

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION**

<b>MICHAEL L. SHAKMAN and</b>	)	
<b>PAUL M. LURIE, et al.,</b>	)	<b>Case No. 69 C 2145</b>
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>DEMOCRATIC ORGANIZATION OF</b>	)	<b>Honorable Edmond E. Chang</b>
<b>COOK COUNTY, et al.,</b>	)	
<b>Defendants.</b>	)	

**SPECIAL MASTER’S SUR-REPLY TO THE STATE’S MOTION TO VACATE THE  
MAY 5, 1972 CONSENT DECREE**

In its filing, the State claims the 1972 Decree should be vacated because the State has accomplished the benchmarks and compliance tasks the Court identified. (Dkt. 7769, at 1). The State then criticizes the Special Master’s office for allegedly identifying new benchmarks and areas of non-compliance that were never previously raised. (*Id.*). That criticism is not warranted. The Special Master’s monitoring activities have been consistent with the Court’s various Orders. When the Court’s March 2021 Order instructed the Special Master’s office to assess implementation of the CEP, we did so. Agencies that had never been subject to scrutiny, became so. As a result of that review, we identified areas of non-compliance and reported on the same. That is consistent with this Court’s instructions.

The initial 2014 Order appointing the Special Master authorized this Office to perform five functions primarily focused on IDOT and we focused accordingly. (Dkt. 4020 at p. 2). In May of 2017, the Court directed the Special Master to review and assist in the creation of a State-wide

Exempt list and we did so. (Dkt. 5004). In March 2021, the Court issued a new Order that directed the Special Master to:

- (1) Assess the implementation of the CEP (including the Electronic Hiring Plan) and make recommendations on the implementation of the CEP (including proposing amendments to the CEP) that would assist in preventing violations of the 1972 Consent Decree.
- (2) Investigate particular hiring sequences if, in the course of assessing the CEP, the Special Master finds a reasonable basis to believe that the sequence involves a potential violation of the 1972 Consent Decree (bearing in mind that the Decree applies to current government employees but also bearing in mind that hiring can affect current employees in various ways, as discussed earlier in the Opinion).
- (3) Assess the implementation and enforcement of the Comprehensive Employee Plan for Exempt Positions, the statewide Exempt List, the John Doe Process, and finalize any outstanding proposals for modifications of the Plan, List, and the Process.

(*Id.* at pp. 42-43). As a result of that Order, we have been assessing the implementation of the CEP and making appropriate recommendations. Thus, although the State may not like our assessment and recommendations, we are following the Court's instructions. And the Court's benchmarks make clear that the Special Master is to continue her ongoing assessment of the CEP's implementation and CMS's compliance oversight of hiring sequences. (Dkt. 7616 at pp. 5-6). Again, the State's criticism is unwarranted.

#### **I. CMS REVIEW OF HIRING SEQUENCE/ENFORCEMENT OF CEP**

The State asserts that the Special Master's monitoring demonstrates the State is mostly compliant with the CEP. (Dkt. 7769 at 12-14). In our last two filings, however, we identified repeated instances of non-compliance with the CEP and noted that CMS was not flagging or correcting those mistakes. The most significant instances of non-compliance occurred during the application of MRQs, screening, and/or creation of the interview pool. As noted in the Ninth Report, we had monitored 52 sequences. We found 26 of the 38 paper-based sequences and 10 of

14 of the electronic sequences lacked well-documented decisions on application of the MRQs or how the interview pools were created. (Dkt. 7654 at pp. 34, 38).

**A. Level of MRQ/Screening/Creation of Interview Pool Non-Compliance is Significant**

The State dismisses these findings as “paperwork” errors. We disagree. The problems are systemic and impact the substance of hiring sequences. Individuals who did not meet the minimum requirements were invited to interview and qualified candidates were excluded. (*See, e.g.*, Ex. 2 to Special Master’s Report in Response, Dkt. 7705-2) at entry 3 (seemingly qualified candidate excluded from interview); at entry 4 (seemingly qualified candidate excluded from interview); at entry 5 (seemingly qualified candidate excluded; seemingly unqualified candidate invited to interview); at entry 10 (candidate not meeting MRQs invited to interview); at 11 (candidate not meeting MRQs invited to interview); at entry 12 (seemingly qualified candidate not invited to interview); at entry 14 (same); at entry 15 (same).

In the majority of sequences monitored there was insufficient documentation to explain why agencies made the decisions they made when creating the interview pool. Again, the State suggests there are merely ministerial errors it would characterize as “no harm, no foul” mistakes. The point, however, is that *we do not know* whether these errors were harmless or lacked patronage influences because *there is no* documented explanation. The materials submitted by the State in its Response to the Ninth Report illustrate the point. Merely recording numbers of applicants, number of applicants that met the MRQs and number of applicants invited to interview sheds no light on 1) whether the agency applied the MRQs; 2) who failed to meet the MRQs; 3) who was actually invited to interview; and 4) basis for including/excluding specific candidates.

We are not, as the State asserts, seeking heightened documentation or additional layers of paperwork. Rather, we are recommending the CEP be followed as written. The Hiring Sequence Record must be maintained for all sequences. The CEP requires that it include:

A record containing all information related to the selection sufficient to document each step of the selection process and compliance with this CEP...

Amended CEP at ¶W. The Screening Justification Form Guidance instructs that “every agency’s selection of whom to interview must be merit-based and well-documented” and that “the agency should apply the Box 19 requirements [MRQs].” *See* Ex. 1 to Special Master’s Report in Response, Dkt. 7705-1 at p. 1. Recent CMS Training on Screening instructs:

Screening should be well-documented both on or with the applications reviewed and on the Screening Justification Form.

**Documentation must be sufficient to allow for an external review of the hiring sequence.**

(*See* CMS CEP Follow-Up: Minimum Requirements and Screening Training, attached hereto as, Ex. 1 at p. 6).

The requirement to document the application of MRQs, screening, whether an agency pulled an Open-Competitive list, etc., is *not new*. Agencies have been instructed on this process since at least 2018. In a 2018 “Follow-Up Training on Screening” CMS explained:

After posting, the agency *must* first determine which applicants are qualified for the POSITION being filled via application of Box 19 requirements. *These must be listed on the screening form.* (emphasis in original).

(*See* Follow-Up Training on Screening, attached hereto as Ex. 2 at p. 2). CMS identified a list of “Consistent discrepancies” in documentation as follows:

- Lacking information about the full scope of applicant pool
- Insufficient information to show how you got your applicant pool [OC, other means, etc.]
- Insufficient information on how the pool was narrowed for interview invitations

- When applying Box 19 requirements, insufficient information on which requirements were applied or could not be

(*Id.* at p. 6.) These are the same documentation deficiencies we have identified. These are not heightened requirements—these requirements have been in place since 2018. The fact that the “consistent discrepancies” identified in 2018 are the same “consistent discrepancies” identified in our recent monitoring suggests the training has not been sufficiently effective.

### **B. Conflict Between CMS Grading and Agency MRQs is Violation of the CEP**

The State similarly dismisses the conflict between CMS Grading and agency MRQs in Box 19. Although the State argues that CMS Grading is a “low risk” proposition, it does not address the fact that different MRQs are applied to different individuals. One of the cornerstones of the CEP is that all positions have verifiable MRQs and only candidates that meet the MRQs are eligible for hire. *See* Amended CEP ¶ 17.

The State argues that an A Grade from CMS is equivalent to meeting the MRQs.<sup>1</sup> That is contrary to the CEP. CMS can, and does, issue A grades to individuals that do not meet the MRQs on the Position Description. An A grade is based on the qualifications set forth in the class specification;<sup>2</sup> however, agencies can, and do, include more detailed, position specific qualifications in the Position Description and Box 19. Amended CEP at ¶X. For example, agencies may require degrees in certain fields (i.e., business, public administration) or experience in certain fields (construction, investigations) that go beyond the class specifications used by CMS grading.

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<sup>1</sup> As discussed later in this filing, the CMS Chief Compliance Officer disagrees with the State’s contention that an A grade is equivalent to meeting the MRQs. When asked recently during an interview by the Special Master’s office, the Chief Compliance Officer stated that agencies must apply the MRQs as written and cannot merely rely upon an A grade from CMS as evidence of meeting the MRQs.

<sup>2</sup> As discussed below in the CDB section, requirements stated in the class specifications can also be altered for grading purposes.

Thus, even when a candidate lacks these specific qualifications, agencies continue to rely upon CMS grades as evidence that a candidate meets the MRQs. (*See* Response to MTV, Dkt. 7705 at pp. 19-22). This results in a conflict between the actual MRQs and CMS grading, which can, and does, result in violations of the CEP.

As the Court explained in its March 31, 2021 Order, CEP mechanisms are intended to prevent patronage practices by requiring that certain processes be followed. (Dkt. 7370 at 25). When processes are not followed, that can create an inference that patronage or other illegal influences impacted an employment decision. Here, if the State is correct that applicants do not actually have to meet the MRQs as written, this mechanism in the CEP fails. And if qualifications are assessed differently by different agencies (CMS v. agencies), then enforcing or monitoring the CEP becomes impossible.

**C. CMS Does Not Timely Approve the Selected Candidate/No CMS Approval for Non-Code Positions**

The State does not address the evidence presented in the Special Master’s Response to the Motion To Vacate (“MTV”) regarding CMS’s delay in evaluating and approving the selected candidates. The CEP requires CMS to review the selected candidate. “CMS will review all hiring sequences either through the Hiring Lead [Electronic Hiring Process] or through CMS Transactions [paper-based sequences].” Amended CEP ¶ 39. Agencies, however, can hire individuals and put them on the payroll *before* CMS Transactions conducts its review. CMS Transactions’ review can occur weeks or months after the individual is on the payroll. After a certain period of time, the individual becomes “certified” and cannot be terminated absent misconduct. Without a timeframe for the CMS Transactions review, the review becomes meaningless because there is no remedy available if a problem is discovered.

With respect to union covered Non-Code positions that proceed through the paper-based process, there is *no* CMS review after a position is posted, contrary to the CEP provisions. *See* Amended CEP ¶¶ 39, 42. For those positions, CMS does not conduct any review of the hiring sequence after posting (except for five technical sequences per month at IDOT). In the summer of 2021, the State reported having 725 Non-Code positions at agencies other than IDOT,<sup>3</sup> and 3,014 Non-Code/Technical positions at IDOT.

As the Court previously explained, CMS's oversight “is important in assessing the CEP’s and CMS’s role in establishing a durable remedy.” (Dkt. 7616 p. 6). With respect to the Non-code (technical) Staff Assistant positions, the Court noted that “[t]he lack of CMS oversight was the primary problem rightly identified by the Special Master.” 7616 p. 15. Timely oversight by CMS, thus, is an important component to establishing a durable remedy.

## **II. THE STATUS AND PROGRESS ON SPECIFICALLY NUMBERED BENCHMARKS**

### **1. Benchmark #1: Amend CEP**

The State has filed the Amended CEP. It has not addressed the gaps identified in the Ninth Report or the Special Master’s Report in Response to the State’s MTV.

### **2. Benchmark #2 and Benchmark #6: Increased Monthly Training on the CEP & Training for Interviewers/Revised Interviewer Instruction**

The State has continued to provide monthly training sessions addressing various topics in the CEP. We believe the continued training is helping to increase compliance with the CEP. *But see*, Section (CDB discussion).

### **3. Benchmark #3: Enhanced Agency Interaction with HEM Advisories**

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<sup>3</sup> Not all of these agencies are subject to the *Shakman* litigation.

The State's filing mostly ignores the evidence presented in the Special Master's Report in Response to the MTV addressing the lack of follow-up of the HEM Advisories by CMS. To the extent it does address Advisory follow-ups, the State accuses the Special Master's office of "moving the goalposts." We disagree.

The question is and has been: *What is CMS or HEM doing to follow-up on Advisories to make sure the Advisory recommendations are actually implemented?* The Court previously noted that it is not sufficient to just identify non-compliance; it must also be addressed and remedied. (Dkt. 7370 at p. 25).

**a) Limited CMS Follow Up to Ensure Implementation of Advisories**

By way of background, during briefing on the State's first Motion to Vacate, it became apparent that some agencies were ignoring recommendations in the HEM Advisories. The State agreed to require an Agency to respond to the Advisories and this requirement was included in the Amended CEP. Agencies' responses uniformly "agree" to implement the recommendations. But an Agency "agreement" to implement some change going forward needs to be verified—simply saying you will do something is different than actually doing it. At the August 2, 2021 Status Hearing, there was a lengthy discussion of what was being done, if anything, to verify Agency implementation of HEM recommendations. (*See* August 2, 2021 Hearing Transcript, Ex. 3 at pp. 52-57). During that Hearing, the State represented that CMS was conducting spot checks to ensure implementation of HEM recommendations. (*Id.* at 54-55). The Court's minute Order following the status noted:

The State will be providing information to the Plaintiffs and the Special Master **on what follow-up steps are taken, after responses are received, to check on whether recommendations are actually being implemented.**



(Dtk. 7527 at p. 2). With respect to CMS, the only subsequent information provided was an oral report that CMS had followed up on three Advisories and an email from CMS describing its role as “informal” and including no data on whether the follow-up reflected implementation. (*See* Ex. 6 to Special Master’s Report in Response, Dkt. 7705-6). Requesting actual data about CMS’s Advisory follow-up and evidence of implementation does not, in our opinion, result in “moving the goalpost.”

**b) CMS Does Not Implement HEM Advisory Directed to CMS**

The Special Master’s Report in Response to MTV presented evidence that CMS has not implemented Advisories directed at CMS. The State ignores this issue in its Reply. As explained, HEM highlighted the conflict between CMS Grading and Agency application of MRQs in **21-HEM-0004**. The Advisory recommended CMS clarify whether MRQs in the Position Descriptions can be *more stringent* than the class specifications (criteria used in CMS Grading). Although this issue is addressed in the CEP (“Agencies **may establish more detailed, position-specific qualifications** that are still consistent with the class specifications”) Agencies continue to struggle with the interaction between CMS A Grades and Agency application of MRQs. *See* **20-HEM-0066** (MRQs not met by selected candidate because agency relied upon CMS A grade); **19-HEM-0084** (selected candidate with A Grade did not meet MRQs). (*See* HEM Reports attached hereto as, Ex. 4).

Despite the HEM Advisory recommendation to CMS, and the other HEM Advisories regarding the same issue, CMS has not implemented the recommendation to clarify this conflict and provide guidance to Agencies.<sup>4</sup> The State’s Reply does not address this issue.

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<sup>4</sup> CMS provided training on MRQs and screening on December 1, 2021, that touched on this topic. The training materials do not clarify the confusion.

**c) HEM Follow Up to Ensure Implementation of Advisories**

At the August 2, 2021 Status Hearing, the Court asked OEIG if HEM was following up to ensure its recommendations were implemented. ( Ex. 3 at p. 55). OEIG reported that its follow-up consists primarily of determining whether the Agency that received a recommendation repeats the same violation during a subsequent review. (*Id.* at 55-57). At the October 19, 2021 Status, OEIG explained it had conducted analyses of agency responses to HEM Advisories and later filed those reports with the Court. (referred to as “HEM Summary Advisories”). The State relies heavily on these HEM Summary Advisories in support of its Motion to Vacate. (Dkt. 7648 at pp. 11-14).

In our Report and Response to MTV, we explain that although the Summary Advisories include useful information and shed light on some agency’s actions, they do not quite answer the question as to whether agencies are making the same mistakes, even after being notified of the mistakes. Our filing explains how some (and certainly not all) conclusions in the HEM Summary Advisories are not, in our opinion, supported by the underlying data. Specifically, we laid out, in painstaking detail, why the Advisory conclusions that most agencies have not engaged in repeat non-compliance were not supported by the available evidence. This is particularly true with respect to the HEM Screening Summary Advisory. (Dkt. 7705 at pp. 24-30).

In its Reply, the State ignores the data and evidence that undermines some of the Summary Advisory conclusions and rather, accuses us of “nitpicking” and asserts that our fundamental criticism is that “we would have done it differently.” The State’s characterizations are wrong.

For the past 18 months the parties and the Court have sought to determine whether agencies are implementing recommendations made in HEM Advisories. There is a relatively straight-forward approach to answering that question: conduct direct follow-up with the agency to verify

that changes are made and document the same. Then conduct a subsequent follow-up at some later date, etc.

Thus, although there is more agency interaction with HEM Advisories, the State lacks a uniform or consistent practice of verifying that HEM Advisories are being implemented. And there is at least some evidence—as with the Advisory issued to CMS—that agencies are not implementing HEM recommendations. (Dkt. 7705). Again, the State simply ignores this evidence.

4. Benchmark #4: Robust Information Sharing

In a footnote, the State contends that the Special Master identified only a “single document” from its CDB investigation that the Special Master did not receive until after the document was described in a witness interview. (Dkt. 7769 at p. 5, fn. 3). The State claims this was just a “discovery issue” that resulted from a “single document” not hitting on email search terms. (*Id.*) The State’s failure to timely and openly share information with the Special Master’s office relating to the hiring errors at CDB is more than just the failure to produce a “single document.”

As reported, the State initially failed to timely report the CDB material hiring errors to the Special Master as required by the CEP. (Dkt. 7654 at p. 16). Once we were apprised of the material hiring errors involving the Contract Specialist III sequences, we sought to understand the scope of the hiring errors at CDB, and who knew what when. On numerous occasions in October and November 2021, we requested all materials and documents related to the CS III sequences, including internal agency and intra-agency communications and communications with the Governor’s Office about these sequences as well as information on whether there were other sequences at CDB that raised concerns of Personnel Code or CEP violations. (*See* October 28, 2021-November 19, 2021 Emails attached hereto as Exhibit 5). We explained the purpose of our requests was to identify the scope of the errors at CDB, what the Governor’s Office knew about

the CDB hiring errors, and when it learned the information. As the attached email communications reveal, rather than robustly share information with our office, counsel for both the State and the Governor's Office parsed our information requests and failed to disclose the [REDACTED] that had been referred to the Governor's Office on October 27, CMS Compliance's November 3, 2021 email communications approving the non-compliant transactions, and information about other CDB sequences that reportedly had hiring errors. We discovered this information only after conducting interviews as part of our investigation. *See infra* at Section IV.

The Agreement Between the Governor's Office and the Special Master (Dkt. 7232-1 at p. 1) requires the Governor's Office to provide our office with employment-related complaints referred to agencies by the OEIG.<sup>5</sup> The Governor's Office provides us with monthly updates via email. The Governor's Office did not report the CDB [REDACTED] Complaint that was referred to the Governor's Office on October 27, 2021 in either its October 2021 or November 2021 updates.

In sum, there has been a lack of robust and transparent information sharing with the Special Master's Office relating to the CDB hiring errors and the scope of the problems at CDB.

5. Benchmark #5: Four More Compliance Officer

As previously reported, this benchmark has been met.

6. Benchmarks #7 and #8: Additional CMS Oversight of PSCs and Temporary Assignments ("TAs"), and Documentation of PSCs and TAs.

**a) Temporary Assignments**

The Court has noted that with respect to TAs, the key "will be the future assessment of how well the agencies justified and tracked temporary assignments" as required by the CEP's

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<sup>5</sup> If the Governor's Office contends the Agreement is not applicable because the [REDACTED] complaint was not referred to an "agency," then that would raise questions about what other [REDACTED] complaints have not been disclosed and produced.

provisions. (Dkt. 7616 at p. 11). The success of this benchmark rests on a robust implementation of the CEP. (*Id.*). Based on our analysis of the 3Q2021 Temporary Assignment Report, we reported on an excessive number of long-term TAs. We also reported that many long-term TAs lacked adequate justifications. We noted how some state agencies were not reporting accurate and complete information to CMS Compliance in order for it to meaningfully conduct its oversight functions, as required by the CEP. (Dkt. 7705, at pp. 39-40). The State's Reply fails to address any of this data and analysis.<sup>6</sup>

#### **b) Personal Services Contracts**

The Court has identified PSCs as “a genuine area of concern” and noted the importance of transparent and accurate documentation of PSC duration and justification. (Dkt. 7616, at p. 9). In the Special Master Report and Response to the MTV, we analyzed the 3Q2021 data on personal services contracts, which remains the most current data available to the Special Master. We noted a large number of long-term PSCs that do not appear to be project-based and for limited duration, as required by the CEP. (Dkt. 7705, at pp. 41-44). We also noted concerns about the accuracy of the justifications provided by the agencies for these long-terms PSCs. (*Id.* at pp. 44-46). The State's Reply fails to address our data and analysis on PSCs.

Since the filing of our response, we have received additional information from CMS Compliance, which calls into question the accuracy of the justifications being reported for long-term PSCs reported by some agencies. For example, DHFS reported “difficulty finding full-time employees” as a justification for several long-term PSCs. On December 10, 2021, we asked CMS Compliance for information on how many times DHFS posted to fill these positions permanently

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<sup>6</sup> The 3Q 2021 TA Report remains the most current data available to the Special Master. To date, we have not received a 4Q TA Report.

in the past two years. On January 4, 2022, CMS Compliance reported that DHFS has not posted the positions for permanent filling in the past two years because of an inability to reach qualified candidates.

7. Electronic Hiring.

As previously reported, approximately 80% of State employees are members of the AFSCME union. Currently, AFSCME positions are not being filled through the electronic hiring process, other than a very small number of positions that are part of a pilot program agreed to between the State and AFSCME. (Dkt. 7648, at p. 19). That agreement is documented in a Memorandum of Understanding dated October 29, 2021, regarding use of the electronic hiring process to assess applications for 16 AFSCME position titles. (See MOU attached hereto as, Ex. 6).<sup>7</sup> The pilot program covers a very small fraction of all AFSCME position titles and is in the infancy of its rollout.

In its Reply, the State reported that “many AFSCME positions have been posted through the pilot program for full completion through the electronic hiring.” (Dkt. 7769 at p. 7). The State did not provide any details. We requested information from CMS regarding the status of the AFSCME pilot program. On January 11, 2022, CMS reported that 27 postings for nine different position titles were “in the queue” under the AFSCME pilot program. (See 1/11/22 email from CMS re: AFSCME Pilot Program; attached hereto as Ex. 7). On January 31, 2022, we reviewed the 27 posting requisition numbers on SuccessFactors. Ten of the 27 requisition numbers (37%) had not been posted and were reported as pending approval. CMS has agreed to notify the Special Master if, and when, interviews are scheduled for these sequences to allow for monitoring. To our knowledge, no such interviews have been scheduled to date.

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<sup>7</sup> The MOU covers 11 position titles, three of which include different levels (*e.g.*, I, II, etc.).

Although the State reported its estimate to expand electronic hiring to AFSCME positions in the first quarter of 2022, CMS recently reported to our office that the now expected rollout will occur in May or June 2022.

The years' long delay in rolling out the electronic hiring process, (which started long before the COVID pandemic) raises the question as to when, if ever, the State will actually fully convert to an electronic hiring process. And while the State argues that it is not necessary for a "durable remedy" it also argues that the electronic hiring process will remedy many instances of non-compliance (CMS grading, for example). If the State is thus unable to expand the electronic hiring process, then it should identify a different, actually available, remedy for current non-compliance.

### **III. THERE ARE NO NEW BENCHMARKS PROPOSED BY THE SPECIAL MASTER**

The State argues that the Special Master proposes five additional benchmarks to have a durable remedy. To the contrary, the Special Master's recommendations are aimed at existing benchmarks designed to prevent a recurrence of the type of misconduct that led to the Staff Assistant abuse.<sup>8</sup>

First, the Special Master recommended that the State establish a clear policy, consistent with the CEP, on the application of MRQs, screening and creation of the interview pool, focusing on the interplay between CMS grading and MRQs (and train on the policy). (Dkt. 7705 at p. 2). This is not a new benchmark. It is designed to bring the State into compliance with existing CEP requirements based on findings made during the Special Master's monitoring of hiring sequences. (*See, e.g.*, Dkt. 7655, 7705 at pp. 6-10). The Court's October 14, 2021 Order acknowledged the Special Master's monitoring role included assessing whether there are yawning gaps in the State's

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<sup>8</sup> The CEP requires CMS to cooperate with the Special Master, while acting, regarding potential improved processes. (Dkt. 7841-7 at p. 15, Par. 24).

implementation of the CEP and whether CMS was effectively monitoring hiring sequences. (Dkt. 7616 at p. 5-6).<sup>9</sup> Although the Court did not set a concrete monitoring period or specific compliance threshold for achieving substantial compliance, the Court made clear that the nature and extent of the violations were what mattered. Our monitoring revealed gaps in the CEP implementation and CMS compliance functions with respect to application of the MRQs, screening and creation of the interview pool, which is why we made this recommendation.

The State's claim that it is "at a loss for how to respond to this proposed benchmark" is puzzling. The Special Master has detailed the ways in which agencies are misusing the Screening Justification Form, failing to apply MRQs and to properly document how the interview pool was created. Issuing a written policy or guidance memorandum that addresses these concerns and providing training on that policy are not overly burdensome requests. While the State provided additional training on Minimum Requirements and Screening on December 1, 2021, the training did not address all of the Special Master's concerns, particularly with respect to grading.

Second, the Special Master recommended that all sequences undergo CMS compliance checkpoint # 2 prior to interviews and that the State implement a timeframe for CMS to conduct its review and approval of the selected candidate. Once again, these are not new benchmarks. They are recommendations aimed at bringing the State into compliance with existing CEP requirements and are designed to address gaps in CMS compliance oversight of sequences that proceed through the paper-based system. The CEP requires CMS to review all hiring sequences and to perform a CEP compliance review. CMS is responsible for reviewing agencies' execution of hiring plans

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<sup>9</sup> At the October 19, 2021, status hearing, the Court stated "I do think it's worth remembering that when the termination motion is filed and given CMS's role, I will be looking to how well CMS has been performing the oversight function." (*See* 10/19/21 Hearing Transcript attached hereto as, Ex. 8 pp. 14-15).



through the hiring sequence and approving the selected candidate. (*Id.* at ¶¶ 39, 43, 79).<sup>10</sup> As it stands, CMS is not reviewing execution of the hiring plans through the hiring sequence or approving the selected candidate for paper-based sequences. Although CMS Transactions conducts a post-hire review of the transaction, the review can occur months after the candidate has been hired. And even if CMS Transactions fails to approve a transaction, the candidate is allowed to remain employed by the State anyway. These notable gaps in CMS compliance oversight led to the Special Master's recommendations.<sup>11</sup>

Third, we recommended that CMS establish and implement a more robust policy for following-up with agencies on recommendations made in HEM Advisories and when issues of noncompliance are discovered. (Dkt. 7705 p. 2). The Court's benchmarks require enhanced agency interaction with HEM Advisories and CMS enforcement of CEP violations that are identified. (Dkt. 7616 at pp. 3, 12). At the October 19, 2021 status hearing, the State reported that the CMS Deputy Director of the Bureau of Personnel is auditing agency follow-up. (Dkt. 7634 at p. 2; Ex. 8 at p. 42). Nonetheless, the State now objects to the Special Master's recommendation, claiming it is a new benchmark when, in fact, it directly relates to the existing benchmarks.

The State also objects on the grounds that not every HEM Advisory requires the same follow up steps or level of attention. The Special Master's recommendation is that CMS establish

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<sup>10</sup> The State claims that the Court rejected the three CMS compliance checkpoints for paper-based sequences as benchmarks because the Special Master objected to the Amended CEP's limited scope of CMS oversight functions for paper-based sequences. (Dkt. 7769 at p. 23). The Court acknowledged the disputed portions of the Amended CEP, noted that the CEP is not static, and discussed at length the importance of CMS' compliance oversight to a durable remedy. (Dkt. 7616 at p. 2, 4-6). Further, as set forth above, the CEP requires CMS to review execution of the hiring plans through the hiring sequence, which it is not doing for paper-based sequences.

<sup>11</sup> The State maintains that the Special Master simply "surmises" that the process might more effectively prevent future violations if these specific steps were performed and that the same could be hypothesized for any additional compliance measure. These recommendations are not based on mere supposition. They are based on historical facts and evidence and the results of our ongoing monitoring.

and implement a more robust policy for following-up with agencies on recommendations made in HEM Advisories and when issues of noncompliance are discovered—not that the policy requires the same level of follow-up for all situations.

Finally, the Special Master recommended that the State use SuccessFactors to post and fill a majority of State positions. For years, the State has been holding out the electronic hiring process as the tool to implement many of the reforms in the CEP and to allow for increased CMS oversight and transparency. When the Special Master conferred with the State about the CEP, the State represented that all positions would be transitioned to the electronic hiring process. Yet the bulk of positions remain filled through the paper-based process that does not include many of the important compliance oversights. As the Court noted in its October 14, 2021 Order, “the transparency offered by the electronic hiring system remains a significant step toward a durable remedy.” (Dkt. 7616 at p. 7).

#### **IV. CAPITAL DEVELOPMENT BOARD VIOLATIONS**

During 2020 and 2021, CDB sought to hire a number of Contract Specialists. According to CDB, as a result of the “Rebuild Illinois Capital Plan” CDB’s budget went from \$28 Million Dollars in Fiscal Year 2018 to **more than \$9 Billion Dollars in Fiscal Year 2021**. Significant funds awarded through the Rebuild Illinois Capital Plan flow through CDB. Accordingly, CDB needed to staff its Contracts Unit with new Contract Specialists. That Unit and these new employees would be responsible for conducting pre qualification reviews for all State vendors, posting all construction bid opportunities, verifying the bidder’s insurance, reviewing financial disclosures, recommending awards, and notifying successful bidders, among other things. (*See Meyer Transcript attached hereto as Ex. 9 at 3*). During 2020 and 2021, CDB filled six Contract Specialists III positions (referred to as “Bid Officers”). The Contract Specialists III are responsible

for receiving the construction bids from outside vendors, opening the bid documents, processing the bids, and sending out notice of awards. (*Id.* at 4) CDB also filled one Contract Specialist II position (referred to as “Insurance” position) and one Contract Specialist I position.

On July 1, 2021, CMS Compliance was notified that four of the Contract Specialist III positions were hired in violation of the CEP and the Personnel Code. In late September 2021, after this office was notified of a Material Hiring Error, we began an investigation into this particular sequence, as well as others. Below are our results.

**A. Purpose of Capital Development Board**

The Capital Development Board was created pursuant to 20 ILCS 3105/4. The purpose of CDB is as follows:

- To build or otherwise provide hospital, housing, penitentiary, administrative, recreational, educational, laboratory, parking, environmental equipment and other capital improvements for which money has been appropriated or authorized by the General Assembly. 20 ILCS 3105/4.01.
- To conduct continuous studies into the costs of building or otherwise providing the facilities described in Section 4.01. 20 ILCS 3105/4.02.
- To conduct research on improvements in choice and use of materials, energy systems, and in construction methods for reducing construction costs and operating and maintenance costs of the facilities described in Section 4.01. 20 ILCS 3105/4.03
- To review and recommend periodic revisions in established building and construction codes to promote public safety, energy efficiency and economy, and reduce construction costs and operating and maintenance costs of the facilities described in Section 4.01. 20 ILCS 3105/4.04. And
- To advise State agencies, and units of local government, on request, on any matter related to the purpose of this Act and to assist State agencies in the preparation of their annual long-range capital expenditure plans. 20 ILCS 3105/4.05.

According to its website, the Capital Development Board manages the State's building and capital improvement program; reviews and periodically revises building and construction codes; and advises state agencies and units of local government on preparing long-range capital expenditure plans.

CDB is guided by a seven-member Board that deliberates matters of policy; approves the selection of design professionals pursuant to the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act (30 ILCS 535); and sets the direction for CDB. The Board Members are appointed by the Governor and confirmed by the Illinois Senate, and serve four-year, unpaid terms. The Board Members are charged with selecting an Executive Director, who is responsible for the daily operations and management of CDB and its employees.

**B. Rebuild Illinois Capital Plan**

In the summer of 2019, Governor Pritzker signed into law a comprehensive capital plan, the “Rebuild Illinois Capital Plan.” Rebuild Illinois will make \$45 Billion Dollars of investments in roads, bridges, railroads, universities, early childhood centers, and State facilities over the next several years. According to CDB, Rebuild Illinois has increased its budget from \$28 Million in FY18 to over **\$9 Billion Dollars** in FY21. CDB staff makes determinations about what projects are funded, what firms are qualified to bid on State funded projects, it pre-screens all bid entries, and makes recommendations to award contracts to specific bidders.

**C. CDB Organization and Key Personnel**

The Executive Director, Jim Underwood, oversees all departments within CDB. The two largest units within CDB are Operations and Construction. The Deputy Director of Operations, Kathryn Martin, oversees operations including Contracts Administration, Fiscal Management, Project Development and Quality Assurance. During the relevant period of time, Carey Mayer was the head of Contracts Administration and Paula Sorenson was the head of Fiscal Management. Mayer and Sorenson both reported to Martin.

Mayer was hired in January of 2020 into the senior Contract unit position—Contracts Administrator.<sup>12</sup> That unit includes the following positions: Contract Specialist I, Contract Specialist II, and Contract Specialist III. These positions are Personnel Code covered and covered by AFSCME. According to Mayer, and others, the Contracts Administration unit conducts prequalification reviews for all vendors, posts all construction bid opportunities, verifies bidder insurance, and reviews financial disclosures. (Ex. 9 at 3). The Contract Specialists III receive the construction bids from outside vendors, open the bid documents, process the bids, and make the awards. (*Id.* at 4). According to CDB, all of CDB’s work on “Rebuild Illinois” starts in the Contracts unit. (See 7/1/21 email to Jakoby from Dye attached hereto as, Ex. 10).

██████████ was the Personnel Administrator in CDB from August 2016 until February of 2021. Prior to her promotion to CDB, ██████████ was a Human Resources Representative in CMS’s Division of Examining and Counseling beginning in 2002. (See ██████████’s interview transcript attached hereto as, Ex. 11 at pp. 5, 9-10, 18). ██████████

██████████

In February of 2021, Tina Dye assumed the CDB Personnel Administrator position. Prior to that date, Dye had more than 20 years of Human Resources experience in different State agencies including IDOT, Department of Revenue, and Department of Commerce and Economic Opportunity (“DCEO”). Her pre-CDB roles, however, did not include experience in job postings or the interview/hire process. (See Dye interview transcript attached hereto as, Ex. 12 at 13). Wanda Trumbo was the Human Resources Assistant in CDB during the relevant period.

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<sup>12</sup> Mayer stated she applied through the Governor’s Office for her exempt position. She knew CDB Executive Director Jim Underwood from her previous private sector work and from seeing him at fundraisers. She explained that her husband is Peoria County Board Member, Allan Mayer, and that she had seen Underwood at various events. (See Mayer interview transcript attached hereto as, Ex. 9 at pp. 6-9). Allan Mayer is also the Chief of Staff for Illinois State Treasurer Michael Frerichs.

#### **D. Investigation Overview**

After being notified of the Material Hiring Error, we initially reviewed the Contract Specialist III sequence (CDB199). We determined that the hiring process used violated a number of CEP and Personnel Code provisions. We also determined that the four individuals hired raised additional concerns: two of the four had been previously fired from the State for cause; one of the two was on a Clout List tied to Governor Blagojevich (along with CDB Executive Director Jim Underwood); the other was a former IDOT Staff Assistant, identified by Governor Quinn's office as someone with a "legislator/sponsor" that was pushing a job action for her. The third hire was the son of CDB's CFO who did not meet the minimum qualifications for the position.

As our investigation expanded, we discovered the Contract Specialist II hire was also a prior IDOT employee, whose original IDOT application listed Sam Flood (Governor Blagojevich's Director of Governmental Relations) as his reference and who had recently held the temporary position of (from September 2018 to November 2018) Political Director of the Illinois Democratic County Chairs Association where his duties included:

Coordinated numerous weekly conference calls for Tier 1 State House and Senate multi-county races with candidates, campaign managers, county chairs and county headquarters. Participated on weekly planning calls with candidate Pritzker's staff (Nikki Budzinski) to determine county level campaign efforts. Worked with County Chairmen to effectively utilize "Blue Wave" funding ...

among other duties. His hire was the result of a "single candidate" interview that was not authorized by CMS Compliance. Each of these hires was tainted by non-compliance with the CEP, and some were also violations of the Personnel Code. Additional hires were also identified as having had CEP and Personnel Code violations. We discuss these more fully below.

##### **1. Contract Specialist III Position Description:**

According to the Position Description for the CS III position, the duties are as follows:

Under general direction, this position is accountable for reviewing bid documents for compliance with CDB rules and the IL Procurement Code, verifying information is correct and have the appropriate signatures, reviewing post-award contract documents for ATP, administering bid openings by publicly reading construction bids, approving bid scheduling on the CDB database, and serving as a liaison between the general public, other state agencies, contractors, engineers and architects in resolving discrepancies.

(See CMS 104 attached hereto as, Ex. 13). The Position Description describes the minimum requirements as follows:

**Requires** knowledge, skill and mental development equivalent to the completion of two years of college and four years of work experience in a construction related field.

and

**Requires** extensive knowledge of the Illinois Procurement Code; Procedural Manual; Construction Contracts Manual and the Emergency Small Purchase Contracts Manual ...[continues].

(*Id.* at Box 19).

2. December 2019 Two Contract Specialist III Positions Posted (CDB 167)

According to materials provided by the State, a CS III position was posted to fill two positions in December of 2019. As a result of that posting, two CS III positions were filled: one through a transfer (██████) and one through promotion (██████). No interviews were conducted for this sequence. Mayer stated that the positions were filled through contractual rights. (Ex. 9 at p. 23).

3. April 2020 Two Contract Specialist III Positions Posted (CDB 190)

On April 27, 2020, CDB posted to fill two more CS III positions (CDB 190) in Springfield. Eight candidates applied in response to this posting. Candidates included current State employees and external applicants. No Open Competitive list was contained in the hiring file and the Bid List included notations that seven candidates were “rejected” and one candidate had a B grade. There is no evidence of any of the candidates being interviewed. Personnel Administrator Tina Dye reported that she could not locate any interview files and that “I believe this was reposted but

cannot be sure as there is no information to be found.” (See 12/9/21 Email attached hereto as, Ex. 14).<sup>13</sup> CMS Compliance did not receive a request to cancel this sequence and no approval was given.

4. July 2020 Four Contract Specialist III Positions Posted (CDB 196)

On July 24, 2020, CDB posted to fill four CS III positions (CDB 196) in Springfield. The posting closed on August 6, 2020 and thirteen candidates applied. On September 13, 2020 CMS Examining and Counseling or “grading” notified CDB that “grades have been entered” and that some applications were incomplete or incorrectly filled out, and those applications were not graded. On September 14, 2020, when Personnel Administrator ██████ asked Trumbo whether the ungraded applications had been fixed, Trumbo reported that they had not. Later, on September 28, 2020, ██████ notified Trumbo that “I need the grades for the remaining 8 applicants that were submitted so we can begin interviewing.” (See 9/28/20 Email from ██████ attached hereto as, Ex. 15).

On September 29, 2020 Trumbo sent ██████ three A grade applicants to interview: ██████ (later hired into the CS II slot), ██████, and ██████ and noted she “will be sending the others [applications to CMS] tomorrow.” Thus, as of September 29, 2020, at least six applicants for the CS III 196 posting had not been graded by CMS (two of the eight had been rejected) (See 9/29/20 Email from Trumbo attached hereto as, Ex. 16).

CDB did reach out to three of the six applicants that had incomplete submissions (but not the other three) and those three individuals corrected their applications. (emails). Two of the three were resubmitted to CMS for grading, but none of those were graded or invited to interview. There

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<sup>13</sup> On February 4, 2022, Sarah Kerley informed us that ██████ was hired through this posting. He was not. His personnel file reflects he was hired through the earlier posting, CDB 167.



is no record of CDB ever requesting the missing grades from CMS. In total, six applicants were never given grades by CMS according to the materials produced by the State.<sup>14</sup>

Nonetheless, on September 30, 2020, ██████ notified Carey that three candidates were ready to interview for CDB 196. Despite her statement days earlier, ██████ did not wait for all the applications to be graded before scheduling interviews. (*See* 9/30/20 Email attached hereto as, Ex. 17). On October 14, 2020, the three candidates with grades were sent an interview link and background check forms for completion. ██████ included the following instructions to the candidates:

I am attaching the job posting for your review and background checks that I need for you to complete and return to me.

One of the background check documents was an “Employment Background Reference Report” intended for use to verify prior employment and includes the question: “Would This Person Be Re-Hired?” The other document was an “Authorization for Release of Criminal History Information.” (*See* 10/14/20 Interview Invite attached hereto as, Ex. 18).

On October 14, the three candidates were interviewed and scored as follows:

██████ 3.325; ██████ : 3.125; ██████ : 2.412

On October 26, 2020, ██████ emailed CDB Executive Director Jim Underwood and Chief of Staff TJ Edwards asking for permission to hire ██████ stating: “Please let me know if it meets your approval to offer ██████ the CS III position as the highest scoring interviewer.” (*See* 10/26/20 Email attached hereto as, Ex. 19) ██████ was offered and accepted a CS III. The hiring file does not include an Open Competitive list. According to CMS Transactions Supervisor, Rhonda Ross, there was no Open Competitive list pulled for this sequence in violation

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<sup>14</sup> Even if CMS later graded these applications, none of them were invited to interview or, as far as we can tell, placed on an eligibles list.

of the Personnel Code. (See Ross Transcripts attached hereto as, Ex. 20 at 44-45). Although the posting was for four positions, CDB did not seek to hire the second highest scoring candidate. Mayer explained that she did not believe that hiring another candidate from this sequence was an option, although she knew that she could have sought approval to do so. (Ex. 9 at 27-29). Emails exchanged at the time show that ██████ informed Mayer that CDB *could have* sought permission to hire another candidate from this sequence, but they never did so (through a small pool request). It is not clear why CDB posted to fill four positions, only to later conclude that it could hire just one candidate. And since CDB asserted that it was in dire need of qualified employees to fill these positions, it is puzzling that it did not hire the second ranked candidate.

5. Decision to “Re-Post” for Four CS III Before Interviews Occur for CDB 196

On September 24, 2020, prior to the interviews or the completion of CMS grading for applicants to CDB 196, ██████ sent an email to Trumbo stating: “**Contract Specialist III—please repost asap for 4 vacancies.**” (See 9/24/20-9/28/20 Email Exchange attached hereto as, Ex. 21) (emphasis added). Also on September 24, 2020, ██████ and Contracts Administrator Carey Mayer discussed reducing the minimum requirements for the CS III position. On September 28, 2020, ██████ explained that “[w]e can’t change the current job requirements this quick but CMS removed the lid for grading. We should be able to get grades this time.” (*Id.*). During her interview, CMS official Donna Acres explained that “removing the lid” for CMS grading means that candidates are credited for experience that is only “marginally related” (“B” level experience) to the core experience requirement—in this instance “experience in construction” (“A” level experience). (See Acres Interview Transcript attached hereto as, Ex. 22 at p. 32). In other words, it makes it easier to get an A grade.

6. September 2020 Four Contract Specialist III Positions Posted (CDB 199)

Prior to the interviews for the earlier posted CS III positions, on September 25, 2020, CDB “re-posted” to fill four CS III positions in Springfield (CDB 199). Fourteen individuals applied and the applications were submitted to CMS for grading on October 19, 2020. Candidates included current State of Illinois employees and external applicants. On November 16, CMS notified ██████ that the grades were in the system, but that there were three blank applications (including later selected candidates ██████ and ██████ and one with a missing social security number (later selected candidate ██████)).

On December 2, 2020 ██████ sent three candidates with A grades to Mayer to schedule interviews. She explained that there were “issues” with other applicants but sent the three “to get you started.” On December 5, 2020 the three applicants, ██████, ██████ and ██████ were sent links for interviews. Unlike the process in the previous sequence, **no background check documents** were sent to these candidates.

On December 8, the candidates were interviewed and scored as follows:

██████: 3.091; ██████: 2.771; ██████: 2.34

While those interviews were proceeding, ██████ communicated with the other three later-selected candidates, and one other candidate, to make sure their applications got corrected. Once she received corrected applications, she resubmitted the applications to CMS for grading. (See 10/19/20-1/21/21 Email Exchange attached hereto as, Ex. 23). In particular, on January 6, 2021, ██████ resubmitted applications for ██████ ██████ ██████, and ██████t; and requested missing grades for applicants ██████ and ██████i. (*Id.*)

Also on January 6, Chief of Staff TJ Edwards emailed about the December 8th interviews asking: “**Where are we with these postings, have offers been made to any candidates** [referring

to the three interviewed candidates]?” In response, ██████ stated: “We are waiting for grades for 5 additional candidates from CMS so they can be interviewed as well.” At 9pm that same evening, however, ██████ emailed ██████ offering her the position. There is no explanation from ██████ as to why she reversed course and offered ██████ the job—the very evening after stating she could not do that—when other candidates had not been graded or interviewed. (See 1/6/21 Email Exchange attached hereto as, Ex. 24).

After getting notice from CMS about new grades being in the system, on January 21, 2021, ██████ learned that ██████ and ██████ now had A grades and ██████ failed. The email exchange about the new grades did not mention ██████ ██████s or ██████. Once ██████ realized that ██████ did not have a grade, she emailed CMS right away asking why ██████ did not have a grade. ██████s grade was later entered into the system so that she could be interviewed. No one mentioned or asked why ██████ did not have a grade.

On January 26, 2021, ██████ emailed CDB officials that: “**CMS posted the grade that I have been waiting for the CS III position.** There are 3 additional candidates for you to interview.” (emphasis added). (See 1/7/21 - 1/26/21 Email Exchange attached hereto as, Ex. 25)

7. A Grade Candidate ██████ is Denied Interview

Meanwhile, on January 4, 2021, candidate ██████ emailed ██████ stating:

I am following up with you in reference to the job position, contract specialist III. I would greatly appreciate if you can provide me with the current status on the application. Please let me know if you require any further documentation in reference to this position.

(See Email Exchange attached hereto as, Ex. 26). ██████ did not respond. On February 2, 2021,

█████ again emailed ██████ stating:

I am following up with you for the position of contract specialist III. I just wanted to update you that I have received A grade in CMS 100. I will greatly appreciate if you could please provide me with the status of my application.

Looking forward to hearing from you soon, if you require further information or documents please let me know.

(*Id.*). On the same day, ██████ responded stating “CDB has not yet filled this position.” ██████ did not tell ██████ interviews were about to be scheduled. ██████ was never added to the group of interviewees or considered for the position, despite having an A grade and twice following up via email to check the status of the position.

8. Interviews Scheduled for ██████, ██████ and ██████

On February 8, 2021, ██████ sent the ██████, ██████ and ██████ applications to CDB officials for scheduling interviews. No small pool approval was obtained from CMS Compliance to proceed with an interview pool of three candidates for the three vacancies that remained. At this time, ██████ was transitioning out of the Personnel Administration position; Tina Dye replaced ██████ although they overlapped slightly.

9. Relationship Disclosure Forms Not Vetted

In preparing to schedule the interviews, Mayer sent Chief of Staff Edwards an email on February 10, 2021, asking how she should handle her Relationship Disclosure Form (“RDF”) and explained: “One of the candidates is a member of this unit that I obviously work with closely...”. Edwards responded that she (Edwards) can approve the form. On February 11, Mayer sent Edwards her completed RDF which includes the following disclosures:

One of these candidates is ██████. **I've worked extremely closely with her during my time with CDB** since January of last year as she's been in the Procurement Specialist position in the Contracts Unit.

One of the other candidates is who **I believe to be the son of CDB's CFO Paula Sorenson**. I do not have a relationship with him, but do work at times with his mother on issues that develop from our roles at CDB. (emphasis added)

(*See* 2/10/21 - 2/23/21 Email Exchange attached hereto as, Ex. 27).

After not receiving any feedback regarding the conflict of interest, Mayer emailed Edwards again on February 16, 2021 and stated:

I'm thinking that I should wait on doing anything else until a determination is made on the relationship disclosure forms? Please let me know if that's not what you'd recommend—thanks!

(*Id.*)

Again, Edwards stated that she would review the RDFs with CDB's General Counsel.

On February 23, 2021, Edwards emailed the new Personnel Administrator, Tina Dye about the RDFs. (*Id.*) The RDFs were ultimately never approved or signed by anyone. There is no explanation or documented discussion as to whether the RDFs for interviewers Mayer, Trumbo and Vidana, all of whom worked with one candidate and worked with another candidate's mother, were ever considered or cleared.

#### 10. Scheduling Second Round of Interviews for CDB 199

Because Dye was new to the Personnel Administrator position, on March 1, 2021, she emailed two CMS Hiring Reform Team officials asking what steps she needed to take to set up interviews for this new group of candidates. (*See* 3/1/21 email - attached hereto as Ex. 28.). The CMS official asked if the position was going through the Hiring Reform project or through an Open-Competitive list. (*Id.*) Dye replied that *she did not know*. In response, the CMS official noted that 1) he did not deal with these types of hires; 2) he did not know the details of this sequence; and 3) provided some ideas as to what *may* have happened previously. (*Id.*) No one raised the issue of the pulling of the Open Competitive list again and no one suggested Dye consult with CMS Compliance.<sup>15</sup> The interviews were nonetheless conducted on March 11, 2021. Mayer was

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<sup>15</sup> At this same time Dye reached out to several CMS officials to see if she needed to take additional steps before making an offer in a different sequence that had been completed during ████████ tenure. She was again told that they could not answer her questions. When Dye stated that she did not want to make offers

on the interview panel even though her RDF disclosed a conflict that had not been vetted and approved. When the interviews were scheduled, no one from CDB sent the background check documents to be completed by the candidates.

The interviews occurred on March 11, 2021, and the candidates were scored as follows:

██████████: 3.53                      ██████████: 3.26                      ██████████ 3.14

After the interviews, Mayer reported she would like to make an offer to ██████████, and would also like to make an offer to ██████████. She informed Dye that CDB would have to seek a small pool waiver from CMS in order to hire two candidates from the three-person interview pool. (It is not clear why CDB now wanted to get the waiver to hire more than one candidate, but did not want to do that during the earlier sequence). Again, Dye reached out to CMS for help in determining the proper steps and process. (*See* 4/6/21 Email attached hereto as Ex. 29). CDB sent emails on April 6th, 7th, and 20th asking how many candidates they could hire from the interview pool. (*Id.*) In response, on April 20, 2021, the CMS official stated: “I truly don’t know the answer to your question” and suggested Katrina McCarver, the head of Examining and Counseling, whom he copied on the emails, could assist. (*Id.*). After several email exchanges, on April 23, 2021, McCarver approved hiring *three* candidates from the interview pool of three. (*Id.*). Although the initial request was only to hire two of the three candidates, through the email exchange, McCarver apparently granted permission to hire all three. (*Id.*). This was true even though Mayer—who was the head of the Contracts division—stated she only needed two more CS III at that time. (Ex. 9, p. 60).

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and then learn “we were supposed to do x, y, and z” CMS Human Resources Specialist responded: “I am telling you I don’t know what x, y, and z are, and that I can not answer your question.” (*See* 3/5/21 Email attached hereto as Ex. 30). Katrina McCarver, the head of CMS Examining and Counseling was copied on the email exchange. (*Id.*). Later, it was discovered that no Open-Competitive list had been pulled for this sequence either. (Ex. 20, p. 47) Again, no one suggested Dye consult with CMS Compliance. (Ex. 30).

At the time McCarver approved the request, she apparently did not know and was not told that 1) no Open Competitive list was pulled; 2) interviews for the position had already resulted in one hire in December; 3) no RDFs were approved for the March interviews (and one interviewer had disclosed a conflict); and 4) no small candidate pool request was made. In addition, no one suggested that Dye consult with CMS Compliance—the CEP designated authority for granting this request.

11. ██████████ Previous Termination for Gross Mismanagement Discovered

Before making the offers, Dye sent the candidate summaries to Kathryn Martin and TJ Edwards, who approved the offers. (See 4/24-4/28 Email attached hereto as Ex. 31). When Dye was preparing to make the offer to ██████████, she discovered that he had been terminated from his most recent position with the State at CMS, although she did not know the reason for the termination. (See 4/28/21 Email attached hereto at Ex. 32). When she informed Martin, Edwards and Underwood about ██████████ prior termination, Underwood responded:

For full disclosure I've known candidate #2 ██████████ for years and have no qualms about hiring him due to his previous termination.

(See 4/28 Email attached hereto at Ex. 33.)

The next day Dye received ██████████ personnel documents from CMS explaining he had been fired from CMS for “gross mismanagement of property and staff” and that he had been disciplined prior to his termination. Dye forwarded these documents to Underwood who responded, without asking any follow up questions, to “Please move forward with the offer.” (Ex. 32). Underwood then approved a Special Salary request for ██████████ with the justification that:

██████████ worked at CMS from 1/2011 to 2/2019 and dealt extensively with the Capital improvement requests and projects during that time period. Very familiar with the IL Procurement Code.



(Ex. 32).

12. Termination from IDOT Known

Carey Mayer explained that she was aware of the fact that [REDACTED] had been fired from her prior employment at IDOT. (Ex. 9, 42-43). Mayer did not seek information from IDOT or [REDACTED] about her termination or performance. (Ex. 9, 44).

13. Special Salary Requests

Ultimately, all four hires were granted Special Salary Requests, approved by Underwood, which increased their respective entry level position pay significantly. The entry level salary for this position was \$4,361 per month. By submitting Special Salary Requests, which were approved by CMS for all four hires, [REDACTED], [REDACTED] and [REDACTED] were provided a 23% increase to \$5,401 per month; [REDACTED] was given a 47% increase to \$6,444 per month.

14. Minimum Qualifications Not Applied

As explained above, the Box 19 MRQs for the Contract Services III position include: “knowledge, skill and mental development equivalent to the completion of two years of college and four years of work experience in a construction related field.” Additionally, the position requires: “extensive knowledge of the Illinois Procurement Code; Procedural Manual; Construction Contracts Manual and the Emergency Small Purchase Contract Manual.” (See CS III Position Description attached hereto as, Ex. 34 at p. 2).

When CMS graded the applications for CDB 199, it did not apply the Box 19 requirement regarding the Illinois Procurement Code (because that requirement was not specified on the grading scale). (Ex. 22 at 23-29). Neither [REDACTED] or [REDACTED] met the minimum qualification of having “extensive knowledge of the Illinois Procurement Code; Procedural Manual; Construction Contracts Manual and the Emergency Small Purchase Contract Manual.”

When CMS graded the applications for CDB 199, it did not require four years of construction related experience to receive an A grade. As explained above, CDB asked CMS to “remove the lid” for grading in September of 2020. This allowed candidates with only marginally related experience to obtain a CMS “A” grade even if they failed to meet the MRQs stated in the position description. When CMS grading evaluated whether the candidates for CDB 199 had four years’ work experience in a “construction related field”, CMS credited experience that was only “marginally related” to the construction field. (Ex. 22 at 26-33). Under the grading scale that existed prior to September of 2020, neither [REDACTED] nor [REDACTED] would have been able to obtain an “A” grade from CMS.

#### 15. Interviewers for CDB 199 Use Wrong Hiring Criteria

Although the Job Posting and the Box 19 MRQs require knowledge, skill and ability equivalent to two years of college and four years of **construction related experience**, the Hiring Criteria used for scoring during the interviews measured entirely different qualities. According to the Candidate Evaluation Forms, **thirty percent (30%)** of each candidate’s score was based on Knowledge and Experience described as:

- Must have extensive knowledge, skill and experience in a quality/performance measurable program as a coordinator, team leader and/or team facilitator. Should be well versed in the various quality process innovation tools and have practical experience in their successful application.

And **thirty-five percent (35%)** of the candidate’s score was based on the following Education and Training criteria:

- Requires knowledge, skill and mental equivalent to completion of four years of college with a degree in business administration or management, public administration or a related field; two years of developing and tracking quality metrics.

(See CEF for CS III, attached hereto as Ex. 35). The disconnect between the MRQs and the Hiring Criteria is inexplicable. The Hiring Criteria completely omits any mention of construction related experience, which was the primary MRQ. Additionally, the Hiring Criteria require a four year degree in business administration, management, etc., which is absent from the MRQs. The candidates were scored as follows:

██████████ 3.53                      ██████████ : 3.26                      ██████████ 3.14

Assessing whether the candidates were fairly scored is impossible when the interviewers used the wrong Hiring Criteria.

Several months after these interviews, CMS Transactions placed a hold on CDB 199 due to CDB's failure to pull the Open-Competitive list in violation of the Personnel Code.

**E. Other Problems Discovered in Filling Contract Specialist Positions**

1. Contract Specialist II (CDB 202) Posted November of 2020

During this same timeframe, CDB also filled a Contract Specialist II position. According to materials provided by the State, the Contract Specialist II position was posted on November 10, 2020. (See 11/10/20 Job Posting attached hereto as Ex. 36). The hiring file provided by the State includes just three applications. According to CDB, only one applicant—former IDOT official ██████████—received an A grade from CMS. In this sequence, unlike those discussed above, CDB *did* pull the Open-Competitive list and ██████████ was the only individual listed. Because there was only one person on the list, CDB was required to get approval to proceed from CMS Compliance. CMS Compliance, however, never approved a single candidate interview or small pool request for this sequence. Several months later, CMS Transactions put a hold on this sequence also, because there was no evidence that a single candidate interview was approved by CMS

Compliance, as required by the CEP. (Ex. 20 at 68).<sup>16</sup> Although CMS Transactions is holding the sequence, ██████ remains on the payroll.

The Contract Specialist II, referred to as the “Insurance” position, has the following MRQs on the Job Posting and Job Description include, in part:

Requires knowledge, skill and mental development equivalent to the completion of two years of college and two years of work experience in construction related or construction insurance related field.<sup>17</sup>

The job duties listed on the Job Posting deal almost exclusively with insurance related duties, such as “reviewing and approving contractor and A/E insurance coverage;” “maintaining the CDB contractor and A/E insurance database system;” corresponding with insurance companies; verifying that contractor or bidder insurance is compliant with CDB standards, etc.

The Candidate Evaluation Form notes that although ██████ has ample experience with processing contract documents, he does not have “a lot of in-depth insurance knowledge but has grant management and some design/construction experience.” (See ██████ CEF attached hereto as, Ex. 37). The CEF also states “[m]ay be overqualified about the management expectations of this position.” There are no “management expectations” for this position.

As with the CS III above, the Hiring Criteria used to score ██████ did not match the MRQs. In fact, the Hiring Criteria lists the exact same criteria noted above used for the Contract Specialist III position. For instance, under Education & Training, 35% of the score, the CEF states “Requires knowledge, skill and mental equivalent to completion of four years of college with a degree in business administration or management...”. (Ex. 37). Notwithstanding the lack of insurance

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<sup>16</sup> ██████, however, told others in CDB that she had requested and received approval from CMS to proceed with a single candidate interview.

<sup>17</sup> There are a number of additional Minimum Requirements as well. (See 11.10.20 CS II (Insurance) posting, Ex. 36).

experience, and being the only candidate considered, ██████ was offered and accepted the position.<sup>18</sup>

Finally, when Dye prepared to make an offer to ██████ at his requested salary (Step 3), Executive Director Underwood instructed Dye to offer him a *higher* salary (Step 4) than what ██████ had actually requested. (*See* 3/10/21 Email and ██████ Salary Request attached hereto as, Ex. 38).

## 2. Contract Specialist I

According to materials provided, CDB also posted a Contract Specialist 1 (CDB000201) position from 11/10/2020 -11/30/2020. The hiring file produced to our office contained twelve applications, a listing of eligibles with seven candidates' names dated January 8, 2021, CEFs for five interviewees and an EDF identifying ██████ as the selected candidate. A February 25, 2021 email in the file states that two candidates on the eligibles list declined interviews, the remaining five candidates on the list were interviewed on February 10 and 11, 2021. There is no SJF in the file.

The position overview is as follows:

Under general direction, this position performs complex, technical functions in reviewing contractor and subcontractor financial disclosures for completeness and accuracy.

Evaluates contractor and subcontractor annual recertification submittals, maintains and updates the AS400 database system regarding disclosures and recertifications, assists staff in the preparation of forms and review and reconciliation of financial disclosures and recertifications.

(*See* Posting attached hereto as Ex. 39). The minimum requirements for this position include:

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<sup>18</sup> Interestingly, when ██████ was interviewed by some of the same panelists for a CS III position just months before, their comments and scores were quite different. On the Knowledge and Experience criteria, they noted "Not a lot of experience with contract review and approvals—just a grant program." For Education and Training, they noted "No college degree and not currently pursuing. Done some classes on software suite."

- Requires knowledge, skill, and mental development equivalent to two years of college and one year of work experience in the building construction field.
- Requires elementary knowledge of the Illinois Procurement Code, the agency’s Administrative Rules and the agency database for tracking purposes. (cite to posting).

The 12 applicants included a mix of both current State of Illinois employees and external applicants. One applicant ( [REDACTED] ) met the MRQs but was not included on the list of eligibles and was not invited for an interview. The documentation in the file does not fully explain how the interview pool of five was selected from the applicant pool of 12.

The score breakdown is as follows:

[REDACTED] : 2.81	[REDACTED] : 2.99	[REDACTED] : 2.96	[REDACTED] : 2.50	[REDACTED] : 2.56
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Again, the interviewers used the wrong Hiring Criteria during the interviews. The Candidate Evaluation Forms list different qualifications than the posting or job description.

Again, the Hiring Criteria used in the interviews were::

- Knowledge & Experience: Must have extensive knowledge, skill and experience in a quality/performance measurable program as a coordinator, team leader and/or team facilitator. Should be well versed in the various quality process innovation tools and have practical experience in their successful application.
- Education & Training: Requires knowledge, skill and mental equivalent to completion of four years of college with a degree in business administration or management, public administration or a related field; two years of developing and tracking quality metrics.

Assessing whether the candidates were graded fairly during the interviews is impossible where the wrong Hiring Criteria was used.

CMS Transactions is also holding this sequence. Transactions Supervisor Ross stated that this sequence was being held because CDB has not provided the paperwork showing that it “worked” the eligibles list and therefore Transactions will not approve it. (Ex. 20 at 69-70).

**F. Additional Problems Discovered in Other (non-CS) Positions**

According to Dye, once she assumed the Personnel Administrator position, she discovered new personnel problems “every day.” (Ex. 12 at 26). When she began this position at CDB “she pretty much had to figure out everything [on her own]” because she did not receive training on the hiring processes. (Ex. 12 at pp. 25-28, 10-11). She stated that she had not attended any “official trainings” on how to comply with the Comprehensive Employment Plan, but that she had attended some weekly meetings where CMS goes over refresher items. CDB has not filled any positions through the electronic hiring process. As discussed above, Dye *did* reach out on numerous occasions to CMS for assistance. In those requests for help, Dye repeatedly explained her concerns to CMS:

“Bear with me as I’m brand new to the interviewing/hiring process.”

“I started here a week ago today.”

“It has been a very long time since I handled hiring paperwork or duties within the state so bear with me.”

“Katrina, please bear with me—I came into this position after this posting came down but before interviews were held.”

(See, e.g., Ex. 28 and Ex. 40).

Yet no one at CMS directed Dye to CMS Compliance until late June or early July of 2021.<sup>19</sup>

Dye provided the Special Master’s office with a list of eight other problematic sequences that she had identified. Many of the files were missing interview notes; others were missing information about whether a hire resulted and, if so, who was hired. (See 12/9/21 Email attached hereto as Ex. 41). She also created a chart identifying the following “CDB Personnel Issues:”

- Failure to update HRIS (employee transactions and data) system;

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<sup>19</sup> As previously reported, Dye also reported her concerns in an [REDACTED] complaint. [REDACTED] (Ex. 12, pp. 83-86).

- Failure to maintain personnel files since 2017;
- Failure to properly note employee tax elected preferences on IRS forms;
- Failure to maintain proper payroll data;
- Failure to remove former employees from system (meaning some employees were earning “time” although they had been separated from CDB long ago);
- Failure to maintain employees’ correct title/position in personnel database;
- Failure to accurately maintain employees’ leave requests/use
- Significant errors in payment of comp time;
- Failure to get approvals on pay increases; and
- Failure to maintain disciplinary file.

(See Chart attached hereto as, Ex. 42). The State did not alert the Special Master’s office to these other issues despite our repeated requests, including information on the scope of the problems at CDB. The State was clearly on notice that the problems in CDB were much larger than the CS III sequence under review.

#### **G. Payroll Discrepancies Reports Fail to Trigger CMS Compliance Review**

Dye also noted that CDB failed to send the proper paperwork to CMS Transactions and that “CMS is still waiting on paperwork from employees hired going back to August of 2019. Most of this paperwork hasn’t been found and has had to be re-created.” (Ex. 42). If the required paperwork is not forwarded to CMS Transactions, then the transaction is on “hold” although the employee remains on the payroll. The failure to submit the necessary paperwork results in the transaction (hire, promotion, transfer, etc.) being placed on a “payroll discrepancy report.”

A payroll discrepancy is when there is a difference between what is being reported on an agency’s payroll and what is being reported in CMS’s personnel history. (Ex. 20, p 7). Because



the agency payroll system and CMS personnel history system do not communicate, CMS Transactions reviews the reported payroll numbers with agency's payrolls and tries to reconcile any discrepancies. To do that, Transactions requests the documentation supporting the transaction (hire, promotion, pay raise) to justify the action. (Ex. 20, p 7). Payroll discrepancy reports are submitted to agencies monthly. If an individual remains on a report for two months in a row, the discrepancy is reported to the Agency Director for resolution.

According to documents produced by the State, CMS Transactions was sending monthly payroll discrepancy reports to CDB as early as **February of 2020**. The earliest report produced to our office was sent to CDB in November of 2020 and reflects ten different individuals who were on CDB's report. (See 11/18/20 Email attached hereto as Ex. 43). The report noted the following number of months on report and the missing documentation that created the discrepancy.

<b>Months on the Report</b>	<b>Reason for Discrepancy</b>
9	New Hire--Need appointment paperwork
9	New Hire—Need appointment paperwork
2	Raise—Need to Justify Salary Increase
2	Promotion—Need Promotion paperwork
1	Promotion—Need Promotion paperwork*
1	Transfer—Need appointment paperwork
3	Promotion—Need Promotion paperwork
2	Promotion—Need Promotion paperwork
1	Raise—Need to Justify Salary Increase
2	Raise—Need to Justify Salary Increase

On November 18, 2020, CMS Transactions emailed [REDACTED] stating in part:

I am working the payroll discrepancy report and MANY of the entries have been sent more than 2 times. ... These discrepancies MUST be cleaned up in the next week. What is your plan?

(*Id.*). On the same day, ██████ explained (in part):

I have tried to work with Transactions & Tech Services to get this resolved and I was just going in a loop.

(*Id.*). ██████ was not instructed to consult with CMS Compliance and CMS Compliance was not alerted to this non-compliance with the CEP.

The payroll discrepancy reports produced by the State show that ██████, ██████, ██████, ██████, ██████, ██████, ██████, and ██████ all had at least three payroll discrepancies reported from March to September 2021 because CDB could not provide the necessary paperwork to process the personnel transactions. According to Ross (CMS Transactions), agencies should submit the hiring paperwork to be processed by CMS Transactions before the first pay period. (Ex. 20 at 23). Also according to Ross, some of these individuals still remain on the payroll discrepancy reports (Ex. 20 at 40).

On January 13, 2022, we interviewed CMS Transactions supervisor Rhonda Ross regarding CDB's inability to provide the paperwork necessary for Transactions to conduct its "back end" review of a sequence. Ross noted that Transactions is supposed to ensure that each selected candidate was from an Open-Competitive list or otherwise "reachable" (Ex. 20 at 23) and that all of the CEP required materials are submitted (posting, hiring file, RDFs, Candidate Evaluation Forms, screening justification forms, etc.) (Ex. 20 at 30). Ross stated that she was holding **approximately 10 sequences** from CDB because of various violations or non-compliance.

(Ex. 20 at 67-69).<sup>20</sup> Ross stated that if Transactions identifies non-compliance, CMS Compliance becomes involved. (Ex. 20 at 34-35). She specifically mentioned she was holding *another* Contract Specialist III position, filled in November of 2020 (CDB 196). (Ex. 20 at 43) When asked about the status of that sequence, she stated: “It is in the hands of CMS Compliance until we get further guidance from them.” (Ex. 20 at 43).

When CMS Compliance officer Jakoby was interviewed, we asked whether he was reviewing any other CDB sequences, Jakoby stated that no—he was not. He said if any inquiry had come to him from CDB, it had been resolved. He also stated he was unaware of any other CDB non-compliance similar to the Contract Specialist III sequence he had reviewed. Additionally, when asked whether inclusion on a payroll discrepancy report could raise compliance concerns, he stated that they may, but that the issue had not come up. Jakoby was unaware that the CSIII candidates were on the payroll discrepancy reports.

#### **H. Known Relationships and Background Information for CS Hires**

1. [REDACTED]

[REDACTED] was hired as a Staff Assistant, TM VI at IDOT in 2007. She listed as references, the Mayor of Country Club Hills and Victor Roberson, who is referred to in the press as Governor Blagojevich’s “Patronage Chief.” At the time of her hire her application reflected seven months experience as a marketing coordinator at an engineering firm; one year experience at a staffing company; one year experience at a mortgage company; and three years’ experience at a shipping company. (See [REDACTED] App attached hereto as Ex. 44). She answered “Yes” to the questions: “have you ever been fired from a job?;” “have you ever pled guilty to or been convicted

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<sup>20</sup> We requested information on the 10 sequences being held by CMS Transactions during Ross’s interview, which has not yet been provided.

of any criminal offense other than a minor traffic violation?” and “Are you currently in default on the repayment of any State educational loan?” (*Id.*)

She was initially placed in the Office of Chief Counsel and her duties were described as:

This position is accountable for assisting in the overall direction in the overall development and coordination of policy and directives regarding Office of Business and Workforce Diversity (OBWD), Bureau of Civil Rights. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. ...

(*See* 11/13/07 ePAR attached hereto as, Ex. 45).

In a July 21, 2011 email from the Governor’s office to IDOT, ██████████ is listed (with several others) noting that her transfer to a new position has been approved. The email states:

Jack [Lavin] said you (or Lindsay) **should inform the appropriate legislators/sponsors first thing in the morning** if they were pushing an epar. He said you knew who was pushing what.

(*See* 7/21/11 Email attached hereto as Ex. 46). (emphasis added).

During 2012, she had several disputes with co-workers and managers. According to one manager, after instructing ██████████ to perform certain duties, she responded “you don’t know who you are dealing with.” (*See* 6/8/2012 Email attached hereto as Ex. 47). On November 19, 2012, ██████████ was placed on paid administrative leave. During 2013, the Governor’s office, CMS and IDOT internally discussed trying to find a position for ██████████. On May 14, 2013, IDOT Secretary Ann Schneider asked IDOT’s personnel administrator to send ██████████ resume to Sean O’Shea in the Governor’s office, which he did on the same day. Several days later, O’Shea sent the resume to Simone McNeil, the then Governor’s office Director of Operations. (*See* 5/17/2013 Email Chain attached hereto as Group Ex 48). On August 1, 2013, McNeil forwarded ██████████ resume to Malcom Weems, the then Director of CMS with a note: “Please call to discuss.”

On March 21, 2014, [REDACTED] was notified by IDOT Chief Counsel that her paid leave was expiring and she should report to work in District One on April 14, 2014. (*See* Letter attached hereto as Ex. 49). On August 22, 2014, [REDACTED] was sent a letter that she would be separated on September 30, 2014. (*See* Letter attached hereto as Ex. 50). Her final Performance Evaluation reflected her “Performance is Unsatisfactory” and that after she was returned to work, she was absent 23 of 106 workdays and late 73% of the days she appeared at work. (*See* 2014 Performance Evaluation).

2. [REDACTED]

[REDACTED] was initially appointed to an Exempt Legislative Liaison position in the Department of Agriculture in February of 2003, shortly after Governor Blagojevich was elected. [REDACTED] name was included on one of the Clout Lists<sup>21</sup> that was made public as part of Governor Blagojevich’s criminal prosecution and attached as an exhibit to the Special Master’s Initial Report on IDOT. (*See* Clout List at Dkt. 4128-2). At the time of his initial appointment, his work history included experience as a fuel salesman, most recently for McClean County. In 2004, [REDACTED] was appointed to the Bureau Chief of Building and Grounds where he was responsible for the state fairgrounds. In 2011, he transferred to CMS. On his application for the CS III position, [REDACTED] indicated he held Exempt Regional and Statewide Facility Manager positions. (*See* [REDACTED] App attached hereto as Ex. 51).

During the Court ordered Exempt Review process, OEIG uncovered evidence that certain CMS employees, in positions designated as “Exempt,” were actually performing covered duties. During its investigation, it discovered that [REDACTED] was supervising one of the “faux-exempt”

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<sup>21</sup> Over the course of the United States Attorney’s investigation and prosecution of Governor Blagojevich, various “Clout Lists” purported to be maintained by the Governor’s Office were made public. When the Plaintiffs filed their initial motion for supplemental relief, they attached some of these Clout Lists to their filing. Thereafter we attached some of the Clout Lists as Exhibit 2 to the Special Master’s Initial Report.

employees. That employee was on the same Clout List as [REDACTED], was hired at the same time, and was later an IDOT Staff Assistant. Although [REDACTED] was not found to have engaged in “misconduct” we believe [REDACTED] knew or should have known the employee he supervised was not performing exempt duties. In addition, we reported to the State in April of 2018 that [REDACTED] had provided inaccurate information to the Special Master’s office during the Exempt Review process.

[REDACTED] was also implicated in OEIG Report # 17-626 where he and other CMS employees were involved in CMS’s violation of the Illinois Procurement Code in awarding a lease to Climate Controlled Holdings, a company owned by William “Bill” Cellini’s family.

Eventually, on February 15, 2019, [REDACTED] was terminated by CMS for “gross mismanagement of property and staff.” (See Letter attached hereto as Ex. 52). CMS found [REDACTED] had allowed subordinate employees to “abuse and misuse overtime” even after being warned to stop. (See 5/22/19 Letter attached hereto as Ex. 53). CMS stated [REDACTED] egregious conduct was willful, repeated, and harmed the employing unit.” (*Id.*) Before his termination, he was also issued a disciplinary action for failing to supervise a subordinate that was engaged in harassment. Although CDB was aware [REDACTED] was terminated from CMS for “gross mismanagement of property and staff”, Executive Director Underwood authorized his hire at CDB.

3. [REDACTED]

[REDACTED] was initially hired at IDOT in August of 2003 into a TM V Exempt position titled Metropolitan Planning Manager. (See Memo from Cini to Monk attached hereto as Ex. 54). Sam Flood, Director of Governmental Relations for the Governor Blagojevich’s Office, was listed as one of his references. He also listed Rod Hale and Scott Doubet as references on his IDOT job

application.<sup>22</sup> His application lists his prior employment at the Illinois Secretary of State's office (four years) as "Managerial Asst II" and his job duties as:

Vehicle Coordinator for entire S.O.S. pool (approx. 250 cars) responsible for licensing, titles, etc. for all cars, trucks, trailers, etc.

(See █████ IDOT Appl. Attached hereto as Ex. 55). The Metropolitan Planning Manager position was described as follows:

The position is needed to assure that the Department's planning resources for metropolitan areas are used by area agencies to develop implementable plans and programs consistent with statewide goals.

(See IPR, Metropolitan Program Planning attached hereto as Ex. 56).

In November of 2004, █████ was promoted to a TM VII Exempt position titled Transit & Metro Planning Section Chief. The job duties were described as responsibility for transportation improvement programs in all of Illinois' 14 Metropolitan Planning Organizations and developing and maintaining information regarding the condition and performance of the statewide transit system. (See ePar, Transit & Metro Planning Section Chief attached hereto as Ex. 57). █████ subsequently held another Bureau Chief position, a Section Manager position, and an interim Bureau Chief position. (See █████ App. Attached hereto as Ex. 58). █████ left IDOT in 2015 for personal reasons. (*Id.*)

In January of 2016, he started a seasonal Lawn Care business. In September of 2018, he was hired by the Illinois Democratic County Chairs Association as the Deputy Political Director. He described his duties as:

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<sup>22</sup> Hale was reportedly a former Blagojevich campaign worker who was hired by Blagojevich to head up IDOT's traffic safety division. Doubet worked as IDOT's Bureau Chief of Personnel during a period of the Staff Assistant abuse (2004-2009), and was reported to have worked with Blagojevich's patronage chief, Joseph Cini. <https://www.chicagotribune.com/news/ct-xpm-2005-11-13-0511130332-story.html>; <https://www.sj-r.com/story/news/2009/04/25/idot-personnel-manager-fired-got/42943679007/>

Coordinated numerous weekly conference calls for Tier 1 State House and Senate multi-county races with candidates, campaign managers, county chairs and county headquarters. Participated on weekly planning calls with candidate Pritzker's staff (Nikki Budzinski) to determine county level campaign efforts. Worked with County Chairmen to effectively utilize "Blue Wave" funding in a cost benefit manner to elect Democrats up and down the ballot in most countries throughout the state. Attended political events and fund raisers on behalf of IDCCA. Assisted several local candidates running for county positions, including development of digital ads, promotion of Hustle program, assistance with VoteBuilder, literature creation, opposition research and other political advice and assistance, as needed.

(*Id.*) He held that position for two months. During the time that ██████ was working “with County Chairmen,” CDB Executive Director Underwood was the Macon County Democratic Chairman.

#### 4. CDB Executive Director James (Jim) Underwood

According to his CDB biography, Underwood started his State of Illinois employment at the Secretary of State’s office in 2001. Underwood, like ██████, is also listed on one of Governor Blagojevich’s Clout Lists. His sponsor is listed as State Representative Julie Curry *See* Clout List at Dkt. 4128-2. According to entries on the list, he was hired into the State in February of 2003. Although he does not appear to have a background in human resources, he was appointed as Personnel Manager in IDOC. Later, he became Chief Executive officer at Illinois Department of Corrections. In 2008 he joined CDB as a Deputy Director and then Executive Director from 2011 to 2015. In 2015 he moved to the State Treasurer’s office as Chief Procurement Officer until he returned to CDB as Executive Director in May of 2019.<sup>23</sup> From 2003 until April of 2019,

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<sup>23</sup> The State contends that Underwood is appointed by the CDB Board, not the Governor. They are correct that the CDB Board is charged with appointing the Executive Director. In June of 2020, newspaper reports questioned Governor Pritker’s hiring of several individuals that were included on a list provided by Former Speaker Michael Madigan. Jim Underwood was included on that list with the following designation: “Jim Underwood–interested in Director of CDB (resume sent) \*\*Rep. Scherer recommendation.” (attach list). In response to these questions, the Governor’s spokesperson responded: “Jim Underwood came highly recommended from various members of organized labor including the AFL-CIO. He also previously served in this role in prior administrations.” *See* <https://patch.com/illinois/across-il/gov-pritzker-hired-35-people-madigans-clout-list-report>.



Underwood was the Macon County Democratic Party Chairman. After Governor Quinn was elected in November of 2010, Underwood emailed Sheila Simon (Lt. Governor):

I sure wish we'd have gotten more Democratic votes in Macon County. We did work hard for what we got. Sheriff Schneider won and we kept control of the County Board with the status quo, but we lost the County Treasurer's race and of course Hare, Flider, and Dudley all went down. ... But, a win is a win and it's great to be on the winning side!! You and Gov Quinn worked harder than anyone and the message finally got through. It's going to be great having a Lt Gov office staffed again. **I'd like to meet with you some time to discuss what we can do to help and who to talk to about job candidates and board and commission appointments.**

(See 11/10/10 Email attached hereto at Ex. 60) (emphasis added). In 2011, after Governor Quinn's election, Underwood was first appointed to the Deputy Director position at CDB.

5. [REDACTED]

[REDACTED] is the son of CDB CFO Paula Sorenson. CFO Sorenson reported to Deputy Director of Operations, Kathryn Martin. At the time of his application, [REDACTED] did not meet the MRQ of knowledge of the Illinois Procurement Code. Prior to the change in CMS's grading for the Contract Special III position, he would not have been eligible to receive an "A" grade from CMS.

## **V. CMS COMPLIANCE REVIEW OF CDB SEQUENCES**

Once we were notified of some of the information described above, we recommended that the State reverse the Contract Specialist III (CDB 199) hires. It refused. Instead, we were told the sequences were under review. We now know CMS Compliance approved the sequences in November 2021 (although we were not notified until last week). The employees are now certified, meaning they have Personnel Code protection and cannot be fired without a showing of misconduct. CMS's Compliance review is discussed below.

### **A. CDB Alerts CMS Compliance to Hiring Errors**

CMS Compliance conducted a compliance review of the Contract Specialist III (CDB 199) positions. During her interview, Dye explained that Rhonda Ross in CMS Transactions would not process the Contract Specialist III transactions (CDB 199) because of missing paperwork. Ross told Dye no Open-Competitive list had been pulled, which was problematic. (Ex. 12, pp. 30-31). Ross told Dye the transactions needed to be reversed because they were not completed correctly. (Ex. 12, pp. 37-38). Dye said Ross was “dumbfounded” about the lack of an Open-Competitive list and suggested she go to CMS Compliance. (Ex. 12, pp. 43-44). Dye followed Ross’s advice and on July 1, 2021, she emailed Jakoby, CMS’s Chief Compliance Officer, regarding “Capital Development Board (CDB) Transaction Issues that Require your Review/Assistance.” (See July 2 Email Chain attached hereto as Ex. 61).

In her July 1 email, Dye informed Jakoby that CDB never requested an Open-Competitive list for the CS III positions and that CMS Transactions told her the transactions needed to be reversed. Based on information provided to her from TJ Edwards (CDB’s Chief of Staff), Dye told Jakoby that reversing the transactions would injure the employees and cripple CDB’s mission to implement the “Rebuild Illinois” initiative. (*Id.*; Ex 12, pp. 41-42).<sup>24</sup>

**B. CMS Compliance Alerts CMS Chief Administrative Officer and HEM of the Hiring Errors, but Not Special Master’s Office**

On July 2, 2021, Jakoby sent Dye’s email to Sarah Kerley, CMS Chief Administrative Officer and *Shakman* Litigation point person for the Governor’s Office, stating, “This is the email chain on the CDB issue we discussed yesterday.” (See Email attached hereto as Ex. 62). On July

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<sup>24</sup> Jakoby reported he first learned of the issues with the CS III positions at CDB through Dye’s July 1 email. Kerley reported learning of issues with the CS III positions from Melinda MacMillan in CMS Transactions in early July. MacMillan told Kerley she had referred someone to Jakoby for compliance assistance because no OC list was pulled for a transaction. Kerley asked MacMillan if there were any Veterans on the OC list. Kerley said they reviewed the OC list at that time (July 2021) and there were no Veterans on the OC list. However, there was no way to know who was on the OC list at the time of the underlying transactions

12, 2021, Jakoby forwarded Dye's July 1, 2021 email to both Kerley and Erin Bonales, OEIG HEM, along with several attachments relating to the transactions. (*See* July 12, 2021 email to Kerley and Bonales from Jakoby attached hereto as Ex. 63). The Special Master's Office was not copied on the email and was not notified of any hiring errors in CDB until late September 2021. Jakoby said he did not know why he did not copy the Special Master on the email.

When asked why the Special Master was not notified at that time, Kerley said that as of July 12 they were still trying to decide if there was a material hiring error. She stated they were not confident there was a hiring error until they reported it in the CMS Semi-Annual Report in the middle of September, two-and-a-half months later. Kerley said she conferred with Scott Lerner, Counsel for the Governor's Office, on whether to report the hiring error in the September 2021 CMS Semi-Annual Report prior to its issuance on September 15, 2021.

### **C. CMS Compliance Requests Additional Information and Conducts Compliance Review**

After receiving the July 1 email from Dye, Jakoby requested additional information and documents from Dye and Ross. He also kept Kerley apprised of some of those communications. On July 2, 2021, Ross (CMS Transactions) informed Jakoby: 1) no OC list was requested or pulled for the CS III positions; 2) there **would** have been an OC list to pull for the CS III positions at the time of the underlying sequences; 3) if an OC list would have been requested and pulled after applications were graded, it is unclear who would have been on the OC list; and 4) it is unknown if eligible Veterans would have been on the OC list. (Ex. 61). Jakoby requested additional information from Dye on the number of applicants, number of interviewees and on how they were reached. On July 12, 2021, Dye informed Jakoby she found 13 applications, it appeared six were interviewed, and she was not sure how the interviewees were reached. Dye again reported to

Jakoby that “they skipped the step of requesting an OC list.” (Ex. 61). Jakoby forwarded Dye’s responses to Kerley on the same day. (*Id.*).

Also on July 12, 2021, Jakoby reported to Kerley that “they were short by 1 for small pool” and attached a copy of the Bid Record for the CS III posting, which identified 15 applicants,<sup>25</sup> only eight of whom had grades for the positions (six had “A” grades, one had a “B” grade, and one had a “C” grade). (*See* July 12, 2021 email to Kerley from Jakoby attached hereto as Ex. 64). On July 13, 2021, Jakoby sent Dye an email informing her that he would be conducting a compliance review to account for the small pool request that did not happen. He requested all posting and interview files/documents. (*See* July 13, 2021 email to Dye from Jakoby attached hereto as Ex. 65). Jakoby received the paper files for the CS III hiring sequences from CDB in the summer of 2021 and conducted the compliance review. During his interview with this office, he described a compliance review as a review of every piece of paper in the hiring packet, checking for discrepancies. He reviews the position description and minimum requirements, and applications to make sure the candidates met the MRQs. He also reviews the interview notes and scoring materials to make sure everything matches up. He also checks the EDF to make sure it is accurate and looks for completed RDFs.

Jakoby noted compliance problems with the sequence. He discussed the problems with Dye. In an August 3, 2021 email to Dye, Jakoby asked several questions, including “why were only 3 candidates interviewed in December?” (*See* 8/3/21 Email attached hereto as Ex. 66). He also noted inconsistencies with the information reported on the Screening Justification Form, asked “Why was [REDACTED] hired before all interviews were conducted?” and questioned “Why were [REDACTED], [REDACTED], and [REDACTED] the only 3 candidates interviewed in Mar 2021?” (*Id.*) He also

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<sup>25</sup> Dye reported to Jakoby on July 12 that she only found 13 applications.

wanted to know “How was the list of candidates to interview in March 2021 created?” (*Id.*) He noted none of the RDFs from the February 2021 interviews were signed by the APO, and the February 2021 RDFs disclosed conflicts of interest that did not appear to have been vetted. Notably, Jakoby also questioned how anyone met the Box 19 minimum requirements for “extensive knowledge of the Illinois Procurement Code, Procedures Manual, Construction Contracts Manual, and the Emergency Small Purchase Contracts Manual.” Jakoby specifically noted the candidates’ lack of experience in the required areas. (*Id.*).

During his February 1, 2022 interview with this office, Jakoby said he checked the selected candidates’ qualifications and found them to meet the MRQs of the position. He acknowledged he sent the earlier email questioning the candidates’ qualifications and when asked specific questions about whether he concluded the selected candidates met particular Box 19 MRQs, he said he believed that he did. When asked if the candidates had the required construction related experience, he did not remember. He said he did not rely on the “A” grades, because even if a candidate has an “A” grade, he/she must still meet the MRQs. He knew there was another applicant who had an “A” grade and was not invited to interview, but said this did not heavily factor into his analysis of the sequence.

In response to Jakoby’s August 3, email, Dye responded the same day and reported:

As stated in prior emails to CMS (see first attachment), my predecessor [REDACTED] [REDACTED] ) was allowed to resign from this agency due to there being suspicions of things not being handled properly in our HR department. Upon my arrival it has been discovered that the issues/problems that were discovered are **enormous**. To name just a few....

- There are multiple interview files we cannot find at all. This interview file in question had to be completely rebuilt – the original could not be located at all.
- Personnel files weren’t touched since 2017.

\* \* \*

- Multiple employees that left CDB up to 5-6 years ago still in timekeeping earning benefit time.

(Ex. 66) (emphasis in original).

In her response, Dye explained that she was told that ██████ thought the agency had to post and interview for each vacancy separately (even though the posting was for four vacancies). She also said she had “no idea” why ██████ ██████ and ██████ were the only three candidates interviewed in March 2021. She had “no idea” how the list of candidates to interview in March 2021 was created because these actions took place before she started at CDB. She reiterated that “an OC list was never requested (that’s one of the big problems with this posting).” (*Id.*) With respect to the unsigned RDFs, Dye reported that ██████ did not sign them, and Dye was “not comfortable signing them.” She had “no idea” whether Box 19 requirements were used to determine eligibility. She reported that she could not find any handwritten interviewer notes from Carey Mayer, one of the interviewers for the CS III sequence. (*Id.*)

#### **D. Failure to Timely Produce CMS Compliance Review Materials to Special Master**

On February 1, 2022, the same day we were scheduled to interview Jakoby, Kerley forwarded to us a November 3, 2021 email from Jakoby to Dye (cc: Melinda MacMillan) regarding “Contract Specialist III – final decision.” (*See* 2/1/22 Email attached hereto as, Ex. 67).<sup>26</sup> Jakoby forwarded the email to Kerley on November 10, 2021, stating “As discussed.” (*Id.*). The State had not previously informed us that CMS Compliance had made a final decision regarding these

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<sup>26</sup> After receiving the email on February 1, 2022, we requested that the State conduct a thorough review for any other documents we requested that were not produced. We also requested that Jakoby and Kerley search again for responsive documents that have not been produced. They agreed to do so, and we await their receipt.

transactions or produced any emails about such a decision (even though they were responsive to our multiple requests). The first time we learned of CMS Compliance's final decision that was made in November 2021 was on February 1, 2022.

It also became clear during the Jakoby and Kerley interviews that other information and documents requested by our office had not been produced, including but not limited to CMS Compliance's communications with CMS Transactions, HEM and CMS Chief Administrative Officer about the Contract Specialist III sequences and CMS Compliance's review of the same. We have again requested those materials.

#### **E. CMS Compliance Finds Multiple Violations But Approves Transactions**

In the November 3, 2021 email to Dye (cc: MacMillan), Jakoby reported his "final decision on the Contract Specialist III positions as a result of the CMS Transactions and Personnel Compliance review." (*Id.*) During his February 2, 2022, interview, Jakoby explained that he conferred with Melinda MacMillan, Supervisor in CMS Transactions,<sup>27</sup> about his review of the CS III transactions. He emailed his compliance review assessment to MacMillan and requested her feedback. She provided feedback through email and the November 3 email was a compilation of their combined comments.<sup>28</sup> Kerley said she saw a draft of Jakoby's email, which she believes circulated around the time that the hiring error was reported to the Special Master. Despite the lengthy, on-going communications between this office and CMS regarding these errors, there was no effort to include our office in discussions about this final decision before it was issued.

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<sup>27</sup> Ross reports to MacMillan.

<sup>28</sup> We did not receive copies of those emails although they were responsive to our many requests for information. During his interview, Jakoby agreed to produce them. To date, our office has not received them.

In the November 3 email, Jakoby detailed numerous violations of the Personnel Code, Personnel Rules, AFSCME Master Contract, and/or the Comprehensive Employment Plan. (*Id.*). For example, he noted that the RDFs for all three interviewers for the second round of interviews identified conflicts of interest with [REDACTED], which were not signed or approved by an APO, and concluded:

If the forms had been reviewed at the time of the sequence Compliance would have 1. indicated the APO should complete the forms by signing and 2. recommended changing out panel member Mayer due to the statement “worked extremely closely with candidate [REDACTED].” However, ultimately, it is the agencies [sic] decision as to whether or not there is a conflict of interest that would necessitate replacing an interview panel member.

(*Id.*).

He concluded that CDB violated Paragraph 33 of the CEP for failing to request small pool approval. He noted that if CDB had requested such approval, CMS Compliance would have asked if an OC list had been pulled and if the answer was “no,” approval would not have been granted. He noted violations of the Personnel Code and Personnel Rules because no OC list was pulled to reach the candidates. He also concluded CDB is in potential violation of absolute Veterans preference. He noted the sequences violated Paragraph 80 of the CEP, requiring review of [REDACTED] employment into a Covered position from an Exempt position. He stated that his after-the-fact Exempt to Covered review of [REDACTED] did not result in any “findings.” When asked what this meant, Jakoby explained that it meant he found no compliance errors after reviewing [REDACTED] paperwork. When we asked him how to reconcile that with the compliance problems noted in his email, he



said he was not counting those violations for the Exempt to Covered review and that without those other violations ██████ Exempt to Covered review would have been approved.<sup>29</sup>

After describing all the hiring sequence errors, Jakoby's November 3 email concluded with an approval of the transactions because the candidates had already been hired and reversing the transactions could "result in further potential liability to the agency." (Ex. 67). During his interview, Jakoby explained he approved the transactions despite the compliance problems because one of the goals is to do no harm to the employee. He explained one employee was already certified, and the employee who was responsible for the errors (██████) was no longer with the State. Jakoby said MacMillan agreed with the outcome. He believed CMS Transactions had approved the transactions. However, during her January 13, 2022 interview, Rhonda Ross, Transactions Supervisor in CMS Transactions, stated that the CS III position sequences remained on hold and that she had not approved the transactions. (Ex. 20, pp. 38-40). She also stated that the individuals in those positions remain on the payroll discrepancy reports.<sup>30</sup> (Ex. 20, pp. 38-40). She also stated that CMS Transactions has not approved another sequence, CDB 000196, for a CS III position filled in November 2020 based on failure to pull an OC list and SJF discrepancies. (Ex. 20, pp. 43-45). She explained the transaction is "in the hands of CMS Compliance until we get

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<sup>29</sup> Jakoby said the agency did not inform him that ██████ had previously been fired for misconduct. Nor did the agency tell him that ██████ had been terminated from IDOT or that she had previously served as a Staff Assistant.

<sup>30</sup> Ross described another position that CMS Transactions reversed or put on hold at the Developmental Disabilities Council. She stated the effective date of the transaction was in 2018 or 2019 and CMS Transactions had still not approved the transaction as of 2022, all the while the individual remained in the position. She explained that CMS Transactions "repeatedly tried to gather information from the agency with no response." (Ex. 20, pp. 38-41). Ross stated that the agency should submit transaction paperwork to CMS Transactions within the first pay period if not before. (Ex. 20, p. 23-24). She also explained how agencies can onboard and pay an employee without any oversight or approval of the transaction by CMS under the paper-based system, similar to what happened with the CS III positions. (Ex. 20, p. 24-25).

further guidance from them.” (Ex. 20, p. 43) (Jakoby denied knowing of any other CDB hiring errors that were on hold and under review). Ross reported that if CMS Compliance approves this transaction, then CMS Compliance would have to sign off on it; she would not approve it because of all the problems. (Ex. 20, p. 43-44).<sup>31</sup>

Jakoby said no one from the Governor’s Office influenced his decision to approve the CS III transactions. He never talked to [REDACTED] about the hiring errors. The only person he communicated with at CDB was Dye. He said he did not recall if Dye raised concerns about other CDB sequences with him.

#### **F. No CMS Compliance Follow-Up**

CMS Compliance did not follow-up with CDB to investigate other hiring problems reported by Dye. As noted above, Dye reported enormous problems at CDB, and identified other hiring problems. (Ex. 66). CMS Compliance has not conducted an investigation into any other problematic sequences.

Jakoby reported that CMS Compliance has final say over CMS Transactions as to whether sequences should be approved. He described CMS Transactions as a “backstop” in the sense that it reviews transactions and if it comes across a compliance issue, such as a small pool without evidence of approval, CMS Transactions would refer the sequence to CMS Compliance. From there, CMS Compliance reviews the sequence to determine if it would have given the approval if it had been sought by the agency. If CMS Compliance determines it would have approved the request if the request had been made by the agency, then CMS Compliance emails the approval to

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<sup>31</sup> She also identified CDB 000167, another Contract Specialist III sequence, as another transaction on hold. (Ex. 20, p. 44).

the agency. There is no requirement that CMS Compliance (or anyone else) follow-up with the agency about its non-compliance.<sup>32</sup>

## **VI. ANALYSIS OF CDB INVESTIGATION**

### **A. The Investigation Revealed Multiple Material CEP and Personnel Code Violations.**

The State claims the CDB sequences were merely paperwork errors. We disagree. CDB violated multiple provisions of the CEP and Personnel Code in connection with the Contract Specialist III sequences in 2020 and 2021. The violations were not merely ministerial paperwork problems. Rather, the violations substantively impacted the competitive nature of the selection process and ultimately favored the selected candidates. The State's characterization of these violations suggests a lack of appreciation for the nature of the violations, the systemic weaknesses they reveal, and ignores the reasons why the State revised its employment practices and processes in the first place.

#### 1. Failure to Request Open Competitive List

The Personnel Code requires agencies to request and pull an Open Competitive list from CMS in order to reach certain candidates for selection. (Ex. 67). CDB bypassed this requirement in violation of the Personnel Code.<sup>33</sup> This was not a mere paperwork problem. It materially altered the competitive selection process and creation of the interview pool. Rather than request and pull an Open Competitive list from CMS, which would have included *all* candidates who had a qualifying grade for the CS III positions and required application of the absolute Veterans preference, CDB hand selected which "A" grade applicants to interview and when. Proceeding in

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<sup>32</sup> CMS Compliance tracks errors like this that may be used for determining training needs and the information is reported in the CMS Compliance reports.

<sup>33</sup> CDB failed to pull the Open Competitive list in violation of the Personnel Code for the CDB 196 sequence as well. (Ex. 20, pp. 43-44).

this manner violated the Personnel Code, reduced the competition for the selected candidates and excluded eligible candidates.

2. Failure to Consider All Eligible Candidates.

The CEP requires applicants to be reviewed based on pre-established MRQs and screening criteria. Our office worked extensively with CMS to establish processes to implement application of the MRQs and screening tools to ensure transparency and integrity in the selection process. “To facilitate the integrity of the State’s hiring decisions, every agency’s selection of whom to interview must be merit-based and well-documented.” (*See* CMS Memorandum AMENDED July 13, 2018 re: Guidance Regarding Screening Applicants for Interview at Dkt 7654-3). “[A]gencies should identify the applicants who are qualified for the position by application of the requirements of the position as outlined in Box 19 of the position description.” (*Id.*). Applicants that meet the MRQs are qualified “and continue to be considered.” (*Id.*). “Only when interviewing all qualified applicants is not practicable may an agency use a [pre-approved] merit-based screening tool to reduce the interview pool to a manageable number.” (*Id.*). CDB violated these requirements.

CDB did not apply the MRQs to determine the applicant pool. It instead relied on CMS “A” grades and then proceeded to select some but not all applicants who had an “A” grade for interview. As detailed above, one other applicant [REDACTED] had an “A” grade from CMS but was excluded from consideration. [REDACTED] provided evidence of her A grade to CDB and followed-up twice in an attempt to secure an interview. Nonetheless, CDB failed to include her in the interview pool. In filling the earlier Contract Specialist III position (CDB 196), CDB also did not pull an Open-Competitive list in violation of the Personnel Code. It also failed to ensure that all applicants received CMS grades, resulting in those applicants being excluded from consideration. This lack of diligence to ensure all applicants are considered is contrary to the State’s contention that it was

desperate to find candidates to fill these positions. CDB's failure to ensure all applicants were treated the same and considered in accordance with the CEP's requirements favored the selected candidates.

3. Conflicted Interviewers Not Properly Vetted and Excluded.

The CEP requires all interviewers to disclose conflicts of interests prior to interviews and APO's to vet any disclosed conflicts before interviews take place. The purpose of these requirements is to preserve the integrity of the competitive selection process by removing conflicted interviewers from the process. We worked with the State to develop a process for implementation of this CEP provision, which requires interviewers to make disclosures on a signed RDF and for the APO to review and vet the disclosed conflicts and sign the RDF after doing so. As detailed above, the CEP provisions were violated and the RDF process was not followed in the CS III sequence. Conflicts were disclosed but not vetted and approved.<sup>34</sup> The result was not a mere paperwork problem—it resulted in potentially conflicted interviewer(s) participating in the sequence and the known candidates being selected candidates.<sup>35</sup>

4. Failure to Obtain Small Pool Approval

Paragraph 33 of the CEP requires at least three candidates to be interviewed per vacancy in every hiring sequence. If there are fewer than two more qualified applicants than vacant

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<sup>34</sup> In another sequence we reviewed as part of this investigation (CDB 000191/AAI position), an interviewer disclosed a potential conflict of interest with the selected candidate. The APO determined a conflict existed and that the interviewer should not participate in the hiring sequence. Yet, the conflicted interviewer remained on the interview panel for 5 of the 6 interviews and only recused herself from the selected candidate's interview.

<sup>35</sup> Jakoby noted that he would have recommended changing out the conflicted interviewer if the RDFs had been reviewed by CMS Compliance before the interviews, but ultimately it is the agency's decision whether there is a disqualifying conflict of interest. But the CEP makes the CMS Chief Compliance Officer responsible for quality control and compliance oversight of the CEP, including "review of Agency Personnel Officers' identification of potential conflicts of interest." (Amended CEP, 80(c)). Jakoby's compliance review did not address the fact that another candidate was the CFO's son.

positions, the agency must seek CMS Compliance approval if it plans to proceed with a small pool of interviewees. Here, the CS III posting (CDB 199) was for four vacancies. Yet, CDB proceeded to interview only three candidates without seeking small pool approval in violation of the CEP. CDB then made an offer to [REDACTED]. At this point, three vacancies remained and CDB proceeded to schedule another round of interviews with only three candidates without seeking small pool approval.<sup>36</sup> This was not merely a paperwork problem. Proceeding in this manner significantly reduced competition for all of the selected candidates and basically guaranteed [REDACTED] [REDACTED] and [REDACTED] position.

#### 5. Some Selected Candidates Did Not Meet MRQs

The CEP and CMS Guidance requires the agency to apply MRQs to all applicants. Applicants that meet the MRQs are qualified and continue to be considered. Applicants who do not meet the MRQs are not qualified and should be excluded from the interview pool. (Dkt. 7654-3). As set forth above, CDB did not apply the MRQs to the applicants to the CS III sequence and some of the selected candidates failed to meet the MRQs. Jakoby acknowledged the selected candidates' lack of qualifications in his August 3, 2021 email to Dye, but then reversed his position in his November 3, 2021 final decision approving the transactions. When asked whether he in fact concluded the selected candidates met each of the MRQs, he did not remember. Our review concludes that CDB failed to apply the actual MRQs to the CS III candidates, and instead relied on the CMS A grade. When grading, CMS failed to apply the actual MRQs.<sup>37</sup>

During his interview with our office, Jakoby confirmed that having a CMS "A" grade does not mean an applicant meets the MRQs. CDB had requested that CMS to "remove the lid" on class

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<sup>36</sup> CDB also failed to seek small pool approval for the CS II sequence reported above.

<sup>37</sup> This is an area of confusion at the agencies, which the Special Master has recommended needs to be addressed through implementation of written guidance and training.

specification requirements, before the CDB199 sequence began. This impacted how CMS credited experience when applying the class specification for grading purposes only. It did not impact the actual MRQs. In the end, the MRQs were not properly applied and this favored the selected candidates.

6. CMS Transactions' Post-Hire Reviews Do Not Allow for Effective Internal Quality Control and Compliance Review of Hiring Sequences

The CEP requires CMS to review each hiring sequence, including execution of the hiring plans during the hiring sequence. (Amended CEP, Par. 39, 79). The CEP also tasks CMS with internal quality control and compliance oversight of hiring sequences. (*Id.* at Par. 80). The purpose of these reviews and functions is to provide a mechanism for effective real-time compliance monitoring which allows for timely intervention when violations are discovered.

In connection with the CS III sequence, there was a violation of both the letter and the spirit of these CEP provisions. CMS failed to review execution of the hiring plan during the hiring sequence. And it failed to timely review the hiring sequence and conduct internal quality control and oversight over CDB sequences.<sup>38</sup> The candidates were hired and put on the State's payroll in violation of the CEP and the Personnel Code, with no effective review or oversight by CMS. CDB failed to provide timely hiring documentation to CMS Transactions, thus triggering the payroll discrepancy reports. The candidates remained on the payroll discrepancy reports for months, without any notice provided to CMS Compliance. CDB's delay in providing the hiring paperwork resulted in the CMS Transactions post-hire review occurring months after the candidates were hired. This untimely review fails to satisfy CMS's review and oversight functions under the CEP.<sup>39</sup>

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<sup>38</sup> In the case of Non-Code, union positions that proceed through the paper-based process, CMS does not review them at all.

<sup>39</sup> This is a systemic deficiency that is not just limited to the CS III sequences. During our investigation, we discovered many other sequences (including promotional sequences) where CMS Transactions did not

7. Lack of Notice to Special Master Office Prevented Opportunity to Weigh In on Material Hiring Errors Before Employees Became Certified

Paragraph 83 requires the CMS Chief Compliance Officer to notify the Special Master of Material Hiring Errors within 48 hours of their discovery, and to discuss Material Hiring Errors with the Special Master's office. Moreover, Paragraph 23 of CEP provides that if a concern is raised about an ongoing hiring process, the CMS Chief Compliance Officer shall notify the Special Master of the concern and any meeting to discuss the appropriate way to proceed. These provisions were violated with respect to the Material Hiring Error at CDB.

The evidence reveals that the CMS Chief Compliance Officer was notified in July 2021 that no Open Competitive list had been pulled and that CMS Transactions said the transactions needed to be reversed. The CMS Chief Compliance Officer notified Kerley (Chief Administrative Officer at CMS and Governor's Office point person for Shakman litigation) but failed to notify the Special Master's Office. Kerley conferred with the Governor's Office on whether to report the Material Hiring Error in the September 2021 CMS Semi-Annual Compliance Report before it was finalized on September 15, 2021. Yet the first time our office was notified of the Material Hiring Error was September 24, 2021, past the 48 hour deadline for providing notice.

Moreover, our office was excluded from discussions on the appropriate way to proceed. Despite our repeated requests for information and documents and our recommendation that the transactions be reversed, no one informed us of the ongoing communication between the CMS Chief Compliance Officer and CMS Transactions, or that a final decision was rendered by CMS Compliance on November 1, 2021. We were notified of the final decision three months later, on February 1, 2022.

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receive the information and paperwork it needed to conduct a post-hire review until months (or even years) after the candidate was hired and put on the state's payroll.



8. Lack of Effective Enforcement of CEP

The CEP gives CMS the authority to enforce the provisions of the CEP and to take remedial actions when violations are discovered, including reversing improper transactions. (Amended CEP, Par. 77-79). Despite finding a number of material violations, CMS Compliance nonetheless approved the transactions. One reason CMS Compliance provided for approving the transactions was that the employees had already been hired and had become certified state employees. However, the employees were not certified when CMS Compliance was alerted to the improper transactions in July 2021, and had CMS Compliance taken more prompt action, the transactions could have been reversed during the candidates' probationary periods.

Moreover, CMS Compliance was informed of numerous other employment problems at CDB on August 3, 2021. (Ex. 66). Yet, CMS Compliance did not investigate further to determine and understand the scope of the problems at CDB.

**B. Each Violation Favored the Selected Candidates, Some of Whom Had Political Connections or Other Relationships**

1. Known Candidates Treated Differently

As detailed above, CDB failed to follow the required processes for filling non-exempt positions for the CS III sequence. Those violations ultimately resulted, in every turn, in favoring the selected candidates. CDB knew it had to pull an Open Competitive list to reach the selected candidates, but it failed to do so. CDB followed up with CMS Examining about inputting grades for the known candidates, while ignoring missing grades for the "unknown" candidates. CDB asked CMS to "remove the lid" for grading for the CDB 199 sequence, which resulted in lower grading standards being applied.

2. State's Explanations Do Not Make Sense

The CDB and the State seek to justify these violations in several ways.

First, the State argues that [REDACTED] was merely a poor Personnel Administrator, the mistakes were not intentional and the failure to pull the Open Competitive list was just a procedural error. But during her interview, [REDACTED] reported that *she knew she needed to pull the Open Competitive list* to move forward with these hires. If that is true, the failure to request the lists in CDB 196 and 199 (and others) makes no sense. That is particularly true when CDB *did* pull the Open Competitive list for the CDB 202 sequence where [REDACTED] was hired—and he just happened to be the only person on the list.

Second, the State asserts that anomalies described in the multiple CS III postings were the result of CDB's understanding that each **posting** could only result in one hire. And only later, when it wanted to hire four candidates through CDB 199, did it learn that such action was possible. If that explanation were valid, however, then CDB's decision to repeatedly post for multiple positions makes no sense. First, it posted CDB 190 for two positions but hired no one. Next it posted CDB 196 for four positions. For this sequence, CDB elected to hire just one applicant. Then, before the interviews for CDB 196 even began, CDB "re-posted" CDB 199 for four positions, after the MRQs were reduced. Only then, after the four candidates were eligible to hire ([REDACTED], [REDACTED], [REDACTED] and [REDACTED]), did it seek to hire multiple candidates through a single posting. If CDB actually understood it could only hire one candidate per posting, then it would not have continued to post for multiple slots.

Third, CDB has asserted it was desperate to fill the CS positions because all of CDB's work on "Rebuild Illinois" **starts in the Contracts unit** and it needed to quickly fill these crucial positions. But CDB first posted for these positions in December of 2019, and did not seem to be urgently working towards filling them. CDB failed to send all applicants for grading and failed to pull OC lists to "reach" all eligible candidates. And, these crucial positions have responsibility

over vast sums of State funds. Given the importance of these roles, it seems that CDB could have taken action to locate candidates that had not previously been fired from the state and that met the MRQs.

Fourth, the State argues that because no one *admitted* to having favored these particular candidates, we cannot conclude that patronage influenced this sequence. But the connections between █████ and the IDOT Staff Assistants; █████ and the Blagojevich Clout List, as well as Underwood; █████ and Blagojevich (through Flood and others) as well as Underwood; and █████ and his mother, the CFO at CDB, are too coincidental to be ignored.

And while the relationships described above or the numerous CEP and Personnel Code violations, standing alone, are not conclusive evidence that patronage and nepotism played a role in the selection process, the combination of these factors, *at a minimum*, would allow for a reasonable inference to be drawn that patronage and nepotism were factors in the selection process.

At this stage, we need not make a conclusive finding one way or the other.<sup>40</sup> In order to move forward in this investigation, we believe a more formal process, pursuant to the Federal Rules of Civil Procedure is warranted. In light of the posture of this litigation, we did not proceed with subpoenas or under oath testimony and will instead await further direction from the Court.

We need not reach a conclusion on the patronage question to find that there are gaps in the CEP implementation and CMS oversight and those gaps leave too much room for political manipulation.

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<sup>40</sup> We are certain that the State will complain that we did not interview more senior CDB officials, including Underwood. We did not believe an interview with Underwood would be productive absent a subpoena for all relevant information and under oath testimony.

**C. CDB Hiring Errors Reveal Significant Gaps in Implementation and CMS Oversight of CEP**

The CDB Material Hiring Error demonstrates significant gaps in CEP implementation and CMS's compliance oversight of the paper-based sequences. The CDB Personnel Administrators (██████ and Dye) were not properly trained on the CEP requirements for filling non-exempt positions. Both of them told the Special Master they were unfamiliar with the selection process. As a result, hiring sequences in 2020 and 2021 (after the CEP had been fully implemented according to the State) failed to comply with the CEP. This was a systemic breakdown at CDB that went unchecked by CMS.

CMS's failure to conduct checkpoint #2 (or any meaningful oversight of hiring sequences as they proceed through the paper-based process) allowed the Material Hiring Errors to occur without detection until after the candidates were hired. And the failure to require agencies to submit hiring paperwork in a timely manner to CMS Transactions delayed any effective CMS review of the hiring sequence. The paper-based process simply has too many gaps to provide a durable remedy.

**VII. CONCLUSION**

For the reasons stated above, the State's Motion to Vacate the May 5, 1972 Consent Decree should be denied.

Dated: February 7, 2022

Respectfully submitted,

/s/ Noelle Brennan

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