

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: G. SCOTT VINIARD

)

OEIG Case #19-02266

PUBLICATION OF REDACTED VERSION OF OEIG FINAL REPORT

Below is the redacted final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused and others uninvolved. To balance these interests, the Commission may redact certain information contained in this report. Additionally, the Commission redacts certain information that relates to allegations against a person who was found not to have committed a violation. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and G. Scott Viniard’s last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

OEIG SUMMARY REPORT

I. ALLEGATIONS

On November 4, 2019, the OEIG initiated an investigation into a hiring sequence at the Department of Human Services (DHS) for the position of Employment First Coordinator, upon learning that DHS did not hire the individual who appeared to be the top-ranked candidate after a competitive interview and selection process. Instead, DHS abolished the position and retained a contract employee through a Personal Services Contract (PSC) to perform certain Employment First duties. The OEIG opened this investigation to determine whether DHS retained the contract employee for political or other improper reasons, and also reviewed DHS practices when using PSCs.¹

II. BACKGROUND ON STATE HIRING REFORMS

For decades, the State has operated under the principle that most government jobs, whether full-time, part-time, or contractual, are to be filled on a competitive basis to ensure a merit-based hiring system. Implementation of that principle has been the subject of litigation, multiple court rulings, administrative orders, and personnel policies and procedures. The following is an overview of relevant authority.

A. Antipatronage And Merit Hires

The Supreme Court has long held that government agencies violate the United States Constitution when they make employment decisions based on political affiliation or support.² In *Rutan v. Republican Party of Illinois*, the Court affirmed these principles with regard to the State's hiring practices.³ As a result, most personnel decisions in State government must be made without regard to political affiliation.

In the years following the *Rutan* decision, various Illinois Governors issued administrative orders to ensure the State's compliance.⁴ Those orders outlined mandatory procedures designed to create objective, fair, and qualifications-based personnel processes, including posting positions online for a minimum period, developing standardized interview questions and scoring criteria, using interviewers certified through so-called "*Rutan*" interview and selection training, and documenting the interview process and employment decisions.

¹ In addition, on May 21, 2019, the OEIG received an anonymous complaint that DHS hired [DHS Employee 7] without following prescribed hiring requirements, among other allegations, in Case No. 19-00988. Upon ascertaining that DHS retained [DHS Employee 7] through a PSC in FY17 that was renewed in FY18 and FY19, the OEIG examined that allegation in the present case.

² See *Elrod v. Burns*, 427 U.S. 347, 356 (1976); *Branti v. Finkel*, 445 U.S. 507, 518 (1980). Such patronage practices impede the "political belief and association," which "constitute the core of those activities protected by the First Amendment." *Elrod*, 427 U.S. at 356.

³ *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 65 (1990).

⁴ See, e.g., Administrative Order No. 1 (1990); Administrative Order No. 2 (1990); Administrative Order No. 1 (1991); Administrative Order No. 2 (2009).

Other relevant hiring authority includes the Illinois Personnel Code, which became law in 1955 to establish “a system of personnel administration under the Governor, based on merit principles and scientific methods.”⁵ The Personnel Code’s Merit and Fitness provisions require the State to follow certain rules for candidate testing and selection, performance appraisal, discipline, and dismissal; thus, also restricting the State’s ability to hire and fire at will.⁶ The Personnel Code is administered by the Illinois Department of Central Management Services (CMS).⁷

In addition, *Shakman v. Democratic Organization of Cook County, et al.*⁸ was filed in 1969 to challenge patronage employment practices in various governmental entities within Illinois, including the Illinois Governor’s Office. In 1972, a consent decree was entered enjoining the defendants from conditioning terms of government employment on political factors.⁹ However, compliance with the *Shakman* decree has been an ongoing process, and the case remains active to the present day. Despite the measures put into place after *Rutan*, in 2014 the State became a renewed focus in the *Shakman* case, as discussed in further detail below. Most recently, the State filed its Comprehensive Employment Plan with the *Shakman* court in November 2019, setting forth the principles that will govern the State’s hiring and employment policies and procedures for agencies under the jurisdiction of the Governor.¹⁰

B. “Exempt” Positions

Although most State hires are subject to the principles and competitive hiring processes described above, the Supreme Court has recognized a narrow exception when “the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.”¹¹ The focus of whether a position meets this exception has come to revolve around whether the job includes substantial, high-level policymaking responsibility, meaningful discretion to implement an elected official’s policy goals, the need to maintain confidential information related to political objectives, and/or speaking on behalf of a governmental agency to outside entities.¹² In Illinois, identifying positions exempt from competitive hire has been an evolving process subject to recent reform efforts.

⁵ 20 ILCS 415/2.

⁶ 80 Ill. Admin. Code §§ 302.90, 302.110. The Merit and Fitness provisions are found in Jurisdiction B of the Personnel Code. 20 ILCS 415/8b, *et seq.*

⁷ 20 ILCS 415/3. CMS provides management support to State agencies, including administering various personnel and hiring rules, implementing employee classification standards, and processing personnel transactions. See <https://www2.illinois.gov/cms/About/Bureaus/Pages/default.aspx> (last visited November 24, 2020).

⁸ *Shakman v. Democratic Organization of Cook County, et al.*, 69 CV 2145 (N.D. Ill.).

⁹ *Shakman*, Judgment (May 5, 1972).

¹⁰ *Shakman*, The Governor’s Comprehensive Employment Plan for Agencies Under the Jurisdiction of the Governor (November 25, 2019).

¹¹ *Branti v. Finkel*, 445 U.S. 507, 518 (1980).

¹² See, e.g., *Bogart v. Vermilion County, Illinois*, 909 F.3d 210 (7th Cir. 2018); *Hagan v. Quinn*, 867 F.3d 816 (7th Cir. 2017); *Embry v. Calumet City*, 701 F.3d 231 (7th Cir. 2012); *Allen v. Martin*, 460 F.3d 939 (7th Cir. 2006); *Riley v. Blagojevich*, 425 F.3d 357 (7th Cir. 2005); *Kiddy-Brown v. Blagojevich*, 408 F.3d 346 (7th Cir. 2005).

1. “*Rutan* Exempt” Positions

For a number of years following the Supreme Court’s *Rutan* decision, CMS was charged with determining whether a State position was “*Rutan* covered” or “*Rutan* exempt.”¹³ If a position was “*Rutan* exempt,” then it could be filled directly by the Governor’s Office and the competitive interview process did not need to be followed. If it was “*Rutan* covered,” it was subject to the competitive hiring process. That led to the development of criteria known as “*Rutan* scales,” which CMS used to evaluate whether a position was appropriately exempt.¹⁴

However, after many years of utilizing that process, CMS ceased using the “*Rutan* scales” in May 2017, consistent with court orders in the *Shakman* case.¹⁵ Although the phrases “*Rutan* covered” and “*Rutan* exempt” are still used colloquially, positions granted “exempt” status after May 2017 have not gone through the old CMS process. Rather, as of January 2019, they are instead subject to agreed processes and procedures specified in the *Shakman* orders described below.

2. Illinois Personnel Code and “4d(3) Exempt” Positions

Under the Personnel Code, a minority of State positions are statutorily exempt from the Code’s Merit and Fitness provisions, either because the position is explicitly listed (for example, high-level positions such as elected officers and department directors), or because it falls under Section 4d(3) of the Code, as having “either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out.”¹⁶ So-called “4d(3) exempt” positions may be filled on the basis of political or other non-merit considerations. Whether a position is 4d(3) exempt is determined by the Civil Service Commission, an appointed body, upon recommendation by CMS.¹⁷ CMS is required to inform the Civil Service Commission of significant changes to 4d(3) exempt positions, including the position’s essential functions, working title, and reporting structure.¹⁸

¹³ Administrative Order No. 2 (1990); Administrative Order No. 1 (1991).

¹⁴ See CMS Memorandum from Michael M. Hoffman, Acting Director, to Agency Directors, General Counsel, and Personnel Officers under the Governor’s Jurisdiction (October 5, 2017) (“Hoffman Memo”). As discussed in a prior investigation regarding improper hiring practices at the Illinois Department of Transportation, in applying the scales, CMS generally considered a position’s authority to: (1) develop and implement agency policies, typically in upper management positions; (2) access confidential agency information, such as labor-related or budgetary information; and (3) speak on behalf of the agency or bind the agency to a course of action. OEIG Final Report, Case No. 11-01567, pp. 11-12 (publicly available at https://www2.illinois.gov/oeig/investigations/Documents/11-01567_Schneider_Hannig_Hughes_Woods,%20Jr,%20Parts%201%20and%202.pdf). CMS would also examine the location of the position within the agency’s organizational hierarchy and consider whether the position reported to a *Rutan*-covered or *Rutan*-exempt supervisor. *Id.*

¹⁵ See Hoffman Memo.

¹⁶ 20 ILCS 415/4c, 415/4d.

¹⁷ 20 ILCS 415/4d(3). The Civil Service Commission considers any or all of the following factors: (1) the amount and scope of principal policy making authority; (2) the amount and scope of principal policy administering authority; (3) the amount of independent authority to represent the agency to individuals, legislators, organizations or other agencies relative to programmatic responsibilities; (4) the capability to bind the agency to a course of action; (5) the nature of the program for which the position has principal policy responsibility; (6) the placement of the position on the organizational chart of the agency; and (7) the mission, size and geographical scope of the organizational entity or program within the agency to which the position is allocated. 80 Ill. Admin. Code § 1.142(a).

¹⁸ 80 Ill. Admin. Code § 1.142(c).

3. The *Shakman* Exempt List

In 2014, the *Shakman* plaintiffs sought relief from the court after investigations by the OEIG and others revealed that the Illinois Department of Transportation had intentionally circumvented the competitive hiring process by improperly classifying positions as “*Rutan* exempt.” The investigations revealed that the job classifications did not reflect the actual duties being performed. In response, the court appointed a Special Master to investigate and recommend reforms, and in November 2016, the court expanded the Special Master’s authority to include review of all exempt positions at agencies under the jurisdiction of the Governor.¹⁹

In an effort to create a clear and bright-line structure for what should be a narrow list of exempt appointments, the Special Master was tasked with developing a comprehensive “Exempt List” across State agencies. An Agreed Order was entered in May 2017 requiring the State to provide positions it wanted classified as exempt, to ensure each agency reviewed its written position descriptions for accuracy, and to confirm that employees in those positions were actually performing duties that would qualify as exempt.²⁰ As the process moved forward, CMS warned State agencies that not all positions that had been deemed exempt under the “*Rutan* scales” would make it onto the Exempt List.²¹

In January 2019, the *Shakman* court approved the agreed Exempt List, which at that time included 953 Exempt Positions.²² An Exempt Position is defined as a:

completely at-will position that (1) is not covered by a collective bargaining agreement or by Personnel Code protections and (2) is also on the Exempt List because the position involves policymaking to an extent that or is confidential in such a way that political affiliation is an appropriate consideration for the effective performance of the job.²³

CMS is responsible for updating and posting the Exempt List on its website on a monthly basis.

In order to make changes to the Exempt List, including adding, deleting, or amending job titles, the court approved a plan requiring the involvement of the Governor’s Office, the Executive Inspector General, CMS, the Special Master (while acting), and the OEIG’s Hiring and Employment Monitoring Division (HEM).²⁴ In addition, if the Civil Service Commission determines a position under its jurisdiction should have Personnel Code protections or is otherwise

¹⁹ *Shakman*, Order Appointing a Special Master for IDOT (November 18, 2014); Memorandum Opinion and Order (November 28, 2016).

²⁰ *Shakman*, Agreed Order (May 1, 2017).

²¹ Hoffman Memo; Memorandum from CMS Acting Assistant Director Sarah Kerley to Agency Personnel Officers (March 30, 2018).

²² *Shakman*, Agreed Order Approving List of Exempt Positions Under the Jurisdiction of the Governor (January 22, 2019).

²³ *Shakman*, Agreed Order Approving the Governor’s Employment Plan for Exempt Positions and the General Principles and Commitments Applicable to Hiring (January 7, 2019).

²⁴ *Id.* The Plan also included updated processes for filling Exempt Positions: first, a candidate with experience or skills relevant to the position is identified; then, the Governor’s Office vets the candidate and issues a notice of intent to fill; and finally, the individual agency must certify that the candidate meets the position’s minimum qualifications. The certification process must be completed before the individual’s first day of work.

protected under a collective bargaining agreement, then it will not appear on the Exempt List. On the other hand, if the Civil Service Commission determines a position is 4d(3) exempt, then the position can be added to the Exempt List, though it may still be challenged by the *Shakman* plaintiffs.²⁵

III. BACKGROUND ON PERSONAL SERVICES CONTRACTS

Beginning well before the recent hiring reforms discussed above, Personal Services Contracts (PSCs) have been utilized to fill personnel needs within the State. Although several State statutes reference contractual employees,²⁶ no statute explicitly authorizes employment of individuals through PSCs. CMS has issued the following memoranda over the years outlining policies and procedures governing PSCs:

- *Memorandum from Governor's Office General Counsel William Quinlan to CMS, July 26, 2006 ("Quinlan Memo")*: Defines PSCs as "temporary contracts between the State and an individual which outline[] specifically-identified and limited services to be provided under the supervision of agency personnel, the employee's work location, the term of the contract and the level of compensation," and states that *Rutan's* prohibition against the consideration of political affiliation "applies with equal force" to PSCs.²⁷
- *CMS Policies and Procedures for Interviewing and Selecting Candidates for Personal Services Contracts ("PSC Hiring Procedures")*, transmitted from CMS Director Paul Campbell to agency Directors and Human Resources Directors²⁸ on December 13, 2006: Requires agencies to conduct a competitive interview process and maintain a file containing a PSC Decision Form, PSC Candidate Evaluation Form, completed interview questionnaires, and statements certifying that politics were not a factor in the contracting decision, unless CMS approves the PSC as "exempt" from that process, or unless it is a renewal. In order to renew a PSC, the agency must complete a Decision Form demonstrating: (1) the benefit to the agency in appointing a candidate with prior state experience, and (2) that the candidate performed satisfactorily during his or her prior contract.
- *Memorandum from Israel Salazar, Deputy Director of the CMS Bureau of Personnel, to certain agencies, December 10, 2012 ("Salazar Memo")*: States that in regard to temporary

²⁵ In addition, other reforms to State employment practices have resulted, culminating in the State's Comprehensive Employment Plan filed with the court in November 2019.

²⁶ See, e.g., 5 ILCS 410/10(b) (defining "contractual services employee," in the context of the State Employment Records Act); 5 ILCS 365/2 (including "State contractual employees" in the definition of "Employee," relating to deductions to purchase United States Savings Bonds under the State Salary and Annuity Withholding Act); 15 ILCS 405/10.05 (prohibiting deductions of amounts in excess of 25% from "contractual payment[s] to an individual for personal services," to satisfy amounts owed to the State, under the State Comptroller Act); 5 ILCS 340/3 (including "individual[s] hired as an employee by contract" in the definition of "Employee," under the Voluntary Payroll Deductions Act of 1983); 30 ILCS 500/1-10(b)(4) (exempting from the Procurement Code the "[h]iring of an individual as employee and not as an independent contractor, whether pursuant to an employment code or policy or by contract directly with that individual").

²⁷ In support of this position, the Quinlan Memo cited *O'Hare Trucking Serv., Inc. v. City of Northlake*, 116 S. Ct. 2353 (1996).

²⁸ The memo stated that it was simultaneously being directed to Agency HR Directors for implementation.

positions, it had come to CMS's attention that, "in many cases, Rutan interviewing and documentation procedures are not being followed," and affirmed the steps in the PSC Hiring Procedures for hiring former employees into temporary positions without competitive interviews.²⁹

Most recently, PSCs were addressed in the State's November 2019 proposed Comprehensive Employment Plan, submitted to the *Shakman* court. The Comprehensive Employment Plan makes it clear that PSCs cannot be used to circumvent competitive hiring, may only be for a length of time reasonably necessary to complete the project (and no more than one year), and can only be renewed in rare and extenuating circumstances. For PSCs with duties consistent with a job-protected position, agencies must follow the hiring process for non-exempt positions set forth in the Comprehensive Employment Plan.³⁰ PSCs with duties consistent with exempt work (and which thus avoid a competitive hiring process) must now follow specific procedures and are subject to review by CMS, the OEIG's HEM Division, the *Shakman* plaintiffs, and the Special Master's Office.

IV. INVESTIGATION

A. Background Of The Employment First Program At DHS

Employment First is a policy initiative enacted into Illinois law in 2013, mandating that competitive and integrated employment be the first option considered when serving individuals with disabilities.³¹ DHS works on various statewide Employment First initiatives.³² In addition, DHS is tasked with expanding affordable, supportive housing options for disabled individuals transitioning from institutional settings, including through a referral network of available housing, in an initiative referred to as the Statewide Housing Program.³³

B. Overview Of Significant Events

The following timeline summarizes the history of positions created and filled at DHS to work on Employment First initiatives. The events outlined here are explored in further detail in the following sections.

²⁹ The Salazar Memo was transmitted to the Department of Agriculture, Historic Preservation Agency, and the Department of Natural Resources.

³⁰ The Comprehensive Employment Plan provides two exceptions to this rule: (1) where a former employee is rehired using a PSC to perform similar work (and evidence of their prior satisfactory performance has been submitted), and (2) for certain specified contracts for temporary trades.

³¹ 20 ILCS 40/1 *et seq.*

³² Executive Order No. 14-08 (2014); <https://www.dhs.state.il.us/page.aspx?item=80571> (last visited November 24, 2020); 20 ILCS 40/1 *et seq.*; <http://www.dhs.state.il.us/page.aspx?item=97770> (last visited November 24, 2020).

³³ <https://www.dhs.state.il.us/page.aspx?item=87600> (last visited November 24, 2020); 20 ILCS 2407/1 *et seq.* DHS's housing services are part of the State's efforts towards compliance with the *Olmstead* Consent Decrees, which require that disabled individuals be provided the opportunity to live in appropriate integrated settings. <https://www.dhs.state.il.us/page.aspx?item=98210> (last visited November 24, 2020; *see Olmstead v. L.C.*, 527 U.S. 581 (1999); *Ligas v. Norwood, et al.*, 05 C 4331 (N.D. Ill.); *Williams v. Quinn, et al.*, 05 C 4673 (N.D. Ill.); and *Colbert v. Quinn, et al.*, 07 C 4737 (N.D. Ill.).

2014 - 2016	Under various intergovernmental agreements, [DHS Employee 1] performed Statewide Housing Coordinator duties.
April 2016	DHS executed a PSC for an “Employment First Manager” with [DHS Employee 2], who reported to [DHS Employee 1] (renewed for FY 2018 and FY 2019).
Nov. 2016	DHS formally established the Statewide Housing Coordinator and Employment First Coordinator position (Housing/Employment Coordinator) and requested 4d(3) exempt status.
January 2017	The Housing/Employment Coordinator position was granted 4d(3) exempt status and DHS appointed [DHS Employee 1] thereafter.
October 2017	DHS split the position to create a distinct Statewide Housing Coordinator position and a separate Employment First Coordinator position.
October 2017	DHS requested 4d(3) exempt status for the new Employment First Coordinator position.
August 2018	DHS withdrew its request for 4d(3) exempt status for the Employment First Coordinator position.
Sept. 2018	[DHS Employee 1] and [DHS Employee 2] both left State employment.
January 2019	The Statewide Housing Coordinator position was approved on the first <i>Shakman</i> Exempt List (absent Employment First duties).
Dec. 2018 - March 2019	DHS posted the non-exempt Employment First Coordinator position and conducted a competitive selection process.
March 5, 2019	Upon completion of interviews, DHS identified [Candidate A] as its top-ranked candidate for the Employment First Coordinator position.
April 11, 2019	DHS cancelled the hiring process for the Employment First Coordinator position and abolished the Employment First Coordinator position. DHS amended the exempt Statewide Housing Coordinator position to include the Employment First Coordinator duties that existed before the position was split in 2017.
July 2019	[DHS Employee 5] was appointed to the recombined Housing/Employment Coordinator position.
Sept. 2019	DHS executed an exempt “Employment First Manager” PSC for [Candidate B] to assist [DHS Employee 5] with Employment First duties.

C. Establishment Of The DHS Employment First Coordinator Position

Beginning in 2014, duties related to the Statewide Housing Program were performed by [DHS Employee 1] under various intergovernmental agreements. In late 2016, DHS established

one position, the Statewide Housing Coordinator and Employment First Coordinator (Housing/Employment Coordinator), to develop and oversee policy and programming related to Statewide Housing and Employment First objectives, and [DHS Employee 1] was appointed to that position. In January 2017, the Civil Service Commission granted DHS's request that the position be 4d(3) exempt.³⁴

In April 2016, DHS executed a PSC for an "Employment First Manager" with [DHS Employee 2]. DHS sought and received approval from CMS in 2016 that this PSC was "exempt" from the candidate selection process. [DHS Employee 2]'s services included working under [DHS Employee 1]'s supervision to increase community-based, integrated employment opportunities for individuals with significant disabilities. [DHS Employee 2]'s PSC was renewed twice.

In October 2017, DHS split [DHS Employee 1]'s position into two, establishing separate Statewide Housing Coordinator and Employment First Coordinator positions. In a letter to CMS dated October 31, 2017, then-DHS Secretary James Dimas explained that the growth of the two programs was creating too much work for one person.³⁵ At that time, DHS also submitted a request that the newly-created Employment First Coordinator be deemed "4d(3) exempt." However, that request sat pending for several months, and before the Civil Service Commission made a decision about the position's 4d(3) exempt status, DHS withdrew its request in August 2018. During that time, [DHS Employee 1] continued to perform duties related to both programs, assisted by [DHS Employee 2] in the Employment First duties. In approximately September 2018, both [DHS Employee 1] and [DHS Employee 2] left State employment.³⁶

D. Addition Of Statewide Housing Coordinator Position To The *Shakman* Exempt List

On January 22, 2019, the first *Shakman* Exempt List was filed with the court, and included a position entitled "Statewide Housing Coordinator & Employment." However, the position reviewed included only the housing coordinator duties, and the position number reflected that of the standalone Statewide Housing Coordinator position. In her OEIG interview, Sarah Kerley, CMS Senior Policy Advisor,³⁷ who was involved in representing the State in the creation of the Exempt List, explained that the continued inclusion of "Employment" in the position title was essentially a typographical error. The Statewide Housing Coordinator position remained vacant at the time the first Exempt List was filed.

³⁴ Illinois Civil Service Commission, Regular Meeting Minutes, January 20, 2017. The Civil Service Commission based its decision on information that the position was tasked with "primary program policy and oversight" for transitioning disabled individuals to community-based services and housing, improving integrated employment options, and working with multiple agencies in accomplishing those objectives.

³⁵ After the split, the CMS-104 Position Description for the Statewide Housing Coordinator retained the existing position number (40070-10-00-000-12-01) and 4d(3) exempt status. The Employment First Coordinator was given a new position number (40070-10-00-000-14-01), and its CMS-104 Position Description reflected a non-exempt status.

³⁶ DHS did not provide the OEIG with documentation showing [DHS Employee 2]'s end date; however, the Illinois Comptroller's Salary Database shows she was last paid in October 2018 and a profile for [DHS Employee 2] on www.linkedin.com shows she ended DHS employment in September 2018.

³⁷ The OEIG interviewed Ms. Kerley on December 3 and December 6, 2019.

E. Initial Competitive Hiring Process For Employment First Coordinator Position

Documents reviewed by the OEIG show that after the departure of [DHS Employee 1] and [DHS Employee 2], and after DHS withdrew its 4d(3) exempt request for the Employment First Coordinator position, DHS submitted the Employment First Coordinator position to a pilot electronic hiring program for non-exempt hires, which CMS was testing at the time with the assistance of a consulting group, Illuminative Strategies, Inc. The job was posted online from December 19, 2018 through January 9, 2019. Although the posting did not specify a work location, G. Scott Viniard, DHS's Human Resources (HR) Director, confirmed by email on February 4, 2019, that the Employment First Coordinator position would need to be located in Springfield.

Six candidates were invited to interview for the position, and four of them scheduled interviews, which DHS conducted in Springfield in February and early March 2019. The candidates scheduled to interview included [Candidate B] and [Candidate A], whose applications both reflected that they lived in the Chicago area.³⁸ Documentation reflects that [Candidate B] arrived for her scheduled interview, but then elected not to proceed further upon learning the position's Springfield location was not flexible. A March 5, 2019 Employment Decision Form signed in the name of then-DHS Secretary Dimas stated that [Candidate A] was DHS's top-ranked candidate for the Employment First position. The Employment Decision Form then was sent on March 13, 2019 to Illuminative Strategies and CMS to finalize the rankings.

In her OEIG interview, [Candidate B] said that she previously worked on a project with [DHS Employee 2] when [DHS Employee 2] was at DHS.³⁹ She said that she reached out to [DHS Employee 2] and [DHS Employee 1] about the Employment First Coordinator position before applying, but that she did not ask them to advocate for her to receive the position. After she scheduled the interview in February 2019, [Candidate B] said she was notified the position was based in Springfield, but she nevertheless attended in the hope she would be allowed to work remotely. When she arrived, she said she spoke to two interviewers for about 20 minutes about her qualifications and why she would be a good fit. However, once she was told that working remotely was not a possibility, she said she did not see any point in proceeding further.

One of the interviewers for the position, former DHS Bureau of Recruitment and Selection Bureau Chief [DHS Employee 3], confirmed to the OEIG that [Candidate B] declined to proceed after she learned that she could not work from home in the Chicago area.⁴⁰ [DHS Employee 3] recalled that he and the other interviewer engaged in "chit chat" with [Candidate B] for 10-15 minutes, during which time he thought [Candidate B] seemed "very knowledgeable" about the Employment First work. [DHS Employee 3] said he did not know [Candidate B] other than having met her immediately prior to her scheduled interview, but he remembered having a conversation with Mr. Viniard after meeting her, about considering [Candidate B] for the exempt position previously held by [DHS Employee 1] or another position in DHS. [DHS Employee 3] also confirmed that [Candidate A] thereafter interviewed in March 2019 and ultimately was the top scoring candidate.

³⁸ [Candidate A]'s application also reflected that she wished to claim veteran's status.

³⁹ The OEIG interviewed [Candidate B] on February 26, 2020.

⁴⁰ The OEIG interviewed [DHS Employee 3] on November 22, 2019.

F. Cancellation Of The Competitive Hiring Process And Abolishment Of The Employment First Coordinator Position

1. Cancellation of the Competitive Hiring Process

On March 26, April 9, and April 17, 2019, a DHS Personnel Manager followed up with Illuminative Strategies via email, asking when DHS would receive the final order of selection for the Employment First Coordinator position. However, before Illuminative Strategies had finished compiling that list for DHS, the Personnel Manager sent a subsequent email to them on April 17, 2019 stating, “Please disregard... I just found out this position no longer exists, it was pulled by the new [DHS] Administration.”⁴¹

Records show that on April 11, 2019, DHS submitted paperwork to CMS, signed in the name of [DHS Employee 4], DHS’s Classifications Manager, on behalf of DHS Secretary Grace Hou, requesting the abolishment of the Employment First Coordinator position. That request became effective April 16, 2019. Additional paperwork that became effective April 16, 2019 “clarified” the Statewide Housing Coordinator position description by retitling it “Statewide Housing Coordinator and Employment First Coordinator” (Housing/Employment Coordinator) and reverting to the description of duties existing before the position was split in 2017.

[DHS Employee 3], who had conducted interviews in the competitive hiring process, told the OEIG that he was not involved in DHS’s decision to cancel the process and he did not know why it occurred. He said that he and the other interviewer were excited about [Candidate A] after her interview, and that he first learned that DHS cancelled the hire after the position was abolished in April 2019.

2. Interview of DHS HR Director G. Scott Viniard

The OEIG interviewed Mr. Viniard,⁴² DHS’s HR Director, who indicated that he has held his current position since 2015, having previously worked in the Office of Human Resources since 2010 and in various other DHS positions since 1986.⁴³ When asked about the cancellation of the Employment First Coordinator hiring sequence, Mr. Viniard stated that he received an email from the Civil Service Commission “suggesting” that the Statewide Housing Coordinator position was going to be placed on its pending 4d(3) rescission list. He said he brought that information to members of the current DHS administration, which at that point consisted of Secretary Hou, her transition team members [Transition Team Member 1] and [Transition Team Member 2], who were involved with staffing 4d(3) exempt positions at DHS, and the previous Acting Chief of Staff.

Mr. Viniard said that he communicated to the DHS administration the concern that the Statewide Housing Coordinator position might not be strong enough as a “standalone,” absent the Employment First duties, and that if it proceeded before the Civil Service Commission, DHS

⁴¹ Under Section V.L of the Comprehensive Employment Plan, agencies intending to cancel a competitive hiring sequence must now submit a justification to CMS for review and approval, as well as submit the agency’s plan to cover the duties of the position. However, the Comprehensive Employment Plan was not yet in place as of April 2019.

⁴² The OEIG interviewed Mr. Viniard on January 31, 2020 and July 21, 2020.

⁴³ Mr. Viniard added that he had a break in State employment from 2007-2010.

risked losing a 4d(3) exempt position. He said the DHS administration decided they did not want to take that risk, which ultimately prompted a decision to recombine the Employment First Coordinator position with the Statewide Housing Coordinator position and abolish the Employment First Coordinator as an independent position.

The OEIG asked Mr. Viniard if he advised the DHS administration that the Employment First Coordinator position had just gone through the pilot hiring process, resulting in the identification of a qualified candidate. He said that he attempted to talk to them about it, but the Secretary's transition team consisted of long-term state employees and it was "challenging" for them to grasp the recent hiring reforms. He said that the new DHS administration had not been involved in the pilot and it was not their priority, adding that the Secretary was being told about the pilot program as something that had been done in the past tense and had failed. However, Mr. Viniard acknowledged to the OEIG that the final hiring decision for the Employment First Coordinator had not yet been finalized at that point. The OEIG asked Mr. Viniard if he had concerns about the appearance of DHS cancelling a hire that had gone so far through a competitive hiring process, and he said that at the time, that did not occur to him.

The OEIG also asked Mr. Viniard if, during this process, he ever had discussions with CMS or the Civil Service Commission about the fact that the Statewide Housing Coordinator position had been recently reviewed as part of the *Shakman* process and had been approved and added to the Exempt List in January 2019 as a standalone position. Mr. Viniard said that he did not discuss the position with CMS or the Civil Service Commission or advocate for its continued exempt status. Mr. Viniard said that he probably would have told [DHS Employee 4] to have a conversation with CMS about whether they agreed with the Civil Service Commission regarding the position's exempt status, and he believed that someone from CMS, likely Ms. Kerley, would have then communicated to the Civil Service Commission that the Statewide Housing Coordinator had been added to the Exempt List. However, he could not specifically recall whether any such conversations occurred.

3. Review of Emails Regarding the Employment First Coordinator Position

The OEIG reviewed pertinent emails and confirmed that on April 11, 2019, the Exemption Monitor/Human Resources Manager at the Civil Service Commission emailed individuals in DHS's HR Department, including Mr. Viniard, [DHS Employee 4], and a Personnel Manager, indicating that the Civil Service Commission was considering placing the Statewide Housing Coordinator position on its rescission list. The email questioned why, if the position only included the housing duties and not the employment duties, would it still be qualified to be exempt. The email asked for a response by Monday, April 15th.⁴⁴ The following is a summary of the pertinent emails addressing the Civil Service Commission's question of the Statewide Housing Coordinator position, all of which occurred within a two hour period after the Civil Service Commission's initial email:

⁴⁴ Each year, in May and November, the Civil Service Commission conducts a broad and systematic review of 4d(3) exempt positions. According to Ms. Kerley, in preparation for those meetings, the Civil Service Commission sends a list to agencies of positions to be reviewed, which may be prompted by various factors, including a position remaining vacant or a change in duties.

April 11, 2019 Emails

- 10:50 am: Civil Service Commission’s initial email questioning the exempt status of the Statewide Housing Coordinator position.
- 11:16 am: [DHS Employee 4] forwarded the email to Mr. Viniard, asking, “How do you want to respond to this?”
- 11:37 am: [DHS Employee 4] emailed CMS explaining that the new DHS administration no longer wished to separate the Statewide Housing and Employment First programs, but instead wanted to abolish the Employment First Coordinator position and “clarify the SPSA 4d3 position.”
- 12:46 pm: CMS personnel responded to [DHS Employee 4] that DHS could “work with [the Civil Service Commission] on what the new administration wants to do.”
- 12:54 pm: [DHS Employee 4] emailed the Civil Service Commission that the new DHS administration had decided to merge the Statewide Housing and Employment First positions back together into “one SPSA position.” She added that DHS would submit the proposal to CMS Classifications that day.⁴⁵

The OEIG also obtained and reviewed Mr. Viniard’s emails for April 11, 2019, and did not locate any emails sent from Mr. Viniard’s account to anyone on the transition team or within DHS management after he received the Civil Service Commission’s email regarding the Commission’s request or regarding the issue of merging the two positions back together.⁴⁶

4. Interview of [DHS Employee 4]

In her interview with the OEIG, [DHS Employee 4] indicated that she has been the DHS Classifications Manager since March 2017, and previously spent over 10 years working for CMS.⁴⁷ [DHS Employee 4] said that she reports to Mr. Viniard and is tasked with overseeing HR staff and the establishment, clarification, and abolishment of approximately 9,000 DHS positions. [DHS Employee 4] said that she recalled the April 11, 2019 email from the Civil Service Commission, which she forwarded to Mr. Viniard with a message asking him how to respond. [DHS Employee 4] said that Mr. Viniard told her that the DHS administration did not wish to jeopardize a 4d(3) exempt position and instructed her to merge the Statewide Housing and Employment First positions back into one.

⁴⁵ On April 11, 2019, a position description for the previous 4d(3) exempt Statewide Housing Coordinator was submitted to CMS Classifications and identified as a clarification. The position was retitled Statewide Housing Coordinator & Employment First Coordinator and the description of duties reverted to the language in the position description before it was split into two in 2017. The newly recombined Statewide Housing Coordinator and Employment First Coordinator position description retained the same position number and continued to reflect that it was *Rutan* exempt.

⁴⁶ DHS withheld some emails on the assertion that they were protected by attorney-client privilege.

⁴⁷ The OEIG interviewed [DHS Employee 4] on February 19, 2020.

According to [DHS Employee 4], she had no input into the decision to cancel the Employment First Coordinator hiring sequence. [DHS Employee 4] stated that she was not part of any meetings with the DHS administration about the position, and that she did not otherwise discuss the Civil Service Commission's email with Mr. Viniard or anyone else. [DHS Employee 4] also told the OEIG that she did not have conversations with CMS or the Civil Service Commission about the Statewide Housing Coordinator position having been added to the *Shakman* Exempt List, stating that it was not her role to do so, and that no one instructed her to do so. Rather, [DHS Employee 4] said that she sought Mr. Viniard's guidance and then acted on his direction to send DHS's proposal to CMS before responding to the Civil Service Commission.

5. Additional Interviews

The OEIG interviewed [Transition Team Member 1] and [Transition Team Member 2], the members of Secretary Hou's transition team who Mr. Viniard asserted were present for discussions regarding cancelling the hiring sequence and abolishing the Employment First Coordinator position.⁴⁸ [Transition Team Member 1] said that she served as a policy advisor for Secretary Hou, and in that role, she was responsible for identifying and screening candidates for 4d(3) exempt positions.

[Transition Team Member 1] said that she did not recall any conversations about the possibility of losing the exempt status of a standalone Statewide Housing Coordinator position or abolishing a standalone Employment First Coordinator position. Rather, [Transition Team Member 1] said that in her discussions with Mr. Viniard and [Transition Team Member 2], it was always her understanding that the position was a combined Statewide Housing Coordinator and Employment First Coordinator, which was 4d(3) exempt. She said that while she generally recalled some confusion with the history of the position, her work was always focused on screening candidates for that combined position.

[Transition Team Member 1] stated that she did not recall any conversations with Mr. Viniard about the Employment First Coordinator position ever having been part of a competitive hiring process. According to [Transition Team Member 1], she learned about CMS's pilot hiring process in relation to a different position, but she was unaware that the Employment First Coordinator position as a standalone had been part of it.

In her interview, [Transition Team Member 2] said she was responsible for identifying and screening candidates for 4d(3) exempt positions along with [Transition Team Member 1]. [Transition Team Member 2] also stated that she did not recall specific conversations about losing the 4d(3) exempt status of the standalone Statewide Housing Coordinator position or abolishing the Employment First Coordinator position. She said that DHS periodically had to justify the 4d(3) exempt status of other positions subject to rescission by the Civil Service Commission, but she did not remember the Statewide Housing Coordinator being among them. She also said that she was familiar with the *Shakman* exempt review process, but she did not remember being informed that the Statewide Housing Coordinator position had been placed on the *Shakman* Exempt List. And while aware of the pilot hiring program, which she said included a handful of DHS positions,

⁴⁸ The OEIG interviewed [Transition Team Member 1] on July 22, 2020 and [Transition Team Member 2] on November 13, 2020.

[Transition Team Member 2] said she did not know that the Employment First Coordinator position had been part of it or had ever gone through a competitive hiring process.

The OEIG also asked Sol Flores, the Deputy Governor overseeing DHS and other health and human services agencies, about her knowledge related to the Employment First Coordinator position.⁴⁹ Ms. Flores said that she was only aware of the position as the combined 4d(3) exempt Housing/Employment Coordinator. She said she had no knowledge of a competitive hiring process for an Employment First position and had never heard of [Candidate A].

In her OEIG interview, Ms. Kerley from CMS stated that although she had been telling Agency Personnel Officers,⁵⁰ including Mr. Viniard, for months that she was the point person for exempt positions, no one at DHS reached out to her about the Statewide Housing position's exempt status being potentially reconsidered by the Civil Service Commission. Ms. Kerley said that had DHS done so, she would have discussed with them how to maintain the position's exempt status. Ultimately, Ms. Kerley said that when DHS asked to abolish the Employment First Coordinator position and recombine it with the Statewide Housing Coordinator position, she attributed it to Secretary Hou coming in with different priorities.⁵¹

G. The Hiring Of [Candidate B] By A PSC To Perform Employment First Duties

1. Consideration of [Candidate B] for the Position

On April 18, 2019, following the abolishment of the Employment First Coordinator position, Mr. Viniard emailed the two interviewers involved in the competitive hiring process, asking them to call him. Shortly thereafter, one sent Mr. Viniard [Candidate B]'s employment application for the Employment First Coordinator position, which Mr. Viniard then forwarded to Secretary Hou, [Transition Team Member 1], and [Transition Team Member 2]. In that email, which bore the subject line "Housing/Employment First," Mr. Viniard wrote, "[t]his person interviewed for the pilot ... They were very impressed with her but she wanted Chicago not Springfield...Probably worth talking to since we can move it to Chicago..."⁵²

In her OEIG interview, [Candidate B] explained that after she canceled her interview in February 2019, she received a call sometime in the spring of 2019 from Secretary Hou's administrative assistant for a phone interview. [Candidate B] said that no specific position was identified, and she thereafter participated in an "exploratory" call with two individuals from the Secretary's transition team, whose names she could not recall. She said that they explained that the Secretary was building her team and asked her about her experience working with people with disabilities. She said that a second call with the Secretary was cancelled but never rescheduled, and she heard nothing more about any DHS position until summer 2019. [Candidate B] stated that

⁴⁹ The OEIG interviewed Ms. Flores on August 10, 2020.

⁵⁰ "Agency Personnel Officer" has been defined in the Employment Plans as "the highest-ranking human resources employee at an agency."

⁵¹ Ms. Kerley added that the Classifications staff at CMS would likely not have been aware the Employment First Coordinator position had gone through the pilot hiring process, as that was handled by a separate CMS division.

⁵² Mr. Viniard told the OEIG that Secretary Hou elected to move several vacant 4d(3) exempt positions to the Chicago area around this time, including the Housing/Employment Coordinator position, after discussion about what location would best serve DHS and draw the most qualified applicants.

she had no connections with anyone at DHS or in State government other than her previous familiarity with [DHS Employee 2] and [DHS Employee 1]. She stated she is not aware of anyone who would have advocated on her behalf to DHS or the Office of the Governor.

Emails and associated documents show that the DHS administration also considered other individuals for the exempt Housing/Employment Coordinator position in the spring of 2019. In May 2019, Mr. Viniard directed [DHS Employee 4] to create an “Employment First” PSC for [Candidate B], using the duties from the abolished Employment First Coordinator position description. Further email correspondence regarding the preparation of [Candidate B]’s PSC took place between [DHS Employee 4] and [DHS Employee 6] in DHS’s Office of Contract Administration, dated May 22, 2019. In that correspondence, [DHS Employee 4] sent [DHS Employee 6] a draft PSC containing duties mirroring those in the abolished Employment First Coordinator position. However, that draft PSC was never executed.

2. Hiring of [DHS Employee 5] for the Statewide Housing Coordinator and Employment First Coordinator Position

Effective July 1, 2019, [DHS Employee 5] was appointed to the recently recombined 4d(3) exempt Housing/Employment Coordinator position.⁵³ Thereafter, records show that [DHS Employee 5] signed internal DHS documentation in August 2019 as the “Requestor” for a PSC to hire [Candidate B] as an Employment First Manager. The documentation marked the PSC as “Rutan Exempt.” In his OEIG interview,⁵⁴ [DHS Employee 5] explained that his background was in the nonprofit sector working on fair housing issues, and that “everybody” at DHS understood that his position was too much work for one person. Thus, he said he was told coming in that DHS would get someone to assist him with his Employment First duties.

[DHS Employee 5] said that he had conversations with Mr. Viniard, [Transition Team Member 1], and [Transition Team Member 2] about how to proceed with retaining someone, and he was told that [Candidate B] had been identified as someone interested in the role, which would be accomplished through a contractual position. [DHS Employee 5] said that he and another DHS employee had a conversation with [Candidate B] in July 2019, and he felt she was a good fit.⁵⁵

⁵³ The OEIG noted that documentation associated with [DHS Employee 5]’s appointment showed that DHS contacted the Governor’s Office about him on May 31, 2019, and an Intent to Fill was issued on June 4, 2019. However, HEM did not receive the certification paperwork related to [DHS Employee 5] until July 30, 2019, nearly one month after he started his position. When the OEIG interviewed Governor’s Office Director of Executive Appointments Judy McAnarney, she confirmed that she did not receive certification paperwork from DHS prior to [DHS Employee 5] starting his position. Ms. McAnarney said that in reconciling her own records, she reached out to DHS about this on July 25, 2019, and DHS sent her the certification packet to her very quickly. She said this is not a frequent issue for DHS. However, the OEIG reminds DHS that under *Shakman* rulings and the Comprehensive Employment Plan, agencies must certify that a candidate for an Exempt position meets the position’s minimum qualifications prior to the candidate’s start date.

⁵⁴ The OEIG interviewed [DHS Employee 5] on January 16, 2020.

⁵⁵ [Candidate B] confirmed to the OEIG that in the summer of 2019, she received a call from [DHS Employee 5] asking if she was still interested in a position with DHS. She said that she was told it would be a PSC. [Candidate B] said that she thereafter interviewed with [DHS Employee 5] and another DHS employee, and later heard back from [DHS Employee 5] with an employment offer. Both [DHS Employee 5] and [Candidate B] acknowledged to the OEIG that [DHS Employee 5] is above [Candidate B] in the “chain of command” and that he oversees and manages [Candidate B] in the performance of employment-side duties.

[DHS Employee 5] said that he had “no idea” what to do next, however, as he was new to State employment and the processes were not familiar. He said that at one point, [Transition Team Member 1] and [Transition Team Member 2] asked him if the position should be permanent instead of a PSC, and he thought it was odd that he was being asked. Therefore, he sought clarification from Mr. Viniard and a Personnel Manager in HR, and after doing so, understood that making the position permanent would require a lot of work.

[DHS Employee 5] said that he did not speak to any candidates other than [Candidate B], and that he conferred with [DHS Employee 6] in DHS’s Office of Contract Administration, who prepared most of the paperwork associated with the PSC. The OEIG asked [DHS Employee 5] why paperwork associated with [Candidate B]’s PSC was marked “Rutan Exempt,” and he recalled that in preparing the PSC, [DHS Employee 6] asked him about the *Rutan* status. [DHS Employee 5] said that he told [DHS Employee 6] that he had no idea, and he thinks that he checked [DHS Employee 2]’s former PSC and that it was marked that way for hers. [DHS Employee 5] said that he recalls having a further conversation about the exempt status of the PSC, possibly with Mr. Viniard or the Personnel Manager in HR, and that he remembers being under the impression that that the “Rutan Exempt” box needed to be marked “Yes.” [DHS Employee 5] said that he does not know why the PSC would qualify as exempt, stating that the rules around that are not clear to him.⁵⁶

3. Emails Regarding the Employment First Manager PSC and Exempt PSCs

During the time that [Candidate B]’s PSC was being created, various emails were exchanged between DHS personnel discussing the question of whether the Employment First Manager position had an exempt status. Of note, on July 22, 2019, [Transition Team Member 1] inquired of Mr. Viniard what hiring process would be required to fill the PSC. In his response, Mr. Viniard wrote that because the 4d(3) exempt position was filled by [DHS Employee 5], [Candidate B]’s PSC would be a “contract to assist,” which would be set at the Public Service Administrator level. Mr. Viniard advised [Transition Team Member 1] in the email correspondence that such a PSC would require a competitive interview and selection process.

There was also email correspondence between Mr. Viniard and Ms. Kerley dated August 22, 2019, with the subject “PSC Rutan Determination,” where Mr. Viniard asked who should determine whether a position is exempt if it has duties that have not been formally deemed exempt, and is filled through a PSC. Ms. Kerley responded to Mr. Viniard’s inquiry and acknowledged that this was not an easy area but instructed Mr. Viniard that “if you’re doing a PSC for someone other than a retiree back to do same or similar work, **you need to post it.**” (emphasis added). Ms. Kerley went on to reiterate that DHS should “[b]e safe and post.”

⁵⁶ The OEIG reviewed other documentation DHS provided to support the PSC’s “exempt” status, which consisted of a Request for Review/Determination Form that DHS previously submitted to CMS in 2016 related to [DHS Employee 2]’s PSC. On that form, the “Category of Service” for the PSC was noted to be a Public Service Administrator. Under the procedures in place at that time, CMS determined the PSC was “exempt” from the PSC Hiring Procedures. According to Ms. Kerley, CMS stopped making “exempt” determinations on PSCs in May 2017, consistent with the rulings in the *Shakman* case.

In addition to the email with Ms. Kerley, the OEIG reviewed a number of additional internal DHS emails in which Mr. Viniard acknowledged that PSCs were a subject of concern for the *Shakman* Special Master, due to concern that agencies could use them to circumvent established hiring processes. For example, on August 21, 2019, he wrote to his direct supervisor, Assistant Secretary of Operations Dulce Quintero: “The Special Master believes that the 4d process may be being circumvented by hiring 4d level staff on PSC and she is not in support.” On September 3, 2019, Mr. Viniard wrote to various DHS personnel that “PSCs are now a major focus of the Special Master and [the OEIG’s Hiring and Employment Monitoring Division]... Agencies are having to provide CMS list of certain types of PSCs” On September 4, 2019, he added, “Where I potentially see the Special Master going with this is ... PSC[s] were not meant to be used in place of hiring state staff...she sees PSCs as a way to circumvent the hiring process whether MC or 4d. PSCs should be used for short term coverage related to special projects, grants, seasonal work, transitioning, short-term leaves, etc...with targeted end dates.”

4. Executed PSC for [Candidate B]

Records show that no competitive hiring process was completed for [Candidate B]’s hire and that Mr. Viniard continued to move [Candidate B]’s PSC forward as exempt. The PSC was not posted, no other candidates were considered, and no other interviews were conducted. On September 16, 2019, Mr. Viniard emailed Judy McAnarney in the Governor’s Office with the subject line “PSC-[Candidate B],” attaching a spreadsheet containing the proposed contracted amount, contract length, and a two-sentence paragraph entitled “Justification,” which very briefly summed up the contractual duties. The spreadsheet noted that [Candidate B] was not a retired or former State employee. Mr. Viniard also attached [Candidate B]’s CMS 100 employment application for the Employment First Coordinator position.

On September 18, 2019, Ms. McAnarney responded to Mr. Viniard’s email, asking, “Scott – will she be doing the work of a 4D3 position?” Mr. Viniard replied, “Well since they are going directly after her and not posting and interviewing we will have to add it to the 4d3 PSC list according to Sarah.” On September 19, 2019, Ms. McAnarney wrote, “Scott, it’s approved as long as all the proper processes are followed.”

[Candidate B]’s PSC was fully executed on September 23, 2019, for a term ending June 30, 2020. The description of services for [Candidate B]’s “Employment First Manager” PSC was identical to [DHS Employee 2]’s PSC executed in 2016. Some of those duties appeared similar to those in the abolished Employment First Coordinator position. However, unlike the Position Description for the standalone Employment First Coordinator position, the Employment First Manager PSC contained several references to the contractor working “under direction” of, being “supervised by,” and “assisting” the Statewide Housing and Employment First Coordinator ([DHS Employee 5]).

The Governor’s Office Employment Plan for Exempt Positions, in effect as of January 2019, requires Agency Personnel Officers to provide paperwork to HEM, and others, prior to the start date, certifying that (1) the individual meets the minimum qualifications of the position, (2) the position is on the Exempt List, and (3) the individual will be performing exempt duties as

described in the position description. No such paperwork for [Candidate B] was provided to HEM.⁵⁷

5. Interview of [DHS Employee 4]

In her OEIG interview, [DHS Employee 4] told the OEIG that the Employment First Manager PSC that was executed for [Candidate B] was not the same version of the Employment First Coordinator PSC she created in May 2019. She stated that she had no role in actually filling [Candidate B]’s PSC, classifying the PSC, or in any “exempt” determination for the version of the PSC that was used. When asked in her interview to review the duties listed for [Candidate B]’s PSC, [DHS Employee 4] said it is a Public Service Administrator-level position,⁵⁸ which she noted normally would not rise to the level of 4d(3) exempt. She stated that in her opinion, the duties of [Candidate B]’s executed PSC do not meet the standards for a 4d(3) exemption.

6. Interviews of [Transition Team Member 1] and [Transition Team Member 2]

In her interview, [Transition Team Member 1] told the OEIG that her focus was to find a good candidate for the 4d(3) exempt Housing/Employment Coordinator position, and the plan after that was to evaluate whether that person needed additional support. She said that Mr. Viniard advised that if further support was needed, then a PSC could be executed to support the position’s Employment First duties.

[Transition Team Member 1] said that she was not involved in the hire of [Candidate B] but acknowledged that she might have asked [DHS Employee 5] about [Candidate B]’s PSC. She said that around that time, she had been tasked by Secretary Hou with ensuring she was aware of all PSCs for management level positions and with inquiring with divisions why they wanted to use a PSC rather than fill the job as an established position. She acknowledged email correspondence between herself and Mr. Viniard where she inquired whether a competitive hiring process would need to take place for an Employment First PSC. When the OEIG asked [Transition Team Member 1] if a competitive selection process ultimately took place, [Transition Team Member 1] said that that process is a function of HR, for which she had no oversight, and she does not know if the process was followed or how [Candidate B]’s PSC came to be executed.

[Transition Team Member 2] told the OEIG that she also remembered a plan to hire one person at the 4d(3) level who would oversee the Statewide Housing and Employment First program areas, along with a contractual employee who would report to the 4d(3) position and focus on Employment First duties. She said that the DHS administration took direction from Mr. Viniard

⁵⁷ In March and June 2019, the OEIG met with staff from CMS and the Governor’s Office to discuss procedural issues of the Employment Plan. As a result of these meetings, the Office of the Governor’s General Counsel issued a Memorandum to Agency Directors and others, including Agency Personnel Officers, entitled “Instructions for Compliance with *Shakman* Exempt Hiring Process.” The memo explicitly instructed that the exempt hiring process “must be followed any time an individual is performing the role of an Exempt Position ... regardless of the type of assignment or the length of that assignment.” (emphasis in original).

⁵⁸ [DHS Employee 4] said the position was classified incorrectly as a Senior Public Service Administrator on the Contract Approval Request form associated with the PSC. [DHS Employee 6] from the DHS Office of Contract Administration told the OEIG that he probably created the Contract Approval Request form and typed the wrong classification by mistake, but added that the PSC was nevertheless processed as a Public Service Administrator PSC.

on such personnel matters, because he communicated with CMS and the Governor's Office and understood the hiring processes. [Transition Team Member 2] said that from her perspective, the procedures were not always clear, and she would have taken guidance from Mr. Viniard about what was and was not possible.

[Transition Team Member 2] further stated that she remembered [Candidate B] because she was one of many candidates screened for a possible 4d(3) position at DHS, but she said that she had not heard of [Candidate B] before that time. She said that ultimately, DHS utilized a PSC for [Candidate B] with the same duties that existed in [DHS Employee 2]'s old PSC, which [Transition Team Member 2] understood to be a supporting role that would be managed by [DHS Employee 5]. [Transition Team Member 2] added that [DHS Employee 5] also had support staff for his housing-related duties. She said that she was not involved in the PSC hiring process and did not know how the Employment First Manager PSC was approved as exempt.

7. Interview of Sarah Kerley

In her OEIG interview, Ms. Kerley said that she did not discuss [Candidate B]'s PSC at all with Mr. Viniard, and that it first came to her attention months after its execution. She said that if Mr. Viniard had contacted her about utilizing a PSC to cover the duties of the Employment First Coordinator position, she would have told him to post the PSC and go through the competitive selection process. She said that DHS could have invited applicants from the pilot program who did not schedule interviews, because there were additional qualified applicants. Ms. Kerley said that DHS should have called her about this PSC.

8. Interview of Judy McAnarney

The OEIG interviewed Ms. McAnarney about the role of the Governor's Office in relation to "exempt" PSCs.⁵⁹ Ms. McAnarney said that in her role as the Director of Executive Appointments, her involvement is to receive the PSC request and candidate information, send the candidate for vetting, confirm the hire with the appropriate deputy governor's team, and relay the approval to the requesting agency. Ms. McAnarney said that the Governor's Office approval is the notification to the agency that it may proceed with the selected candidate at the proposed salary.

Ms. McAnarney said that Deputy Governor Sol Flores asked her about a PSC for [Candidate B] around the same time that Mr. Viniard sent it, and she knows it is a high priority when a deputy governor is asking. Therefore, she said she asked for an "accelerated vet" on [Candidate B]. However, Ms. McAnarney said that she must have still felt uncertain, because she told Mr. Viniard via email to follow "all the proper processes," and that is not something she normally does when giving PSC approval.

In hindsight, Ms. McAnarney said that in reviewing the records again, she noted that DHS did not mark [Candidate B] as a retiree or former State employee on the grid they sent. Thus, she said the PSC should have been posted and a competitive interview process should have occurred. In addition, Ms. McAnarney said that if she had had any knowledge that [Candidate B]'s PSC was

⁵⁹ The OEIG interviewed Ms. McAnarney on November 15, 2019.

based on a non-exempt position that had gone through a competitive hiring process, she would have had a formal meeting with Ms. Kerley and Mr. Viniard.

The OEIG also asked Ms. McAnarney if she had any knowledge of [Candidate B] having any political connections, and Ms. McAnarney said she did not know [Candidate B] and had no record of her resume coming out of the Governor's Office.⁶⁰ Ms. McAnarney said that identifying qualified applicants and conducting a competitive hiring process are the agencies' responsibilities, and that the Governor's Office cannot be involved with the filling of non-exempt positions.

9. Interview of Sol Flores

Ms. Flores similarly told the OEIG that she is never involved in filling non-exempt positions, but that she sometimes receives information from Ms. McAnarney about candidates that require the approval of the Governor's Office. Ms. Flores said that her role as a deputy governor involves collaboration with agencies within her portfolio to ensure the Governor's vision is implemented through policy and programmatic work, communications, media, and proposed legislation.

With regard to [Candidate B]'s PSC, Ms. Flores could not recall having been involved and said that [Candidate B]'s name was not familiar to her. She added that she has no knowledge of [Candidate B] having any political connections or anyone having advocated for her hire, and that she did not remember speaking to Ms. McAnarney about her. However, Ms. Flores did generally recall conversations in spring or summer 2019 about filling various positions within DHS, including related to the Statewide Housing and Employment First programs. She added that she sometimes has conversations with agency leadership about their personnel needs and what support they might require. She also remembered that community advocates had reached out to DHS and the Governor's Office about the importance of those programs and that the Governor's Office was also very interested in compliance with the Consent Decrees around housing choice.

10. Interview of G. Scott Viniard

During his OEIG interview, Mr. Viniard explained that Secretary Hou and her transition team were working on filling a number of vacant 4d(3) exempt positions in early 2019, including the Housing/Employment Coordinator position. Mr. Viniard said he recalled hearing about a desirable candidate who had backed out of the Employment First Coordinator interviews, and so he sent her information along to Secretary Hou for consideration for a 4d(3) position. Mr. Viniard said he did not know [Candidate B] or even know her name at the time, and it did not occur to him to forward the information of others who participated in the Employment First Coordinator interviews, because the recombined position had been moved to Chicago. Mr. Viniard said he did not recall that [Candidate A] was the top-scoring candidate for that position or realize that she was based in Chicago.

Mr. Viniard initially told the OEIG that he did "not know anything about" [Candidate B]'s PSC until the "tail end" of the process in August or September 2019, when it needed to be

⁶⁰ Campaign contribution searches for [Candidate B] and [DHS Employee 7] conducted as part of this investigation did not reveal any contributions by either.

processed through the Governor's Office. However, after being shown various email correspondence indicating his involvement beginning in May 2019,⁶¹ Mr. Viniard told the OEIG that DHS was "up against the wall" after recombining the housing and employment positions, because one person was not going to be able to perform all of the functions. Mr. Viniard said that [DHS Employee 4] was frustrated because the PSC created overlap with the established position, and she did not know what to do. Mr. Viniard said that his role in [Candidate B]'s PSC was not the "norm" and that generally PSCs were not under the jurisdiction of HR. Rather, he said that HR focuses on regular hires, while PSCs, which do not involve "personnel transactions," are typically handled by the DHS Office of Contract Administration. Mr. Viniard explained that the way he resolved it in his mind was that DHS had done a PSC before and it had worked, when those duties were in [DHS Employee 1]'s position. Mr. Viniard said he otherwise did not give it a lot of thought, stating "contracts are not my worry."

Despite Mr. Viniard's initial assertions to the OEIG that PSCs were not within his purview, he later clarified that HR is in fact involved in PSCs in several ways. Generally, he acknowledged that HR advises DHS leadership on various options available to fill personnel needs, which can include PSCs.⁶² In addition, when a DHS division seeks to create a PSC, he said that [DHS Employee 4] is involved on the front end to review the PSC duties and assign a job title, classification, and salary range. For non-exempt PSCs, Mr. Viniard confirmed that interviews are conducted by the Bureau of Recruitment and Selection, which is part of HR. Finally, if a PSC is what he described as a "4d," or exempt, PSC, under which contractors are doing "4d duties," HR is also involved on the back end. For those, he said that he or someone else in HR will send the PSC to the Governor's Office for approval of the PSC candidate.

Mr. Viniard said that he did not review the duties in [Candidate B]'s Employment First Manager PSC, but that he generally understood that PSC to be the same one previously created to assist [DHS Employee 1] with her Employment First duties, adding that he noticed that the PSC documents contained language from 2016. Mr. Viniard said that while he did not specifically recall doing so, if asked he would have advised that the Employment First Manager PSC was "exempt." He said that would have been based on the PSC containing "4d" duties pulled from the Statewide Housing Coordinator and Employment First Coordinator position. Mr. Viniard said that in that instance, no "formal" review of the duties was necessary to ascertain that the PSC was appropriately exempt. However, Mr. Viniard also acknowledged that DHS's prior 4d(3) exemption request for the standalone Employment First Coordinator position had never been approved by the Civil Service Commission, nor had the position ever been added to the *Shakman* Exempt List.

⁶¹ In an email dated May 21, 2019, Mr. Viniard wrote, "[Candidate B] [sic] will be a PSC to assist with the employment first piece that assist [sic] [DHS Employee 5]... can we use the old position we had split out and work with [DHS Employee 6] to get this going..." The Personnel Manager responded that same day, "You mean for [DHS Employee 4] to give [DHS Employee 6] the old 104 for the PSC for him to start?;" to which Mr. Viniard replied "Yes." A subsequent July 29, 2019 from [DHS Employee 5] to Mr. Viniard reflects that, "[a]s we discussed when we met, I believe the appropriate route with [sic] be through a PSC like [DHS Employee 2] had previously."

⁶² Mr. Viniard said that generally, the decision to use a PSC involves a roundtable approval process which includes the requesting DHS division, DHS leadership, the Chief of Staff and Chief Operating Officer, Fiscal, Labor Relations, and staff from the Office of Contract Administration.

When asked about Ms. Kerley’s August 22 email telling him to “be safe and post” PSCs, Mr. Viniard said that he nevertheless understood from that email, and other conversations with Ms. Kerley, that [Candidate B]’s PSC could be exempt because he believed its duties were derived from a 4d(3) exempt position. However, at another point in the interview, Mr. Viniard told the OEIG that conversations with Ms. Kerley led him to the conclusion that the only PSCs that did not need to be posted were those for qualified returning candidates. In addition, Mr. Viniard gave the OEIG conflicting statements about whether he specifically discussed [Candidate B]’s PSC with Ms. Kerley. Mr. Viniard told the OEIG at one point that he followed up with Ms. Kerley about [Candidate B]’s PSC shortly before it was executed in September 2019. But at yet another point, he told the OEIG that he did not have any further conversation with Ms. Kerley about exempt PSCs after the August 22 email. Mr. Viniard reiterated that PSCs were not at the forefront of his mind when DHS was filling [Candidate B]’s PSC; rather, he said that he was more focused on filling other vacancies at DHS. He also told the OEIG that guidance on PSCs had shifted over time.

The OEIG asked Mr. Viniard why, given his own assertion that there was confusion over PSCs, he did not pause and seek further advice, or simply err on the side of caution and post [Candidate B]’s PSC. Mr. Viniard replied that with regard to [Candidate B]’s PSC, DHS had run into multiple frustrating barriers in trying to fill the position, that the PSC “had already been done,” that the decision not to post the PSC had already been made, and that he had presented a name to the Governor’s Office for approval. He said that at that point, DHS needed someone performing the Employment First duties.

However, Mr. Viniard further acknowledged to the OEIG that after he sent over [Candidate B]’s documentation, Ms. McAnarney questioned whether the PSC needed to be posted. He said that he told her it was exempt and did not need to be posted, but Ms. McAnarney told him “I don’t think that’s true anymore” and asked him if he had spoken to Ms. Kerley. The OEIG reminded Mr. Viniard that the PSC was still not yet executed as of September 19, 2019, when Ms. McAnarney further questioned him about whether it was properly exempt. He replied that he nevertheless viewed the process as complete at that point, telling the OEIG, “this was all done, and executed. It was over,” adding that the tone was “don’t do this again.”

H. PSC Processes At DHS

1. DHS Office of Contract Administration

Mr. Viniard and [DHS Employee 4] maintained that despite being a hiring mechanism, PSCs largely fall under the purview of the DHS Office of Contract Administration. The OEIG interviewed [DHS Employee 6], who stated that his title was the PSC Manager in the Contract Administration Office, and that his duties included processing PSC paperwork.⁶³ [DHS Employee 6] said that to establish a PSC, the DHS division completes Contract Approval Request and Description of Services forms, which he sends to DHS Classifications.⁶⁴ If Classifications

⁶³ The OEIG interviewed [DHS Employee 6] on February 24, 2020 and October 7, 2020.

⁶⁴ [DHS Employee 4] confirmed that she is involved in the classification of a PSC by looking at Personnel Code-covered positions for a comparable title and salary range, which she then returns to the Office of Contract

approves the salary range, [DHS Employee 6] said that HR posts the position and interviews are conducted, unless the PSC is “exempt.” When a contractor is selected, [DHS Employee 6] said that he receives a Decision Form with a justification for the selection, along with the individual’s application materials, and that documentation is then routed to Labor Relations, the DHS Budget Director, the DHS Chief Fiscal Director, and the Secretary, to sign off on the Contract Approval Request form. [DHS Employee 6] said he believed that a committee consisting of a designee for the Chief of Staff, Mr. Viniard, and the Secretary’s authorized signatory also reviews the packet. Once [DHS Employee 6] receives the packet back, the final PSC is executed. [DHS Employee 6] said that for exempt PSCs, he also prepares a spreadsheet or “grid” for HR to send to the Governor’s Office, which contains the candidate’s name, salary, term, location, and a brief summary of duties.

[DHS Employee 6] said that when [DHS Employee 5] contacted him about [Candidate B]’s PSC, [DHS Employee 5] told him that it would be for the same PSC previously held by [DHS Employee 2]. Therefore, [DHS Employee 6] said that he likely sent the Description of Services form from [DHS Employee 2]’s PSC to [DHS Employee 5] to ensure the duties were still appropriate.⁶⁵ [DHS Employee 6] said that from there, the PSC moved forward through the “exempt” PSC process. [DHS Employee 6] said that he has never been tasked with assessing whether a DHS PSC conflicts with a regular hire, and he simply assumes that if a division requests a PSC, it needs one. He also said that he had never heard of [Candidate B] prior to handling the request to create her PSC.

[DHS Employee 6] said that because [DHS Employee 2]’s previous PSC was exempt, his understanding was that [Candidate B]’s PSC would also be exempt. He said that he was told by his predecessor that once a PSC ends, it remains “vacant” and can be filled at a later time. Therefore, he viewed the contract established for [DHS Employee 2] in 2016 to be a vacant exempt PSC that could be filled again in mid-2019. However, he added that the Office of Contract Administration does not make exempt determinations, and he did not tell [DHS Employee 5] that the PSC was exempt. [DHS Employee 6] also said that his understanding about “vacant” exempt PSCs was not reflected in a written policy anywhere at DHS. [DHS Employee 6] said that generally, things with PSCs were fluid and always changing, and he did not view his responsibilities to include providing guidance on what is required to fill a PSC. Rather, if asked, he said his role was limited to walking the requesting division through the required paperwork.

2. Handling of Personnel Matters for Employees Hired by PSCs

[DHS Employee 6] told the OEIG that after a PSC is executed, the Office of Contract Administration retains paperwork consisting of the Contract Approval Request Form, Decision Form, the contractor’s CMS 100 employment application, a copy of his or her driver’s license, and the signed contract. He said that he also personally maintains a spreadsheet with information from the PSC packets. However, [DHS Employee 6] said that the Office of Contract Administration

Administration. [DHS Employee 4] said that she has never received any direction that agencies cannot use a PSC to fill a Code-covered position.

⁶⁵ [DHS Employee 6] added that the Employment First PSC he created for [DHS Employee 4] in May 2019 never moved forward, because no one followed up with him about it, and [DHS Employee 5] referenced [DHS Employee 2]’s PSC.

does not otherwise maintain any personnel, timekeeping, or disciplinary files on contracted employees. He said that his office is not involved with any onboarding process for new PSC employees, and he assumed the divisions would undertake that responsibility.

[DHS Employee 6] also said he did not know who was responsible for other aspects of contractual employees' employment, such as ensuring that contractors attend mandatory trainings required of all State employees, including annual ethics and sexual harassment prevention trainings. He said that DHS's Ethics Officer periodically asks him for new contractor names, which he speculated might be for that purpose. [DHS Employee 6] said he is also aware that some PSC employees are subject to the Revolving Door Policy, but he does not know how they are identified.⁶⁶ He said that the divisions are responsible for obtaining a signed Revolving Door Acknowledgement Form from those PSC employees, but he did not know how Revolving Door information was communicated to those employees. He said that he refers Revolving Door questions to the Ethics Officer.

In his interview, Mr. Viniard told the OEIG that because PSCs do not fall under his "jurisdiction," HR does not maintain any files on contractors.

3. Current Status of the Employment First Manager PSC and PSC Renewals at DHS

In August 2020, the OEIG sought updated information about the status of the Employment First Manager PSC. Documentation showed that a new Employment First PSC was executed for [Candidate B] for the period of September 21, 2020 through March 20, 2021. The paperwork reflects duties almost identical to those in [Candidate B]'s PSC from Fiscal Year (FY) 2020, and the PSC remains under the supervision of the Statewide Housing and Employment First Coordinator.

However, a "PSC Classification Review and Description of Services" form dated May 26, 2020, assigned a CMS Classification of "Executive II" instead of Public Service Administrator.⁶⁷ a state employee position (or positions) to fill this role, but requirements and restrictions have delayed this process."

DHS's documentation also reflected that the position was posted and interviews were conducted. A job bulletin for the Employment First PSC, showed an opening date of July 13, 2020 and a closing date of July 24, 2020, and a "Bid Record" that included more than 20 names,

⁶⁶The Revolving Door provision of the Ethics Act prohibits certain State employees from accepting non-State employment within one year of leaving State employment when the employee personally and substantially participated in the award of State contracts or change orders valued at \$25,000 or more, or in regulatory or licensing decisions on the agency's behalf, to the prospective employer. 5 ILCS 430/5-45(a)-(b). Accordingly, State agencies must determine which employees may participate in awarding such contracts or in regulatory or licensing decisions, and compile those employees on a list commonly referred to as a "c-list." 5 ILCS 430/5-45(c).

⁶⁷ In addition, a PSC "Overview Form" was also included for the FY21 PSC, dated June 26, 2020 and submitted by [DHS Employee 5]. That document identified [Candidate B] early on as the candidate for a term of nine months (September 21, 2020 through June 30, 2021). The Overview Form requested information about why the role was "being filled as a PSC and not as a State employee," and the response stated: "IDHS is working to establish No further details were provided.

including [Candidate B]’s. Eleven interviews were scheduled over August 26 and 27, 2020, and interview notes and scoring sheets reflect that 10 candidates were ultimately interviewed and were scored on the same set of questions. An unsigned Decision Form dated August 31, 2020 states that [Candidate B] was the selected candidate.

During this investigation, the OEIG learned that a PSC for another DHS employee⁶⁸ was initially created in March 2017 and was renewed in FY 2018 and in FY 2019 without a Decision Form associated with each renewal demonstrating: (1) there was some tangible benefit to the rehire, and (2) the candidate performed satisfactorily under the prior PSC, as required by PSC procedures in place at the time.⁶⁹

The OEIG’s review showed that [DHS Employee 7] was contracted by DHS to oversee the “SNAP to Success” program in March 2017. Thereafter, a Contract Approval Request Form was created requesting the renewal of [DHS Employee 7]’s PSC for FY 2018 (July 1, 2017 to June 30, 2018). However, the Decision Form for the FY18 renewal request was the same Decision Form that had been completed upon DHS’s initial selection and did not address whether there was a tangible benefit to [DHS Employee 7]’s rehire or whether [DHS Employee 7] performed satisfactorily under the original PSC. Similarly, a Contract Approval Request Form was created requesting the renewal of [DHS Employee 7]’s PSC for FY 2019 (July 1, 2018 to June 30, 2019), but the associated Decision Form was again from March 2017 and did not address a tangible benefit to [DHS Employee 7]’s rehire or whether [DHS Employee 7] performed satisfactorily under the original PSC.⁷⁰

The OEIG requested performance evaluations or other documentation showing that [DHS Employee 7] performed satisfactorily during each year of his PSC. In response, DHS’s Ethics Officer wrote via email that the agency “would only renew [a PSC] if they did what we needed. . . the renewal is agreement that they did the work” and further clarified that “a renewal would not have happened unless the contractor satisfactorily performed. Thus, the renewal itself is the writing evincing his satisfactory performance.”

In his interview, [DHS Employee 6] confirmed that no documented evaluations or assessments were provided for the renewal of [DHS Employee 7]’s PSC. Rather, he said that he was trained by his predecessor that upon receiving a request to renew a PSC, he should go back to the previous contract file and “pull the guts out,” including the old job description and Decision Form. In [DHS Employee 7]’s case, [DHS Employee 6] said he simply moved the March 2017 Decision Form through to renew the PSC twice. [DHS Employee 6] said that the Office of Contract Administration would have no way to know whether [DHS Employee 7] had performed satisfactorily in his PSC, and that he did not review the renewal paperwork for substance.

⁶⁸ Because these allegations in Case No. 19-00988 related to this investigation, the renewal of the PSC in Case No. 19-00988 will be addressed in this report.

⁶⁹ See PSC Hiring Procedures. Currently, the Comprehensive Employment Plan provides that PSCs should be renewed or otherwise extended only in “rare and extenuating” circumstances, and that any renewal requires written justification.

⁷⁰ In 2019, [DHS Employee 7]’s contractual employment ended and he was appointed to the position of Associate Director of the Office of Workforce Development, a *Shakman* Exempt position.

When directed to the requirement in the PSC Hiring Procedures that renewal of a PSC requires a Decision Form documenting the benefit of the hire and the candidate's previous satisfactory performance, [DHS Employee 6] said that he was not previously aware of that requirement. He reiterated that in moving the original Decision Form along with the renewal paperwork each year, he was following the guidance left by his predecessor, but said he did not know what function it served. He added that he does not make the decision whether to renew a PSC, but rather receives the paperwork and routes the hiring packet.

[DHS Employee 6] also told the OEIG that beginning in FY2021, DHS has required that all PSC employees have an evaluation completed by the requesting division before they can move forward with renewal. He said that a new PSC "Overview Sheet" is attached to the Contract Approval Request form and sent to Assistant Secretary Dulce Quintero's office to determine if the person can be renewed and for what length of time, or alternatively, that the position has to be posted. He said that Ms. Quintero's office developed the evaluation form and made him aware of the process to use it. Now, if he receives PSC renewal paperwork without the evaluation, he said he sends it back, but added that he does not review the evaluation forms for substance.

In his interview, Mr. Viniard said that prior to early 2020, HR had no involvement in PSC renewals, and he was not familiar with the PSC Hiring Procedures or its guidance on renewals. He said that more recently, after "receiving feedback," HR assisted the Office of Contract Administration in early 2020 to put together a "structured evaluation process" for contractors. He said that no one in HR is responsible for reviewing PSC renewals to determine if the position should be converted to a full-time position or if the person should be removed.

Mr. Viniard said that he was not familiar with the Quinlan Memo or the PSC Hiring Procedures issued by CMS but was aware of the 2012 Salazar Memo. [DHS Employee 6] similarly told the OEIG that he was not familiar with the PSC Hiring Procedures, although when the OEIG showed him the forms attached to that document, he said DHS uses both the Description of Services form and the Decision Form.⁷¹

[DHS Employee 6], Mr. Viniard, and [DHS Employee 4] all expressed to the OEIG that DHS maintains no formal written guidance on the PSC process. Mr. Viniard said that there is no manual that tells DHS employees how to do a PSC from start to finish, and he could not recite any measures DHS had in place to ensure that the use of PSCs do not circumvent existing hiring processes. [DHS Employee 6] also told the OEIG that he does not rely on written guidance in regard to PSCs, other than a document his predecessor created for his benefit with "how to" steps for moving documents through DHS's computer system. [DHS Employee 6] added that he had received no formal training at all on PSCs while at DHS, other than the on-the-job training he received from his predecessor before she left.

Mr. Viniard, [DHS Employee 6], and [Transition Team Member 1] told the OEIG that DHS began creating a written Administrative Directive about PSCs in August 2019. At the time of Mr. Viniard's July 2020 interview, he told the OEIG that further discussions had taken place about moving PSCs completely over to HR, and HR had been tasked with constructing a process

⁷¹ The OEIG noted that the Decision Form contains an explicit certification stating, in part, "The 'Policies and Procedures for Interviewing and Selected Candidates for Personal Services Contracts' were complied with."

flow chart to illustrate how the PSC process “should be.” He said that process remained ongoing. During his October 2020 interview, [DHS Employee 6] told the OEIG that formal written guidance for PSCs had not been finalized at DHS.⁷²

V. ANALYSIS

The OEIG’s investigation revealed that, in executing an “exempt” PSC for [Candidate B] in September 2019, DHS HR Director G. Scott Viniard disregarded PSC hiring procedures, failed to properly relay or advise DHS administration regarding hiring procedures, and ignored guidance or failed to seek clarification in areas of uncertainty and confusion. Although the evidence did not show that [Candidate B]’s hire was the result of any unlawful political discrimination, the hire nevertheless circumvented established hiring processes in several respects.

Mr. Viniard’s Mismanagement Of The Hiring Process for Employment First Duties

As DHS’s HR Director and Agency Personnel Officer, Mr. Viniard is the gatekeeper for personnel matters and is relied upon to ensure hiring processes are properly followed. As hiring reforms have progressed, Agency Personnel Officers have been critical in implementing changes and ensuring compliance at the individual agency level. Mr. Viniard was involved with or aware of all pertinent events leading to the execution of [Candidate B]’s PSC, including the history of the Statewide Housing and Employment First positions. He was also aware of the ongoing concerns with PSCs, the evolution of the *Shakman* Exempt List, and the development of the new State electronic hiring system. Even with his knowledge and role in agency hiring, Mr. Viniard failed to take appropriate action resulting in an unsupported cancellation of the competitive hire of the Employment First Manager position, and the improper execution of an exempt PSC.

First, Mr. Viniard facilitated the cancellation of the completed hiring sequence for the Employment First Coordinator position without appropriate justification. The position had been posted as a non-exempt position, been through the posting, screening, interviewing, and selection process, and the top-ranked candidate had been identified. However, on April 11, 2019, DHS HR sent paperwork to CMS requesting the abolishment of the Employment First Coordinator position. According to Mr. Viniard, the cancellation was prompted by an email from the Civil Service Commission suggesting that the 4d(3) exempt status of the standalone Statewide Housing Coordinator position may be rescinded. While Mr. Viniard claims that after he received the email, he brought this information and his concerns to members of the DHS transition team and the decision was made to recombine the Statewide Housing and Employment First positions, this assertion is not supported by other evidence. [Transition Team Member 1], [Transition Team Member 2], and Ms. Flores all told the OEIG that they were unaware of the possibility of losing the exempt status of a standalone Statewide Housing Coordinator position, and none could recall having any discussion with Mr. Viniard about that or about abolishing the standalone Employment First Coordinator position. The email history indicates the same. Only 47 minutes from the receipt of the Civil Service Commission’s email, [DHS Employee 4], after asking Mr. Viniard how to

⁷² [DHS Employee 6] added that beginning in FY21, some processes related to PSCs have shifted to Assistant Secretary Dulce Quintero’s Office, such as reviewing the term of a PSC, whether the division had looked at hiring a full-time employee, and determining the need for renewal, but that PSCs have generally remained under the auspices of the Office of Contract Administration.

proceed, sent an email to CMS stating that DHS management wanted to recombine the Housing and Employment Coordinator positions. [DHS Employee 4] confirmed that Mr. Viniard told her to relay that this was the DHS administration's position. There was also no correspondence from Mr. Viniard's email account with any DHS administration members regarding this issue or the Civil Service Commission's email on April 11th, either within that 47-minute window or for the remainder of the day.

Suggesting that the Civil Service Commission's inquiry regarding the exempt status of the standalone Statewide Housing Coordinator position, was the basis for the cancellation/abolishment of the Employment First Coordinator position, is also suspect for several reasons. Each year, in May and November, the Civil Service Commission sends lists to the agencies of exempt positions to be reviewed to determine whether the position should remain exempt. This was not a novel process for Mr. Viniard, nor does it necessarily result in the rescission of the position. Mr. Viniard was also well aware that the two positions had been split apart because it was too much work for one person. The standalone Statewide Housing Coordinator position had also recently been vetted by CMS, OEIG HEM, and the *Shakman* Special Master and deemed exempt.

Furthermore, Mr. Viniard did not attempt to discuss the situation with CMS or the Civil Service Commission in order to explain that the Statewide Housing position had recently been deemed exempt and to explore potential alternate solutions. According to Ms. Kerley, no one at DHS reached out to her about the Statewide Housing position's exempt status being potentially reconsidered by the Civil Service Commission, and that had DHS done so, she would have discussed with them how to maintain the position's exempt status. Mr. Viniard claimed that he probably told [DHS Employee 4] to have such discussions with CMS but acknowledged that he could not recall if any of those conversations actually took place. [DHS Employee 4] told the OEIG that she did not discuss the position with anyone. She stated that it was not her role to do so, and that was not instructed to do so by Mr. Viniard.

The decision to merge the positions and abolish the Employment First Coordinator position was not justified. Whether or not Mr. Viniard made this decision on his own as the evidence supports, at minimum he failed to make an appropriate inquiry and properly advise the DHS administration of the problems with such a decision without further consultation.

Second, in May 2019, Mr. Viniard facilitated the creation of an Employment First Manager PSC for [Candidate B] that did not appear to qualify as an exempt position and should have gone through a competitive selection process.⁷³ [Candidate B]'s position reports to an already exempt position and does not appear to have the ability to independently bind the agency or stakeholders to a specific course of action. Even [DHS Employee 4] opined by looking at [Candidate B]'s PSC that the duties did not meet the standard for an exempt PSC. Emails, including instructions from Mr. Viniard to his staff in May, show that Mr. Viniard was involved with the creation of [Candidate B]'s PSC from the outset and [DHS Employee 5], [Transition Team Member 1], and [Transition Team Member 2] all confirmed that they sought advice from Mr. Viniard about [Candidate B]'s PSC during that time.

⁷³ The OEIG recognizes that [Candidate B]'s PSC was entered into before the Comprehensive Employment Plan was filed; nevertheless the use of a PSC instead of a regular hire, in this instance, does not appear to have sufficient justification, if any at all.

Even though he was involved with the process of setting up a PSC for [Candidate B], Mr. Viniard failed to take action to ensure that the PSC was justified and filled appropriately. Mr. Viniard failed to properly determine whether the PSC was exempt or whether there should have been a competitive selection. Mr. Viniard acknowledged that he was not aware of whether DHS did any independent analysis to ensure the duties of [Candidate B]’s PSC met the standards for 4d(3) exemption. Mr. Viniard knew that the Employment First PSC position was to assist the 4d(3) exempt position, and that there had been a recent competitive selection process for the Employment First duties. However, Mr. Viniard said he did not give any thought to creating an exempt PSC to cover those same duties. Furthermore, Mr. Viniard, in his OEIG interview, attempted to justify the “exempt” status of [Candidate B]’s PSC because the duties were drawn from [DHS Employee 5]’s 4d(3) exempt position. Following Mr. Viniard’s problematic rationale, however, could lead an agency to believe it could parse out any duties from a 4d(3) exempt position in an unending number of exempt PSCs.

Mr. Viniard also ignored red flags that arose along the way and failed to seek further guidance or clarification. Mr. Viniard acknowledged to the OEIG that the advice regarding PSCs was changing over the course of the summer of 2019, that CMS had requested information about exempt PSCs, and that he knew the Special Master’s Office had concerns. Ms. Kerley told him in late August 2019 to “be safe and post” any PSCs that were not clearly exempt. Ms. McAnarney also raised concerns when Mr. Viniard sent the exempt PSC to the Governor’s Office. Even with continued reminders of the problems with exempt PSCs, Mr. Viniard allowed [Candidate B]’s exempt PSC to go forward even though DHS still had the opportunity at that point to post the PSC and conduct interviews. As DHS’s HR Director and Agency Personnel Officer, Mr. Viniard should have recognized that the approach DHS used was not consistent with recent hiring reforms. Finally, even if he believed [Candidate B]’s position was exempt, Mr. Viniard failed to follow the Exempt Employment Plan process that requires Agency Personnel Officers to provide certification paperwork to HEM, and others, prior to the individual’s first day of work. HEM never received [Candidate B]’s certification paperwork from Mr. Viniard.

Initially, in his OEIG interview, Mr. Viniard denied knowing anything about [Candidate B]’s PSC until the “tail end” when the PSC was being processed through the Governor’s Office. After being presented evidence to the contrary, Mr. Viniard explained that DHS was “up against the wall” and the way he resolved it to himself was that DHS had done this PSC in the past and it had worked. Mr. Viniard said he otherwise did not give it a lot of thought, stating “contracts are not my worry” and that PSCs were not his “jurisdiction.” The role of HR Director requires more. Agencies, as in this case, necessarily rely on HR Directors to guide and advise its administration on effectuating hiring needs in a manner that comports with current rules, policies, and procedures. Mr. Viniard cannot simply abdicate responsibility based on his misguided belief that he does not have a pivotal role in the hiring process effectuated by contract or otherwise.

Due to Mr. Viniard's mismanagement, DHS cancelled the competitive selection process for the Employment First Coordinator position without appropriate justification and failed to use a competitive hiring process to hire [Candidate B], and those allegations are **FOUNDED**.⁷⁴

VI. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDING:**

- **FOUNDED** – Illinois Department of Human Services Human Resources Director G. Scott Viniard mismanaged the process of abolishing the Employment First Coordinator position and executing the Employment First Manager PSC.

The OEIG recommends that DHS take appropriate disciplinary action with regard to Mr. Viniard and that such action ensure that DHS hiring decisions and guidance are being properly administered.

During this investigation, the OEIG also learned that no division at DHS takes full accountability for knowing PSC policies or ensuring policies are properly followed. Mr. Viniard and [DHS Employee 4] disclaimed responsibility for PSCs, by asserting that they were under the jurisdiction of the Office of Contract Administration. But [DHS Employee 6], the PSC Manager in the Contract Administration Office, told the OEIG that his duties essentially focused on processing the contractual paperwork. The lack of control over the PSC processes at DHS has contributed to both the improper execution of the Employment First Manager PSC and PSC renewals including those for [DHS Employee 7]. Mr. Viniard appears to continue asserting the position that his unit is not responsible for PSCs or for implementing the Comprehensive Employment Plan's provisions related to PSCs. The current lack of responsibility by any department over the PSC process increases the risk of improper hiring decisions recurring. The lack of defined responsibility also makes it difficult for an agency to ensure proper employment measures are being completed as required by hiring policies and the Ethics Act such as employee training, timekeeping reporting, Revolving Door assessments, and employee discipline and evaluations.

For these reasons, the OEIG recommends that DHS address the agency's deficient approach to PSCs and implement procedures to ensure that hiring through PSCs, at minimum, conform to the requirements of the Comprehensive Employment Plan. The Comprehensive Employment Plan outlines specific procedures for both exempt and non-exempt PSCs, for reporting information about PSCs, maintaining documentation on PSC employees similar to records retained for a personnel file, and more generally, the fundamental acknowledgement that PSCs should be used "in exceptional circumstances," cannot be used in lieu of hiring into an established position, and may be renewed only in "rare and extenuating" situations. It appears that DHS has recently made some remedial efforts by implementing an evaluation process for PSC renewals and reviewing the use of PSCs instead of established positions. However, the OEIG

⁷⁴ The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

encourages DHS to take significant steps to centralize oversight of the PSC process and put permanent systems into place to comply with the all hiring and employment provisions and rules.

No further investigative action is needed, and this case is considered closed.

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Office of Executive Inspector General
for the Agencies of the Illinois Governor
607 East Adams, 14th Floor
Springfield, IL 62701

By: Janelle Skaloud
Assistant Inspector General

Tiffany Pryor-Wallace
Supervising Investigator



JB Pritzker, Governor

Illinois Department of Human Services

Grace B. Hou, Secretary

100 W. Randolph • Chicago, Illinois 60601

January 20, 2021

Via E-Mail to Sherry Bult, Senior Paralegal, at [REDACTED], on behalf of:

Susan M. Haling

Executive Inspector General

Office of the Executive Inspector General for the Agencies of the Illinois Governor

69 West Washington Street, Suite 3400

Chicago, Illinois 60602

RE: Response to the Final Report for Complaint Number 19-02266

Dear Executive Inspector General Haling:

This letter responds to the Final Report for Complaint Number 19-02266. That Report includes one founded allegation, while also making two recommendations. The Illinois Department of Human Services (IDHS) is reviewing the Report. Your office will receive an update regarding this matter within one month. If you have any questions, please feel free to contact Robert J. Grindle, IDHS' Ethics Officer.

Regards,

/s/ Grace B. Hou by /s/ Robert J. Grindle

Grace B. Hou

Secretary



JB Pritzker, Governor

Illinois Department of Human Services

Grace B. Hou, Secretary

100 W. Randolph • Chicago, Illinois 60601

March 17, 2021

Via E-Mail to Sherry Bult, Senior Paralegal, at [REDACTED], on behalf of:

Susan M. Haling

Executive Inspector General

Office of the Executive Inspector General for the Agencies of the Illinois Governor

69 West Washington Street, Suite 3400

Chicago, Illinois 60602

RE: Updated Response to the Final Report for Complaint Number 19-02266

Dear Executive Inspector General Haling:

This letter updates a response to the Final Report for Complaint Number 19-02266. That Report included one founded allegation, while also making two recommendations.

I. Addressing the Report's Recommendations

The Report recommended that the Illinois Department of Human Services (IDHS) address its approach to Personal Service Contracts (PSCs) and implement procedures to ensure that contracting through PSCs, at a minimum, conforms to the requirements of the Comprehensive Employment Plan (CEP). That recommendation is being followed. Senior Leadership of IDHS also recognized the issues noted in the Report and has already started to implement PSC improvements—that process continues.

The Report concluded that IDHS Human Resources Director G. Scott Viniard mismanaged the process of abolishing the Employment First Coordinator position and executing the Employment First Manager PSC and recommended that IDHS take appropriate disciplinary action. The recommendation is being followed. IDHS believes a written reprimand and corrective counseling from IDHS Assistant Secretary-designate for Operations Dulce Quintero will be completed and are appropriate in this instance because, as the Report identified, the failure to properly manage the entire process relating to the Employment First position and contract stemmed in large part from issues with the Department's overall approach to PSCs at the time of this hiring sequence and contract.

Below is further detail regarding (i) improvements and reduction in the use of PSCs at IDHS and (ii) increased support and oversight for IDHS' Office of Human Resources.

II. IDHS Improvements and Reduction in the Use of PSCs

Since the issues noted in the Final Report, IDHS has significantly amended its PSC procedures and practices, reducing the likelihood of similar events reoccurring in the future. This is the result of numerous meetings to identify the issues and considerable work to address those issues (detailed below) by a number of senior staff, including the Assistant Secretary-designate for Operations and her Senior Policy Advisor, the Office of Human Resources, the Office of General Counsel, and the Office of Contract Administration.

For example, IDHS has developed and implemented a defined hierarchy responsible for rendering PSC hiring decisions and is developing agency policies governing that process. *See, e.g.*, IDHS PSC Instructions and IDHS PSC Overview Form, attached (detailing and providing greater transparency as to the PSC process and specific guidance as to when PSCs are appropriate and permissible). IDHS is also creating a tracking mechanism for PSCs (begun in August 2020). This new database will allow for tracking of the PSCs throughout the entire lifecycle (from pre-contract to budget to performance). This will create a uniform method of ensuring all necessary or involved parties have approved the PSC and improve the tracking of the hours worked versus work output. In addition, IDHS is also finalizing an Administrative Directive in this area. Finally, to avoid any confusion over where the responsibilities for PSCs lie and to minimize handoffs and any left-hand versus right-hand issues across separate IDHS Offices, IDHS is working on placing the responsibility for PSCs entirely within its Office of Human Resources, a responsibility that has been split between that Office and the Office of Contract Administration.

The above steps, as well as a deliberate decision by IDHS to reduce its use of PSCs, have resulted in a reduction in IDHS PSCs over the past calendar year (maintaining the short-term and reasonable accommodation PSCs appropriate under the CEP) as PSCs were either not renewed or the position was posted as a full-time State position, as recommended by the PSC parameters in the CEP.

III. Increased Support and Oversight for IDHS Office of Human Resources

Separate from and prior to receiving this Report, IDHS has already taken steps to increase the oversight of the Office of Human Resources. Since March 2020, Corey-Anne Gulkewicz, Senior Policy Advisor, who reports directly to the Assistant Secretary-designate of Operations, has been tasked with managing the Office of Human Resources. Ms. Gulkewicz previously held senior legal and policy roles in the Department for more than eight years, including having served as both Chief of Staff and General Counsel. Her oversight of the Office of Human Resources specifically involves (i) the Human Resources Director reporting directly to her, (ii) serving as a liaison to Sarah Kerley, Senior Policy Advisor and the State's lead at the Department of Central Management Services (CMS) on matters related to hiring and employment oversight and compliance, the Comprehensive Employment Plan, and personnel policy changes, and (iii) personally overseeing and implementing improved processes in a variety of Human Resources matters, including, but not limited to, the PSC hiring process. Ms. Gulkewicz reviews all

requests to renew or establish a PSC and determines if the proposed new contracts meet applicable criteria under the State's Comprehensive Employment Plan. Similarly, whether for a State position or a PSC, all requests to fill exempt positions and supporting documentation are now reviewed and submitted by IDHS Secretary Hou for Governor's Office approval and ultimate submission to both the Division of Hiring and Employment Monitoring (HEM) and the Special Master.

In addition, in May 2020, IDHS hired David Bonner as Deputy General Counsel for Labor and Employment, the first dedicated labor and employment attorney at IDHS. David provides legal expertise and guidance for any labor and employment matters that may arise, notably including permissible hiring and contracting practices within the context of exempt and non-exempt positions and PSCs. David is also tasked with monitoring agency compliance with applicable labor and employment rules and regulations.

Finally, and again, separate and apart from the Report, Alvin Schexnider has recently taken over as Director of the Office of Human Resources. Scott Viniard is continuing to work with Alvin through a transition period. Alvin has been with IDHS since November 2019, serving as a direct report to the Assistant Secretary-designate for Operations and leading numerous, critical projects regarding employee and workplace safety and protection. He has a Master's degree from the University of Minnesota's Carlson School of Management in Human Resources and Industrial Relations. In previous positions as the Senior Director of Operations, Director of Operations, and Director of Human Resources, with his three previous employers, he oversaw and was responsible for Human Resources. As he transitions into the role, Alvin will be working closely with Corey-Anne Gulkewicz for the foreseeable future, with Corey-Anne continuing to play a key role with the Office of Human Resources, including, along with Alvin, continuing to serve as a liaison to CMS.

With regard to providing more support for the Office of Human Resources, in November 2020, IDHS' request for authorization to increase the headcount in the Office of Human Resources was approved. As a result, 26 additional staff members will ultimately be added, greatly increasing that Office's ability to track the thousands of hires routinely processed by IDHS each year. Notably, just since March 16, 2020, IDHS has been approved to post more than 3,700 positions and has hired more than 2,800 employees. The Office of Human Resources has increased hiring within IDHS by approximately 60% from 2019 to 2020. Such an increase is due to (i) IDHS having been grossly understaffed in some areas (e.g. caseworkers to process Medicaid and Supplemental Nutrition Assistance Program (SNAP) applications and staff at our 24/7 facilities) due to budget issues in the last Administration, causing processing backlogs and exorbitant overtime, as well as (ii) the 24/7 hiring demands caused by the pandemic. Importantly, those metrics, viewed within the context of the staffing shortages that existed at the time within the Office of Human Resources, illustrate conditions that could only have contributed to issues like those described in the Report. Additional staffing will make for a more effective Office and aid in ensuring compliance.

In summary, IDHS has made strides to correct systemic shortcomings and continues to bring order, reform, and transparency to the PSC process, and will take appropriate disciplinary action regarding the mismanagement described in the Report. IDHS would welcome any additional

recommendations you may have based on this response or your experience with other agencies. If you have any such recommendations or questions, please feel free to contact Robert J. Grindle, IDHS' Ethics Officer. Your office will be updated once the disciplinary action is completed.

Regards,

/s/ Grace B. Hou by /s/ Robert J. Grindle

Grace B. Hou
Secretary

Enclosures



JB Pritzker, Governor

Illinois Department of Human Services

Grace B. Hou, Secretary

100 W. Randolph • Chicago, Illinois 60601

May 26, 2021

Via E-Mail to Sherry Bult, Senior Paralegal, at [REDACTED], on behalf of:

Susan M. Haling

Executive Inspector General

Office of the Executive Inspector General for the Agencies of the Illinois Governor

69 West Washington Street, Suite 3400

Chicago, Illinois 60602

RE: Updated Response to the Final Report for Complaint Number 19-02266

Dear Executive Inspector General Haling:

This letter updates a response to the Final Report for Complaint Number 19-02266. That Report included one founded allegation, while also making two recommendations. The recommendations have been followed.

As noted in a previous response, only one recommendation remained outstanding. Specifically, the Department of Human Services (DHS) had yet to take appropriate disciplinary action against Mr. Viniard. A written reprimand was issued to him, and a copy will be placed in his personnel file.

With the recommendations followed and the copy to be placed in the personnel file in the normal course, DHS considers this matter closed. Should you have any other questions, please feel free to contact Robert J. Grindle, DHS' Ethics Officer.

Regards,

/s/ Grace B. Hou by /s/ Robert J. Grindle

Grace B. Hou
Secretary