful, OIG finds that the risk profiles are pretextual and were simply created to support the predetermined decision to suspend the clearances of the individuals, rather than a legitimate reason for the suspensions.

Suspensions of Career Executives Created Further Anxiety in the Workplace

On August 12, 2020, each of the six senior career executives and the Director of Security received a letter from CEO Pack suspending their security clearance and placing them on administrative leave. The letter stated: “I certify it is in the interest of U.S. national security to suspend your security clearance, pending the outcome of an investigation effective immediately.” These employees were prohibited from conducting any USAGM business or duties, directed to immediately surrender identification badges and all government property or records, and prohibited from entering any Agency facility. Any

changes to home address, telephone number, or email address were to be reported to USAGM. They were directed to physically report to USAGM headquarters within one day of any request.

These suspensions had an immediate and profound effect on the Agency. All seven were career civil service employees. They had no notice of the pending suspensions and no prior opportunity to review and challenge the allegations. In interviews, several whistleblowers expressed concern about the impact these actions might have on their reputations and careers.

News of the suspensions spread quickly throughout USAGM. Many of the employees interviewed described the unprecedented abrupt, simultaneous removal of the Agency's most senior career leaders as a shock. Lack of communication from CEO Pack and the isolation of working from home during the pandemic aggravated apprehensions. Employees learned of the suspensions from other employees or media reports. The Agency's Chief Operating Officer, to whom some of the suspended employees reported, was not consulted or informed. In an interview, he described the situation as "total and complete chaos."

The suspensions also engendered an atmosphere of anxiety, as employees worried about whether their jobs might also be in jeopardy. A common sentiment expressed in interviews was that if the CEO could abruptly remove the Agency's senior career leadership, then he could remove anyone else.

The suspensions also exacerbated the confusion about authority and chain of commands from the CEO's office. The rapid turnover and uncertain authority of political appointees in the CEO's office⁵⁹, the lack of clear communication, and the recissions of delegations had produced confusion and delay in decision-making. Employees were uncertain of their status or responsibilities. The six senior executives were sources of critical institutional knowledge, operational continuity, and day-to-day advice for many USAGM employees. According to interviews with employees, the lines of authority were blurred, and decision-making slowed. Several employees were uncertain of whom they reported to.

Continuation of Efforts to Remove Career Executives

Following the August 12 suspension of the six career executives, CEO Pack and his staff continued their efforts to remove them. As described above, McGuireWoods was engaged in an extensive program to investigate the executives and search thousands of emails and documents to unearth, compile, and organize derogatory information to support their removal.

CEO Pack also engaged the services of FELTG to provide legal and human resources advice and draft documents relating to the suspensions, including replying to the

⁵⁹ According to the Office of Human Resources, many of Pack's senior political appointees were never Agency employees recorded on the USAGM personnel system, including: the Chief Operating Officer; the Chief of Staff; the Deputy Chief of Staff; Senior Advisor to the CEO; Acting Vice President for Legal, Compliance, and Risk Management; and Vice President for Legal, Compliance, and Risk Management. These employees were detailed from other federal agencies and their positions of record remained at the detailing agencies.

employees' attorneys on suspension matters, advising and preparing for the required administrative hearings on the suspensions, and developing timelines for the discipline of employees. **The Acting VP of Legal, Compliance, and Risk** also attempted to get access to the raw background investigation files for the six executives and have them turned over to McGuireWoods.

The Acting Director of Security, whose supervisor was one of the employees suspended on August 12, was directed to turn the files over to McGuireWoods. The employee declined to do so and expressed concern that proper custody procedures be followed for these highly sensitive investigative files; she believed it improper to release these files to a private entity without proper security and custody arrangements. **The Acting VP of Legal, Compliance, and Risk** followed up with an email saying that whatever she was directed to provide she was required to provide. Although the employee said she felt threatened and pressured, she again declined to release the files. Concerned, she consulted with an attorney in the Office of General Counsel who advised her to follow proper procedures. She did not hear from **the Acting VP of Legal, Compliance, and Risk** again, and the files were not turned over.

After the August 12 suspensions, CEO Pack and his appointees appeared to have continued their efforts to attempt to discipline some of the executives for making public disclosures. **The Acting VP of Legal, Compliance, and Risk** threatened to discipline two of the executives for statements made to the media about their suspensions. An attorney who was a Senior Advisor to the CEO asked a Department of Justice attorney for advice on disciplining an attorney for upcoming congressional testimony.⁶⁰

In late September, the whistleblowers' issues received additional public attention. On September 24, one of the whistleblowers, as well as several other then-present and former USAGM staff, testified before the House Foreign Affairs Committee, describing several instances of alleged gross mismanagement, abuse of authority, and violation of law that would form the basis of the whistleblower complaint five days later.⁶¹ On September 29, the six suspended senior executives filed whistleblower complaints with the Office of Special Counsel and the State Department Office of Inspector General alleging retaliatory action and reprisals by CEO Pack for protected disclosures and their political beliefs. This filing generated press attention. On October 8, five of the six whistleblowers filed suit in Federal District Court alleging multiple breaches of the firewall and gross mismanagement.

⁶⁰ On August 27, 2020, the Senior Vice President drafted a memorandum to one executive, threatening to discipline him for statements that he made in news articles asserting that the suspension of his clearance was "pretextual" and constituted "retaliation" for reporting instances of gross mismanagement or abuse of authority. The Senior Vice President also drafted a memorandum to another executive threatening to discipline him for statements that he made in news articles asserting that the suspension of his clearance constituted "retaliation" for reporting instances of gross mismanagement and violations of law. On September 23, a Senior Advisor to the CEO emailed a Department of Justice attorney and raised concerns that [an executive] was going to testify before Congress on the following day and "may allege some form of retaliation." The Senior Advisor asked for the attorney's advice as to how to discipline the executive for his testimony.

⁶¹ "Committee on Foreign Affairs: Hearing: Oversight of the United States Agency for Global Media and U.S. International Broadcasting Efforts, September 24, 2020," U.S. House of Representatives Committee Repository, <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111033>, accessed October 22, 2022.

Throughout this period, CEO Pack monitored the situation closely. On September 12, 2020, in response to communications from lawyers representing the whistleblowers, he reviewed draft responses and asked to review the timing of requested administrative hearings. On September 13, he participated in a call with a FELTG attorney about the proposed hearings. On October 1, he emailed [REDACTED] the Acting VP of Legal, Compliance, and Risk and a Senior Advisor, who was an attorney, with the subject line “update on the six”:

Let me know where this stands, especially regarding our authority. As I have mentioned many times, quoting Admiral Rickover, I want to know about problems as soon as they arise, not after you’ve tried to ‘fix them,’ especially as they will become my problems. You need to let me know ASAP on new developments in this.

Declination of Appearance Request Before the House Foreign Affairs Committee

On September 3, counsel for the whistleblowers communicated with USAGM seeking an administrative hearing concerning the suspensions. On September 10 and 11 the two attorneys for the whistleblowers, having had no response from CEO Pack, sent follow-up letters. CEO Pack continued to be directly involved. In a September 12 email to [REDACTED] the Acting VP of Legal, Compliance, and Risk stated that he had reviewed the draft response from FELTG, the outside law firm he had retained to manage the suspension process. On September 13, he participated in a call with the FELTG attorney on the process for revoking the security clearances of the six SES whistleblowers and the Director of Security. On September 14, the FELTG attorney requested from [REDACTED] the Acting VP of Legal, Compliance, and Risk copies of the August 12 letters of suspension. On September 17, CEO Pack sent one of the attorneys for the whistleblowers a letter setting September 24 as the date for the administrative hearing.

September 24 was a surprising date to set for the administrative hearing, as CEO Pack had been scheduled to testify before the House Foreign Affairs Committee on that date, which had been scheduled since August 3. On September 18, the whistleblowers’ attorney, the FELTG attorneys, and [REDACTED] the Acting VP of Legal, Compliance, and Risk engaged in a series of email exchanges concerning the hearing date. The FELTG attorneys expressed concern over failure to accommodate the plaintiff’s request to postpone and noted, “Refusing to accommodate those legitimate scheduling concerns could indicate a lack of good faith on the part of the agency.”⁶²

⁶² The sequence of the email exchange was as follows:

- An attorney for the six SES whistleblowers asked to postpone the September 24 date, citing: (i) the intervening Jewish holiday and the need to prepare; (ii) the attorney’s inability to participate on that date because of a medical appointment; and (iii) CEO Pack’s scheduled appearance at the congressional committee hearing.
- The FELTG attorney representing USAGM wrote to FELTG’s president that the rejection of the whistleblowers’ counsel’s request to delay the Sept 24 administration hearing was unreasonable, because the Jewish holidays and medical reasons cited: “**the only reason to rush is to get these people fired quickly.** They should allow counsel to be present, and a pacemaker replacement is pretty good grounds for a delay [emphasis added].”

At about the time the Acting VP of Legal, Compliance, and Risk and the attorneys representing the parties were corresponding on postponing the September 24 administrative hearing, CEO Pack's appointees were communicating with staff of the House Foreign Affairs Committee about his scheduled September 24 appearance.

On September 17, HFAC staff and CEO Pack's appointees exchanged emails about the scheduled September 24 hearing, in the following sequence:

A Senior Advisor to CEO Pack, who was primarily responsible for his congressional affairs, emailed two staff members of HFAC that CEO Pack would not appear at the previously scheduled committee hearing:

[U]nfortunately there have been factors that have coalesced since we agreed to the September 24 date requiring the urgent attention of the CEO and his leadership staff. This will make the next few weeks an incredibly busy time at USAGM and for Mr. Pack. Accordingly, Mr. Pack is unable to appear on the 24th... While the September 24 date was convenient when scheduled in early August, issues have evolved since that time now requiring considerable attention from the CEO and leadership staff to address security related issues.

This explanation did not satisfy committee staff. The HFAC staff member's reply to CEO Pack's Senior Advisor included the following:

On our call, you also referred to "administrative proceedings" that would keep Mr. Pack from testifying, but you refused to describe what those proceedings were other than to confirm that they were not classified in nature. Your email provides no more clarity on what specifically is preventing Mr. Pack from appearing next Thursday. As a reminder, Chairman Engel initially invited Mr. Pack to appear before the Committee in the attached June 23 letter. With respect to request to brief Chairman Engel on the "national security issues," the committee staff director informed a senior political appointee on July 30 that a staff-level briefing would be required first. The Agency never sought to schedule such a briefing with Committee staff.

Later that day, the HFAC staff member replied:

The Committee has learned that Mr. Pack is unavailable on September 24th because he has chosen to schedule and attend administrative hearings related to a number of employees whose security clearances have been suspended. We understand a number of items related to this:

1) Mr. Pack has total discretion as to when these proceedings can be scheduled.

-
- A senior political appointee emailed the two attorneys asking them to prepare a response, including the following excerpt: "Can you provide a brief draft response to this letter? We are not interested in postponing the hearing..."
 - The FELTG attorney emailed a draft and again recommended postponing the September 24 hearing: "We understand your desire to move these matters quickly, but recommend the agency consider rescheduling from September 24 to September 29, due to the medical issue with [whistleblower attorney] and the Yom Kippur holiday."

2) The employees involved learned about these proceedings at or after 4:30 p.m. today.

3) According to our understanding of USAGM regulations and standard federal Agency practice, such administrative hearings are handled by security professionals, not the head of Agency.

This information leads us to conclude that the Agency has operated in bad faith on the matter of Mr. Pack's appearance before the Committee, which he committed to on August 3.

USAGM has until 9am tomorrow to reconsider this matter and confirm that Mr. Pack will appear voluntarily before the Committee on Foreign Affairs on September 24 at 10:00am as previously agreed to, or the Chairman will proceed with issuing a subpoena compelling his attendance.

On September 18, Chairman Engel of the House Foreign Affairs Committee issued a subpoena for CEO Pack's appearance before the Committee on September 24:

Mr. Pack's office informed the Committee last night that he intended to back out on his commitment to appear at a hearing on September 24. His office failed to provide any reasonable alternative dates and his excuse for breaking his commitment is not acceptable. Today the Committee has issued a subpoena to compel Mr. Pack's testimony on the originally agreed-upon date.

The evidence shows that CEO Pack was keeping close tabs on developments involving the September 24 congressional hearing. On September 23, CEO Pack emailed OMB's General Counsel, "now there is a second panel" for the next day's HFAC hearing. In addition to the then-CFO and former CEO, whose testimony was described above, this panel included the former Director of the Voice of America, the former President of Radio Free Europe/Radio Liberty, and the Chair and a board member of the Open Technology Fund.

CEO Pack did not appear at the September 24 HFAC hearing.

The USAGM administrative security hearings were not rescheduled and took place on September 24. CEO Pack did not attend. The weight of evidence supports the conclusion that the administrative hearing was a pretext to avoid appearing before HFAC, based on: (1) recommendations from CEO Pack's attorneys to reschedule the hearing; (2) exchanges with HFAC staff concluding that CEO Pack had acted in bad faith; (3) CEO Pack's refusal to reschedule the hearing; and (4) CEO Pack's failure to appear at the administrative hearing.

Of the seven suspended employees, the only one to appear at the administrative hearing was the Director of Security, who was also the only suspended employee not represented by counsel. The Acting VP of Legal, Compliance, and Risk chaired the hearing and was the only person who spoke. The Director of Security had prepared an 81-page report plus extensive appendices concerning the allegations in the suspension notice and history of personnel security at USAGM. He had previously provided this document to the panel and gave an oral presentation at the hearing.

Shortly before the hearing, the Director of Security received a call from a close colleague in the Office of Human Resources who said that they were calling at the request of [REDACTED] the Acting VP of Legal, Compliance, and Risk. His colleague said that it would be good for his case if he could provide the CEO's Office with more information on security issues. The colleague said that he was conveying a message from [REDACTED] the Acting VP of Legal, Compliance, and Risk that "if you want to help yourself out, you may want to provide some information." He responded by providing the documentation referred to above.

He was later called for a second hearing, at which the Senior Vice President for Strategy and an attorney who was a Senior Advisor to CEO Pack, in addition to [REDACTED] the Acting VP of Legal, Compliance, and Risk were present. He was questioned about the documentation he had provided. He was requested to rewrite his documentation in the form of a whistleblower complaint about USAGM security issues. [REDACTED] The Acting VP of Legal, Compliance, and Risk stated that if he wrote as a whistleblower, it would help his case, and the Agency wouldn't take certain actions against him. [REDACTED] The Acting VP of Legal, Compliance, and Risk asked that the rewritten material be provided quickly.

The employee provided the material somewhat later but was not aware if any action was taken with it. On October 14, [REDACTED] the Acting VP of Legal, Compliance, and Risk asked the FELTG attorney, "Can you provide details on process for ending investigative leave/clearance suspension and potentially bringing someone back to the agency." The Director of Security was returned to duty on December 14.

Actions Targeting Whistleblowers Continue Post-Election

After the election, CEO Pack and his appointees continued their efforts to act against the whistleblowers.

Of the seven employees who were suspended on August 12, two left the Agency, one by retirement and the other by resignation. Both executives who left the Agency stated that their departures were not voluntary but were prompted by their distress with CEO Pack's actions against them. According to the Office of Human Resources, two employees were returned to duty, one on December 14 and one on January 19.

CEO Pack continued his pattern of actions against three career executives on suspension by seeking their removal. On December 22, the three executives—the Chief Strategy Officer, the Chief Financial Officer, and the Deputy Director for Operations—received notices of their proposed removal from federal service, signed by CEO Pack's Principal Director for Contracts.⁶³ The charges in the removal proposals relied heavily on material from the McGuireWoods dossiers, citing personnel and security concerns. McGuireWoods produced the draft memoranda on November 20 and transmitted them to a Senior Advisor to CEO Pack. Neither the Office of Human Resources nor the Office of General Counsel was consulted or aware of the decisions to remove the executives. This work was performed by outside counsel.

The final memoranda were produced and transmitted on December 9. Although the career executives had excellent career records, in the removal proposals, the Principal Director for Contracts determined that the executives, among other factors, "did not

⁶³ Mr. Jagers was a Schedule C employee appointed October 5, 2020, with the duty title of Principal Director, Office of Contracts.

have a realistic potential for rehabilitation” and that he “did not believe that any lesser penalty [than removal] will correct [their] misconduct.”

On January 21, 2021, these executives were issued a decision letter from a USAGM official identified as the Senior Advisor and Acting Vice President for Strategy, Research, and Operations purporting to remove them from federal service as of 12:01 am January 21. Incoming USAGM leadership directed that these removal actions not be processed. They were not entered into the agency’s human resources systems. USAGM human resources systems reflect that the three executives were returned to duty January 21, 2021. These executives, although returned to duty on January 21, were not reinstated to their former positions until the new leadership had reviewed the proposals to terminate and determined they were unsupportable. All information concerning proposed personnel actions and the suspension of security clearances has been removed from the executives’ personnel and security files.

CEO Pack Request for OIG Investigations and Circulation of McGuireWoods Documents

On January 14, 2021, CEO Pack sent the State OIG a letter requesting an OIG investigation of four issues he described as: security; OTF; spending; and J-1 visas and hiring foreign nationals.

On January 19, 2021, a senior advisor to
CEO Pack emailed the non-governmental addresses of five members of the boards of directors of the USAGM grantee networks who were also active private journalists. CEO Pack was copied at one of his USAGM addresses. That same day, CEO Pack had appointed all five of the recipients to the boards of three USAGM grantee networks: RFE/FL, RFA, and MBN. CEO Pack approved the transmittal of the McGuireWoods documents against the strong legal advice of a McGuireWoods attorney. According to a January 15 memorandum from a partner with McGuireWoods, on January 13 he and CEO Pack had discussed releasing the McGuireWoods investigative memoranda, either on the USAGM website or to the board members. The McGuireWoods partner’s January 15 memorandum strongly advised against such release stating:

- [O]ur view it is a bad idea -- and very possibly unlawful -- to post the McGuireWoods memos on the agency website... We strongly advise against posting these materials publicly or sharing them with board members in the absence of close legal analysis of the implications.”
- [T]here are good reasons to think that posting these memos would violate the Privacy Act, 5 U.S.C. s. 552a
- [I]nvestigative authority (e.g., a congressional committee) may conclude that USAGM leadership is gaming them, i.e., that you are refusing to cooperate with them while taking your side of the investigation story public to advantage yourself and the agency.
- [B]ecause the employees at issue were not interviewed, their counsel will immediately highlight his offer to provide them for interviews and the fact that they were not interviewed, and then paint the memos themselves as incomplete, one-sided, and agenda- or vendetta-driven.

Four days later, a senior advisor to
CEO Pack sent emails with the memoranda attached to the board members as described above. Two days later, both CEO Pack and the grantee board members who received the information were removed from their USAGM positions.

On February 23 and March 2, 2021, the USAGM Office of General Counsel sent Privacy Act violation notices to all five recipients. The notices advised each recipient that they had received an unauthorized release of Agency records and instructed each recipient to destroy the electronic files by permanent deletion, to return hard copies to the USAGM OGC, and to provide contact information of entities or individuals to whom they may have provided or disclosed the information. USAGM received responses from three of the recipients (or an attorney) that they had complied with the instructions. To date, USAGM has not received responses from two recipients.

Response to Office of Special Counsel Whistleblower Complaints

CEO Pack's actions against the executives continued until his last day in office. On January 20, 2021, CEO Pack sent a letter to the Special Counsel rejecting OSC's December 2, 2020, referral under 5 USC 1213(c) for investigation of matters raised by the whistleblowers. CEO Pack rejected OSC's referral on several bases. In his letter, he described OSC as "unconstitutional as presently constituted and administered" and claimed that the whistleblowers' allegations did not merit investigation because they "have an axe to grind." CEO Pack stated that USAGM "did not intend to take any action based on the Letter." (See [Appendix D](#) for the full text of CEO Pack's letter to the Special Counsel.) On February 18, 2021, the acting USAGM CEO rescinded CEO Pack's letter.

4. Personnel Suitability and Security

This section is relevant to the following items referred by the Office of Special Counsel:

- Gross mismanagement and abuse of authority (*OSC Referral Bullet 2*)
- Suspending the six SES whistleblowers' security clearances and placing them on leave (*OSC Referral Sub-Bullet F*)
- Freezing or delaying Agency hiring, contracting, and IT operations resulting in threats to Agency operations and/or employees' safety (*OSC Referral Bullet 3*)

Key Findings

- **Improving USAGM's compliance with regulations governing personnel suitability and national security determinations was an appropriate management focus for CEO Pack.**
- **During CEO Pack's tenure, USAGM continued efforts to improve compliance with personnel suitability and security recommendations.** These efforts were hampered by CEO Pack's lack of delegation to his appointees and delay in decision-making.
- **CEO Pack's public release of OPM's suitability agent report in July 2020 created unnecessary risks to the USAGM personnel security program and served no valid Agency purpose.**
- OPM documented a number of personnel suitability and security recommendations for which corrective action had not been completed, and OPM directed that USAGM redo all investigations since the lapse of delegated authority in 2012. Neither OPM nor ODNI rescinded or invalidated any existing investigations or adjudications that had been performed by USAGM.
- **A 2021 review by the Department of State Office of Inspector General found that USAGM had taken actions to address longstanding deficiencies identified by OPM and ODNI with the personnel suitability and national security determination processes.** OIG made no recommendations related to USAGM's personnel security issues.

When CEO Pack assumed office, compliance with regulations governing personnel security had been a longstanding issue at USAGM. Although some progress had been made in preceding years, many recommendations from oversight agencies remained open. Improving USAGM's compliance with regulations governing personnel suitability and national security determinations was an appropriate management focus for CEO Pack.

CEO Pack made personnel suitability and security issues a touchstone of his administration, returning to the issue many times as a major management challenge at USAGM.

On July 23, 2020, CEO Pack issued a statement announcing an investigation into “long-term security failures.” CEO Pack stated: “Multiple in-depth assessments of USAGM have been conducted by other federal agencies. These assessments reveal systemic, severe, and fundamental security failures, many of which have persisted for years... I also ordered a comprehensive investigation of USAGM operations because I am concerned that the failures identified compromise the agency’s ability to fulfill its mission, undermine the efficiency and effectiveness of the federal workforce, and pose a threat to U.S. national security.”⁶⁴ This statement was precipitated by the transmittal of a confidential report on the USAGM suitability program by OPM to USAGM in July 2020.

In later statements, CEO Pack amplified his view of the potential threat presented by shortfalls in the program. In an August 27, 2020, interview with *The Federalist*, CEO Pack, in discussing the security situation, stated of the networks, “It’s a great place to put a foreign spy.”⁶⁵ On September 3, CEO Pack issued a statement on J-1 visas and security issues, saying that, “USAGM faces a decade-worth of gross managerial incompetence that imperiled the organization’s viability and the safety of our country.”

CEO Pack reiterated these themes during the closing days of his administration. On January 14, 2021, he sent a letter to the State OIG requesting a “comprehensive investigation” of issues affecting the Agency, including security. The letter stated: “Previous USAGM senior management had repeatedly failed to adhere to national security protocols and essential federal government personnel security practices for at least a decade.”

On his final day in office, CEO Pack highlighted his work on the personnel security issue as a major accomplishment of his tenure. On January 20, 2021, CEO Pack published a series of memoranda on the USAGM website presenting his views of significant issues during his tenure. One memorandum was entitled “Security Issues.” CEO Pack stated that “previous senior management” had “placed U.S. national security in danger.” He stated that he “immediately directed USAGM to work closely with its federal partners to ensure that OPM’s and ODNI’s findings were swiftly and appropriately addressed.” He stated that at his direction, “USAGM has initiated a system in consultation with agency partners that will cure the aforementioned security violations and deficiencies.”

Personnel Security

The personnel security process includes three sequential phases: (1) position designation; (2) investigation; and (3) adjudication.

⁶⁴ “USAGM Pack announces investigation into long-term security failures,” U.S. Agency for Global Media, July 23, 2020, <https://www.usagm.gov/2020/07/23/usagm-ceo-pack-announces-investigation-into-long-term-security-failure>, accessed October 22, 2022.

⁶⁵ “How Michael Pack Is Draining The Swamp And Rooting Out Bias In Taxpayer Journalism,” *The Federalist*, August 27, 2020, <https://thefederalist.com/2020/08/27/why-public-broadcasting-drifted-left-and-what-can-be-done-to-fix-it/>, accessed October 22, 2022.

The process begins with the designation of a position.⁶⁶ The position designation determines a corresponding level of investigation that covers two related, but distinct, determinations: (1) suitability for federal employment (“public trust positions”) and (2) eligibility for access to classified information (“national security positions”).⁶⁷ Oversight of suitability and national security programs are divided between OPM, for public trust positions, and ODNI, for national security positions.⁶⁸ The position designation determines the type and scope of the required background investigation.⁶⁹

In 2014, new regulations governing position designations (5 CFR 1400) became effective. These new regulations required agencies to use a new position designation system for both public trust and national security positions. In most instances, agencies would be required to complete new position designation determinations for all covered positions and conduct reinvestigations should the new determinations require a different level of investigation.

Once the position has been designated, the appropriate background investigation is conducted. USAGM’s personnel security program is unusual in two respects. First, for many years it had been performing its own suitability background investigations, under a delegation of authority from OPM.⁷⁰ Second, the networks employ a significant number of foreign national staff.

The lapse in 2012 of USAGM’s delegated authority to perform its own investigations, as reported by OPM in its 2014 review, and its failure to comply with the new position designation regulations of 5 CFR 1400 were the two principal deficiencies with its personnel security program, although subsequent OPM reviews identified additional recommendations for corrective action.

Personnel Security Program Before June 2020

USAGM’s compliance with OPM personnel suitability regulations and ODNI personnel security regulations had been a longstanding management challenge at USAGM that had not been adequately addressed by USAGM’s leadership in the years preceding CEO Pack’s administration. CEO Pack was properly concerned about USAGM’s lack of compliance with governing regulations.

⁶⁶ The position may be an employee, contractor, or consultant.

⁶⁷ 5 CFR 1400 *et seq.* – Designation of National Security Positions, <https://www.ecfr.gov/current/title-5/chapter-IV/part-1400>, accessed October 22, 2022.

⁶⁸ “Executive Order 13467, as amended, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information,” White House, June 30, 2008, <https://www.presidency.ucsb.edu/documents/executive-order-13467-reforming-processes-related-suitability-for-government-employment>, accessed October 22, 2022.

⁶⁹ Positions may be both public trust positions and national security positions, in which event the investigation would support both determinations.

⁷⁰ 5 USC 1104 – Delegation of authority for personnel management, <https://www.law.cornell.edu/uscode/text/5/1104>, accessed October 22, 2022.

USAGM's personnel security program had been subject to periodic reviews by the OPM Suitability Agent Executive Programs. Program reviews (some conducted jointly with ODNI) were conducted in 2010, 2014, 2018, and most recently in July 2020.⁷¹

These reviews identified many issues of non-compliance with laws, rules, and regulations and specified corrective actions. The 2018 OPM Suitability Review identified 37 recommendations for corrective action and warned USAGM that its delegated investigative and adjudicative authority was in jeopardy. Following the 2018 OPM Suitability Review, USAGM began working with OPM and ODNI to implement corrective actions.

The 2020 OPM Suitability Review found that USAGM had taken corrective action on 18 of its recommendations, had not completed corrective action on 19 recommendations, and issued six new recommendations. The 2020 Suitability Review highlighted deficiencies with USAGM suitability investigations, adjudications, and position designations. ODNI highlighted a similar deficiency with national security investigations and adjudications in its own review.

The 2020 OPM Suitability Review concluded: "OPM will take steps to revoke USAGM's adjudicative and other delegated authority until such time as USAGM can demonstrate to OPM's satisfaction that USAGM has taken all corrective actions. OPM does not intend to grant delegated investigative authority to USAGM."⁷²

In an email to Federal News Network, an OPM spokesperson described this action: "OPM has revoked delegated investigative authority in the past; however, it is exceedingly rare... Delegated authority has been revoked from an agency at least one other time, and this has not occurred in more than 20 years."⁷³

USAGM Suitability Investigations

Issues with USAGM's compliance with personnel security regulations date from 2012. The last MOU between OPM and USAGM delegating authority for background investigations expired in December 2012 and no subsequent MOUs were executed. OPM noted the lapse in delegated authority in its 2014 review. USAGM security personnel stated that they were unaware of the lapse in OPM delegated authority until July 2017 (despite being notified by OPM in its 2014 review).

In the 2018 Suitability Review, OPM stated that it was unwilling to re-establish the delegation of investigative authority until USAGM had taken corrective actions on outstanding audit recommendations. In February 2019, USAGM ceased conducting its own background investigations and transferred these responsibilities to the Defense

⁷¹ "Follow-Up Review of U.S. Agency for Global Media Suitability Program," U.S. Office of Personnel Management, Suitability Executive Agent Programs, July 2020, OPM-SuitEA-July-2020.pdf (usagm.gov), accessed January 11, 2023.

⁷² USAGM transferred authority for suitability adjudications to OPM in October 2020.

⁷³ Nicole Ogrysko, "In rare move, OPM strips broadcasting agency of background investigation and vetting authorities," Federal News Network, August 12, 2020, <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>, accessed October 22, 2022.

Counterintelligence and Security Agency (DCSA). In 2020, OPM directed that USAGM have all investigations since the lapse of delegated authority in 2012 redone.

DCSA initially identified 1527 reinvestigations from 2018 through April 2020. After review, the actual number of reinvestigations that needed to be performed was 874. The remainder were either no longer required (e.g., employee had left the Agency or no longer required access) or were duplicate entries in the original list.

National Security Investigations

A similar issue existed for national security investigations. According to ODNI, USAGM had been conducting national security investigations without proper delegated authority. In July 2019, ODNI directed USAGM to have a third party conduct national security investigations.

Designation of Position Risk and Sensitivity

USAGM's lack of delegated investigative authority was compounded by its failure to implement new requirements for designation of position risk and sensitivity, which determine what type of investigation is required and how closely an individual is screened. In June 2015, OPM and ODNI jointly issued new regulations (5 CFR 1400 et seq.). Agencies were given 24 months to comply. Compliance with these new regulations imposed significant administrative challenges, especially for smaller agencies, as they required that all positions be reviewed using a new position designation system and reinvestigations be done if needed.

USAGM did not appropriately plan or allocate resources to comply with the new position designation system. As of July 2017, the deadline for Agency compliance with the new designation system, USAGM had neither implemented the system nor asked for an extension. USAGM subsequently requested a waiver in May 2018.

According to OPM, failure to consistently designate Agency positions at the proper level may result in either (1) investigating employees at a higher level than required, subjecting them to unnecessary scrutiny and placing undue financial burden on the Agency, or (2) allowing individuals access to information they are not properly vetted for, placing the Agency and the federal government at risk.

OPM's sample reviews of USAGM position designations in 2018 and 2020 identified many discrepancies, with both higher and lower designations and corresponding investigations than the standards required.

Other Related Issues

In addition, OPM's 2020 Suitability Review identified needed corrective actions in related security areas such as proper credentialing and Personnel Identity Verification (PIV) card issuance (for access to government facilities and information systems), adjudication training, pre-employment screening, use of appropriate forms, and recordkeeping.

Significantly, based on OPM’s 2020 Suitability Review, neither OPM nor ODNI rescinded or invalidated any existing investigations or adjudications that had been performed by USAGM since the lapse.

CEO Pack’s Actions Concerning USAGM’s Personnel Security Issues

Soon after CEO Pack assumed office, the former Director of Security reported that he had briefed the Deputy Chief of Staff on the outstanding security issues, including what he believed were inadequate staffing levels to manage the functions. He did not know if this information was transmitted to CEO Pack. He received no further inquiries from CEO Pack or his appointees on the briefing.

Release of OPM Suitability Report

On July 15, 2020, OPM transmitted the 2020 Suitability Review to USAGM. CEO Pack, the Deputy Chief of Staff, and the Acting VP of Legal, Compliance, and Risk were among the recipients of the report. The review was watermarked: “Privileged under Law Enforcement Privilege; Exempt from Disclosure under FOIA Exemptions 7E [disclose techniques and procedures for law enforcement investigations or prosecutions], 7F [endanger the life or physical safety of an individual].”

On August 4, 2020, CEO Pack put out a public statement announcing the release of the OPM review and attaching a copy. The former Director of Security was concerned about the release of the OPM Suitability Review because “you show the public exactly where the weaknesses of the security process lie.” He further stated, “[M]y main concern here is the security of the agency. And when you release those reports, you basically tell the public, you know, where your weaknesses are, how probably if you wanted to hurt the agency, maybe how best to hurt the agency.” Shortly after his return to duty on December 14, the Director of Security met with CEO Pack for what he described as a contentious meeting. He raised the issue of public release of the OPM report, noting that after the release, ODNI, the FBI, and the State Department had restricted their release of intelligence information to USAGM. He stated that the public release of the report placed Agency personnel, especially overseas personnel, at high risk.

USAGM’s lack of authority to investigate and adjudicate created difficulties in onboarding new hires, including new hires in the CEO’s Office. USAGM needed to have in place interim measures to have all investigative and adjudicative functions performed on its behalf until it could regain its delegated authorities.

In late July and early August, CEO Pack and his staff began reaching out to other agencies and individuals to discuss personnel security issues. On July 27, the Senior Advisor and Vice President for Strategy, Research, and Operations (Senior Advisor for Strategy) began work at USAGM, assumed lead responsibility on CEO Pack’s staff for the personnel security issue, and was engaged with this issue during the remainder of 2021. The two career personnel with the deepest institutional knowledge of these issues, the Director of Security and the Director of Management Services, had been placed on

administrative and investigative leave on August 12.⁷⁴ Work on this issue was delayed by CEO Pack's hesitant decision-making and refusal to delegate authority.

- On October 7, CEO Pack, in response to a request from the Senior Advisor for Strategy to complete an MOU with OPM for suitability investigations and adjudications, replied: "I think we should put the entire effort on hold." Later that day, the Senior Advisor for Strategy informed OPM and USAGM career staff that security work was on hold.
- On October 9, in an email to CEO Pack, the Senior Advisor for Strategy reiterated his view that the security work should go ahead: "I continue to believe that action should proceed without delay."
- In another email that day, the Senior Advisor for Strategy expressed his frustration with the delay, forwarding an email from OPM Office of Security inquiring about the status of the USAGM-OPM security arrangements for incoming personnel: "Michael, FYI, as you are handling the SSD [Security Stand Down] moving forward, pushing this to you. The item below is connected, via the MOU to which the SSD and long-term services were to be affixed. Until the MOU is executed, which was one of the subjects of the meeting cancelled this week, OPM will likely be hesitant to continue adjudicating our personnel."
- On October 14, the Senior Advisor for Strategy again pleaded with CEO Pack for approval to move ahead with OPM. "In light of the below and your last response, I (Senior Advisor for Strategy) request clear written authorization to proceed with discussions, drafting, and execution of our pending MOU w/ OPM that intends to secure suitability determinations and adjudications of our incoming personnel, via reimbursed services by OPM on a continuing basis." Later that day, CEO Pack authorized the work to proceed.
- On October 23, the Senior Advisor for Strategy sent CEO Pack for signature three Interagency Agreements to support background investigations and adjudications. On October 24, CEO Pack asked for additional information. Later that day, the Senior Advisor for Strategy replied: "Respectfully, I must advise you that we have lost valuable time and relationship capital w/ OPM by the past two weeks of delays. Please sign and return so that I may get this rolling on Monday."

Also in early October, the Chief of Staff emailed CEO Pack her concerns about delays in delegation and decision-making, referencing her specific concerns about security:

In the interim, as you have now rescinded prior delegations of authority on numerous time-consuming administrative and operational matters, how would you like to proceed with managing the agency's workflow? Also, how would you now like documents reviewed/cleared prior to presentation to you? I am particularly concerned about time sensitive and critical contractual and personnel matters, as well as legal and operational matters affecting broadcasting operations and security.

⁷⁴ The two employees were among the named whistleblowers.

Despite these delays, during calendar year 2020, USAGM continued to make progress on compliance with personnel security regulations. Working with OPM, USAGM identified 874 individuals who required reinvestigation because of the lapse in delegated authority. USAGM also put in place interagency agreements and contracts to support personnel security functions. Although USAGM staff were not able to get all the necessary contracts and interagency agreements in place by the end of the fiscal year, efforts continued, and necessary agreements were in place by the end of the calendar year.

By the end of 2020, USAGM had agreements in place for both its personnel suitability and national security processes. Agreements were in place with Defense Counterintelligence and Security Agency (DCSA), OPM, General Services Administration, and contractors for investigations, adjudications, pre-suitability determinations, and credentialing that allowed the Agency to continue to onboard some new employees and respond to OPM recommendations.

As of September 2021, USAGM, working with OPM and ODNI, had approved an Alternative Vetting Program (AVP) for a subset of foreign nationals. The AVP was operationalized in June 2022 through an MOU with DCSA.

2021 OIG Review

In response to CEO Pack's January 14 request that State OIG investigate the USAGM security situation, OIG began a review in February 2021. OIG found that some of the allegations in CEO Pack's letter were consistent with findings of previous OPM and ODNI reviews, as summarized above.

OIG concluded that the current suitability and national security determination process employed by USAGM had been approved by OPM (for suitability determinations) and by ODNI (for national security determinations). OIG did not make any recommendations when reporting progress made by USAGM to date.

5. Journalism and Journalistic Independence

This section is relevant to the following items referred by the Office of Special Counsel:

- Repeat firewall violations (*OSC Referral Bullet 1*)
- Gross mismanagement and abuse of authority (*OSC Referral Bullet 2*)
 - Removing the VOA Standards Editor (*OSC Referral Sub-Bullet D*)
 - Removing the RFA Executive Editor (*OSC Referral Sub-Bullet E*)

Key Findings

- **CEO Pack took actions that were inconsistent with the legal mandate that he respect the networks' journalistic independence and integrity** and other parts of law related to journalistic independence, although those statutory provisions do not clearly define the limits of CEO authority.
- Immediately prior to CEO Pack's arrival at the Agency, the BBG adopted a new rule aimed at defining the activities constituting violations of journalistic independence. While the timing of the adoption of this new rule (the day before he took office) was suspect, CEO Pack repealed the rule despite reassuring the Senate Foreign Relations Committee during his confirmation hearing that he would strengthen the journalistic practices and techniques inside the Agency that shield the networks from outside interference. Repeal of this rule was within his authority as CEO and did not alter the statutory language governing journalistic independence. However, this repeal signaled to many inside USAGM, the networks, and Congress that CEO Pack lacked a commitment to ensuring the networks' journalistic independence.
- **CEO Pack's actions to direct VOA to suspend its internal investigation and due process procedures involving the broadcast of a partisan video were inconsistent with USAGM procedures.** The video was produced for an Urdu-language audience in Pakistan and ran for five days before being taken down. CEO Pack then tasked a political appointee, who had no previous journalism experience, to conduct the investigation. (A federal judge found that CEO Pack's actions were not "reasonably necessary" since there were "less intrusive means" of conducting oversight—i.e., the VOA investigation—and thus his actions were "likely to be found unconstitutional" under a First Amendment analysis.)
- **There is no available evidence that CEO Pack intervened or expressed concern when informed that the acting Office of Cuba Broadcasting (OCB) head provided a White House political appointee with a link to OCB content so the appointee could email it to a domestic U.S. audience two months before the 2020 election.**

The White House event featured a group that had endorsed the incumbent president weeks earlier. USAGM broadcasters have an affirmative obligation to take all steps to ensure that U.S. audiences are not being targeted by Agency content, according to USAGM guidance. CEO Pack was made aware of this situation by way of two weekly activity reports provided in writing by the OCB acting head. There is no evidence that the acting head of OCB acted with improper intent. The acting head of OCB, who is no longer in the federal government, said he was not aware of CEO Pack expressing any concern.

- **There is no available evidence that CEO Pack expressed any concern with VOA leadership in January 2021 after they took employment-related actions against a VOA journalist for asking legitimate reporting questions of the Secretary of State.** Those VOA leadership actions ran contrary to VOA’s mission, and CEO Pack had a statutory responsibility to ensure that VOA upholds the highest professional standards of broadcast journalism.
- **CEO Pack’s reassignment of the VOA Standards Editor for four months, without backfilling the position, increased the risk of journalism lapses and constituted gross mismanagement.** CEO Pack’s action to temporarily detail the VOA Standards Editor was at odds with his statements that he sought to ensure the networks adhered to the highest standards of professional journalism. Reassigning employees is within the discretion of the Agency head; however, this specific reassignment impeded the ability of VOA to conduct its standard review of reporters’ editorial content, heightening operational and mission risks. CEO Pack’s detail also heightened concern within VOA that CEO Pack was eroding its independence because he took action without consulting VOA and because of the Standards Editor’s role in assessing and responding to potential violations of VOA’s journalistic independence. The Review Team assesses CEO Pack’s four-month detail of the VOA Standards Editor for no stated reason, while not allowing VOA to fill this position, as gross mismanagement.
- CEO Pack’s pressure on RFA’s acting leadership to remove the Executive Editor, although not an abuse of authority or gross mismanagement, was inconsistent with his statutory obligation to respect the professional integrity and independence of RFA’s journalistic operation.

Journalistic Independence

In protected communications with Congress, OSC, the State Department OIG, and GAO, as well as in a federal lawsuit, Agency employees claimed that some actions by CEO Pack and his team violated the journalistic independence of USAGM-funded networks.

These were serious claims given that journalism is the overarching mission of USAGM. The Agency exists “to inform, engage, and connect people around the world in support of freedom and democracy,” according to its website, and that “mission is reinforced by

those of the individual entities that are overseen by USAGM.” Five of the six USAGM-funded entities are journalism organizations and the sixth facilitates online access to USAGM-funded content and funds digital tools that support the work of USAGM-funded journalists and journalists writ large.⁷⁵

Journalistic independence—the ability to decide what news to cover and how to cover it—is seen as critically important to any news organization’s credibility.⁷⁶ For USAGM-funded news organizations, journalistic independence is also key to their effectiveness. They provide information to foreign audiences that are adept at identifying government propaganda and their independence demonstrates America’s values of freedom and democracy. Journalistic independence is a treasured operating principle within the networks, and has been since the first network, VOA, was founded during World War II. It is also a principle that Congress has repeatedly recognized as critical to the credibility, and thus effectiveness, of the networks in laws dating back decades.

To serve America’s “*broad* foreign policy objectives” as news outlets, as they are legally required to do, their *news* content cannot be U.S. government advocacy messaging [emphasis added].⁷⁷ As numerous current and former employees and others told the Review Team, while USAGM’s networks are government-funded, the news they deliver is not government-controlled.⁷⁸ When it comes to independence, appearances are important.

The networks must seek approval from USAGM for the financial and other resources for major new initiatives as well as part of the routine budget process. And it is entirely appropriate for USAGM to provide strategic feedback, including upholding its statutory obligation to provide direction to the networks on which foreign audiences should be prioritized. Yet, the CEO’s exercise of their statutory authority is circumscribed by the statute’s language that the CEO “shall respect the professional independence and integrity” of the networks.

Some of these allegations regarding the journalistic independence of the networks formed the basis for a federal judge’s preliminary injunction restricting the actions of

⁷⁵ “Mission,” U.S. Agency for Global Media, <https://www.usagm.gov/who-we-are/mission/>, accessed October 22, 2022; Former Broadcasting Board of Governors Chairman James Glassman also described this as “journalism with a purpose”: “An interview with James K. Glassman, Chairman of the BBG,” USC Center on Public Diplomacy, August 6, 2007, <https://uscpublicdiplomacy.org/blog/interview-james-k-glassman-chairman-bbg>, accessed October 22, 2022; The Open Technology Fund’s efforts also benefit non-journalists and enable access to other online content.

⁷⁶ The phrase “journalistic independence” is used here instead of the confusing, but commonly used phrase “editorial independence.” “Editorials” are a reference to a media outlet’s or its owner’s published viewpoints. Many publications have an “editorial board” that writes editorials. Yet, the term “editorial” is commonly used to more broadly describe the journalistic functions at a media outlet, especially the news, non-opinion side—hence the confusion. The applicable law describes this as the networks’ “professional independence and integrity.”

⁷⁷ This represents the state of the current statutory framework. For a fuller discussion, see “Role of U.S. International Broadcasting in Advancing U.S. Foreign Policy Goals and Promoting Democracy” in Matthew C. Weed, “U.S. International Broadcasting: Background and Issues for Reform,” Congressional Research Service, December 15, 2016, <https://sgp.fas.org/crs/row/R43521.pdf>.

⁷⁸ USAGM editorials that are run by VOA are different. Those are subject to government control, and they are labeled as government editorials.

CEO Pack, his appointees, and USAGM.⁷⁹ Five senior USAGM career executives and a senior VOA official filed a legal complaint containing these and other allegations against USAGM, CEO Pack, and five of CEO Pack’s appointees. On November 20, 2020, the U.S. District Court for the District of Columbia found that the plaintiffs “are likely to succeed in showing that defendants’ actions have already violated and continue to violate their First Amendment rights because, among other unconstitutional effects, they result in self-censorship and the chilling of First Amendment expression.”

While the court allowed CEO Pack and USAGM to continue exercising their authority on the policy level, its injunction forbid them from making or interfering with personnel actions involving individual journalists and editors, communicating with individual journalists and editors, or launching investigations of alleged journalism lapses.⁸⁰ However, if the relevant network leadership consented, USAGM could take those actions, per the judge’s order.

The court’s findings and order were a substantial rebuke since CEO Pack sought to enact changes to USAGM-funded journalism. His priorities included “Fix the News Room [sic],” according to a June 23, 2020, to-do list.

While USAGM’s CEO has, as one of their statutory responsibilities, broad oversight of adherence to journalistic standards and principles, this responsibility has to be understood in context. In addition to being legally bound to respect the professional independence of the networks, USAGM’s CEO is tasked with ensuring the Agency adheres to the highest professional journalism standards. In the news industry, these standards bar the business side of a media operation from dictating or improperly influencing editorial decision-making. These notions of journalistic independence

⁷⁹ The defendants appealed Judge Howell’s ruling at the Court of Appeals for the District of Columbia Circuit on December 17, 2020. After the change in presidential administrations and a change in leadership at USAGM, the Agency voluntarily dismissed its appeal; *Turner v. U.S. Agency for Global Media*: Joint Motion to Lift Stay of Proceedings and to Dissolve the Court’s Preliminary Injunction, U.S. District Court for the District of Columbia, May 7, 2021, <https://www.courtlistener.com/docket/18521917/53/turner-v-us-agency-for-global-media/>.

⁸⁰ Chief Judge Beryl A. Howell, *Turner v. U.S. Agency for Global Media*: Order, U.S. District Court for the District of Columbia, November 20, 2020, <https://context-cdn.washingtonpost.com/notes/prod/default/documents/fo060ca4-5bd6-4163-9c27-7e317f37a660/note/8676998c-9f05-4061-be06-746680f20681.#page=1>, accessed October 22, 2022; Judge Howell enjoined 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. . . .”

Judge Howell explained her reasoning in a 76-page memorandum opinion: Chief Judge Beryl A. Howell, *Turner v. U.S. Agency for Global Media*: Memorandum Opinion, November 20, 2020, <https://storage.courtlistener.com/recap/gov.uscourts.dcd.222894/gov.uscourts.dcd.222894.45.o.pdf>.

within USAGM are often referred to as the “firewall.”⁸¹ These statutory provisions limit the influence of USAGM’s CEO, as the District Court noted in issuing its preliminary injunction.⁸²

Indeed, during his Senate confirmation hearing in September 2019, CEO Pack testified that he would “strengthen” the “journalistic practices and techniques inside the agency” that shield the networks from political interference. The new CEO position had led to concerns that a single person in charge of the Agency would have more power to influence coverage than the previous bipartisan BBG.⁸³

Despite his promises to strengthen the journalistic practices inside the Agency, CEO Pack and his leadership team took actions inconsistent with the statutory basis for the firewall. Instead of strengthening the firewall, CEO Pack repealed the rules adopted just prior to his arrival at the Agency. While the repeal was not an abuse of authority, or a legal violation, CEO Pack’s actions negatively affected staff morale within the networks, strengthening many staff members’ views that CEO Pack was not committed to the Agency’s mission and to journalistic independence. It also angered both the chair and ranking member on one of USAGM’s main congressional oversight committees.

This section will detail several episodes involving CEO Pack and his leadership team that directly impacted USAGM-funded journalistic operations, although not all of these actions directly implicate journalistic independence.⁸⁴

CEO Pack and the “Firewall”

The 2017 NDAA, which created the new Senate-confirmed USAGM CEO position at the end of 2016, left statutory provisions related to journalistic independence in place. On June 4, 2020, the same day the Senate confirmed CEO Pack as USAGM’s CEO, the BBG finalized an Agency rule called *Firewall and Highest Standards of Professional Journalism*. The rule clarified “the practical meaning and impact of the statutory firewall.” Research and development of the rule began in 2016. The rule went into effect on June 11, 2020.

Among other key passages, the rule states that:

⁸¹ The firewall has its basis in statute. The International Broadcasting Act requires that Agency-funded journalism “be conducted in accordance with the highest professional standards of broadcast journalism” and to provide “news which is consistently reliable and authoritative, accurate, objective, and comprehensive.” The law mandated that the Agency “respect the professional independence and integrity” of USAGM-funded networks.

⁸² Judge Howell, “Memorandum Opinion”: the Agency’s “statutory scheme reflects a considered Congressional determination that USAGM’s pursuit of agency efficiency is cabined by the mandate that U.S.-funded international broadcasting ‘be conducted in accordance with the highest professional standards of broadcast journalism.’”

⁸³ Palmeri, “Trump to inherit state-run TV network with expanded reach.”

⁸⁴ Judge Howell, “Memorandum Opinion”: This section is informed by the Court’s Memorandum Opinion explaining the rationale for issuing a preliminary injunction, which evaluated whether certain actions implicated the statutory firewall and the First Amendment; This section is also substantially informed by a State Department Office of Inspector General report issued in October 2022 on journalism standards and principles at USAGM (“Targeted Inspection of the U.S. Agency for Global Media,” State OIG.)

...the existence of a firewall does not mean the absence of oversight. This firewall shall not be construed to limit USAGM oversight conducted in a manner consistent with that conducted by other media organizations which operate editorially independent news divisions that adhere to the highest standards of journalism.⁸⁵

The rule also states that “the firewall does not prevent officers or employees within the Executive Branch, including the State Department, from engaging with or speaking about USAGM networks as they might with any other news organization,” including commenting on stories.

The stated aim of the rule was to insulate the networks’ newsrooms from “*any* political or other external pressures or processes that would be inconsistent with the highest standards of professional journalism,” according to the rule. Violations of the rule were defined as attempts by individuals in the Executive Branch (but outside of the Agency’s newsrooms) “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.

There is evidence that CEO Pack took issue with the rule for non-substantive as well as substantive reasons. In particular, the timing of the rule angered him. A memo posted to USAGM’s website shortly before his removal in January 2021 states that, “In its final hours of existence—and literally hours before Michael Pack became the first Senate-confirmed CEO of the U.S. Agency for Global Media (USAGM)—the Broadcasting Board of Governors (BBG) issued a so-called ‘firewall rule’...” The memo refers to the rule as a “midnight regulation,” a phrase often used as a pejorative to describe substantial policy acts by the previous administration on the eve of new leadership.

Within his first weeks, CEO Pack tasked one of his appointees with researching the firewall. On July 1, 2020, that appointee produced an internal memo titled, “The Firewall Myth.” The appointee wrote that no statutory basis could be identified for shielding USAGM-funded journalism from influence or control outside of the newsroom, whether from USAGM or elsewhere in the Executive Branch.

The memo, which was expanded upon days later and re-circulated to CEO Pack and other appointees on July 6, focused its criticism on a one-paragraph summary of the firewall on VOA’s website without mentioning the firewall rule.

After the expanded memo cited President Trump’s criticism of VOA from April 2020,⁸⁶ the political appointee wrote that a “complete and total ‘firewall’” would grant “total autonomy” to VOA and the other networks. The political appointee further wrote that a firewall would mean “journalists working under USAGM would not have any oversight whatsoever of their work including but not limited to their own editors and managerial

⁸⁵ “Firewall and Highest Standards of Professional Journalism,” BBG.

⁸⁶ A Pack senior appointee also cited statements by then-Secretary of State Hillary Clinton from January 2013—more than seven years earlier. The individual also cited criticisms by bipartisan members of Congress from October 2014 regarding VOA’s Persian service where the appointee formerly worked.

staff for fear of a potential ‘firewall’ violation as these people are all also ‘U.S. government personnel.’”

This description misrepresents the nature and purpose of the firewall, as well as how it has operated in practice. Contrary to the appointee’s interpretation, the firewall rule explicitly states that the firewall does not apply to oversight of journalism by editors inside the newsroom, unless their decision-making is in furtherance of “impermissible influence.” The Agency’s firewall rule, Agency procedures finalized in March 2020, and other mechanisms that existed at the time state that USAGM has a proper oversight role consistent with protecting the journalistic independence of the networks.

On August 9, 2020, CEO Pack sent the appointee’s expanded memo to the General Counsel of the Office of Management and Budget.⁸⁷ OMB’s General Counsel, in turn, tasked a political appointee at OMB with preparing a legal analysis of the firewall rule. The OMB analysis was critical of the notion of a statutory firewall, and also recommended that the Agency repeal the firewall rule. And while it favored an expansive legal view regarding the CEO’s powers when it came to journalistic oversight, it still conceded that there was some statutory support for the idea of a firewall, unlike the memo by the Acting VP of Legal, Compliance, and Risk.

OMB’s General Counsel provided CEO Pack with that legal analysis on October 4, 2020, some of which was ultimately incorporated in a formal notice repealing the firewall rule on October 26.⁸⁸ In a press release announcing the repeal, CEO Pack called it the “so-called ‘firewall rule’” [emphasis added]. CEO Pack said the rule “made the agency difficult to manage and less able to fulfill its important mission to inform, engage, and connect people around the world in support of freedom and democracy.”⁸⁹

Acting heads of USAGM’s networks told the Review Team that CEO Pack’s repeal of the rule created consternation within the networks. The acting network leaders said they told staff that, despite the repeal of the rule, the statutory provisions protecting journalistic independence remained in place.

For instance, the acting head of VOA emailed VOA staff that “As was the case before the regulation, it is my position that the repeal does not allow government officials to tamper with or otherwise distort VOA content.” He also wrote that, “We will not defeat America’s enemies in the war of ideas if we mimic the worst examples of state-funded news outlets.”

In Congress, key members were critical of the repeal. “It is unclear why CEO Pack is opposed to journalistic objectivity at USAGM and its networks. Without it, the mission

⁸⁷ The now-former OMB General Counsel has co-authored a book with CEO Pack and served as a sounding board throughout CEO Pack’s tenure.

⁸⁸ The repeal occurred on October 26, 2020, but was formally published in the Federal Register on December 10, 2020; “Repeal of Regulation Entitled Firewall and Highest Standards of Professional Journalism,” U.S. Agency for Global Media, December 10, 2020, <https://www.federalregister.gov/documents/2020/12/10/2020-24736/repeal-of-regulation-entitled-firewall-and-highest-standards-of-professional-journalism>, accessed October 22, 2022.

⁸⁹ “Background on rescinding a so-called ‘firewall rule,’” U.S. Agency for Global Media, October 26, 2020, https://www.legistorm.com/stormfeed/view_rss/2033944/organization/108274/title/background-on-rescinding-a-so-called-firewall-rule.html, accessed October 22, 2022.

and effectiveness of the agency is undermined,” Representative Michael McCaul, the Ranking Member of the House Foreign Affairs Committee, told VOA.⁹⁰ Then-Chairman Eliot Engel said, in a statement, “He’s trying to tear down the legally mandated firewall that protects USAGM broadcasters from outside interference. But Congress created that firewall by law and although Pack can huff and puff, he can’t blow that wall down. The rule he rescinded yesterday clarified the legal protections. The firewall remains.”⁹¹

Nearly a month later, the court issued its preliminary injunction, barring CEO Pack and USAGM from communicating with journalists and editors, investigating journalists or journalism, or making personnel decisions in the networks without the involvement and consent of network leaders. Weeks after the November 20 preliminary injunction, CEO Pack named new heads of the networks to replace the acting leaders he had named in June (the one exception being OCB’s acting head, who was accorded permanent status).

On January 20, 2021, less than an hour before President Biden was inaugurated, CEO Pack sent a letter to OSC rejecting their December 2, 2020, referral to him mandating an investigation into several matters, included allegations of firewall violations: “The simple fact of the matter is that there is no ‘firewall’ at USAGM—it is myth.” (See [Appendix D](#).) CEO Pack’s letter states a similar characterization as his appointee’s July 1, 2020, memo. On February 18, 2021, the Acting CEO of USAGM sent a letter to the Special Counsel rescinding CEO Pack’s letter of January 20.

Actions Regarding VOA’s Standards Editor

On June 17, 2020, the CEO’s Office detailed VOA’s Standards Editor out of VOA for 120 days.⁹² The CEO’s Office provided no explanation to the Standards Editor or to VOA leadership. In his detail at USAGM, the Standards Editor was provided no work and was explicitly barred from conducting most of his VOA job functions. He initially reported to the Chief Operating Officer, who was a member of CEO Pack’s leadership team until mid-August. After the Chief Operating Officer left USAGM, the Standards Editor said he was never given any further instructions or told to whom he should report. In an interview with the Review Team, the former Chief Operating Officer said he had no insight into why CEO Pack wanted the Standards Editor out of VOA and detailed to his office. During the period of his detail, VOA was not permitted to backfill his position despite requests from VOA.⁹³

The Standards Editor plays a critical role within VOA. The job involves training staff in best practices to prevent journalistic lapses, consulting with journalists and editors on difficult reporting questions prior to publication, and examining allegations of violations of journalistic standards. The position of Standards Editor was not filled until well after

⁹⁰ Jessica Jerreat, “USAGM CEO Criticized Over Move to Rescind Firewall Regulation,” Voice of America, October 27, 2020, https://www.voanews.com/a/usa_usagm-ceo-criticized-over-move-rescind-firewall-regulation/6197671.html, accessed October 22, 2022.

⁹¹ “Engel Statement on Michael Pack’s Attack on the Statutory Firewall,” House Foreign Affairs Committee, October 27, 2020, <https://foreignaffairs.house.gov/2020/10/engel-statement-on-michael-pack-s-attack-on-the-statutory-firewall>, accessed October 22, 2022.

⁹² SF-50 Notification of Personnel Action dated June 17, 2020.

⁹³ “Additional Actions Needed to Improve Oversight of Broadcasting Networks,” U.S. Government Accountability Office, October 2021, <https://www.gao.gov/assets/gao-22-104017.pdf>.

CEO Pack's departure, and VOA's Standards Editor was temporarily assigned to OCB to conduct training until the OCB position could be filled.⁹⁴

The Standards Editor's job responsibilities have also included assisting USAGM's Human Resources office in determining whether and what kind of disciplinary actions may be warranted when journalists violate standards and best practices. Career investigative staff in HR's Labor and Employee Relations unit said the Standards Editor was vital in their efforts to appropriately discipline journalists at VOA (and previously at OCB) when there are failures to uphold journalistic standards. This is because they are not journalists themselves and cannot expertly evaluate media content, what went wrong, and who bore responsibility for the lapses.

At times, the Standards Editor has also been a resource during congressional inquiries. For instance, the absence of a Standards Editor was a factor when Congress raised questions regarding CEO Pack's announcement at the end of June 2020 that he would make government editorials more prominent at VOA. VOA leadership exchanged several emails over several days with career staff within USAGM's Office of General Counsel as they sought to find someone to help them answer congressional questions. "We are trying to cover his various duties as we speak," a senior VOA official emailed on June 30, regarding the Standards Editor's duties.

The absence of the Standards Editor came during the runup to the 2020 presidential election—a period of intense media coverage where issues of balance and fairness come up routinely. VOA navigated the Standards Editor's absence by having others fill in as needed; however, VOA leadership thought he would be returning to his role imminently and were not immediately aware of his months-long reassignment. At a large media organization such as VOA, with dozens of language services that are in many ways separate newsrooms of their own (plus OCB, until the summer of 2021)⁹⁵, the standards position is a full-time job. Instead of weeks, the Standards Editor returned to VOA in mid-October 2020 at the end of his four-month detail.

One high-profile lapse occurred during CEO Pack's tenure that might have been prevented if CEO Pack had not detailed the Standards Editor out of VOA for four months, according to a senior VOA official. In a July 28, 2020, email regarding an election-related video released by the VOA's Urdu-language service, the senior VOA official wrote that:

The VOA Standards Editor, who would typically have provided election issues training for all VOA staff and stringers in July, has been on assignment with USAGM since June. He would have been the first contact when editorial issues arose but was not replaced in the wake of the CEO's hiring freeze and contract review, which is ongoing.

The senior VOA official's email, which was forwarded to CEO Pack, stated that the VOA was continuing its investigation into the root causes of the editorial breakdowns regarding the video. Within a day, CEO Pack's team instructed VOA to stop its

⁹⁴ "Embarking on Reform of the Office of Cuba Broadcasting," USAGM.

⁹⁵ "Additional Actions Needed to Improve Oversight of Broadcasting Networks," GAO.

investigation and turn the investigation over to a political appointee with no journalism experience.

Actions Regarding RFA's Executive Editor

The president of Radio Free Asia, unlike counterparts at Radio Free Europe/Radio Liberty or Middle East Broadcasting Networks, had risen through the ranks of RFA. After CEO Pack removed her as president, her contract with RFA stipulated that she could return to her previous position as RFA Executive Editor. When the CEO's Office learned of this weeks later, CEO Pack—who had named himself chair of RFA's board—directed her removal, which RFA's Acting President pursued on July 8.

A former USAGM Senior Advisor filed a declaration in federal court and described CEO Pack's actions regarding the RFA Executive Editor as “reaching into a journalistic organization and demanding the removal of a person in an editorial role.” The USAGM Senior Advisor, a veteran news industry executive, said, “No CEO at a private news organization operating at the highest standards of professional journalism would ever direct such a termination.” The Review Team agrees.

Unlike CEO Pack's removal of the RFA president, CEO Pack's pressure on RFA's acting leadership to remove the Executive Editor was not gross mismanagement or abuse of authority since the newly appointed acting RFA president took the action to terminate her. However, CEO Pack's actions were inconsistent with the statutory mandate that he respect the networks' journalistic integrity and independence.

CEO Office–Led Investigations

In public statements, including some since leaving the Agency, CEO Pack has maintained that his approach to USAGM-funded journalism was politically neutral. Yet, CEO Pack overrode Agency procedures and normal practices in several instances that involved coverage seen as politically contrary to the incumbent president. In these matters, CEO Pack tasked political appointees to examine content and the actions of individual journalists rather than relying on experienced editors and journalism experts from inside the networks or external to the Agency, as Agency procedures require.⁹⁶ In a third instance, CEO Pack was informed in writing of network coverage where a network's acting head worked with a White House appointee to target a domestic U.S. audience with the coverage. There is no evidence CEO Pack took any action or raised any concern in that matter.

The VOA Urdu Service Video

For CEO Pack, exhibit #1 showing bias within VOA is a video segment shared on social media featuring the Biden campaign's outreach to Muslims. In several interviews and op-eds by CEO Pack, including some after his tenure as CEO ended, this has been the only example he has cited. It was produced by low-level contract employees within

⁹⁶ There were instances where the CEO's Office raised concerns about content and the actions of journalists in the performance of their official duties, but VOA was in charge of investigating the content and/or journalists for adherence to journalistic standards. Those instances are consistent with Agency procedures, normal practices, and with respecting the journalistic independence of VOA and thus are not examined here.

VOA's Urdu-language service and distributed on social media on July 22, 2020, with an intended audience primarily in Pakistan.

Every knowledgeable interviewee asked about this video said it fell far short of journalistic standards and should not have been published. When VOA leadership was made aware of the video in late July 2020, after it had run for five days, they directed the video be pulled down immediately. On the morning of July 28, according to a VOA email, VOA had already reached some preliminary conclusions, but its investigation continued to determine root causes of the breakdown. That email, which was forwarded to CEO Pack, noted that the episode could have been prevented had CEO Pack allowed VOA's Standards Editor to do his job. Over the course of that day, USAGM instructed VOA to stop its investigation of the matter and CEO Pack tasked a political appointee with no journalism experience to investigate instead. On July 30, USAGM issued a press release announcing the USAGM investigation with no mention of the shuttered VOA review.⁹⁷

CEO Pack would later write, in his last days at the Agency in January 2021, that the Urdu matter was "naked politicking [that] goes beyond bias" and "for the first time in decades, those responsible for biased reporting, from the most junior reporters to senior managers, faced consequences." This latter claim ignored data available to CEO Pack as the head of the Agency that showed that VOA and other networks had disciplined and terminated journalists for serious lapses prior to his tenure. Prior to publishing that claim, CEO Pack had been personally involved in trying to bring journalists who had been terminated under prior leadership for lapses back to the Agency. He had asked a political appointee at OCB if the termination of a journalist for a story about a prominent philanthropist and campaign donor was appropriate (the appointee told the Review Team that he told CEO Pack he believed it was appropriate).

While no one interviewed disagreed that the Urdu service's Biden video fell far short of standards, senior VOA officials stated that, under existing Agency procedures consistent with the statutory provisions on journalistic independence, VOA should have led the investigation. Yet, internal VOA protests sent to CEO Pack went unheeded. To have a political appointee without journalism experience lead an investigation into news coverage created the appearance that political control extended not just to VOA's budget

⁹⁷ Michael Pack, "The death of democracy," *Washington Examiner*, November 15, 2021, <https://www.washingtonexaminer.com/restoring-america/fairness-justice/the-death-of-democracy>, accessed October 22, 2022; In this essay, CEO Pack misrepresented the timeline and omitted key information regarding this. He wrote:

When we called this to the VOA's attention, they took it down, though reluctantly. A week later, we discovered an audio version was still available. As CEO, I decided to launch an investigation to determine who was responsible and what disciplinary actions should be taken. The investigation was led by USAGM career attorneys and our HR department, coordinated by a lawyer I had brought into the agency.

The reality is VOA immediately removed the video and immediately launched its own investigation. CEO Pack's political appointees directed career VOA staff to stop investigating and hand the investigation to a political appointee. The audio was not discovered until later and it was not intentionally left up. An experienced USAGM career attorney, who was mainly involved after the investigation ended, expressed severe disagreement with how the political appointee handled the disciplinary actions.

and big-picture policy questions, such as which foreign-language markets to prioritize, but to scrutinizing individual news stories. Agency procedures finalized in March 2020—which largely formalized pre-existing practices—state that the networks should handle journalistic lapses that are less severe (typically involving single stories), and that more severe and systematic problems potentially call for utilizing external journalism experts and a greater role for USAGM.

The Review Team found that CEO Pack and his team’s actions represented a failure to “respect” the “professional independence and integrity” of VOA. Had VOA failed to take the matter seriously by leaving up an unbalanced and partisan political video and/or failing to launch an investigation, CEO Pack would have had an argument that he had a legal obligation to intervene, but that was not the case; VOA promptly took action and launched an investigation.⁹⁸

Similarly, citing the Urdu episode, the District Court ruled that USAGM investigations “in response to discrete stories or of particular individuals is questionable at best” when there are less intrusive means of oversight immediately available. She wrote that USAGM did not show that its investigation was “reasonably necessary” and was “likely to be found unconstitutional” under a First Amendment analysis.

It is not clear that CEO Pack was aware of these procedures when he directed a political appointee to conduct the investigation, as the procedures were finalized just months before CEO Pack’s confirmation.

VOA White House Correspondent

After 14 VOA journalists, led by one of VOA’s White House correspondents, sent a letter critical of CEO Pack to VOA’s Acting Director on August 31, 2020, the letter leaked to the press. The letter stated that CEO Pack’s actions “endanger the personal security of VOA reporters at home and abroad, as well as threatening to harm U.S. national security objectives.” The letter put an emphasis on CEO Pack’s non-renewal of J-1 visas for VOA foreign national staff. USAGM publicly responded to the letter, posting a statement on Twitter that the transmission of the letter “was improper and failed to follow procedure.”⁹⁹ While the Review Team is unaware if a federal employee provided the letter to the media, this statement conflicts with federal whistleblower protection law. Federal law protects federal employees for disclosures of various types of alleged wrongdoing (such as threats to public safety) to the press, provided the federal employee has a reasonable belief that wrongdoing occurred, and that the information disclosed is not classified or is another type of information protected by law from public release.

The USAGM statement added that the “letter followed none of the prescribed protocols found in standing U.S. Government personnel directives.” Several VOA employees, including the White House Correspondent and VOA leadership who were interviewed by the Review Team, stated they were not aware of which procedure, protocols, or

⁹⁸ Additionally, CEO Pack and his appointees overruled career Agency experts on how to effectively discipline contract journalists with career staff warning that the approach preferred by CEO Pack’s appointee would likely be unsuccessful. The career staff were correct.

⁹⁹ The tweet has since been deleted.

directives the USAGM tweet referred to. The tweet does not identify any procedure, protocols, or directives.

Around this time, USAGM launched an investigation, led by two political appointees, into the White House Correspondent's social media activities and news coverage. The investigative memo detailed the White House Correspondent's involvement in the August 31 letter and argued that, because the White House Correspondent had criticized CEO Pack, a subordinate of President Trump, he should be precluded from covering the White House. "While the Letter contained many attacks on Pack, it did not attack him for insubordination," states the memo, written by Pack's Vice President for Strategy and a Senior Legal Advisor. "Thus, by implication, given that we have a unitary Executive, an attack on the policy of the President's direct subordinate is an attack on the President himself."

Several VOA employees questioned whether this attenuated connection was a valid basis to find a conflict of interest that would bar the White House Correspondent from covering the president. Around the time this investigation was concluded, USAGM published a conflict-of-interest policy that applied to all networks, circulating it on a Sunday. The networks were not consulted prior to the publication of the policy; neither were career attorneys with expertise on ethics inside USAGM's Office of General Counsel. The policy contained reasonable restrictions in line with industry practices. Network staff believed it could be selectively and aggressively applied to interfere with the network's journalistic independence. The attenuated conflict-of-interest argument, made by the Vice President for Strategy and a Senior Legal Advisor, that the White House correspondent cannot cover the White House because he had criticized CEO Pack supports the view that CEO Pack's team could abusively enforce the policy.

The memo also notes that, "The (current) record is also clear that [the White House Correspondent] did not merely sign the letter, but that [the White House Correspondent] was involved in circulating the letter in an effort to obtain signatures."

While the investigation was focused on the White House Correspondent's social media activities, it also contains criticisms of the Correspondent's news coverage.

The investigative memo was then sent to VOA's Acting Director.¹⁰⁰

Given the timing of the investigation, the publicly stated hostility toward the letter, and the effort by political appointees to identify the White House Correspondent as a central party involved in the letter, the investigation appears retaliatory in nature in response to protected disclosures, whatever the merits were of concerns regarding his social media activity. Career VOA editors and USAGM Labor and Employee Relations investigators could have examined the White House correspondent's activities, per Agency

¹⁰⁰ The focus of this review is on the actions of CEO Pack and his leadership of the Agency. How VOA handled the allegations is outside the scope of this review unless there is evidence of involvement by CEO Pack appointees in disciplinary decision-making.

procedures and normal practices—instead, the matter was investigated by CEO Office political appointees who were less likely to approach the matter as neutral factfinders.¹⁰¹

CEO Pack Failed to Act When a USAGM Political Appointee Violated Agency Guidance

Given CEO Pack’s stated concern that USAGM-funded network coverage could constitute “naked politicking,” his lack of a reaction to another episode involving a USAGM political appointee stands in stark contrast to the degree of attention he paid to alleged violations of Agency procedures by career employees.

On September 16, in a biweekly meeting report sent to CEO Pack, the Acting Director of the Office of Cuba Broadcasting (OCB) informed CEO Pack that a Cuban-American group had endorsed President Trump for re-election. The Acting Director described the group as “a powerful force in Miami and in the Cuban-American community.” The Acting Director further wrote that the Trump White House had invited the group over and one of the group’s “top leaders” asked him if OCB could cover the event. The Acting Director inquired with the White House and CEO Pack’s Deputy Chief of Staff and asked if he and CEO Pack could attend the event.

In a follow-up report to CEO Pack on September 29, the Acting Director said that he and two other senior OCB officials attended the September 23 event that included Trump Administration officials. After the event, the Acting Director and the officials “personally met with [White House] Director of Hispanic Engagement [name redacted] in the Old Executive Office Building, and at her request provided links to the Brigade story so the White House could include them in a nationwide email sent out to Hispanic business leaders.”

Coverage by OCB’s Radio and Television Martí of the event was not itself inappropriate. However, other aspects of the coverage raise questions regarding utilization of USAGM broadcasting content aimed at foreign audiences being utilized for domestic audiences for partisan political activities. According to an email from VOA’s Standards Editor, who also has conducted reviews of OCB content, “The video was going to be used for purely political purposes, and as a federal agency—and more importantly as a news organization—Martí should not be involved in partisan political actions by the White House.” (The Review Team consulted with the VOA Standards Editor because he has acted as the de facto OCB Standards Editor and, at the time of the Team’s consultation, OCB had yet to onboard a standards editor.)

Even though CEO Pack had said, “USAGM staff members who attempt to influence American elections will be held accountable,” there is no evidence CEO Pack raised any concerns about the actions involving OCB’s leadership that were part of an apparent political effort by the White House. CEO Pack also did not initiate an investigation. The former Acting Director of OCB (who CEO Pack later made OCB Director) could not

¹⁰¹ Similarly, Judge Howell wrote that “defendants had a less intrusive means of pursuing their concerns, through the investigative process set forth in USAGM’s policy on potential ethics violations, at their disposal.”

recall CEO Pack raising any concern. The former Acting Director of OCB said normally he and CEO Pack would go through these biweekly agenda reports over the phone.

The Smith-Mundt Act prohibitions apply only to USAGM and the State Department, not the White House. USAGM guidance states that, “USAGM broadcasters have an affirmative obligation to take all steps to ensure that U.S. audiences are not being targeted” by Agency content.¹⁰² The guidelines state that, “USAGM broadcasters have an affirmative obligation to take all steps to ensure that US audiences are not being targeted; for example, broadcasters must opt out of boosting content to audiences located in the U.S.”¹⁰³

OCB uses a Spanish translation of VOA’s best practices guide, which states that USAGM-funded journalists should “not attempt to reach audiences in the United States. This includes diaspora groups. There are no exceptions, even if the content is in a language other than English, or the groups or individuals are from countries which we reach overseas.” The guide also discusses requests from outside of USAGM to use Agency-funded content: “Ultimately, if it looks like the intent is to ignore the rules—i.e., if the goal is to influence U.S. opinion, or otherwise develop audiences within the United States—then the activity is prohibited.”

The former OCB Director said in a written report that coverage of the event at the White House was important partly because of the group’s importance to a domestic audience, specifically the Cuban-American community.¹⁰⁴

¹⁰² “USAGM Smith-Mundt Guidelines,” U.S. Agency for Global Media, June 2019, <https://www.usagm.gov/wp-content/uploads/2019/06/Smith-Mundt-USAGM-Guidelines-6-2019.pdf>, accessed October 22, 2022; Federal law states that “No funds authorized to be appropriated to the Department of State or the Broadcasting Board of Governors shall be used to influence public opinion in the United States”; the Broadcasting Board of Governors is the former name of USAGM; “National Defense Authorization Act for Fiscal Year 2013,” U.S. Congress, January 2, 2013, <https://www.congress.gov/112/plaws/publ239/PLAW-112publ239.pdf>.

¹⁰³ “NDAA 2013,” p. 2.

¹⁰⁴ Five days before the White House event and two days after the acting OCB director’s September 16 report to CEO Pack, Marti also wrote a story on the group’s endorsement of the President—a story that VOA’s standards editor called “one-sided,” among other deficiencies. A translation of that September 18, 2020, piece on the group’s endorsement contains a passage on the close polling and the endorsement’s importance to the incumbent president’s campaign: “[A Trump campaign advisor] thanked [the group] for its support and stressed: ‘We are living in a critical moment where every vote counts.’ Trump and Democratic candidate Joe Biden are virtually tied in Florida, according to the latest voting intention polls.”; “Bay of Pigs veterans endorse Trump to curb socialism,” Radio Television Marti, September 18, 2020, https://www-radiotelevisionmarti-com.translate.google.com/a/trump-bahia-de-cohinos-/272733.html?x_tr_sl=auto&x_tr_tl=en&x_tr_hl=en-US, accessed October 22, 2022;

The Review Team notes that OCB, as well as VOA and USAGM, are subject to the Hatch Act. According to VOA guidance that is several years old (“Political Reporting on VOA Websites”):

Reporting on U.S. politics can be a delicate balancing act for VOA. This is especially true because of the Hatch Act, a federal law whose main provision is to prohibit federal employees in the executive branch of the federal government from engaging in partisan political activity.

Still, as network staff told the Review Team, it was reasonable for Radio and TV Martí to cover the White House event and indeed, Martí has covered other news involving the group. Furthermore, “there was nothing wrong with the [group] contacting [the acting OCB director] to tell him about the event and asking Martí to cover it. News organizations get heads-ups like that all the time,” VOA’s Standards Editor told the Review Team. Other circumstances around the coverage are the issue.

The former Acting Director of OCB spoke with the Review Team about the episode. The former Director acted in a candid and forthright manner when he initiated the discussion of the event. He said the White House official asked for the links as he was passing her in a hallway, and he complied in an effort to be responsive to a White House office and champion OCB.¹⁰⁵ He said he did not consider Agency guidance at the time and that had the request come via email with more time to assess the overall situation he probably would have acted differently. The former OCB Director did not try to hide what he did, as evidenced by his written report to CEO Pack. The Review Team finds his explanations credible and finds he did not intend to violate Agency guidance. The Team further notes that no evidence has been presented that suggests this was part of a pattern of on-going activities or practices.

CEO Pack was obligated to express concern upon receipt of the Acting Director of OCB’s written report. CEO Pack had acknowledged his statutory oversight responsibilities on numerous occasions—including an obligation to prevent an appearance that taxpayer-funded USAGM network coverage was used to politically assist a presidential candidate. CEO Pack was attuned to coverage that he saw as potentially benefiting the incumbent president’s challenger.” But there is no evidence he raised a similar concern when presented with a written report that OCB coverage of a White House event featuring a group that had just endorsed the president was going to be sent by the White House to a U.S. audience. Given that a network head had potentially violated Agency guidance, CEO Pack’s silence and inconsistent treatment is noteworthy.

Editorials

In late June 2020, CEO Pack took action to make government editorials more prominent on VOA’s website and to ensure that VOA language services carried them. Given his statutory responsibility to ensure VOA adhered to its legal mandates—which

In the case of VOA, the Office of Special Counsel recently took note of its reporting on U.S. political campaigns. The OSC’s concern was that as a federal agency VOA’s reporting should abide by the letter and spirit of the Hatch Act. In addition, the OSC’s [sic] noted that a federal agency’s website “...must not create the appearance that the agency, and in turn the federal government, is politically biased.”

This is yet another reason why the political journalism of the networks should be balanced—in addition to USAGM’s statutory requirements to produce “news which is consistently reliable and authoritative, accurate, objective, and comprehensive” and that is produced at the highest journalistic standards. Indeed, CEO Pack raised Hatch Act concerns regarding the Urdu video, but there is no evidence he raised similar concerns with this OCB episode. <https://www.usagm.gov/2020/07/30/ceo-pack-launches-investigation-into-pro-biden-voa-content-u-s-election-interference/>

¹⁰⁵ Also, when the Review Team met the former acting OCB director on December 7, 2020, in the Wilbur J. Cohen Federal Building, he wore a face mask and a lapel pin on his suit, both with the group’s logo.

include carrying U.S. government editorials explaining U.S. policy—his directive was within his authority.¹⁰⁶

How the directive was announced and implemented created friction and antipathy. VOA was not consulted or informed about the decision before USAGM issued a press release on June 24, announcing this directive. Similarly, the CEO's Office also did not give USAGM's Office of Policy—which supported making editorials more prominent—advance warning that a press release was forthcoming.

VOA had technical concerns with ensuring that government editorials were clearly distinguished from news content and did not have an opportunity to work through these concerns prior to CEO Pack's press release. The concerns extended not only to VOA's English-language site, but to dozens of VOA language service websites, as well as to automated feeds that distribute content over social media, such as Facebook Instant Articles. For well over a month, VOA language service content was not clearly distinguished from USAGM editorials on Facebook Instant Articles because both types of content went out over the same automated feed.

“All reputable news organizations keep clear, hard lines between their opinion work and their reporting,” one VOA employee wrote in August. “Without clear labeling and keeping these pieces separated from the social media accounts of our languages, we are deliberately blurring the line between opinion and news.” The VOA employee also raised the legitimate concern that this co-mingling of news with editorials raised the risk that Facebook, for instance, could begin treating government-funded VOA content like it treats state-controlled content from Russia (RT) and China (CCTV).

By late August, VOA resolved many of the technical concerns; however, CEO Pack could have mitigated negative employee feedback had he engaged his organization prior to issuing his press release. Furthermore, better communication with employees could have improved the potential for employee buy-in with the new changes and reduced risks to VOA.

CEO Office Efforts Regarding VOA Persian Leadership

A particularly complex matter involves the then-head of VOA Persian. It is beyond the scope of this review to evaluate the merits of several allegations made against the individual; however, CEO Office involvement will be examined.

That language service has faced criticisms over the years, including criticisms that preceded the individual's time as director of that office.¹⁰⁷

¹⁰⁶ Similarly, Judge Howell found that VOA's interests in this matter do “not outweigh the deference owed to the determination of VOA's parent agency that posting editorials on VOA's homepage is ‘reasonably necessary’ to facilitate compliance with a statutory provision that imposes explicit content requirements on VOA.”

¹⁰⁷ In May 2020, criticism was paired with an effort to get Pack confirmed. About a week before the Senate confirmed Pack as CEO. The then-U.S. Special Representative for Iran and Senior Policy Advisor to the Secretary of State publicly criticized VOA Persian's coverage in a New York Post op-ed and called for the confirmation of Pack. The then-head of VOA at the time told the Review Team she saw no violations of VOA's journalistic independence due to the criticism on its own; Several weeks after his confirmation,

The Acting VP of Legal, Compliance, and Risk became the recipient of several complaints regarding VOA Persian from sources inside the service as well as outside. She had preexisting professional relationships with some of these sources. CEO Pack also had identified changes at VOA Persian as part of his agenda for the Agency, according to his June 23 to-do list.

The Acting VP of Legal, Compliance, and Risk provided these complaints to USAGM’s career Labor and Employee Relations (LER) investigators, who focused appropriately on non-journalistic coverage issues. During the course of their investigation, the LER investigators and other career staff involved faced intense pressure from her to reach a conclusion that the allegations against the VOA Persian Director justified her termination. One long-time career attorney within the Office of General Counsel who was involved in the matter said [REDACTED]

the Acting VP of Legal, Compliance, and Risk threatened her with discipline if the investigation did not find a basis to remove the VOA Persian Director. The two veteran LER investigators told the Review Team that the Acting VP of Legal, Compliance, and Risk showed an unusual amount of interest in their efforts, which they saw as an attempt to pressure their investigation.

In mid-October, the investigators provided an initial report of investigation on the matter to the Acting VP of Legal, Compliance, and Risk, who provided it to CEO Pack and other appointees. It found numerous areas of concern that would require follow-up, but nothing that justified removal without more information. The LER investigators made it clear that their investigation was not complete as they would need to further interview the VOA Persian Director. According to the head of USAGM Human Resources, the Acting VP of Legal, Compliance, and Risk “didn’t accept the results of the investigation.”

As LER continued its work over the coming months, VOA’s new Deputy Director proposed the individual’s termination on January 5, 2021, and placed her on administrative leave. This was one week after the Deputy Director’s first day on December 28, 2020. According to the HR Director, the proposed termination “was issued without our knowledge and it referenced the investigation that our office had begun, which had not been concluded.” The proposed removal was also issued without the knowledge of USAGM’s Office of General Counsel. The established Agency practice for employee discipline cases is that the offices of General Counsel and Human Resources collaboratively review and advise on proposed discipline, especially for the severe penalty of removal from federal service.

On January 14, the Office of Special Counsel sought a stay of the removal—temporarily blocking it as OSC investigates an allegation of prohibited personnel practices. A USAGM career attorney agreed to stay the removal.

Despite the USAGM agreement, on January 21, the VOA Deputy Director told the VOA Persian Director’s attorney that the process of removing her would continue. Then the Deputy Director was put on administrative leave later that day and removed from her non-career position by new USAGM leadership named the day before by the new administration. The following day, the HR Director informed the VOA Persian Director

CEO Pack brought on aide who former worked for that State Department official. That aide also had formerly worked within VOA Persian. The aide was CEO Pack’s Vice President for Legal, Compliance, and Risk from July 2020-December 2020.

and her attorney of “possible due process violations”—a reference to the Deputy Director’s proposal to remove her given that the LER investigation was still incomplete.

This effort by an outgoing political appointee to pursue a career employee’s removal was contrary to established Agency practice, and Agency representations made to OSC support an inference that the discipline case was being prosecuted due to animus. The proposed removal from federal service was not completed; the former VOA Persian Director was assigned to a position in VOA on February 17, 2021, pursuant to a settlement agreement.

CEO Pack—Appointed VOA Leadership Reassigns VOA White House Correspondent

In the weeks after the November 20, 2020, preliminary injunction barring USAGM actions without the consent of network leadership—and only five weeks out from Inauguration Day—CEO Pack appointed new leadership at VOA and the other networks. As mentioned in the passage above, CEO Pack appointed a new Director and Deputy Director at VOA in December 2020. They planned a major VOA event featuring Secretary of State Mike Pompeo on January 11, 2021.

VOA hosting this event raised concerns on the part of some career VOA staff. They cited potential health risks associated with attending an in-person event during the COVID-19 pandemic prior to the widespread availability of a vaccine and the impact on VOA’s journalistic reputation by granting the outgoing Secretary of State a live audience of Agency employees, most of whom are journalists. VOA has in the past hosted senior administration officials, but staff said it was in the context of gaining access to these officials as newsmakers where the officials are asked questions.

VOA leadership solicited questions from VOA journalists, and VOA employees responded with a slew of questions. The VOA Director asked none of the employees’ questions of Secretary Pompeo, ignoring even questions regarding U.S. democracy promotion overseas in the wake of violence at the U.S. Capitol five days earlier.

VOA leadership did not build into the event any time for audience participation, although the VOA Director did ask his own questions. A video of the event shows a member of the audience attempting to ask Secretary Pompeo a question; that audience member is one of VOA’s White House Correspondents. Immediately afterward, the video shows the VOA Director walking and talking with Secretary Pompeo in a hallway of the Wilbur J. Cohen Federal Building, VOA and USAGM’s headquarters, where the event took place.

The White House Correspondent waited until Secretary Pompeo was about to exit the building before attempting to ask him several questions. The questions included, “What are you doing to restore the U.S.’s reputation around the world?” and whether he regretted saying there would be a second Trump Administration term days after the Associated Press and other media outlets declared Joe Biden the winner of the election. Secretary Pompeo did not respond to her questions.

After Secretary Pompeo left, she asked the VOA Director why he didn’t ask any questions that VOA journalists had submitted. With the Deputy Director standing next

to him, he responded by asking her who she was. She responded that she was a VOA White House Correspondent. He replied that she “doesn’t know how to behave” and that she “was not authorized” to ask questions. She replied, “I am a journalist, and I am paid to ask questions.” He ended the conversation by saying, “You are out of order,” and walking away with the Deputy Director. All of this was captured on video.

Shortly thereafter, the VOA Director and Deputy Director initiated attempts to take personnel actions against the White House Correspondent. According to an email by the Deputy Director, the Director and Deputy Director made five calls to a USAGM career employee between 3:45 p.m. and 5:13 p.m. that day (the event with Secretary Pompeo began at 3 p.m.).¹⁰⁸ Eventually, the career employee agreed to ask VOA’s Director of Programming to reassign the VOA White House Correspondent.

During a call at 7:17 p.m., VOA’s Director of Programming, Managing Editor, and Director of News Operations refused. At 8:05 p.m., the Deputy Director sent the Programming Director an email with the subject line, “Directive.” It stated: “I direct you to reassign [the White House Correspondent] from the White House to the general assignment desk effective 9 a.m. tomorrow.” At the Deputy Director’s order, the Director of News Operations was reassigned to VOA’s Program Review Office.

The VOA White House Correspondent was reassigned to the Indonesian-language service, where she had begun her VOA career. Another VOA journalist told the Review Team that they were approached by VOA leadership after the White House Correspondent’s reassignment and asked if they would want to replace her—a sign that the reassignment was intended to be permanent. The VOA journalist declined.

The evidence shows the VOA Director and Deputy Director’s actions against the White House Correspondent were motivated by the questions she asked of Secretary Pompeo. Further, the video shows they expressed anger at her for asking questions of the Secretary. They took these actions minutes after the VOA employee asked the questions.

Additionally, in an email, the Deputy Director pointed to the VOA employee’s questions as a possible violation of a section in VOA’s best practices guide that warns against “ambush” interviews. The guide states that ambush interviews are a situation “where a person who has refused to be interviewed is approached without notice by a reporter or producer” and that they should be “discouraged and should be avoided.” On this particular point, the Deputy Director did not consult with VOA editors with relevant expertise before seeking the employee’s reassignment.

The VOA Standards Editor wrote in a January 12, 2021, email assessing the episode that “(the individual) was doing (her) job as a reporter at an event VOA was told to cover as a news event. So, she did what any reporter would do in a situation like that.” Another senior career VOA official wrote that same day, “I have zero issues with the question itself or the VOA employee aggressively pursuing it.” Similarly, a career USAGM Labor

¹⁰⁸ Patsy Widakuswara (@pwidakuswara), “The nation's top diplomat @SecPompeo ignoring my questions about what he is doing to restore US reputation and whether he regrets saying there will be a second Trump administration,” Twitter, January 11, 2021, <https://twitter.com/pwidakuswara/status/1348733511889514498>, accessed October 22, 2022; These calls began before the correspondent posted a video of the exchange on social media.

Relations and Employment investigator told the Review Team that there was no legitimate basis for disciplining a reporter for asking questions. Secretary Pompeo was also a clear newsmaker to VOA consistent with VOA's mission to deliver news of U.S. government policy to foreign audiences. His appearance at VOA had been publicized and it is routine for senior administration officials to face post-event questions from VOA journalists.

The VOA Director and Deputy Director's actions to reassign the VOA employee were inconsistent with VOA's journalistic mission and punitive. The Review Team found no evidence that CEO Pack raised any concern with the VOA Director and Deputy Director for these actions, despite the widespread publicity and bipartisan congressional concern it generated.

Generally, employee reassignments are not subject to appeal to the Merit Systems Protection Board when the reassignment is bona fide and it furthers the business interests of the Agency. The reassignment did not result in a reduction in grade or pay to the employee.

As mentioned, the employee's reassignment generated congressional concerns. The House Foreign Affairs Committee Chair Gregory Meeks and Ranking Member Michael McCaul issued a joint statement on January 12, 2021, seeking the employee's reinstatement unless there was a legitimate basis for her removal. Following the transition of the new Biden Administration, the VOA employee who was the subject of the reassignment was restored to her previous position as a VOA White House Correspondent.

The actions to reassign the VOA employee by the former VOA leadership were punitive. USAGM management did not give the reason for the sudden reassignment. The lack of intervention by USAGM senior management and the CEO was inconsistent with good management practices and the obligation to ensure fair treatment of Agency employees. This lack of intervention also undermined confidence in the CEO Pack team's adherence to ensuring that the USAGM network adhere to the highest standards of broadcast journalism.

6. The Open Technology Fund and Internet Freedom Funding

This section is relevant to the following items referred by the Office of Special Counsel.

Whether CEO Pack:

- “Engaged in gross mismanagement and abuse of authority by:
 - Terminating ...the President and the CEO of OTF”; and
 - 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.

And whether CEO Pack:

- “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
- Grossly wasted government funds by hiring a private law firm to gather information to use against OTF and senior executives placed on leave.

Key Findings

- CEO Pack did not have the authority to remove OTF’s leadership and board members, as the D.C. Superior Court ruled in October 2020.¹⁰⁹ **However, the Review Team does not find CEO’s effort to remove OTF leadership and board members an abuse of authority or gross mismanagement** given the genuine legal questions regarding the relationship between USAGM and OTF at the time and the parameters of the CEO’s authority.¹¹⁰
- **The hiring and procurement freeze was short-lived for OTF**, lasting only weeks in June 2020, and had no apparent impact. **Thus, the freeze as applied to OTF did not constitute gross mismanagement. It also did**

¹⁰⁹ The D.C. Circuit Court of Appeals also temporarily enjoined CEO Pack from these actions in July 2020.

¹¹⁰ With the passage of the 2021 National Defense Authorization Act, which went into effect in January 2021, Congress amended the International Broadcasting Act to make OTF a statutory grantee, subject to the same USAGM management and oversight as the other USAGM grantee networks. However, the 2021 NDAA also created new limitations to the CEO’s power to remove or hire any statutory grantee leaders.

not represent an abuse of authority.¹¹¹ It is not unusual for new Agency leadership to freeze new contracting and hiring—with exceptions for critical activities—for short periods of time.

- **The withholding of and redirection of internet freedom appropriations put numerous internet freedom projects at risk, including in countries that are State Department priorities.** For a subset of the projects, USAGM mitigated impacts by having its “revived” Office of Internet Freedom essentially take over two contracts from OTF; however, there was a lapse in one of those contracts that led to a significant drop in a key foreign audience for VOA. For 49 other OTF projects, emails show that CEO Pack and his leadership team put those internet freedom efforts at risk by not providing previously agreed upon funding in a timely way despite warnings from OTF and government stakeholders. On its own initiative and consistent with its standing as a 501(c)(3), OTF took action to secure third-party funding directly for these projects, which mitigated impacts. CEO Pack’s decision to change the Agency’s approach for funding internet freedom projects to a revived Office of Internet Freedom lacked adequate planning. Furthermore, OIF was skeletally staffed at the time and lacked the immediate capacity to perform the transferred functions.¹¹²
- **But for OTF’s timely and effective efforts to secure third-party funding permitted by its 501(c)(3) status, CEO Pack’s funding decisions could have had debilitating consequences for the Agency’s critical internet freedom mission.**
- **CEO Pack’s reprogramming of internet freedom funds was not an action that required congressional notification.** It is unclear whether CEO Pack’s reprogramming of funds from grantees to support OIF required a reapportionment from the Office of Management and Budget (OMB). CEO Pack’s team did notify Congress regarding the repurposing of the internet freedom funds and obtained a reapportionment from OMB regarding changes to the Agency’s use of internet freedom funding. However, CEO Pack’s team approached OMB to assess whether a reapportionment was necessary only after USAGM’s Deputy Chief Financial Officer resigned after raising concerns that he was being asked to repurpose the funding without an OMB reapportionment. It is unlikely that changes in reporting structure affecting OIF constituted a reorganization requiring congressional notification.

¹¹¹ It is not unusual for new federal leadership to direct short-lived hiring and procurement freezes. CEO Pack’s directive to expand the freeze to grantee entities came after the career general counsel asked CEO Pack via email if the grantees should be subject to the freeze as well. While several have argued, such as RFE/RL’s President Jamie Fly, that the USAGM CEO overstepped his authority by doing this, there’s no indication that CEO Pack was told at the time of his directive that there were reasons to treat the grantees differently than the federal side. Furthermore, the freeze was lifted on the grantees after a few weeks. Even assuming CEO Pack overstepped his authority, there’s no evidence that this was done with any intent to misuse his authority.

¹¹² The CEO’s Office did not make any reasoned case-by-case decisions for not funding those projects; thus, it cannot be argued that the CEO’s Office intended to defund these efforts on the basis of merit.

- **CEO Pack abused his authority by attempting to debar OTF.** The CEO’s proposal to debar OTF lacked sufficient evidence to justify the serious action (if successful, OTF would have been barred from receiving any new federal funding, typically for three years). The CEO Office’s effort persisted after Congress had made OTF a statutory grantee of USAGM. The evidence and circumstances show that the efforts were inconsistent with federal regulations that state that debarment is to “be imposed only in the public interest for the Government’s protection and not for purposes of punishment.”
- The CEO Office overruled federal career staff who recommended the procurement of anti-circumvention tools from a contractor. The CEO’s Office—including CEO Pack—had repeated email contact with representatives and associates of a group that advocated directing Agency funds toward that contractor. The group was critical of OTF, which they saw as posing an obstacle to the contractor in winning access to Agency funding. In an email, CEO Pack credited an associate of that group as benefiting his efforts to secure Senate confirmation. There is nothing inappropriate about the group’s advocacy efforts or with the CEO Office’s stakeholder engagement. However, **the act of overruling career staff to direct this contract action coupled with this documentary evidence creates, at a minimum, the appearance that the procurement was not based solely on the merits of the contractor’s proposal.**

OTF Background and Discussion

USAGM has played an increasingly important role in funding internet freedom tools and projects around the world. These efforts allow individuals in countries whose governments tightly control online access to circumvent internet censorship, allowing them to access USAGM-funded journalism, reporting from other news outlets, and the broader internet. These tools also allow individuals secure means of communicating digitally, such as giving journalists safer means of communicating with sources. USAGM’s approach to funding internet freedom efforts has evolved through the years.

The former BBG-appointed CEO approved of a decision in 2019 to launch a new non-profit grantee, OTF, as the primary vehicle for funding these efforts.¹¹³ Prior to the fall of 2019, OTF was a part of Radio Free Asia. Also prior to this time, OTF and USAGM’s Office of Internet Freedom (OIF) split the responsibility for funding and administering internet freedom contracts. Under the new USAGM internet freedom framework, OIF would no longer directly administer contracts—instead OTF would take on these responsibilities with OIF serving in a more limited oversight capacity over OTF. This shift had bipartisan congressional approval and was largely implemented between the fall of 2019 and spring 2020.¹¹⁴

¹¹³ OTF was spun off as an independent non-profit from Radio Free Asia in fall 2019.

¹¹⁴ Congressional authorization of the new grantee would not come until the 2021 National Defense Authorization Act became law on January 1, 2021. The status of OTF was a point of contention.

CEO Pack's Initial Actions Regarding OTF

Soon after his Senate confirmation in June 2020, CEO Pack initially issued several directives that impacted all the grantees, including OTF. These directives included a hiring and procurement freeze and the termination of grantee leaders and the members of their boards (these four boards had all the same individuals, except for two additional members on OTF's board). The USAGM-directed freeze for the grantees, including OTF, was short-lived. OTF staff told the Review Team that the freeze did not significantly affect their operations in any discernable way.

On June 17, CEO Pack directed the removal of the members of USAGM's Advisory Board and the boards of the grantee networks and OTF and their replacement with new members CEO Pack named, including himself as the chair of these boards. Then CEO Pack, with the agreement of the new board members, directed the removal of the heads of the grantee networks and OTF. At OTF, this was CEO Libby Liu, who had submitted her resignation just days earlier. On June 18, CEO Pack also directed the removal of OTF President Laura Cunningham.

OTF, unlike the other grantees, and the D.C. Office of Attorney General legally challenged CEO Pack's attempt to remove OTF's board members and OTF's president.¹¹⁵ On July 21, the D.C. Circuit Court of Appeals temporarily enjoined CEO Pack from removing and replacing OTF's leadership and board members. The D.C. attorney general's legal challenge was successful with a ruling by the D.C. Superior Court in October 2020.¹¹⁶

CEO Pack Revives the Office of Internet Freedom

As the parameters of his control over OTF were challenged in the courts, CEO Pack shifted his approach.¹¹⁷ The individual CEO Pack tried to install as the new acting CEO of OTF became the head of OIF when CEO Pack announced he "revived" OIF in August 2020.

To fund the revived OIF, USAGM rescinded unused internet freedom funding at other grantees (much of which was intended to pay for OTF services and tools) and redirected that funding toward OIF. OTF had expected Radio Free Asia to transfer millions of dollars as part of the process of the transition of OTF as a separate non-profit grantee. Under CEO Pack's leadership, that funding was not forthcoming.

¹¹⁵ "AG Racine Files Lawsuit to Resolve Presence of Dueling Boards at District Nonprofit Open Technology Fund," Office of the Attorney General for the District of Columbia, July 20, 2020, <https://oag.dc.gov/release/ag-racine-files-lawsuit-resolve-presence-dueling>, accessed October 22, 2022.

¹¹⁶ "AG Racine Wins Lawsuit Resolving Leadership Crisis at District Nonprofit Caused by Trump Appointee," Office of the Attorney General for the District of Columbia, October 15, 2020, <https://oag.dc.gov/release/ag-racine-wins-lawsuit-resolving-leadership-crisis>, accessed October 22, 2022.

¹¹⁷ Days before the D.C. Circuit's July 21, 2020, injunction, CEO Pack emailed his Chief of Staff regarding "OTF insurance," which appears to be a reference to reviving the in-house USAGM Office of Internet Freedom. Weeks later, CEO Pack would announce the revival of OIF.

Responsibility for major contracts for which OTF had previously been responsible was transferred to OIF.¹¹⁸ However, numerous other projects were not taken up by OIF. Because USAGM funding for OTF was not forthcoming, OTF issued stop work orders for 49 out of 60 projects in August 2020. Several of those projects were relevant to countries important to U.S. foreign policy.

Issues Concerning Congressional Notification

While USAGM's CEO had the authority to change the Agency's approach to funding internet freedom efforts, this authority is bounded by checks and balances between branches of government and within the Executive Branch.

Within USAGM, the Deputy Chief Financial Officer raised concerns about the reprogramming of internet freedom funds from grantees to OIF. The Deputy CFO told the CEO's Office that redirecting internet freedom funding to revive OIF might require congressional notification and a reapportionment from the Office of Management and Budget. **The Acting VP of Legal, Compliance, and Risk** disagreed that congressional notification was needed. In an interview, the Deputy CFO stated that his concerns about the legality of the funding actions coupled with the tense environment in the wake of the actions against senior career executives days earlier led him to resign.¹¹⁹

While **the Acting VP of Legal, Compliance, and Risk** told the Deputy CFO that a congressional notification was unnecessary, the CEO's Office had notified Congress in an email regarding the changes to internet freedom funding (while maintaining it did not have to notify Congress). The CEO's Office did not inform the Deputy CFO about this notification before his resignation. After his resignation, **the Acting VP of Legal, Compliance, and Risk** contacted OMB to inquire whether a reapportionment was necessary. Weeks later, OMB approved a reapportionment.

In response to the OSC referral, a later (June 2021) anonymous whistleblower complaint to OSC, and complaints made directly to OIG, OIG reviewed several allegations that USAGM had failed to notify Congress of various actions as it was required to under the law.¹²⁰ OIG found generally that "it is unclear as to whether these notification requirements applied to the actions at issue, and in any case, USAGM eventually notified Congress of the actions."

Concerning the reprogramming of funds from grantees to support OIF, OIG concluded that it was unclear whether this action required congressional notification, and that in any event, as described above, a reapportionment was subsequently requested and approved by OMB.

¹¹⁸Months earlier, OIF had transferred the responsibility for these contracts to OTF as part of the former BBG-appointed CEO's plan.

¹¹⁹ Repurposing the funding was raised by the Deputy CFO in a November 19, 2021, memorandum to the General Counsel. The memorandum outlined concerns about compliance with the Antideficiency Act. To date, there has been no agency determination whether an Antideficiency Act violation has occurred.

¹²⁰ Memorandum to USAGM and OSC from OIG re: OIG Review of Complaints Regarding USAGM Congressional Notifications, January 13, 2022.

Concerning a related issue, whether a change in reporting structure affecting OIF constituted a reorganization that required congressional notification. OIG concluded that it was unlikely that congressional notification was required.

The Review Team adopts OIG’s findings of fact and conclusions on these issues relating to congressional notification and concludes that CEO Pack’s repurposing of internet freedom funds was not an action that required congressional notification.

USAGM-OTF Oversight Controversies

CEO Pack’s August 2020 announcement that he was reviving OIF was preceded by several actions, in addition to the July 21 injunction.

The Acting VP of Legal, Compliance, and Risk directed a career official to produce a document critical of OTF. That document, dated July 29, argued against OTF’s existence “as a separate and distinct grantee.”¹²¹

A contentious, July 22 physical inspection of OTF’s offices by CEO Pack’s political appointees led to dueling claims.¹²² CEO Pack’s appointees claimed that OTF failed to adhere to the terms of the grant agreement, which gives USAGM the authority to physically inspect OTF and conduct oversight over OTF. OTF claimed that they acted in good faith to comply with USAGM’s physical inspection in the midst of a pandemic, despite little advance notice, and that several of USAGM’s findings from the inspection were incorrect.

The inspection was reported as a first for the grantee, or for any of USAGM’s grantees.¹²³ USAGM had not developed a physical inspection protocol consistent with federal regulations at 2 CFR § 200. CEO Pack had defunded a USAGM effort to enhance its grantee monitoring program—a longstanding management deficiency.

Subsequent to this episode, the CEO’s Office and OTF engaged in dueling claims regarding OTF’s compliance with grant agreement language giving USAGM access to information to conduct oversight. The CEO’s Office contended that OTF provided insufficient information in response to requests. OTF’s position was that the CEO’s Office did not avail itself of OTF’s written offer to give CEO Office staff access to more sensitive information in-person.

¹²¹ The CEO’s Office initially failed to produce the document during litigation with OTF, prompting a number of questions from the Justice Department—which represented USAGM—regarding why the document had not been produced.

¹²² *Open Technology Fund v. Michael Pack*: Declaration of Nathaniel Kretchun, U.S. Court of Appeals for the District of Columbia Circuit, July 22, 2020, <http://guptawessler.com/wp-content/uploads/2020/07/Kretchun-Declaration-and-Exhibit-Final.pdf>, accessed October 22, 2022.

¹²³ 2 CFR § 200.329 Monitoring and reporting program performance, <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR36520e4111dce32/section-200.329>, accessed October 22, 2022; “For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction.”

CEO Office Interactions with Groups and Individuals Advocating Against OTF

Several news articles have alleged a connection between CEO Pack's actions regarding OTF and the interests of a specific vendor and an interest group that had advocated for USAGM funding of that vendor's technology. A few months prior to CEO Pack's Senate confirmation, that interest group invoked their connection to CEO Pack's Senate navigator in a call with top OTF officials on March 20, according to contemporaneous notes taken by OTF officials. CEO Pack was aware of the group and its associates during the confirmation process. An email shows that, prior to his confirmation, CEO Pack credited a close associate of this interest group for expanding support for CEO Pack's nomination on the Senate Foreign Relations Committee.

During the March 2020 call, the interest group's principals grew angry when OTF officials explained why they could not immediately fund their internet freedom tools, according to the notes. The head of that interest group, and a participant on the call, would later publish an op-ed on May 6 that stated, "Our recent plea that they rapidly fund these proven circumvention tools on an emergency basis was met with bureaucratic obfuscation." Referencing a newly introduced bill that would authorize OTF as a statutory grantee, the interest group leader also wrote, "We must prevent the passage of H.R. 6621, the Open Technology Fund Authorization Act, in its current form and stop funding an organization that has proven it is not up to the task of aggressively combating global internet censorship. It is time to identify new and better ways to spend valuable U.S. funds that could effectively support internet freedom." According to a senior member of CEO Pack's leadership team, the interest group's views on OTF substantially influenced CEO Pack's approach to USAGM's internet freedom efforts.

CEO Pack was a recipient of emails from the group and individuals associated with it during his tenure as head of the Agency. He responded to some of their emails and forwarded some to his leadership team.

After CEO Pack took actions that repurposed funding from OTF to OIF, the Acting VP of Legal, Compliance, and Risk directed OIF to award a contract to the vendor for their technology, overruling recommendations from a technical evaluation panel staffed by career experts. USAGM's top procurement official said in his experience it is highly unusual for political appointees to overrule technical evaluation panels. "It's an uncommon thing," he said, and then he cited the recent personnel actions taken against the senior career executives at the Agency on August 12, 2020. "I was pretty concerned for my job for a while there," he added.

The actions of CEO Pack and one of his appointees to direct this contract are not consistent with generally accepted federal acquisition practices. Furthermore, data analyzed by Agency staff shows that the contractor's tool underperformed during its period of performance funded by the Agency. In February 2021, under new Agency leadership, USAGM opted not to extend the contract.

OTF's Creation and Congressional Authorization

OTF was created as a non-profit corporation under D.C. law in the fall of 2019 by the former head of Radio Free Asia, who became OTF's first CEO (prior to this, OTF was a part of RFA). Most—though not all—of OTF's board members were the same as USAGM's and the other grantees. Prior to this, USAGM notified Congress of this effort as well as USAGM's plans to direct funds to OTF and to change OIF's role. Congress, however, took no formal action to authorize the organization as a statutory grantee until 2021.

From 2019 through January 1, 2021, OTF received funding through a grant agreement with USAGM. OTF's non-profit by-laws did contain language that contemplated the possibility that Congress could amend the International Broadcasting Act to include OTF as a statutory grantee in the future.¹²⁴

In April 2020, the Chair and Ranking Member of the House Foreign Affairs Committee, along with two other co-sponsors, introduced a bill to authorize OTF as a statutory grantee by amending the International Broadcasting Act.¹²⁵ Similarly, in May 2020, a bipartisan group of four Senators, including the ranking member of the Senate Foreign Relations Committee, introduced a Senate version of the bill.¹²⁶ The language in these bills would eventually become part of the National Defense Authorization Act for Fiscal Year 2021, which became law on January 1, 2021.

Thus, during this period prior to January 1, 2021, before it was authorized by Congress as a USAGM grantee, the relationship between USAGM and OTF was different than the other grantees.

USAGM's public comments regarding OTF made no mention it was not a statutory grantee. In a press release, USAGM stated that it "launched" OTF.¹²⁷ USAGM further described OTF as similar to the other grantees in key Agency documents.¹²⁸ For instance, in USAGM's Congressional Budget Justification that was published in February 2020, OTF is described as "a USAGM non-federal entity" and listed along with the other non-federal entities.¹²⁹ That same document counted OTF's staffing as part of USAGM's total. On the eve of CEO Pack's Senate confirmation, the bottom of USAGM's

¹²⁴ "As may be authorized by 22 U.S.C. 6203 *et seq.*"

¹²⁵ H.R. 6621 – Open Technology Fund Authorization Act, U.S. House of Representatives, introduced April 24, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/6621/text>.

¹²⁶ "Menendez, Blackburn Lead Effort to Protect Free Speech Online," Foreign Relations Committee, May 22, 2020, <https://www.foreign.senate.gov/press/ranking/release/menendez-blackburn-lead-effort-to-protect-free-speech-online>, accessed October 22, 2022.

¹²⁷ "USAGM launches independent internet freedom grantee," U.S. Agency for Global Media, November 25, 2019, <https://www.usagm.gov/2019/11/25/usagm-launches-independent-internet-freedom-grantee/>, accessed October 22, 2022.

¹²⁸ Such as: "FY 2019 Performance and Accountability Report," U.S. Agency for Global Media, November 19, 2019, <https://www.usagm.gov/wp-content/uploads/2019/11/USAGM-FY2019-PAR.pdf>.

¹²⁹ "FY 2021 Congressional Budget Justification," U.S. Agency for Global Media, https://www.usagm.gov/wp-content/uploads/2020/02/FINAL-USAGM-FY-2021-Congressional-Budget-Justification_2_9_2020.pdf.

home page listed OTF as one of the “USAGM networks” (even though it was not a network).¹³⁰

On June 17, 2020, CEO Pack attempted to dismiss and replace OTF’s board members, and the next day directed the removal of OTF’s President. OTF sued to block CEO Pack’s actions.

CEO Pack’s legal argument pointed to OTF’s by-laws, which only contemplated the possibility that the International Broadcasting Act could be amended to make OTF a USAGM grantee—an action that had only been proposed in legislation but had not yet become law. CEO Pack’s argument also pointed to catch-all language that any broadcast entities “authorized under” USAGM’s statute “shall serve at the pleasure of and may be named by the Chief Executive Officer of the Agency.” However, three separate courts rejected those arguments.

Debarment Proposal

Near the end of his tenure, CEO Pack took actions that could have effectively ended OTF’s ability to receive any federal funds for years, as Congress was on the eve of authorizing OTF in law as a statutory grantee of USAGM.

On December 15, 2020, CEO Pack sent OTF a letter proposing debarment, which, if it went into effect, would have precluded any federal Agency from funding OTF for a period of typically three years. CEO Pack gave OTF 30 days to respond—a deadline just days before the change of presidential administrations.

The proposal noted that “If OTF’s submission in opposition to debarment raises a genuine dispute over facts material to the debarment,” then USAGM would allow OTF to appear before a hearing and present evidence and question witnesses. “If it is determined that a hearing is necessary, the hearing will occur *1 business day* after your submission,” CEO Pack wrote [*italics added*].¹³¹

The reasons for the debarment were contained in one paragraph citing:

- “The lack of adequate authorization from Congress” when OTF was formed;
- A 2015 State Department Office of Inspector General report critical of OTF when it was part of RFA;
- The CEO Office’s view that OTF was not materially responsive when documents and information were requested; and
- “Perhaps most importantly, has used grant funds for projects that have no apparent impact on internet freedom.”

¹³⁰ For instance, see the bottom of USAGM’s home page on May 31, 2020:

<https://web.archive.org/web/20200531181611/https://www.usagm.gov/>

¹³¹ The one-business-day timeframe for holding a hearing is not contained in the Agency’s or federal regulations. The Agency’s debarment regulations state that “the decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause”; 22 CFR § 513.314 - Debarring official's decision,

<https://www.law.cornell.edu/cfr/text/22/513.314>.

The career USAGM employee who was tasked by the CEO's Office with preparing the debarment proposal, told the Review Team that he believed the argument for debarment was "tenuous at best."

Debarment is a tool meant to be used to protect government interests when there is sufficient evidence that an entity is not presently responsible, rather than to punish for past behavior or for another reason. Even if there is cause for debarment, the seriousness of the "acts or omissions and any mitigating factors shall be considered in making any debarment decision," according to federal regulations.¹³²

The stated bases for taking the serious action of proposing debarment were far from clear cut:

- Regarding the "lack of adequate authorization," USAGM notified Congress before OTF's creation, and the proposal to create OTF as a standalone non-profit grantee was received positively by key staff on the Agency's committees of jurisdiction. Furthermore, leadership from two of those committees—House Foreign Affairs and Senate Foreign Relations Committees—were sponsors of legislative language authorizing OTF. At the time of CEO Pack's December 15 debarment proposal, that legislative language—which CEO Pack's office had been tracking and was opposing—was on the verge of becoming law (it would become law on January 1, 2021). Even if the USAGM decision to stand up OTF as a standalone non-profit prior to congressional authorization was questionable, the responsibility for that decision was USAGM's, not OTF's.
- The State Department Office of Inspector General's 2015 report was half a decade old and addressed OTF when it was part of Radio Free Asia. "I'm not sure how those [report's findings] bear on the present responsibility of OTF," the career attorney who was directed to draft the debarment proposal letter told the Review Team.
- OTF had transmitted many of the records sought by CEO Pack's team—and had offered to provide them access to more records and information in person due to security concerns regarding transmitting those records electronically. CEO Pack's team did not avail themselves of that in-person review opportunity offered by OTF.
- The final rationale provided is based on a McGuireWoods analysis of OTF projects dated December 10, 2020, that contained "interim findings." While McGuireWoods raised concerns that some projects had "questionable ties to the journalism-centric intent behind the formation of OTF and appropriation of its funding," the law firm also conceded that there can be overlap with "civil society' projects." The debarment proposal does not contain this point.

Of the rationales, the fourth was cited by CEO Pack as potentially the most important. Yet, the "interim findings" in the McGuireWoods analysis were not conclusive. The

¹³² 22 CFR § 513.300 – General, <https://www.law.cornell.edu/cfr/text/22/513.300>.

questions they raised called for greater oversight, such as stronger grant agreement language and bolstered resources for grantee monitoring.¹³³

While improving oversight of grantees was easily supported by the record—and a recent GAO report¹³⁴ identified this as a longstanding USAGM weakness—debarment of OTF was an action that raised red flags within USAGM. In December 2020, a senior USAGM career attorney with years of experience with suspension and debarment who was not consulted in the preparation or review of the proposed debarment, sent an email that warned that “any use of a debarment procedure to punish contractors, get even with contractors, or to persuade individuals to act in line with agency desires is improper.” He stated that OTF would likely appeal and argue that the debarment “action was to punish, get even with, or force the compliance of the grantee with conditions inimical to the interests of the Federal Government and not designed to ensure that only responsible grantees receive grants.” He also noted that any evidence shows that the debarment decision was made prior to a procedural hearing to hear the grantee’s side would lead to questions regarding the fairness of the process.¹³⁵

That senior career attorney had earlier warned other employees in October in an email that debarment is usually not considered “absent egregious criminal activity, and usually blatant falsehood and non-cooperation with DOJ.”¹³⁶

On December 27, 2020, the President signed an omnibus appropriations bill for Fiscal Year 2021 into law. The new law stated:

In any debarment proceeding concerning the Open Technology Fund that is initiated prior to the date of enactment of this Act, *the Open Technology Fund shall have 90 calendar days* after receipt of any notice of proposed debarment to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, before such proposed debarment may proceed to additional proceedings or decision.¹³⁷ [italics added]

This new appropriations law shifted the OTF’s deadline to respond to USAGM from mid-January to mid-March. However, it only applied to debarment proceedings initiated prior to the new law.

¹³³ Under CEO Pack, grant agreement language was changed to contain stronger oversight provisions, but due to CEO Pack’s redirection of funds, USAGM was unable to implement a plan to bolster its grantee monitoring resources.

¹³⁴ “Additional Actions Needed to Improve Oversight of Broadcasting Networks,” GAO.

¹³⁵ “If any evidence is adduced that the decision to debar was made before the ‘hearing’ then the efficacy of the procedural safeguards is nullified.”

¹³⁶ This is a description of the circumstances under which debarments typically occur in practice, although criminal convictions are not necessary. Debarment can be offense-based—due to a criminal conviction or civil judgment—or fact-based. The standard of proof for debarment is preponderance of the evidence and a conviction or civil judgment automatically meets this standard. A fact-based debarment requires a proposing agency to independently lay out the evidentiary record; See 22 § 1508.850 - What is the standard of proof in a debarment action? <https://www.law.cornell.edu/cfr/text/22/1508.850>.

¹³⁷ Public Law 116-260: Consolidated Appropriations Act, 2021, U.S. Congress, December 27, 2020, <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.

The day after the President signed the appropriations bill into law—December 28, 2020—CEO Pack sent OTF a new letter proposing debarment. It rescinded the previous letter without citing any new information or any other basis for issuing a new debarment proposal.¹³⁸ In addition to proposing debarment, the second letter also immediately suspended OTF—temporarily blocking it from winning federal contracts or obtaining federal assistance.¹³⁹

The Fiscal Year 2021 National Defense Authorization Act, which became law on January 1, 2021, authorized OTF as a statutory USAGM grantee. There is no evidence that CEO Pack sought to withdraw his debarment proposal. This sequence of events and the weak substantive case for debarment is evidence of CEO Pack’s animus against OTF.

After CEO Pack resigned on January 20, 2021, new Agency leadership withdrew the debarment proposal against OTF and ended its suspension.

¹³⁸ Both letters cite a State Department Office of Inspector General referral and a subsequent USAGM investigation.

¹³⁹ The standard of proof for suspension is adequate evidence—a lower standard than for debarment because suspensions are short-term in nature and typically occur when an investigation or a legal proceeding is pending; See 22 § 1508.605 - How does suspension differ from debarment? <https://www.law.cornell.edu/cfr/text/22/1508.605>.

7. Grantee Network Governance

This section will present facts and context relevant to assessing the following items referred by the Office of Special Counsel.

OSC asked USAGM to investigate and evaluate whether CEO Pack:

- “Engaged in gross mismanagement and abuse of authority by:
 - 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.

Key Findings

- **CEO Pack’s efforts to enshrine a provision into grantee bylaws and employment contracts requiring conviction to remove his appointed board members and grantee network Presidents was an abuse of authority.** In the weeks before the change in presidential administrations, CEO Pack, his political appointees, and the board members changed grantee network bylaws and grant agreements to improperly insulate the board members and grantee network leadership from accountability and management.
- **CEO Pack’s dismissal of the members of the bipartisan boards of the non-profit grantee networks and Presidents did not constitute gross mismanagement or an abuse of authority.** He faced no legal restriction in replacing the board members with current political appointees and naming himself as chairman of those boards. The law at the time of CEO Pack’s actions stated that the grantee board members “shall serve at the pleasure of and may be named by the Chief Executive Officer.”¹⁴⁰
- By filling the boards almost entirely with current political appointees, CEO Pack risked compromising the independence of the grantee networks as well as politicizing them. The 2021 NDAA substantially changed the appointment authorities of the CEO in naming and removing grantee board members and the grantee chief executives.¹⁴¹

¹⁴⁰ National Defense Authorization Act for Fiscal Year 2017, U.S. Congress, December 23, 2016, <https://www.congress.gov/114/plaws/publ328/PLAW-114publ328.pdf>.

¹⁴¹ These changes limited the CEO’s authority for both the federal networks and the grantees, transferring some of the CEO’s former executive authority to a reconstituted and strengthened Advisory Board, which became an independent establishment with shared authority with the CEO on certain personnel matters. Major changes included:

- Grantee board members must have requisite expertise in journalism, technology, broadcasting, or diplomacy, or appropriate language or cultural understanding relevant to the grantee’s mission (Note: Unlike the Advisory Board, a bipartisan balance is not required)

As background, the relationship between USAGM and its non-profit grantee networks governing board members and presidents and CEOs is complex. The law in place at that time provided the authority for the USAGM CEO to name members of the boards, who in turn appoint a president and/or CEO. Network grantee board members serve at the pleasure of the USAGM CEO. Further, the GAO had identified longstanding deficiencies in USAGM's grants management oversight and noted efforts to correct these longstanding deficiencies were being taken by the current leadership.

CEO Pack's removal of the heads of the non-profit grantee networks on the evening of June 17, 2020, generated substantial media coverage as well as a critical response from numerous members of Congress of both political parties, including those members who serve on the House and Senate committees of jurisdiction.¹⁴² About an hour before CEO Pack removed grantee network heads, he also removed the members of their non-profit governing boards who had affiliations across the political spectrum and substantial expertise in foreign policy and/or the media industry. He replaced them with then-current political appointees and one attorney from a non-profit organization and named himself the chair of each of the boards. These new board members then ratified CEO Pack's decision to remove the heads of the grantee networks.

USAGM's authorizing statute specifically provided that the board members "shall serve at the pleasure of and may be named by the Chief Executive Officer." The statute was subsequently amended in January 2021, and the new provisions placed restrictions on the CEO. Those new restrictions prohibit current political appointees from being appointed to the boards and prohibit the CEO from serving on the boards. Further, Congress amended the statute to require the boards' members have relevant expertise.

Given the CEO's express statutory authority with no limitations at the time of CEO Pack's actions, the Review Team finds that CEO Pack's removal and replacement of the members of the grantee boards did not constitute an abuse of authority.

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- The CEO must obtain the approval of the Advisory Board before appointing or removing heads of any of USAGM's federal or grantee organizations (VOA, OCB, RFE/RL, RFA, MBN, and OTF)
 - The CEO was prohibited from serving on any of the corporate boards of any grantee network.
 - Federal officials were and employees were prohibited from serving on grantee boards.
 - The Advisory Board may unilaterally remove the head of any network or grantee, following consultation with the CEO, on the approval of five of the seven members of the Advisory Board.
 - The CEO was required to consult with the Advisory Board before submitting budget or strategic plans to OMB or Congress.
 - The Advisory Board was charged with advising the CEO to ensure that the CEO fully respects the professional integrity and editorial independence of USAGM broadcasters, networks, and grantees.

These changes were prompted by Congressional concerns about Michael Pack's actions in June 2020 dismissing the network heads and grantee boards,

¹⁴² "Rubio and Colleagues Send Letter to USAGM CEO Expressing Concern Following Recent Termination of Employees," Senator Marco Rubio, July 1, 2020,

<https://www.rubio.senate.gov/public/index.cfm/2020/7/rubio-and-colleagues-send-letter-to-usagm-ceo-expressing-concern-following-recent-termination-of-employees>, accessed October 22, 2022.

Furthermore, the removal and replacement of the grantee network leaders also cannot be deemed gross mismanagement given CEO Pack’s express authority as provided under the statute at that time.

However, CEO Pack’s actions created risks for the Agency and the grantee networks. By filling the boards with current political appointees, CEO Pack put the credibility of the grantee journalism networks at risk. As a bipartisan group of Senators wrote to CEO Pack in July 2020, “Congress set up these networks, and its governance structure at USAGM, to preserve the grantees’ independence so they can act as a bulwark against disinformation through credible journalism.”¹⁴³

The heads of the non-profit grantee networks and USAGM staff told the Review Team that their arms-length relationship from Executive Branch control is important. This is especially the case given the networks operate in and broadcast to foreign countries where hostile governments try to undermine their credibility by calling them propaganda outlets. The arm’s length relationship allows the grantee networks to state that while they are U.S. government funded, they are not U.S. government controlled. CEO Pack’s actions undermined that position.

The unified partisan tilt of CEO Pack’s board members further risked undermining the credibility of the grantee networks. Prior to CEO Pack’s actions, the boards’ members had a range of partisan affiliations, including individuals who were registered independents. In the Executive Branch, it is expected that political appointees will generally come from the same political party as the President. That expectation does not extend to these non-profit journalism organizations that are government funded. CEO Pack’s actions raised the risk, at least the appearance, that foreign audiences would view grantee network journalism both as U.S. government controlled and filtered through a political lens.

Following the appointment of the new board members, the grantee boards took little to no actions for the next six months, according to grantee network staff who spoke to the Review Team and a review of records. The boards did not meet (including virtually or over the phone) from mid-June 2020 until mid-December 2020. This contrasted with past practices where the grantee network boards would generally meet quarterly. However, the boards’ bylaws did not require regular meetings.

CEO Pack Convenes Board Meetings in December 2020

In December 2020, CEO Pack sought board votes on a number of matters, including approval by the board members on his choices of grantee network heads¹⁴⁴ and changes

¹⁴³ “Rubio and Colleagues Send Letter to USAGM CEO Expressing Concern Following Recent Termination of Employees”; The boards historically have included the Secretary of State as one member. However, the other individuals on the boards have not been individuals currently working in the federal government.

¹⁴⁴ Until this time, acting network heads were placed. At all three grantee networks and the two federal networks, the individuals who were the acting heads were senior network employees. One—at the Office of Cuba Broadcasting—was a political appointee. He was the only one of the acting heads to be selected by CEO Pack as a network head in December 2020.

to grant agreements. CEO Pack's approach to grantee governance was concerning given a number of facts and circumstances related to the December 23 meeting of the boards.

On that date, the grantee network boards met via a conference call. During this meeting, Radio Free Europe/Radio Liberty (RFE/RL)'s General Counsel raised questions regarding RFE/RL board members' due diligence surrounding CEO Pack's selection for that grantee network. During his remarks, the General Counsel said he stressed that the board members have fiduciary duties to work for the best interests of the grantee corporation. According to board meeting minutes taken by the general counsel (who is also its corporate secretary with the responsibility for taking the minutes, per RFE/RL's bylaws), CEO Pack said it may have been inappropriate for the general counsel to raise these questions. The members of the boards unanimously voted to approve CEO Pack's selection.

CEO Pack's political appointees did not notify the general counsels of the other two grantee networks of the meeting. Further, both were their respective corporate secretaries responsible for producing board meeting minutes, along with other duties relevant to board meetings.

Shortly after the meeting's conclusion, one of CEO Pack's political appointees—who had been present during the board meeting along with CEO Pack—inquired with an external law firm about the process of removing RFE/RL's General Counsel. An hour later, the political appointee directed the external law firm to produce the required documentation to remove RFE/RL's General Counsel, emailing that this was “a matter of urgency.”

Ultimately, no formal disciplinary or other personnel actions were taken or proposed against RFE/RL's General Counsel. However, this episode is one of several demonstrating a pattern in CEO Pack's and his appointees' approaches to addressing employee questions and criticisms of management actions. Rather than address the concerns expressed by employees, CEO Pack's administration often sought to punish and silence those employees who brought such concerns or criticisms to management's attention.

CEO Pack does not appear to have had a robust search for network heads until late October 2020 at the earlier. An October 20, 2020, email by CEO Pack to his Front Office team inquired into the possibility of hiring an executive search firm. One of his political appointees objected to the idea and argued that these network heads were political appointees and that the White House would need to be involved. That appointee emailed, “I will non-concur as to legality as to any network head appointment that does not have the assent of PPO [Presidential Personnel Office] and has run through the normal process for selecting a political appointee. In my view PPO should immediately be made aware of this (likely) encroachment of the White House's prerogatives. We may also wish to bring this matter to the attention of White House Counsel's Office.”

The timing of his selections in December 2020 came after the November 20, 2020, preliminary injunction barring CEO Pack and his political appointees from involvement in personnel matters and journalism without the consent of network heads. It also came after the General Services Administrator on November 23, 2020, formally began the process of the presidential transition and the President-Elect had publicly stated he would remove CEO Pack.

The RFE/RL General Counsel said he was never asked or given an opportunity to defend or explain his actions and was not notified of these steps that were taken to remove him.

CEO Pack's appointees also proposed last-minute actions for the December 23, 2020, meeting of the grantee corporate boards. One hour prior to the meetings, one of CEO Pack's political appointees circulated revised grant agreements with the members of the boards as well as with the RFE/RL General Counsel. The meeting agenda included voting on these revised grant agreements that day. The revised grant agreements contained language that would bar removal of grantee network leaders and their board members for two years except "for cause," which was left undefined in the grant agreement, but would later be defined in revised bylaws weeks later. This language was produced without consultation with the grantee networks.

Due to time constraints, one of CEO Pack's appointees conducted a vote on these grant agreements the next day via email. "I am so sorry to ask for this on Christmas Eve but it is urgently required," emailed one of CEO Pack's appointees to the members of the boards, adding that, "These grant agreements must be approved today; these organizations will run out of money if we do not do this." The members of the boards unanimously voted to approve the grant agreements without a discussion of the changes.

According to RFE/RL staff, there was no actual urgency as the organization's Chief Financial Officer assessed that RFE/RL had enough funding until late January.

On December 30, RFE/RL's senior staff protested this revised grant language in a letter to CEO Pack, calling it "an unprecedented departure from RFE/RL's tradition of working in a bipartisan manner with changing U.S. administrations."

RFE/RL's new President—selected by CEO Pack and approved by the board days earlier—approved the language, as did the other new Presidents of Radio Free Asia (RFA) and Middle East Broadcasting Networks (MBN). RFE/RL, RFA, and MBN's General Counsels all expressed concern that this language could violate various laws and principles under which the grantee networks operated. These included the applicable state laws under which the non-profit grantees are incorporated, the International Broadcasting Act, and the Office of Management and Budget's Uniform Guidance.

The lack of advance consultation with the grantee networks on the revisions meant these concerns were not addressed prior to the votes by the boards and ratification by new grantee network leadership. For instance, RFA's general counsel raised concerns in a January 8, 2021, letter suggesting revisions to the grant agreement only after it had been signed by the newly named RFA President on December 29, 2020.

In January 2021, CEO Pack named new members of the boards—with one holdover. Unlike his first slate of members, these were not current political appointees, although the partisan tilt remained. On January 15, they held their first and only board meeting.¹⁴⁵ During this meeting, they voted on changes to the grantee networks bylaws.

¹⁴⁵ "USAGM CEO Michael Pack names Board of Directors," U.S. Agency for Global Media, January 19, 2021, <https://www.usagm.gov/2021/01/19/usagm-ceo-michael-pack-names-board-of-directors/>, accessed October 22, 2022.

There was little time for the new board members to review and consider those changes to the bylaws as they had been sent out by one of CEO Pack's appointees the night before after 10 p.m.

CEO Pack's Proposed Limitation on Removal of New Grantee Presidents

The changes were very significant and had repercussions on the operations of the grantees and could tie the hands of the incoming administration and any successor to CEO Pack. The proposed amendment redefined the circumstances under which the newly appointed grantee leadership could be removed. The current bylaws said these appointees could only be removed "for cause" and for conviction of a felony or a misdemeanor that resulted in imprisonment.

During the January 15, 2021, meeting, which occurred over a conference call, RFE/RL's General Counsel raised concerns about the felony removal standard given that various types of serious misconduct may not be criminal in nature, such as whistleblower retaliation, sexual harassment, or discrimination. He also raised concerns about the truncated amount of time he had to review the revisions to the bylaws given that they had been sent out after 10 p.m. the night before the meeting. The General Counsels of the other grantee networks were not invited to the meeting. The members of the boards unanimously voted to approve the bylaws.

USAGM also took over the crafting of employment contracts between the grantee networks and the new network presidents. Normally, the employment contract between the head of the grantee network and the network would be prepared by the grantee network. USAGM quickly incorporated the felony removal provision in employment contracts for the new grantee network heads, despite the continuing concerns about its legality. For instance, on January 18, 2021, USAGM presented the new head of RFE/RL with an employment contract allowing him to only be removed due to a conviction for a felony or misdemeanor resulting in imprisonment during his first two years.

The timing of these actions strongly suggests that the change in administrations on January 20, 2021, was the motivation behind making it difficult to remove CEO Pack's board members and grantee network heads. New leadership at USAGM and at the grantee networks and their reinstated board members removed this provision in 2021.

The provision—if allowed to remain in effect—would have impeded good governance of the grantee networks for no plausible public policy reason in the event of poor performance or misconduct that does not lead to criminal conviction.

CEO Pack's efforts to enshrine the provision requiring conviction to remove his board members and grantee network heads was an abuse of authority.

8. Use of External Law Firms

This chapter is relevant to the following referral from the Office of Special Counsel dated February 16, 2021:

The substantial likelihood that the engagement of a private law firm to perform work that should have been performed by government employees constituted a gross waste of funds.

This issue was also investigated by the Department of State Office of Inspector General (OIG).¹⁴⁶ The Review Team adopts the OIG's findings of fact and has extensively drawn upon them in the preparation of this section.

Key Findings

- **The hiring of McGuireWoods constituted gross mismanagement and a gross waste of funds.** CEO Pack paid McGuireWoods more than \$1.6 million in taxpayer funds, of which more than \$776,000 was for personnel investigations of the suspended employees. Consilio invoiced USAGM \$138,965.50 for work supporting McGuireWoods' investigation of the suspended employees. None of McGuireWoods' investigatory work demonstrated value in making security determinations or supporting the suspension decision. The taxpayers did not achieve the results for which the contractor was paid.
- **The statutory authority used to award the McGuireWoods contract was problematic.** The statute providing USAGM a limited FAR-exempt authority does not appear to provide a basis for awarding the McGuireWoods contract. CEO Pack violated the applicable USAGM Directive by using the FAR-exempt authority.
- **CEO Pack's oversight of the McGuireWoods contract was lax and ineffective, increasing the risk of waste.** No contracting officer was assigned to oversee the contract, leading to deficiencies in financial management and increasing the risk of waste. CEO Pack's staff tasked work to McGuireWoods without consideration of funds available and McGuireWoods failed to perform certain of its financial obligations under the contract.
- **Work contracted to McGuireWoods could have been performed by federal employees.** Personnel investigations could have been performed by OIG or other knowledgeable and accountable federal personnel. General research on ethics law and routine federal legal matters could have been performed by the Office of General Counsel.

¹⁴⁶ "Review of the U.S. Agency for Global Media's Contract with McGuireWoods," U.S. Department of State Office of Inspector General, August 2022, https://www.stateoig.gov/uploads/report/report_pdf_file/esp-ib-22-03_o.pdf, accessed October 22, 2022.

- **The award to Consilio to support the McGuireWoods investigation was also irregular, and oversight was ineffective.** The contract was awarded without the knowledge or participation of a contracting officer and amounts invoiced greatly exceeded obligations, creating increased risks for USAGM and the taxpayer.

On August 26, 2020, CEO Pack awarded Richmond, Virginia–based law firm, McGuireWoods, a sole-source contract. Several characteristics of this contract award were unusual:

- The contract was awarded without competition.
- The contract was not awarded in accordance with the Federal Acquisition Regulation, the principal set of rules governing federal procurement.
- Neither the USAGM Office of Contracts, a qualified and warranted Contracting Officer, nor any member of the Office of General Counsel was involved or consulted in the award decision.
- No Contracting Officer was involved in the preparation of the contract. No Contracting Officer or Contracting Officer’s representative was assigned to oversee the contract or the contractor’s performance.
- The scope of the contract was principally for services routinely performed by federal government employees.

USAGM paid McGuireWoods more than \$1.6 million under this contract.

Background on Contract Award

CEO Pack selected McGuire Woods for this non-competitive award. We found no record or evidence supporting or justifying the selection of McGuireWoods to perform this work. Further, there is no record indicating that other firms were considered for this work, or that other proposals were solicited. Richmond, Virginia–based McGuireWoods describes itself as “a full-service firm providing legal and public affairs solutions to corporate, individual and nonprofit clients worldwide.” McGuireWoods has more than 900 attorneys and is among the hundred largest U.S. law firms. The firm’s website does not list a practice group specializing in either: (i) federal human resources or (ii) federal employee suitability and national security law and regulations.

None of the federal employees with authority over contracting and subject matter expertise (including contracting officers or attorneys) was substantially involved in the negotiation, award, or management of the contract. The contracting award vehicle was an engagement letter prepared by the contractor.¹⁴⁷

¹⁴⁷ The Review Team was contacted by a whistleblower regarding a discovery of a box of files, some of which contained handwritten notes purportedly authored by one of CEO Pack’s senior advisors and some of which appeared to relate to the contract with McGuireWoods. The notes reflected the author’s recording of some staff and other meetings in which CEO Pack was present or his decisions discussed.

Purpose of the Contract

The precipitating event for this unusual contract award was CEO Pack's suspension of the security clearances of six of the Agency's senior career executives and the Director of the Office of Security. (See [Career USAGM Executives](#).)

The primary purpose of this contract was described in the McGuireWoods engagement letter as follows: "The nature and scope of services to be rendered by our firm are to conduct an internal investigation on behalf of USAGM regarding the complaints of potential misconduct by employees. McGuireWoods will assess the facts and provide appropriate recommendations." These employees had been suspended on August 12. The McGuireWoods investigation was a post-hoc attempt to support the determination to suspend their security clearances.

Before the suspensions, CEO Pack's staff made no attempts to involve federal employee subject matter experts or accountable federal personnel. As noted in Section 3, under established Agency practice, matters concerning possible employee discipline, security clearances, or suitability determinations, were handled collaboratively by the Offices of General Counsel, Human Resources, and Security. None of these offices were consulted or had any knowledge of CEO Pack's plans or his decision to suspend these senior executives. No one trained in the regulations governing security determinations or adjudications participated in the preparation of the suspension documents or was consulted about the decisions. On the contrary, plans for the suspension were communicated from the Acting VP of Legal, Compliance, and Risk using a private encrypted messaging app Signal under strict instructions that confidentiality be maintained. One of her Signal messages: "No one can know. Just you."

CEO Pack hired McGuireWoods to perform a far-reaching investigation of the employees who had been suspended. In hiring the firm, however, CEO Pack failed to

Whether the notes were made contemporaneously with the meetings they chronicled could not be confirmed.

The Review Team asked the whistleblower to give the box(es) containing the notes to the OIG, who would in turn, share them with the Review Team. This chain of custody post-discovery of the notes was to ensure that the Review Team reviewed the same material as reviewed by the OIG. The whistleblower complied and the team received a link from the OIG to review the notes in question.

The purported author of the notes, a Pack senior advisor, had been invited to be interviewed by the Review Team regarding his tenure at USAGM in the fall of 2021. He did not respond to the invitation. The discovery of these notes took place in the summer of 2022. However, had he spoken to the team, questions about his tenure at USAGM and his involvement in the matters apparently referenced in the notes, he might have shed light regarding the authorship and authenticity of the notes, and the context in which they were taken. The Review Team did not make a second request to interview him following the discovery of the notes.

Given these circumstances, the Review Team cannot definitively determine the author of these notes. Further, the discovery of these notes in files in a box was made in an office where the whistleblower's former colleague had once worked. The Pack Senior Advisor had also used that office following the departure of the former colleague from USAGM. The chain of custody of these notes cannot be affirmatively traced nor can assurances be made that others did not have access to this file in the interim between the departure of the Pack staffer and the discovery of the notes by the whistleblower.

As a result of these issues, the Review Team concludes that the probative value of the discovered notes is outweighed by the lack of authentication of the notes' authorship and the chain of custody of the notes from the time they were made until they were uncovered by the whistleblower.

consult with knowledgeable personnel and violated governmentwide regulations in an attempt to justify after-the-fact suspensions of the USAGM executives. (See [Career USAGM Executives](#).)

Use of FAR Exempt Authority Was Problematic and the Contract Award Violated the Applicable USAGM Directive

The 2017 NDAA gave the CEO of USAGM a broad range of management authority. In procurement, the CEO was authorized to “procure, rent, or lease supplies, services, and other property for journalism, media, production, and broadcasting, and related support services, notwithstanding any other provision of law relating to such acquisition, rental, or lease.”¹⁴⁸

A USAGM management directive interpreted this limited exemption for broadcasting, journalism, and related services. USAGM describes this authority as FAR-Exempt Special Agreements (FESA).¹⁴⁹ The Directive lists eight types of broadcasting and media contracts as exempt from the FAR and the Competition in Contracting Act:

- Frequency license contracts
- Operation and maintenance contracts with foreign commercial entities
- Affiliate agreements with foreign media platforms
- Individual broadcaster contracts and agreements
- Acquired programming content contracts
- Foreign real property leases
- Other contracts, leases, or agreements with foreign states
- Contracts dealing with sensitive or security concerns relating to individual safety, protection of sources, or broadcast operability.
- Any other contract determined by USAGM’s Senior Procurement Executive to be a FESA

On August 26, 2020, CEO Pack signed the contract with McGuireWoods with the following language: “As Chief Executive Officer of the U.S. Agency for Global Media (formerly known as the Broadcasting Board of Governors), I hereby exempt this retention agreement from any and all federal laws, regulations and orders related to procurement or contracting, pursuant to the authority granted to me under 22 U.S.C. § 6204(a)(10), which I hereby interpret to authorize me to take this action.”

CEO Pack’s reliance on the 22 USC 6204(a) (10) exemption was problematic and not in accordance with USAGM’s implementing Directive.

¹⁴⁸ 22 U.S.C. § 6204(a)(10) – Authorities of Chief Executive Officer, <https://www.law.cornell.edu/uscode/text/22/6204>.

¹⁴⁹ “Directive Memo: Awarding Federal Acquisition Regulation (FAR) Exempt Special Agreements,” U.S. Agency for Global Media, August 6, 2019.

Neither the Senior Procurement Executive, the Acting Director of Management Services (who supervised the Office of Contracting), nor any employee of the Office of General Counsel reviewed CEO Pack's exemption determination. CEO Pack appears to have relied on a one-page August 18 memorandum prepared by his Front Office Senior Advisor. That memo concluded:

Typically, these procurements [under the FESA Directive] focus around the nuts and bolts of broadcasting, such as property for transmitters or a frequency license. *Id.* But there is nothing in the statute or internal policy that would limit the use of this authority here.

This conclusion is asserted without analysis or supporting evidence.

Neither a contextual reading of the governing statute and Directive, nor the history of USAGM's use of the exemption, supports the Senior Advisor's assertion. Although legislative history for 22 USC 6204(a)(10) is sparse, all the listed purposes concern a specific and circumscribed group of procurements generally relating to specialized broadcasting products and services often performed in foreign countries or by foreign entities. The eight types of contracts in USAGM's Directive reinforce the specific and limited nature of the statutory exemption. In these instances, the FAR exemption is sensible, providing additional flexibility without injury to the FAR's underlying principles. For example:

- Only one entity could perform the contract or service, so there is no requirement for competition.
- The contract will be performed in a foreign nation by a foreign entity, so the FAR principle of fair opportunity to compete for US offerors is not implicated.
- The contract would be subject to foreign law
- The contract concerns sensitive or security matters, so contractor registration in the public System for Awards Management (SAM.gov) database might increase risk.

None of the eight specific categories listed in the Directive relates in any way to domestic legal services for employee personnel investigations. In this event, the only way the contract could be properly awarded under FESA would be under the ninth, "catch-all" category: "Any other contract determined by USAGM's Senior Procurement Executive to be a FESA." No such determination was sought or made. The Senior Procurement Executive confirmed that the McGuireWoods contract did not fit under any of the exempt categories, and he would not have been comfortable approving it (had he been consulted).

The Senior Procurement Executive's determination was sound. Had CEO Pack wanted to expand his authority under the Directive, he could have moved forward to revise the Directive to extend the categories. The McGuireWoods contract for personnel security investigations to support CEO Pack's determinations to suspend to be performed locally by a US law firm has no such similarity and cannot be reasonably reconciled as a proper use of the FESA exemption.

Contract Oversight Was Lax and Ineffective

Even if the contract award is made outside FAR requirements, the FAR embodies principles of contract oversight to ensure prudent stewardship of taxpayers' funds. CEO Pack's oversight of the McGuireWoods contract was lax and ineffective.

Effective contract oversight performs several critical functions. Contract oversight is performed by a warranted contracting officer assigned to the contract, usually assisted by a contracting officer's representative. Among the functions commonly performed:

- Ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.¹⁵⁰
- For a sole source award, a determination that the statutory and FAR requirements have been met and that the pricing is fair and reasonable.¹⁵¹ There is no evidence that the contract pricing was reviewed as being fair and reasonable.
- Review of work performed to verify amounts and quality are in accordance with the contract and that invoices are properly payable.
- Assurance that "sufficient funds are available for obligation."¹⁵² As discussed below, invoices presented were substantially in excess of the amounts obligated under the contract.
- Assurance that Agency obligations under the contract have been properly recorded and that sound financial management practices and internal control procedures are being followed.

CEO Pack's lax oversight of the contract, inadequate attention to internal controls, and failure to assign a contracting officer to the contract significantly increased the risk of waste under the contract.

A major deficiency in financial management occurred early in the contract process. The contracting document was not a standard federal contract, but an engagement letter prepared by McGuireWoods. The draft engagement letter contained no limit on USAGM's liability to McGuireWoods, and would have violated the Anti-Deficiency Act, which as the OIG report notes "is one of the major fiscal laws in the statutory scheme by which Congress exercises its constitutional control of the public purse."¹⁵³ The Act prohibits a federal official from entering into an obligation or making an expenditure in advance or in excess of funds currently appropriated for the obligation.¹⁵⁴

¹⁵⁰ 48 C.F.R. §§ 1.602-1(a), 1.602-2 – Authority, <https://www.law.cornell.edu/cfr/text/48/1.602-1>.

¹⁵¹ 48 CFR 6.303-2 – Content, <https://www.law.cornell.edu/cfr/text/48/6.303-2>.

¹⁵² 48 C.F.R. § 1.602-2(a) – Responsibilities, <https://www.law.cornell.edu/cfr/text/48/1.602-2>.

¹⁵³ *Principles of Federal Appropriations Law, Third Edition, Volume II*, U.S. Government Accountability Office (Washington, D.C.: March 2016), Section 6-34. <https://www.gao.gov/assets/gao-06-382sp.pdf>.

¹⁵⁴ 31 U.S.C. § 1341(a)(1) – Limitations on expending and obligating amounts, <https://www.law.cornell.edu/uscode/text/31/1341>.

Fortunately, career procurement officials noted this deficiency before CEO Pack signed the engagement letter and recommended that the letter be amended to include a cap on the Agency's liability, which was added to the letter.

As work under the contract progressed, lax financial oversight continued to create problems. Under proper contract administration, the contracting officer will ensure that before the contractor is tasked, sufficient funds are available for obligation. This practice was not followed for the McGuireWoods contract. As noted in the OIG report the Senior Advisor tasked work to McGuireWoods with little evidence of concern about the cost to the government or whether funds were available and obligated to perform the work. No contracting officer tasked McGuire Woods or reviewed or approved any invoices.

Financial management problems were exacerbated by the failure of McGuireWoods to perform its obligations under the contract. The contract required McGuireWoods to notify USAGM if McGuireWoods "project[ed] that the value of the services it will provide at USAGM's direction is at risk of exceeding the amount of funds available on the contract." As detailed in the OIG report, McGuireWoods performed work in excess of obligated amounts without notifying USAGM. As a result, contracting officials interviewed by OIG were "shocked" by the amount by which the invoices exceeded the amounts obligated and had to "scramble" after the fact to find additional funds to obligate against the contract.

Award of a Contract Supporting the McGuireWoods Investigation Was Irregular and Oversight Was Ineffective

On September 17, 2020, one of CEO Pack's non-career appointees entered into an agreement with Consilio, LLC, a legal consultancy. The form of the agreement was a statement of work prepared by Consilio. The scope of work was electronic discovery services. The project name was "USAGM Internal Investigation." The USAGM signatory was not a contracting officer and did not hold a warrant. The agreement with Consilio was an unauthorized commitment of funds. Under the agreement, McGuireWoods was purportedly authorized to request and accept the services on behalf of USAGM.

Neither the Agency's Office of Contracting nor the Office of General Counsel was involved in the preparation or award of the contract, or aware of its award at the time. On September 18, the USAGM recorded a miscellaneous obligation in the amount of \$4,000 related to the Consilio effort; no other amounts were obligated for this effort. Consilio subsequently invoiced USAGM for \$138,965.50 for work performed under the agreement.

There is no evidence that CEO Pack or any of his appointees exercised any oversight over services performed or liabilities potentially incurred under this agreement. Services were provided to McGuireWoods and McGuireWoods exercised de facto oversight under the contract.

This arrangement created risks for USAGM and for the taxpayer, as noted in an April 22, 2022, letter from USAGM Acting CEO Kelu Chao to The Comptroller General.

First, the agreement provided for an open-ended indemnification of Consilio by USAGM. Second, the agreement neither stated a firm contract price nor placed a ceiling

price on hourly services or variable quantities—an omission that resulted in an uncontrolled liability. Both these provisions created potential issues with violation of the Anti-Deficiency Act.

As with the McGuireWoods contract, invoices presented were substantially in excess of the amount obligated. Compounding this problem, responsible USAGM officials were not aware of the existence of the contract until the invoices were later presented. USAGM lacked assurance that “sufficient funds are available for obligation.”¹⁵⁵

As the OIG Report notes, “the making of an unauthorized commitment and the delegation to a nongovernmental entity of the ability to request and accept services on behalf of the government are serious violations of federal law and regulation, increase the risk of fraud, waste, and abuse, and usually necessitate disciplinary action against the responsible party.”¹⁵⁶

Work Contracted to McGuireWoods Could Have Been Performed by Federal Employees

CEO Pack outsourced human resources advice and operations, personnel security advice and operations, and employee investigations to McGuireWoods. CEO Pack’s practices of refusing to involve experienced and knowledgeable government employees, lack of communication, and insistence on secrecy created the conditions for this waste.

As the OIG report discusses, the investigative work outsourced to McGuireWoods could have been performed by OIG, which has the responsibility for conducting investigations related to USAGM.¹⁵⁷

In addition, OIG notes that CEO Pack violated the Foreign Affairs Manual, which requires USAGM officials to report “known or suspected waste, fraud, abuse, false certifications, and corruption on a timely basis to the Office of Inspector General, Office of Investigations.”¹⁵⁸ If CEO Pack needed preliminary investigative work to determine the existence and extent of any possible misconduct and believed a conflict of interest would preclude the use any of USAGM’s experts, he also had ample alternative sources of expertise within the federal government. USAGM had an existing Memorandum of Understanding with the General Services Agency to conduct background investigations and adjudications in instances in which USAGM offices had a conflict. OPM (Office of Personnel Management), ODNI (Office of the Director of National Intelligence), or the State Department could have been consulted or called upon to advise about or handle these matters. None of the government agencies with expertise in these matters were consulted.

An investigation undertaken by knowledgeable federal personnel would also likely have been of higher quality and avoided the errors by McGuireWoods that made its

¹⁵⁵ 48 C.F.R. § 1.602-2(a) – Responsibilities, <https://www.law.cornell.edu/cfr/text/48/1.602-2>.

¹⁵⁶ “Review of the U.S. Agency for Global Media’s Contract with McGuireWoods,” p. 8.

¹⁵⁷ 5 U.S.C. App. § 4(a)(1); 22 U.S.C. § 6209a., specifically including allegations of misconduct by senior government officials. 5 U.S.C. App. § 5(a)(19), <https://www.law.cornell.edu/uscode/text/5a/compiledact-95-452/section-4>.

¹⁵⁸ 9 1 FAM 053.2-5(c)(6) (September 10, 2018), <https://fam.state.gov/fam/01fam/01fam0050.html>.

investigations defective for determining violations of personnel security or security standards. As the OIG McGuireWoods report notes:¹⁵⁹

[T]he primary means that McGuireWoods used to investigate the allegations was to review the official email accounts of the seven employees and flag any emails that dealt with the subject matters listed above. McGuireWoods performed minimal interviews and did not interview the seven employees themselves, despite an offer by their attorneys to provide interviews. If OIG had conducted this investigation, it would have followed the Quality Standards for Investigations, which state that in order to ensure that investigations are conducted in a timely, efficient, thorough, and objective manner, “the investigator should collect and analyze evidence through a number of techniques, including, but not limited to, interviews of complainants, witnesses, victims, and subjects.”¹⁶⁰

The Hiring of McGuireWoods Constituted Gross Mismanagement and a Gross Waste of Funds

The Review Team adopts the definitions of gross waste set forth in the OIG report. Two definitions are relevant:

- GAO defines waste as “the act of using or expending resources carelessly, extravagantly, or to no purpose”¹⁶¹
- MSPB caselaw defines gross waste as: “more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government”¹⁶²

The OIG PPD-19 reports concluded that none of this extensive undertaking by McGuireWoods was relevant to issues of national security. None of their work was of any demonstrated value in making security determinations or supporting the suspension decision. Neither CEO Pack nor the taxpayers achieved the results for which the contractor was paid. (See [Career USAGM Executives](#).)

OIG determined that USAGM paid invoices of McGuireWoods of \$1,624,764.77. Of this amount, OIG determined that at least \$776,600 on the investigation of the suspended employees. Hourly rates billed ranged from a low of \$545 to a high of \$930. Under a separate agreement for “USAGM Internal Investigation,” Consilio invoiced USAGM for an additional \$138,965.50. Total amounts invoiced to USAGM for the investigation of the suspended employees was at a minimum \$915,565.

In addition to the substantial amounts spent on the personnel investigations, OIG noted that USAGM spent at least \$18,000 for research into federal ethics laws and regulations. USAGM had a seasoned Designated Agency Ethics Official (DAEO) to perform this

¹⁵⁹ ESP-IB-22-03

¹⁶⁰ “Quality Standards for Investigations,” Council of the Inspectors General on Integrity and Efficiency, November 15, 2011, <https://www.ignet.gov/sites/default/files/files/invprg1211appi.pdf>, p. 11-12.

¹⁶¹ *Government Auditing Standards*, U.S. Government Accountability Office, April 2021, <https://www.gao.gov/assets/gao-21-368g.pdf>, § 6.21.

¹⁶² See, e.g., *Nafus v. Department of the Army*, 57 M.S.P.R. 386, 393 (1993) and Appendix A.

work, in addition to the availability of advice from the Office of Government Ethics (OGE), both of which have the specialized expertise and legal authority to advise agencies on ethics matters. There was no reason not to consult with either the DAEO or OGE before paying McGuire Woods to provide its opinion.

Although amounts could not be determined, CEO Pack paid McGuireWoods for other services that the Office of General Counsel would typically provide, including:

- USAGM’s organic statutes and related authorities, regulations, and activity restrictions;
- government law and regulations concerning lobbying, anti-corruption, bribery and procurement rules and restrictions applicable to federal agencies and their grantees;
- congressional subpoenas; and
- document destruction law and policy applicable to federal employees.

As described in the previous sub-section, all the services for which McGuireWoods was paid could have, and should have, been performed by responsible federal resources. The Senior Procurement Executive also believed it was wasteful to pay McGuireWoods for personnel work that would normally be performed by USAGM Office of Human Resources or General Counsel. OIG determined that several task requests by USAGM constituted waste or gross waste of government funds.¹⁶³

The Review Team finds that the hiring of McGuireWoods constituted gross waste, as defined above, and gross mismanagement.

¹⁶³ “Review of the U.S. Agency for Global Media’s Contract with McGuireWoods,” p. 9.

Appendix A: Glossary and Congressional Committees of Jurisdiction

Term	Definition
AVP	Alternative Vetting Program
BBG	Broadcasting Board of Governors; former name of the agency now known as USAGM and the Agency shorthand for USAGM's Advisory Board
CBP	Customs and Border Protection
CEO	Chief Executive Officer
DAEO	Designated Agency Ethics Official
DCSA	Defense Counterintelligence and Security Agency
DHS	U.S. Department of Homeland Security
EOD	Entrance on duty
FAR	Federal Acquisition Regulation
FELTG	Federal Employment Law Training Group; an outside law and consulting firm hired by CEO Pack
FESA	FAR-Exempt Special Agreements
Firewall	Separation between newsrooms and business/political offices
FOIA	Freedom of Information Act
FTE	Full-time equivalent; shorthand for government employees
FY	Fiscal year
GAO	Government Accountability Office
GSA	General Services Administration
HFAC	House Foreign Affairs Committee
HR	Human Resources
J-1 visa	A category of non-immigrant visa approved and issued under the J-1 Visa Exchange Visitor Program
LER	Labor and Employee Relations
MBN	Middle East Broadcasting Network
MOU	Memorandum of Understanding
NDAA	National Defense Authorization Act
OCB	Office of Cuba Broadcasting

Term	Definition
ODNI	Office of the Director of National Intelligence
OGC	Office of General Counsel
OIF	Office of Internet Freedom
OIG	State Department Office of Inspector General
OMB	Office of Management and Budget
OPM	Office of Personnel Management
ORM	Office of Risk Management
OSC	Office of Special Counsel
OTF	Open Technology Fund
PAS	Presidentially appointed, Senate-confirmed
PIV	Personnel Identity Verification
PPD-19	Presidential Policy Directive 19
PSC	Personal Services Contractor
RFA	Radio Free Asia
RFE/RL	Radio Free Europe/Radio Liberty
SEAD 4	Security Executive Agency Directive
SES	Senior Executive Service
SSD	Security Stand Down
Standards Editor	Editor for News Standards and Best Practices
USAGM	U.S. Agency for Global Media; also referred to as the Agency
USCIS	U.S. Citizenship and Immigration Services
USIA	U.S. Information Agency
VOA	Voice of America

U.S. Congress Authorizing and Appropriations Committees for USAGM

Authorizing Committees

- The **House of Representatives Committee on Foreign Affairs**. Oversight and legislative activities relating to USAGM are reserved for the full Committee.
- The **Senate Foreign Relations Subcommittee on State Department & USAID Management, International Operations, & Bilateral**

International Development has jurisdiction including general oversight responsibility for USAGM.

Appropriations Committees

- The **House of Representatives Appropriations Subcommittee on State, Foreign Operations, and Related Programs** has jurisdiction over USAGM.
- The **Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs** has jurisdiction over USAGM.

Appendix B: Definitions of Gross Mismanagement, Abuse of Authority, and Gross Waste

Federal law defines a protected whistleblower as an employee or applicant who discloses information that he or she “reasonably believes evidences—

- a violation of any law, rule, or regulation, or
- gross mismanagement, a gross waste of funds, an abuse of authority, or
- a substantial and specific danger to public health or safety.” 5 U.S.C. § 2302(b)(8)(A)

In determining whether actions or decisions constitute gross mismanagement, gross waste of funds, or abuse of authority, the Review Team has been guided by definitions adopted by the Merit Systems Protection Board (MSPB), MSPB guidance, federal courts, and Council of Inspectors General, and MSPB Guidance.

1. Gross mismanagement

- a. “[M]anagement action or inaction which creates a significant adverse impact upon the agency’s ability to accomplish its mission.” *Smith v. Dept. of Army*, 80 M.S.P.R. 311, 315 (1998).
- b. “[M]ore than de minimis wrongdoing or negligence; it means a management action or inaction that creates a substantial risk of significant adverse impact on the agency’s ability to accomplish its mission.” *Swanson v. Gen. Servs. Admin.*, 110 M.S.P.R. 278, ¶ 11 (2008).
- c. [G]ross mismanagement requires that a claimed agency error in the adoption of, or continued adherence to, a policy be a matter that is not debatable among reasonable people.” *White v. Department of Air Force*, 391 F.3d 1377 (Fed. Cir. 2004).
- d. In order to qualify as gross, the agency’s decision cannot be a debatable difference of opinion. The agency’s ability to accomplish its mission must be implicated. *Whistleblower Protections for Federal Employees, A Report to the President and Congress of the United States (September 2010)* (“MSPB Report”) at 14 (citations omitted).
- e. The actions of the agency must be so serious “that a conclusion the agency erred is not debatable among reasonable people.” MSPB Report at 14 (citations omitted).
- f. Would a reasonable person conclude that the action undermined the ability of the office to perform its mission? The key is the impact on the mission and the disclosure must implicate mission failure. MSPB Report at 13-14 (citations omitted)

2. Abuse of authority

- a. “[A]rbitrary or capricious exercise of power by a Federal official or employee that affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” *D’Elia v. Dept. of Treasury*, 60 M.S.P.R. 226, 232 (1993). See also *Elkassir v. General Services Administration*, 257 Fed. Appx. 326, 329 (Fed. Cir. 2007) (Table); *Doyle v. Department of Veterans Affairs*, 273 Fed. Appx. 961 (Fed. Cir. 2008) (Table); *Gilbert v. Department of Commerce*, 194 F.3d 1332 (Fed. Cir. 1999) (Table)
- b. “[A]n arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned.” *Smolinski v. Merit Sys. Prot. Bd.*, 23 F.4th 1345, 1352 (Fed. Cir. 2022).
- c. The Board has therefore adopted a regulatory definition. An abuse of authority requires an “arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” MSPB Report at 12
- d. The term “an abuse of authority” also does not have a qualifier such as “gross,” and therefore a disclosure may qualify for whistleblower protection even if the abuse is not substantial. MSPB Report at 12.
- e. “Abuse of authority does not incorporate a de minimis standard.” *Embree v. Department of the Treasury*, 70 M.S.P.R. 79, 85 (1996).

3. Gross waste.

- a. “More than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government” *Jensen v. Department of Agriculture*, 104 M.S.P.R. 379, ¶ 10 (2007) (citing *Van Ee v. Environmental Protection Agency*, 64 M.S.P.R. 693, 698 (1994)).

Appendix C: Office of Special Counsel Referral and Supplemental



The Special Counsel

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

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: David Kligerman, General Counsel; Marie

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

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

Lennon, Director of Management Services; Shawn Powers, Chief Strategy Officer; Hoang-Oanh Tran, Executive Director; Grant Turner, Chief Financial Officer; and Matthew Walsh, Deputy Director for Operations. 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, Steve Springer, and the RFA Executive Editor, Bay Fang, 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. Mr. Springer, 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 Mr. Springer's 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/>.

Mr. Michael Pack
December 2, 2020
Page 5 of 7

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, Mr. Walsh, alleges that a senior USAGM appointee informed him that that appointee had been asked to research Mr. Walsh's 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, Mr. Powers 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. Mr. Turner 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. Mr. Turner 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.

Mr. Turner 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, Mr. Turner 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 Mr. Turner, 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. Mr. Turner 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.

Mr. Michael Pack
December 2, 2020
Page 7 of 7

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



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, Grant Turner, USAGM's Chief Financial Officer, 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, Mr. Turner 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 Mr. Turner 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.

Ms. Kelu Chao
February 16, 2021
Page 2

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,



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>.

Appendix D: CEO Pack Response to Office of Special Counsel Referral



U.S. AGENCY FOR
GLOBAL MEDIA

330 Independence Avenue SW | Washington, DC 20237 | usagm.gov

January 20, 2021

Henry J. Kerner
U.S. Office of Special Counsel
1730 M. Street, N.W., Suite 300
Washington, D.C. 20036-4505

Dear Mr. Kerner:

I am in receipt of your letter of December 2, 2020 (the “Letter”). The Letter refers certain matters to me for investigation pursuant to 5 U.S.C. § 1213. Below, I respond as the Chief Executive Officer (“CEO”) of the United States Agency for Global Media (“USAGM” or the “Agency”) and provide the Report of Investigation required by 5 U.S.C. Section 1213(d).

First. The Office of Special Counsel (“OSC”) is unconstitutional as presently constituted and administered. As you know, that has long been the position of the Department of Justice. *See, e.g.,* Letter from the Hon. Steven E. Boyd to the Hon. Mac Thornberry & the Hon. John McCain, at 7 (Nov. 8, 2017) (“Since the Office of Special Counsel was created, the Department has repeatedly expressed the view that it is constitutionally infirm because the President must have the authority to remove at will the head of an agency exercising largely executive functions.”). Accordingly, your determination under 5 U.S.C. § 1213(c) has no legal effect. USAGM provides a voluntary response and its response should in no way be construed to admit that it has any present obligation under 5 U.S.C. § 1213(c)—no legally authorized finding of “substantial misconduct” has been made.

Second. I am compelled to state at the outside that I find it regrettable that the Letter seems to have some political bias. The Letter largely parrots claims made by current and former USAGM officials in a lawsuit filed against USAGM in the United States District Court for the District of Columbia. *See Turner et al. v. USAGM et al.*, No. 20-2885 (BAH) (D.D.C). As you know, these individuals were placed on investigative leave and had their security clearances suspended due to serious concerns regarding their conduct in office. They have an axe to grind. It is inappropriate for the OSC to purport to direct what is in form “free discovery” for suspended government employees in a lawsuit against the Executive



PUBLIC SERVICE MEDIA

Branch Agency employing the plaintiffs in a case that is being vigorously defended by the Department of Justice. This is doubly the case where much of the Letter boils down to a legal and policy dispute between OSC on the one hand and USAGM and the Department on the other. Such matters are not OSC's remit. See *Authority of the Special Counsel of the Merit System Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. O.L.C. 30, 33–34 (1984) (OSC's predecessor may not contradict the litigation position of the Department of Justice). Reaching such matters suggests political motivation if only to aggrandize jurisdiction. The prudent course would be to follow normal OSC practice and hold the matter in abeyance pending resolution of the *Turner* litigation. See *Carson v. Special Counsel*, No. 04-0315 (PAF), 2006 WL 785292, *6 (Mar. 27, 2006); OSC File No. DI-04-0693 (Aug. 23, 2004) (“It is a general policy for OSC not to transmit allegations of wrongdoing to the agency head where the same allegation is being actively litigated. It was not intended for the Disclosure Unit to duplicate a formal adjudicatory process that is already underway”). The prudent course would be to respect OSC's limited role under 5 U.S.C. § 1213 and avoid second guessing both USAGM's policy determinations and the legal conclusions of USAGM and the Department of Justice. I regret OSC has chosen a different course.¹

Second. The Letter states “[w]e anticipate that you will delegate the responsibility to investigate these allegations to the Inspector General of the U.S. Department of State.” Letter at 1. As you know there is no requirement that I do so. I do not do so here in light of the foregoing and the fact that the career staff of USAGM are more than capable of conducting an independent and accurate investigation.

Third. The Letter provides that this report will be made public. Letter at 7, Appendix. As such, OSC claims authority to compel an Agency Head to investigate certain matters and make the results of that investigation public. See also 5 U.S.C. § 1219 (directing for publication). But the Department of Justice has long concluded that OSC cannot be constitutionally compel the production of information covered by Executive Privilege. See, e.g., Letter from the Hon. Steven E. Boyd to the Hon. Mac Thornberry, the Hon. John McCain, at 9 (Nov. 8, 2017). Accordingly, USAGM will exercise its prerogative to ensure that the President's

¹ I note this is not the first time that questions have arisen as to whether politics has driven OSC's official actions as regards President Trump's Administration. See, e.g., Letter from the Hon. Pat Cipollone to the Hon. Henry Kerner (June 11, 2019); H. Comm. on Oversight & Reform, *Violations of the Hatch Act Under the Trump Administration*, 116th Cong. 1st Sess., Serial No. 116-39, at (June 26, 2019) (Ranking Member Jordan); *id.* 3–4 (Ranking Member Jordan); *id.* at 11 (Rep. Armstrong); *id.* at 57 (Rep. Higgins); *id.* at 70–71 (Ranking Member Jordan and Witness).

constitutional authority to control the dissemination of privileged information in the Executive Branch is preserved. Moreover, the Department of Justice has long held that OSC cannot constitutionally exercise authority to unilaterally release confidential information from the Executive Branch. See *Authority of the Special Counsel of the Merit System Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. O.L.C. 30, 34–38 (1984). Again, USAGM will exercise its prerogative to protect this type of information.

I. Process.

Upon receipt of the letter, USAGM sought legal advice on its responsibilities to respond in light of the Constitutional infirmities in the OSC identified above and the fact that much of the Letter focused on disagreements with USAGM's legal positions and policy preferences. USAGM also conferred with other agencies regarding their response to OSC requests in light of these considerations.

Upon review, USAGM determined that the "allegations to be investigated" raised by the Letter fall into two categories.

The First constitutes instances in which the Letter raises factual questions regarding Agency operations. Many of these questions had been reviewed by a USAGM a career attorney, Dan Ronzenholtz in responding to other inquiries. Those findings are reported herein. The attorney was asked to supplement his findings as needed on applicable factual questions as to issues G, H, and I below. He found no wrongdoing, and he will transmit those specific factual findings under separate cover.²

The Second constitutes instances in which the Letter reflects a disagreement between OSC and USAGM on matters of law or policy. It is the position of USAGM that such issues are not appropriate for review under the rubric of 5 U.S.C. § 1213. In responding to these matters USAGM sets forth the basis for its legal or policy position. It will not undertake an "investigation" into matters that sound in legal or policy dispute. The Department of Justice concurs in this position.

II. Allegations.

² We are aware of no authority by which the "Appendix" to the Letter purports to direct an Agency in the conduct of its investigation. It is the "agency head" who is required to conduct an investigation (*id.* at § 1213(c)) and the format of the resulting report is delineated by statute (*id.* at § 1213(d)). Therefore the "whistleblowers" who publically associated themselves with this complaint were not interviewed. We also note it would be exceedingly strange for an Agency (even if it delegated its investigative authority) to interview the plaintiffs in a pending action about the very subject matter of that action.

A. “Repeatedly violated the VOA firewall—the law that protects VOA journalists’ professional independence and integrity”

This allegation is a paradigmatic example of the OSC’s attempt to substitute its view of the law for that of USAGM.

OSC recognizes at the outset that “[t]he USAGM CEO has oversight of the networks and OTF.” Letter at 3. It then posits that “USAGM’s and its CEO’s oversight has legal limits.” For this proposition, it references a “statutory firewall,” and cites for this “statutory firewall” a regulation that was repealed prior to the issuance of the Letter due to that regulation’s tension with statute and Article II of the Constitution (the Letter fails to note the repeal). Letter at 3 (citing 22 C.F.R. § 531, *repealed by Repeal of Regulation Entitled Firewall and Highest Standards of Professional Journalism*, 85 Fed. Reg. 79,427 (Dec. 10, 2020) (enforcement date Oct. 26, 2020)). From this notion of legal conflict, OSC attempts to trigger 5 U.S.C. § 1213(c).

The simple fact of the matter is that there is no “firewall” at USAGM—it is myth. That the “firewall” is a myth is set out in detail in the *Repeal of Regulation Entitled Firewall and Highest Standards of Professional Journalism*, 85 Fed. Reg. 79,427 (Dec. 10, 2020) (enforcement date Oct. 26, 2020), which the Letter ignores. At all times USAGM complied with its own legal analysis on the “firewall” issue, as well as extensive legal advice from the Department of Justice and the Office of Management and Budget (the letter of which was memorialized in an extensive written advice). This was at times supplemented by detailed factual findings made by the CEO of USAGM, based on his professional experience that certain provisions of the now-repealed “firewall” regulations were properly considered applicable.

Regardless, the identical “firewall” allegations are pled by the Plaintiffs in the *Turner* Litigation. Am. Complaint, *passim*, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH) (Nov. 4, 2020) (ECF No. 36). The Department of Justice has taken the position that even accepting the (wildly inaccurate) accounting of events relayed by the *Turner* Plaintiffs (“whistleblowers” here) there was no “firewall” violation. *See, e.g.*, Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH), 24–26 (Nov. 4, 2020) (ECF No. 27). Thus it is the Department’s position that even if everything related to the “firewall” on pages 3–4 of the Letter is accurate (it is not), there is no violation of law. That legal conclusion is controlling—OSC cannot contradict the litigating position of the Department. *See Authority of the Special Counsel of the Merit System Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. O.L.C. 30 33–34 (1984).

B. “Terminating the Presidents of each USAGM-funded network—RFA, RFE/RL, MBN, and OCB—as well as the President and the CEO of OTF” and “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.”

This is a legal dispute. The Letter notes these actions were informed by partisan considerations. On that field, the actions were legal. At all times relevant to the Letter, the IBA gave the USAGM CEO broad authority to appoint and fire officers and directors of USAGM grantees:

LEADERSHIP OF GRANTEE ORGANIZATIONS.—Officers and directors of RFE/RL Inc., Radio Free Asia, and the Middle East Broadcasting Networks or any organization that is established through the consolidation of such entities, or authorized under this Act, shall serve at the pleasure of and may be named by the Chief Executive Officer of the Board.

22 U.S.C. § 6209(d). The CEO has similar authority over the VOA and OCB Directors as those positions have always been political appointments. No statutory provisions existed at times pertinent to the Letter that would in any way restrict appointment based on political considerations or status as federal employees. *Cf. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, H.R. 6395, § 1299 (c)–(d) (providing tenure protections for the foregoing positions and prohibiting the appointment of full-time federal employees to USAGM grantee Boards).³ Thus, there is no question that during all times relevant to the Letter the CEO has plenary authority to appoint and remove these officials, and that he could quite properly rely on political factors in doing so. *Cf. Open Technology Fund v. Pack*, 470 F. Supp. 3d 8, 19, 26–28 (D.D.C. 2020) (noting CEO’s broad authority under then existing Section 6209(d), and rejecting attack that USAGM grantee boards could not be majority federal officials), *injunction pending appeal granted on other grounds*, Order, No. 20-5195 (D.C. Cir. July 21, 2020) (ECF #1852624).⁴

³ I immediately reconstituted the Grantee Boards to comply with this revision in the law.

⁴ To the extent these “allegations” sound in the “firewall” (Letter at 5), they are the subject of litigation and represent a disagreement on the law between OSC on the one hand and USAGM on the other. *See Open Technology Fund v. Pack*, No. 20-1710 (BAH). That dispute is not cognizable under 5 U.S.C. § 1213 as previously explained. In any event, many of those allegations were also rejected by the District Court. *See Open Technology Fund*, 470 F. Supp. 3d at 26–28.

C. “Revoking all authority from various members of USAGM’s SES and reassigning those authorities to political appointees outside of the relevant offices”

Again, this is a legal and policy dispute. The Letter alleges these actions were taken for political reasons. There is no requirement that career SES officials run Agency operations in the Federal Government. Far from it. We have a unitary Executive, and political appointees are routinely placed in charge of Agency operations. For whatever reason, the prior USAGM management choose not to do this. Under CEO Pack, political appointees were placed in charge of the various key USAGM Departments. There is nothing wrong or evil in USAGM taking the questioned actions in order to ensure that USAGM operations are conducted by individuals aligned with the Administration’s policy objective. That is how government works, and the IBA gives the CEO broad authority to hire staff to accomplish his policy objectives. *See* 22 U.S.C. § 6204(11).

D. “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;”

The Letter raises this issue in the context of a potential “firewall” violation. Letter at 4. Again, that is a legal dispute not properly cognizable under 5 U.S.C. § 1213. It is a claim in the *Turner* litigation as an alleged “firewall” violation. *See* Am. Complaint, ¶¶ 8, 55, 59–63, prayer v, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH) (Nov. 4, 2020) (ECF No. 36). The Department of Justice has taken the position USAGM’s actions in this regard were entirely legal. Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH), 25 (Nov. 4, 2020) (ECF No. 27). That ends the matter. Additionally, as the Department of Justice has pointed out, there is nothing improper about detailing Mr. Springer to the USAGM front office—the CEO has vast and unreviewable authority to do so. *Id.*

E. “Similarly removing the Executive Editor of RFA”

This allegation again sounds in a putative “firewall” violation. Letter at 4. Yet again, that is a legal dispute not properly cognizable under 5 U.S.C. § 1213. It is a claim in the *Turner* litigation as an alleged “firewall” violation. *See* Am. Complaint, ¶¶ 8, 58–63, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH) (Nov. 4, 2020) (ECF No. 36). The Department of Justice has taken the position that USAGM taking personnel actions as regards other similarly situation individuals did not breach the firewall. *See* Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH), 25 (Nov. 4, 2020) (ECF No. 27). And CEO

Pack did not terminate the RFA Executive Editor as the Letter claims. Letter at 2. The official records make clear that the RFA Acting-President did so. RFA is independent from USAGM. 22 U.S.C. § 6207(e).

F. “Suspending the security clearances of six of USAGM’s ten SES members—the named whistleblowers in this referral—and placing them on administrative leave”

As an initial matter, there is a question as to whether or not a complaint about the suspension of a security clearance is cognizable under 5 U.S.C. § 1213. Those proceedings involve a wide exercise of typically unreviewable Executive discretion. *See, e.g., United States v. Egan*, 484 U.S. 518 (1998); *McCabe v. Dep’t of Air Force*, 62 F.3d 1433 (Fed. Cir. 1995). In any event, given that the decision to suspend the clearances was made by the USAGM CEO and involves confidential and sensitive matters concerning national security, USAGM declines to engage in an exercise which could result in the public release of this sensitive information that is largely covered by Executive Privilege.⁵

G. “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;”

This again, appears to sound as a policy dispute. The letter contains no allegation of improper purpose nor does it claim that the procedure is impracticable or unworkable. Letter at 5. Rather, it seems to suggest that instances of friction in the procedure in practice as improper. As discussed above, there is nothing that demands or requires that agency clearance procedures end with careers officials. Requiring political clearance—even if it slows the process—is a normal part of the unitary Executive.

H. “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”

This allegation touches directly on an ongoing GAO Audit. The GAO Audit response was prepared by the career professional with responsibility for such responses and contains detailed factual findings with reference to source documents. That response—and supporting documentation, including

⁵ Additionally, as is already public, this matter is the subject of an on-going Inspector General investigation. USAGM does not wish to interfere in any way in this inquiry by starting its own—later in time—investigation.

relevant OMB paperwork—is being transmitted as part of this report. See Ex. A.

I. “Illegally repurposed, and pressured career staff to illegally repurpose, congressionally appropriated funds and programs without notifying Congress;”

This allegation touches directly on a pending GAO Audit. The GAO Audit response was prepared by the career professional with responsibility for such responses and contains detailed factual findings with reference to source documents. That response—and supporting documentation, including relevant OMB paperwork—are—is being transmitted as part of this report. See Ex. B.

As to the issue of Congressional notification, that issues was reviewed by the authorized legal official as USAGM and it was concluded that no notification was required. Again, this is a dispute of law that is not cognizable under 5 U.S.C. § 1213.

J. “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.”

This allegation again involves a legal dispute. J-1 visas feature prominently in the *Turner* litigation. See Am. Complaint, ¶¶ 71–78, 125, 154, prayer x., *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH), (Nov. 4, 2020) (ECF No. 36). The Department of Justice has made clear that it sees no issue with USAGM’s approach here. See Defendants’ Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Turner et al. v. USAGM et al.*, 20-cv-02885(BAH), 25 (Nov. 4, 2020) (ECF No. 27) (“Plaintiffs do not deny, and indeed acknowledge, that the decision to endorse a J-1 visa falls squarely on CEO Pack—indeed, CEO Pack has a statutory obligation to ensure that foreign citizens are hired only “when suitably qualified United States citizens are not available,” 22 U.S.C. § 1474(1), a requirement USAGM has sometimes been accused of ignoring, e.g., *Nyunt [v. BBG]*, 589 F.3d [445,] 447 [(D.C. Cir. 2009)]; *Grosdidier [v. BBG]*, 560 F.3d [495] 496 [(D.C. Cir. 2009)]; *Broad. Bd. of Governors v. Am. Fed. of Govt. Emps.*, 66 F.L.R.A. 380 (2011)”; see also, *Turner v. USAGM*, No. 20-2885(BAH), 2020 WL 6822780, *29 (D.D.C. Nov. 20, 2020). This legal conclusion is controlling. See *Authority of the Special Counsel of the Merit System Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. O.L.C. 30, 33–34 (1984).

To the extent the concern goes beyond the legal issues raised in the *Turner* litigation, the matter still is one of law and policy. As USAGM recently publically explained in a position paper, the J-1 denials under CEO PACK were based on *systematic* legal flaws in the existing J-1 program and

its failures to fully align with Executive Orders—nothing more. *See* Ex. C. The law *required* the denials of the J-1 visas.⁶

III. Conclusion.

The “whistleblowers” complaints contained in the letter are wholly unfounded and unsubstantiated. USAGM does not intend to take any action based on the Letter.

Sincerely,



Michael Pack
Chief Executive Officer

⁶ As USAGM has repeatedly noted that the issue of J-1 visa denials is entirely separate from the potential “political persecution” of individuals whose visas have been denied and who end up returning to their country of origin. USAGM believes that granting asylum in compliance with the law is a critical governmental function. Individuals denied J-1 visas can apply for asylum or other immigration relief through other processes and procedures that do not run through USAGM. That OSC appears to have ignored this clear legal distinction is disappointing.

Appendix E: March 2020 Procedures for Violations of Principles, Standards, and Journalistic Code of Ethics



U.S. AGENCY FOR
GLOBAL MEDIA

UNITED STATES
BROADCASTING
BOARD OF
GOVERNORS

PREDECISIONAL

USAGM Procedures for Violations of the Principles, Standards, Or Journalistic Code of Ethics *March 12, 2020*

In the interest of ensuring USAGM's effective oversight of the news networks, responding effectively to external inquiries concerning a broadcast or posting, and meeting our obligations to notify Congress¹ and other relevant stakeholders of significant violations of the principles, standards, or the entity's journalistic code of ethics, USAGM has established the following procedures. These procedures build on the documented editorial and program review guidelines maintained by each network and the USAGM Office of Policy and Research (OPR). These procedures are guidelines which shall be interpreted in a manner that is at all times fully respectful of the firewall and consistent with the journalistic independence of the individual networks.²

As with any news organization, questions, concerns, or comments relating to content may come from multiple sources, including: subjects of stories; third parties with special interest in the story; the audience; or from within an organization or network. Regardless of the source, each network has and must maintain processes to receive and respond to alleged violations of the network's principles, standards, or journalistic code of ethics.

Verification: Each Network shall develop and implement appropriate procedures consistent with these guidelines. Reports of a potential violation sent to the network will be directed to the responsible network office/employee for review and investigation. The reviewing office will make a determination whether a violation has occurred in accordance with the network's procedures. Any further action to be taken will depend on the severity of the violation:

1. **Minor correction** – Decisions addressing minor corrections will remain at the network or language service/division level, in accordance with the network's documented procedures for corrections.
2. **Single story or series with significant violation(s) of the principles, standards, or journalistic code of ethics** – Decisions addressing significant violations and deciding whether to correct or retract the story will be handled in accordance with the network's procedures and raised to a sufficiently senior level in the network.³ The network leadership will advise USAGM's OCEO, OPR, and OGC of the report and its resolution. This information is considered confidential.⁴ If the investigation reveals larger editorial

¹ A recurring provision in the Agency's annual appropriation act calls upon the agency to "notify the Committees on Appropriations within 15 days" of any determination by the Agency "that any of its broadcast entities were found to be in [material] violation of the principles, standards, or journalistic code of ethics." When notified of a lapse, the USAGM CEO, in consultation with the General Counsel and Office of Congressional Affairs, will report to the USAGM (BBG) Board (who continues to serve as head of Agency) as to whether the CEO believes it meets the requirement for Congressional notification. If the Board concurs, such notification will be sent to the Congress.

² They shall never be implemented in a manner in any given situation which causes a network to deviate from the highest standards of professional journalism.

³ E.g. senior editorial staff; senior management; and/or leadership; this is in addition of the involvement of a standards editor where applicable.

⁴ Such materials shall at a minimum be treated as deliberative and business sensitive.

problems within the service, the relevant network will review a sample of service programming, following documented network best practices for program reviews, to determine whether additional measures are necessary.

3. **Individual journalist with a pattern of violations** – If the investigation reveals a pattern of violations by an individual journalist, networks will take all appropriate actions; recommendations with respect to disciplinary action will be determined by each network in accordance with the network’s procedures and relevant law, rules, and regulations, in a manner consistent with the highest standards of professional journalism. The network will notify USAGM’s OCEO, OPR, and OGC of the investigation’s findings and recommendations. In the event that a response to external inquiries is required, the network will coordinate and work with USAGM in crafting the response.⁵ USAGM and/or the relevant network may decide to launch a wider review of service content, potentially involving external experts, in order to determine whether problems are more widespread.
4. **Widespread pattern of violations of the principles, standards, or journalistic code of ethics of a service or network over a significant period of time** – USAGM will launch a review of a random sample of service programming, using language-qualified journalism experts external to the organization wherever possible. The USAGM CEO will consult the network to obtain information on any previous reviews relevant to the situation, and then make the determination as to whether this review will be conducted by the relevant network’s program review office (with oversight from USAGM) or by OPR or any other means, depending on the details of the situation and the demonstrated capacity of the program review operation at the relevant network.

The network will provide a confidential report to USAGM Office of the CEO, and the Federal and Network Board of Directors at the conclusion of any investigation, to the extent required by these guidelines; such report shall indicate the results of the investigation and the resolution.

⁵ Nothing shall cause any network to take any actions in violation of legal rights and obligations of any network or employee, including privacy and other legal and potential legal protections.

Appendix F: Bios of Expert Review Team

The Honorable **Dan G. Blair** is an experienced public sector and nonprofit leader who has twice been appointed by the president, and confirmed by the Senate, to lead two federal agencies. As Office of Personnel Management's Deputy Director and Acting Director, he oversaw major civil service and human capital reforms at the Departments of Defense and Homeland Security and served on the President's Council for Integrity and Efficiency. As the first chair of the independent Postal Regulatory Commission, he led Commission efforts in implementing significant new regulatory authorities that Congress granted the Commission in the 2006 postal reform legislation. Following his Executive Branch service, Blair was named president and CEO of the congressionally chartered nonprofit National Academy of Public Administration. He led the Academy's efforts to advise Congress, federal agencies, and state and local governments on issues affecting public administration and improving government performance. Blair is a fellow and former counselor at the nonprofit Bipartisan Policy Center and served as presidential appointments counselor and senior advisor with the Partnership for Public Service's Center for Presidential Transition. He has a bachelor's degree in journalism and a law degree from the University of Missouri-Columbia.

Michael Cushing has more than 30 years' experience as a senior federal executive, including leadership positions at the Export-Import Bank of the United States, the International Development Finance Corporation, and the Office of Personnel Management. He is a member of the Partnership for Public Service's Senior Advisors to Government Executives. Mr. Cushing is a graduate of Harvard College and Harvard Law School.

Nick Schwellenbach is an experienced investigative journalist who has also served as the Office of Special Counsel's communications director. His journalism has been published in *The Washington Post*, *Yahoo News*, *Politico*, *The Daily Beast*, *Mother Jones*, the *Bulletin of Atomic Scientists*, and other publications. His congressional testimony contributed to the passage of the Whistleblower Protection Enhancement Act of 2012. He has extensive experience pursuing in-depth reporting projects at the non-profit Project on Government Oversight and Center for Public Integrity. He spearheaded an investigation that won the Society of Professional Journalists D.C. Chapter's highest prize, the Robert D.G. Lewis Watchdog Award. He has a master's degree in journalism from American University and a history degree from the University of Texas-Austin.

Corrective Actions: OSC Referral Matters, Other Matters, and Statutory Changes

OSC Referral Matters addressed:

1. **Improperly suspended employees.** USAGM rescinded all improper suspensions of security clearances and proposed removal actions. The proposed removals of all employees were rescinded January 21, 2021. The employees who had their security clearances suspended by CEO Pack were returned to service once independent review was complete. Of all those stripped of their clearances:
 - a. Three were returned to their positions from administrative leave on February 2, 2021
 - b. One was returned from administrative leave on January 18, 2021.
 - c. One retired on December 3, 2020
 - d. One was returned from administrative leave on December 14, 2020 and retired on May 28, 2021
 - e. One resigned on December 21, 2020 and was reinstated on February 8, 2021
2. **Privacy Act violations.** In violation of the Privacy Act, prior to departing office, one of Mr. Pack's political appointees sent protected investigative material to unauthorized individuals outside of USAGM. On February 23 and March 2, 2021, the USAGM Office of General Counsel sent Privacy Act violation notices to all five unauthorized recipients. The notices advised each recipient that they had received an unauthorized release of Agency records and instructed each recipient to destroy the electronic files by permanent deletion, to return hard copies to the USAGM OGC, and to provide contact information of entities or individuals to whom they may have provided or disclosed the information. USAGM received responses from three of the recipients (or an attorney) that they had complied with the instructions. To date, USAGM has not received responses from two recipients.
3. **Status of firewall regulations.** Firewall regulations were republished internally and USAGM has conducted Town Hall Meetings and training courses for employees to underscore and ensure understanding of the importance of the firewall. Plans were laid to update the firewall through a Federal Register notice after a permanent CEO was in place.
4. **Reinstatement of Voice of America (VOA) Standards Editor.** The VOA Standards Editor was reinstated to his prior position with assigned duties. He had been detailed from his position and given no assigned duties. The Standards Editor was detailed on June 17, 2020. While he returned to his position upon the detail expiration date of Oct 14, 2020 without notice, he was recognized and the importance of the position fully affirmed under new leadership.

5. **Changes in USAGM procurement guidance.** USAGM has amended its directive on Federal Acquisition Regulation-exempt procurements to incorporate language that will repeat, reinforce, and underscore requirements for sound contract management practices, including: (1) requiring all contractors to cooperate with the Office of Inspector General (OIG) by providing access to relevant documents and to contractor personnel; and (2) requiring that a contracting officer be assigned to every contract signed under the authority. A revised directive on Federal Acquisition Regulation-exempt procurements was published August 25, 2022 and included the above changes.
6. **Changes to hiring/procurement/other functions “freezes.”** The incoming leadership immediately began accepting for review and approving requests to proceed with hiring and procurements, provided they were justified and within budget limitations.
7. **Limitations on provisions in board/executive employment contracts.** Grant agreements were reissued and eliminated inappropriate provisions related to employment of grantee CEOs.
8. **Personnel security and suitability.** New procedures to address USAGM’s unique staffing requirements were developed and operationalized. While several recommendations from the Office of Personnel Management (OPM) Suitability Executive Agent Review remain open, USAGM continues to work collaboratively with OPM and ODNI to close these recommendations. An OIG follow-up audit in December 2021 (AUD-SI-IB-22-01) concluded:

According to OPM and ODNI, USAGM has made progress in addressing deficiencies previously reported by each about USAGM’s personnel suitability and national security program to include ensuring applicable USAGM employees receive valid suitability and national security determinations. Furthermore, OPM and ODNI officials stated that they are closely monitoring USAGM’s progress in addressing identified deficiencies. Because of the actions taken by USAGM, along with OPM and ODNI’s monitoring of USAGM’s progress, OIG is not making any recommendations related to this issue.

Other Actions Taken Not Specific to OSC Referral

1. Federal Employee Reengagement

- a. Leadership commenced a thoughtful and comprehensive outreach strategy that seeks employee input, respects their feedback, and engages employees as critical partners in achieving agency goals and mission. Beyond reestablishing regular staff meetings and weekly meetings with each Executive, plans were engaged to reach out to all employees.
- b. Interim leadership efforts to hear from employees included CEO listening tours, regular Town Hall meetings, and frequent Agency-wide email communications. Acting CEO Chao and Deputy Director Conniff held numerous listening tours from July 15 to August 23, 2021. These events included all major USAGM offices and focused on employee reengagement, talent recruitment and retention, and improving communications. Topics discussed included:

- i. Enhancing training to add value to meeting agency mission and cross train employees.
- ii. Streamlining recruitment and improving communication on management decisions
- iii. Enhancing knowledge management and continuity
- iv. Improving performance management and awards
- v. Improving communication and transparency in management communication
- vi. Enhancing communications to outside stakeholders

Federal Employee Viewpoint Survey scores on improving staff morale demonstrated effectiveness of outreach:

- Global employee satisfaction increased from 57% in 2020 to 66% in 2021
- Employee engagement increased from 60% in 2020 to 70% in 2021
- High level of respect for organization's senior leaders increased almost 20%
- Senior leaders maintain high standards of integrity and honesty increased 17% from 2020 to 2021
- Senior leaders generate high levels of motivation and commitment in the workforce increased 15% from 2020 to 2021

2. **Actions to Reengage Grantees**

- a. Enhanced oversight of the grantees balanced with firewall compliance
- b. International Broadcasting Coordinating Committee (ICC) began meeting February 25, 2021, chaired by USAGM Acting-CEO to coordinate activities of USAGM networks
- c. Withdrew Open Technology Fund (OTF) debarment proposal and restored funding February 11, 2021
- d. Did not extend Ultrasurf contract; on February 2, 2021, the contractor was notified that their next option would not be exercised on 3/1/21

3. **Congressional Action - William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, January 1, 2021 (Sec. 1299Q):**

These changes were prompted by congressional concerns about the previous CEO's actions in June 2020 dismissing the network heads and grantee boards, discussed in Chapters II and VII of the report. These changes limited the CEO's authority for both the federal networks and the grantees, transferring some of the CEO's former executive authority to a reconstituted and strengthened Advisory Board, which became an independent establishment with shared authority with the CEO on certain personnel matters. Major changes included:

- Grantee board members must have requisite expertise in journalism, technology, broadcasting, or diplomacy, or appropriate language or cultural understanding relevant to the grantee's mission (Note: Unlike the Advisory Board, a bipartisan balance is not required).
- The CEO must obtain the approval of the Advisory Board before appointing or removing heads of any of USAGM's federal or grantee organizations (VOA, Office of Cuba Broadcasting, Radio Free Europe/Radio Liberty, Radio Free Asia, Middle East Broadcasting Networks, and OTF)

- The CEO is prohibited from serving on any of the corporate boards of any grantee network.
- Federal officials and employees are prohibited from serving on grantee boards. The Advisory Board may unilaterally remove the head of any network or grantee, following consultation with the CEO, on the approval of five of the seven members of the Advisory Board.
- The CEO is required to consult with the Advisory Board before submitting budget or strategic plans to the Office of Management and Budget or Congress.
- The Advisory Board is charged with advising the CEO to ensure that the CEO fully respects the professional integrity and editorial independence of USAGM broadcasters, networks, and grantees