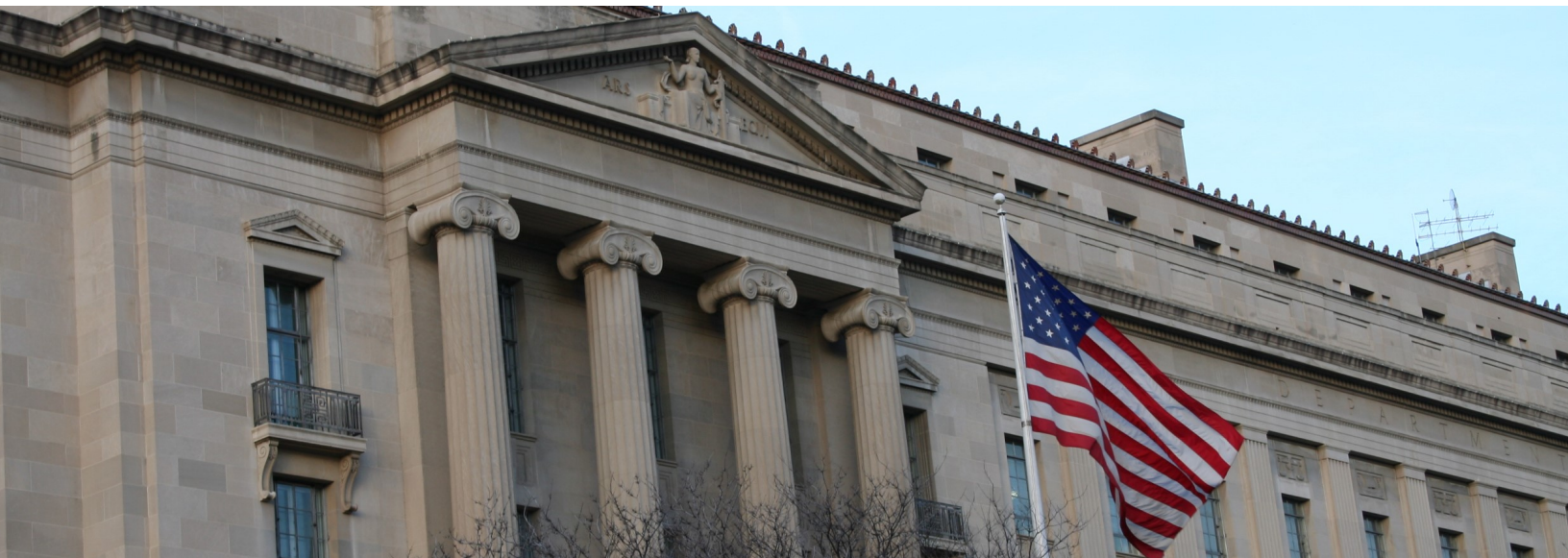




**Office of the Inspector General**  
U.S. Department of Justice

**OVERSIGHT ★ INTEGRITY ★ GUIDANCE**



**A Review of Allegations of  
Improper Hiring Practices in the  
United States Marshals Service and  
Related Matters**



# Executive Summary

## *A Review of Allegations of Improper Hiring Practices in the United States Marshals Service and Related Matters*

This review examined several allegations relating to inappropriate hiring practices at the U.S. Marshals Service (USMS) involving senior level officials, including former USMS Director Stacia Hylton. The allegations were described in letters Senator Charles E. Grassley, Chairman of the Senate Committee on the Judiciary (the Committee), sent to the Department of Justice (DOJ or Department) about information the Committee had received from whistleblowers. Included among the allegations were (a) that Hylton recommended an individual named Gregory Nevin for a contractor position within the USMS's Asset Forfeiture Division (AFD), and that in response then-Deputy Assistant Director Kimberly Beal influenced subordinates to waive contract qualification requirements in order to hire Nevin.<sup>1</sup> Beal allegedly took this action in order to receive favorable treatment from Hylton in Beal's effort to become AFD's Assistant Director; and (b) that two USMS officials – then-Assistant Director of the Tactical Operations Division William Snelson and then-Chief of the Office of Protective Operations in the Judicial Security Division David Sligh – each hired the other's spouse into his division as part of a *quid pro quo* arrangement.

The Office of the Inspector General (OIG) investigated (a) the facts and circumstances surrounding the hiring of Nevin and whether it was part of a *quid pro quo* arrangement between Hylton and Beal; (b) the alleged *quid pro quo* arrangement between Snelson and Sligh by which each hired the other's spouse into his division; (c) two allegations regarding the management of a USMS program overseen by Snelson's spouse and her reassignment to another division after she fell under her husband's chain of command following his promotion to Associate Director for Operations; and (d) the facts and circumstances surrounding the Department's submission of an inaccurate response letter to Senator Grassley dated March 26, 2015. This report describes the results of these investigations.

### **Hiring of Gregory Nevin for a contractor position with USMS**

We concluded that Hylton violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. § 2635.702(a), when she took actions that amounted to a recommendation of Nevin for a contractor position with Forfeiture Support Associates (FSA), a company that provides personnel to Department components that have asset forfeiture programs, such as USMS. We found the recommendation particularly problematic because Hylton had never worked with Nevin and had been in contact with him only a few times since they attended the same college decades earlier. We also concluded that Beal took actions in response to Hylton's recommendation to manipulate the hiring process to benefit Nevin, in violation of Section 2635.101(b)(8) of the Standards of Ethical Conduct, which provides that "employees shall act impartially and not give preferential treatment to any private organization or individual."

We did not, however, substantiate the allegation that Beal's promotion to AFD Assistant Director was in exchange for her efforts on behalf of Nevin. We did not find evidence in the selection process to indicate that Beal was the favored or preferred candidate because of her efforts on behalf of Nevin, nor did we find evidence that Hylton attempted to influence the deliberations of the Executive Review Board or the structured interview panel for the position. We did find that Beal violated Section 705(b) of the Standards of Ethical Conduct by having at least one of her subordinates use official time to help draft Beal's Executive Core Qualifications for her application for the Assistant Director position. Section 705(b) prohibits an employee from encouraging or requesting a subordinate to use official time "to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation."

Hylton and Beal both retired from federal employment during the pendency of our review. We are referring our findings about their conduct to the Department and the USMS so that the information can be placed in their administrative files.

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<sup>1</sup> Gregory Nevin is a pseudonym. Pseudonyms are used in this report to protect the privacy of certain individuals.



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## **Quid pro quo hiring arrangement between William Snelson and David Sligh**

We did not substantiate the allegation of a *quid pro quo* hiring arrangement between William Snelson and David Sligh by which each hired the other's spouse into his division. However, we found that Snelson committed prohibited personnel actions and violated the Standards of Ethical Conduct when he took a series of steps to improve the chances that Sligh's spouse, Brooke Palmer, was hired as a Program Support Specialist at the USMS.<sup>2</sup> The steps taken by Snelson included (1) instructing the Human Resources Division to request from the Office of Personnel Management (OPM) a selective placement factor that was consistent with Palmer's experience, (2) rewriting the position description and editing the vacancy announcement to include required knowledge factors and experience consistent with Palmer's resume, and (3) submitting a "name request" for Palmer.

We found that Snelson's conduct violated 5 U.S.C. § 2302(b)(6), which prohibits a government official from granting an unauthorized preference or advantage to an applicant – including defining the scope or manner of competition or the requirements for any position – "for the purpose of improving or injuring the prospects of any particular person for employment." We also found that Snelson's actions violated Section 702 of the Standards of Ethical Conduct, and that he displayed very poor judgment in failing to follow the procedures described in Section 502. Section 702 prohibits an employee from using his public office for the private gain of friends, and Section 502 provides that an employee should refrain from participating in a particular matter when the circumstances would cause a reasonable person to question the employee's impartiality, unless the employee obtains authorization from the agency designee. We did not find evidence that Sligh was aware of Snelson's actions on behalf of Palmer, nor did we find evidence that Sligh was involved in his spouse's hire or that he advocated for her employment or candidacy.

Snelson retired from the USMS on December 31, 2017. We are referring our findings about Snelson's conduct to the USMS so that the information can be placed in his administrative file.

<sup>2</sup> Brooke Palmer is a pseudonym.

## **Related matters involving Snelson's spouse**

We examined the allegation that the USMS may have violated "basic internal controls standards" by allowing Snelson's spouse, Julie Benton, to manage the budget of a program that was operated by multiple USMS divisions, including one run by Snelson.<sup>3</sup> While we did not conduct a full audit to assess the system of internal controls for funding the program, the evidence we reviewed indicated that the USMS had control activities in place, such as the establishment of an organizational structure and segregation of duties, to mitigate the risk of improper expenditure of program funds. However, we found that the circumstances created the appearance of a conflict of interest, an issue that USMS officials did not consider at the time.

We also examined the allegation that after Snelson was promoted to USMS Associate Director for Operations in 2014, Benton was "hired" within AFD despite having no asset forfeiture experience. We found that Benton's "hire" was actually a reassignment, and that its purpose was to remove Benton from being within her husband's chain of command, a situation created by his promotion. While it would have been more prudent to reassign Benton to a position in which she had experience, we found that the reassignment reflected a good faith effort to manage the situation created by Snelson's promotion while attempting to reasonably accommodate Benton's preferences. We did not find evidence that the reassignment was handled improperly or that Benton received inappropriate preferential treatment.

## **The Department's inaccurate letter to Senator Grassley**

The Department issued a letter to Senator Grassley on March 26, 2015, that contained information that was plainly inconsistent with representations made in an email communication written by one of the individuals whose conduct was the subject of Senator Grassley's inquiry. We concluded that this occurred because the USMS relied on an inadequate and flawed process to gather the information used to draft the response to Senator Grassley, and because the individuals primarily responsible for gathering, as well as providing, the information failed to exercise reasonable care in investigating the allegations and crafting the USMS's draft response. We also concluded that the information

<sup>3</sup> Julie Benton is a pseudonym.



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contained in the USMS's draft response about the relationship between Hylton and Nevin, and about Hylton's communications with Beal regarding Nevin's application, should have caused the Department's Office of Legislative Affairs (OLA) to seek assurances from USMS about the accuracy of the information and inquire about the due diligence performed in arriving at the statements made in the draft response the USMS submitted to OLA.

We found Hylton's and Beal's conduct relating to the USMS's draft response especially troubling. For reasons described in the full report, we concluded that Hylton, as head of the agency and the focus of the *quid pro quo* allegation, bears primary responsibility for the inaccurate letter being provided to Senator Grassley. We also found that Beal's actions that contributed to the letter's inaccuracy – including her failure to inform those working on the letter that she viewed Hylton's actions as a recommendation of Nevin and that she manipulated the process to ensure Nevin's hire – raised significant performance issues and constituted misconduct. Hylton and Beal both retired from federal employment during the pendency of our review. We are referring our findings about their conduct to the Department and the USMS so that the information can be placed in their administrative files.

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## CHAPTER ONE INTRODUCTION

On March 18 and 19, 2015, Senator Charles E. Grassley, Chairman of the Senate Committee on the Judiciary (the Committee), sent letters to the Department of Justice (DOJ or Department) concerning information the Committee had received from whistleblowers about alleged misuse of resources and employee misconduct at the U.S. Marshals Service (USMS). The March 18 letter was sent to then-USMS Director Stacia Hylton and sought information about the use of Assets Forfeiture Fund resources at certain USMS facilities and in support of joint law enforcement operations with State or local law enforcement officers.<sup>4</sup> The March 19 letter was sent to then-Acting Deputy Attorney General Sally Yates and described allegations of inappropriate hiring practices within the USMS. According to the March 19 letter, the Committee obtained information suggesting that Hylton recommended an individual named Gregory Nevin for a contractor position within the Asset Forfeiture Division (AFD), and that in response to this recommendation, then-Deputy Assistant Director Kimberly Beal influenced subordinates to waive contract qualification requirements in order to hire Nevin. Beal allegedly took this action in order to receive favorable treatment from Hylton in Beal's effort to become AFD's Assistant Director.

The Department replied to Grassley's March 19 letter by a letter dated March 26, 2015, and signed by Office of Legislative Affairs Assistant Attorney General Peter Kadzik. The letter stated, among other things, that although Nevin did not possess the requisite qualifications for the position to which he applied, he was qualified for a similar position and was "unanimously recommended" for that position by a four-member interview panel. The letter also stated that Nevin's hire was not "unduly influenced" by Hylton, and that Hylton neither recommended Nevin for a position nor instructed Beal to take any actions on Nevin's behalf. In addition, the letter stated that Beal's selection as Assistant Director for AFD in August 2014 was unrelated to Nevin's hire, which occurred about 3 years earlier.

Grassley responded to Kadzik by letter dated April 7, 2015, and described information in the Committee's possession that cast doubt on the accuracy of the assertions made in the March 26 letter regarding the circumstances of Nevin's hire and Beal's promotion. By letter dated April 17, 2015, Kadzik acknowledged to Grassley that the Department may have provided the Committee with inaccurate information. The letter enclosed an email chain showing that Hylton forwarded Nevin's resume to Beal, and that Beal in turn forwarded it to her Assistant Director with the comment, "Director called and has forwarded the resume of a Customs agent that she highly recommends for the [contractor position] in Boston." According to the letter, the USMS identified the email during its ongoing review of the issues Grassley had raised.

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<sup>4</sup> The Assets Forfeiture Fund provides funding to the USMS for managing and disposing seized assets.

On April 23, 2015, Grassley sent a letter to Yates that described additional information about Nevin's hiring and Beal's promotion, as well as several other allegations relating to improper hiring practices and the waste and misuse of the Assets Forfeiture Fund, that the Committee had obtained from USMS whistleblowers. The allegations relating to improper hiring included a *quid pro quo* arrangement between two USMS officials – then-Associate Director for Operations William Snelson and then-Chief Inspector for the Judicial Security Division David Sligh – by which each hired the other's spouse into his division.<sup>5</sup>

By letter dated May 7, 2015, Kadzik informed Grassley that the Department had referred to the Office of the Inspector General (OIG) the allegations about the use of Assets Forfeiture Fund resources and USMS hiring practices. The letter also stated that the Department would continue to collect and review information to assist it in responding to the Committee's inquiries.

The OIG conducted two investigations in response to the Department's referral. The first focused on whether the use of Assets Forfeiture Fund resources for improvements to AFD's headquarters in Arlington, Virginia and for the development of an AFD academy in Houston, Texas violated any law or policy, or otherwise constituted misconduct. This investigation also addressed whether the USMS paid for expenses not authorized under the Joint Law Enforcement Operations Fund program and whether the USMS failed to properly track the use of these funds. The investigation was completed in May 2016. The investigation did not substantiate the allegations of misuse of funds, but did recommend that certain applicable guidelines and policies be updated and clarified.<sup>6</sup>

The OIG separately conducted a multi-part investigation of several of the allegations relating to improper hiring practices, including the facts and circumstances surrounding the hiring of Nevin and whether it was part of a *quid pro quo* arrangement between Hylton and Beal. We also investigated the alleged *quid pro quo* arrangement between then-Assistant Director for the Tactical Operations Division William Snelson and then-Chief Inspector for the Judicial Security Division David Sligh by which each hired the other's spouse into his division. In addition, we examined the facts and circumstances surrounding the drafting of the Department's inaccurate March 26, 2015, letter to Grassley. This report describes the results of these investigations.

To investigate these matters, the OIG conducted approximately 50 interviews of current and former USMS employees, including of Hylton and Beal, both of whom retired during our review but agreed to appear voluntarily for interviews.<sup>7</sup> We also interviewed two employees of the company that hired Nevin – Forfeiture Support Associates – one of whom was a member of the panel that interviewed Nevin and

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<sup>5</sup> During the time period relevant to the *quid pro quo* allegation, Snelson was the Assistant Director of the Tactical Operations Division.

<sup>6</sup> The OIG sent a letter to Senator Grassley on June 7, 2016, summarizing the results of the investigation.

<sup>7</sup> Hylton retired on July 25, 2015, and Beal on October 31, 2015.



other candidates; Forfeiture Support Associates' Regional Director for the National Capital Area declined our request for a voluntary interview. We examined thousands of USMS records, including agency hiring policies, job position descriptions and postings, and interview notes. We also searched and reviewed tens of thousands of email communications from the accounts of individuals personally involved in the events described in this report. In addition, we obtained emails and other relevant documents from Forfeiture Support Associates.

This report is organized into five chapters, including this introductory chapter. Chapter Two contains the results of the investigation into Nevin's hiring for a contractor position with AFD and Beal's promotion from AFD's Deputy Assistant Director to Assistant Director. Chapter Three contains the results of our investigation into whether Snelson and Sligh had an arrangement whereby each hired the other's spouse into his division. We also examine in this chapter related allegations regarding the management of a USMS program overseen by Snelson's spouse and her reassignment to another division after she fell under her husband's chain of command following his promotion. Chapter Four contains the results of our investigation of the events that resulted in the Department sending a factually inaccurate letter to Congress. In Chapter Five, we provide a summary of our conclusions and recommendations.<sup>8</sup>

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<sup>8</sup> This report uses pseudonyms to protect the privacy of certain individuals. In addition, a footnote in the report is redacted for privacy reasons.

## **CHAPTER TWO**

### **ALLEGATIONS INVOLVING FORMER USMS DIRECTOR STACIA HYLTON AND ASSISTANT DIRECTOR KIMBERLY BEAL**

#### **I. Background**

On March 19, 2015, Senator Grassley sent a letter to then-Acting Deputy Attorney General Yates stating that the Judiciary Committee had received allegations from whistleblowers that USMS Director Stacia Hylton personally recommended Gregory Nevin for a position with a federal contractor and that the then-Deputy Assistant Director (DAD) for the USMS's Asset Forfeiture Division (AFD), Kimberly Beal, "influenced subordinates to waive contract qualification requirements" so that the contractor could hire Nevin. According to the letter, Beal violated contracting standards in order to receive favorable treatment from Hylton because Beal was seeking to obtain a promotion to Assistant Director (AD) for AFD. The letter characterized Hylton's and Beal's actions as a "*quid pro quo* exchange of favors."

In this chapter, we describe the results of the OIG's investigation of the allegations raised by Senator Grassley in his March 19, 2015, letter, including our analysis of whether Hylton or Beal violated federal ethics regulations that prohibit the use of public office for private gain, and that require employees to act impartially and not give preferential treatment to any individual.

#### **II. Applicable Regulations**

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. § 2635, is a comprehensive set of regulations that sets forth the principles of ethical conduct to which all executive branch employees must adhere. In addition to basic obligations of public service, the regulations address such ethical issues as gifts from outside sources, conflicting financial interests, and impartiality in performing official duties. Two provisions of the Standards of Ethical Conduct are particularly relevant to the conduct we reviewed in this matter. The first, found in Section 101 of the regulations, is the basic obligation that employees act impartially and not give preferential treatment to any individual. 5 C.F.R. § 2635.101(b)(8).

The second is Section 702, which states, in part: "An employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." 5 C.F.R. § 2635.702. In addition to the general prohibition set forth above, Section 702 provides several "specific prohibitions" that "are not intended to be exclusive or to limit the application of this section," including Section 702(a) which states:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including

a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

It is not necessary that the government official be successful in his efforts in order to violate Section 702; if the requisite intent to benefit a friend, relative, or person with whom the employee is affiliated in a nongovernmental capacity is present, an unsuccessful attempt to obtain the benefit by using his public office will constitute a violation of Section 702.

### **III. Factual Findings**

#### **A. Hiring of Gregory Nevin**

##### **1. The Asset Forfeiture Program Support Contract**

The Asset Forfeiture Program Support (AFPS) contract is a contract between the Department of Justice (Department or DOJ) and Forfeiture Support Associates (FSA) whereby FSA is responsible for providing “personnel, supervision and other related incidental items necessary to perform asset forfeiture program support services,” such as asset identification and accounting, to Department components that have asset forfeiture programs.<sup>9</sup> The Department’s components procure FSA’s services through “orders for supplies or services,” also known as “task orders.”

The USMS is a Department component that has an asset forfeiture program and utilizes the AFPS contract to obtain forfeiture support services from FSA. For USMS to engage FSA in hiring a contract employee a USMS manager in AFD, such as the AD, DAD or an AFD financial manager must inform the Contracting Officer’s Representative (COR) that he or she is authorizing the procurement of an FSA contract employee.<sup>10</sup> The COR then contacts FSA and provides it with the authority to start the recruitment process. FSA then submits a draft task order to the Department’s Contracting Officer (CO), who has authority to enter into contracts on behalf of DOJ. After the CO approves the task order, FSA initiates the hiring process and identifies potential candidates for the USMS. After the USMS and FSA agree upon candidates, representatives from each organization participate in interviewing the candidates. The hiring process concludes when FSA, with input from the USMS, makes the hiring decision and offers the position to the selected candidate.

The AFPS contract requires FSA to provide “fully qualified, trained, and experienced staff” to perform the work ordered under the contract and, except in approved scenarios, it must ensure that contract employees meet all position

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<sup>9</sup> FSA has been providing these services to the Department since at least July 20, 2004.

<sup>10</sup> A Contracting Officer’s Representative is an individual “designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.” 48 C.F.R. 2.101(b)

qualifications under the applicable “labor category.” It states further that FSA is solely responsible for advertising for personnel and recruiting candidates.

The AFPS contract provides 34 labor categories from which the USMS can choose when procuring a contract position from FSA. The labor categories include administrative positions, such as “Clerical I” and “Clerical II,” and asset forfeiture support positions, such as “Forfeiture Financial Specialist” and “Senior Forfeiture Financial Specialist.” The differences in the position qualifications for some of the labor categories are minimal. The relevant example for our report is the differences between the Forfeiture Financial Specialist (FFS) and Senior Forfeiture Financial Specialist (SFFS) positions, which are highlighted below in Chart 2.1.

**Chart 2.1**

**Qualification Differences between the Forfeiture Financial Specialist and Senior Forfeiture Financial Specialist**

<b>FORFEITURE FINANCIAL SPECIALIST</b>	<b>SENIOR FORFEITURE FINANCIAL SPECIALIST</b>
Ten years of direct experience related to accounting, finance or asset management (5 years of direct asset forfeiture experience is highly preferred)	Ten years of direct experience related to accounting, auditing, finance or budget administration
Four-year undergraduate diploma (additional experience may be substituted for college degree)	Four-year undergraduate diploma in accounting, finance or related field
Experience in government accounting systems and proficiency in using spreadsheets and word processing software	Experience in government accounting systems and proficiency in using spreadsheets and word processing software
Demonstrated ability to: (a) prioritize and complete multiple complex projects under tight deadlines; (b) work with minimal supervision; and (c) consistently deliver the highest level of quality work	Demonstrated ability to: (a) prioritize and complete multiple complex projects under tight deadlines; (b) work with minimal supervision; and (c) consistently deliver the highest level of quality work
Asset forfeiture experience desirable	Asset forfeiture experience desirable, but not required
	One or more related professional certifications such as Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, Certified Government Financial Manager, etc.

Source: USMS.

The responsibilities of the FFS and the SFFS are also nearly identical. The FFS is responsible for monitoring and analyzing financial operations, assisting the USMS by providing guidance relative to complex financial assets and supporting the

preparation of annual Assets Forfeiture Fund audit samples. The FFS also identifies issues associated with asset forfeiture, performs technical and factual research, provides support in conducting pre-seizure analysis, and provides additional support by monitoring financial reports of businesses managed under seizure or forfeiture actions. The SFFS has the same responsibilities as the FFS, but also provides forensic auditing and other financial services related to seized and forfeited businesses.<sup>11</sup>

## 2. The SFFS Position in Boston

On August 17, 2011, FSA's Regional Director for the National Capital Area, Todd Garcia, met with then-DAD for AFD Kimberly Beal regarding the procurement of four SFFS positions in four cities. That same day, Assistant Chief Inspector Kyle Dalton sent an email to the COR.<sup>12</sup> In the email, Dalton informed the COR that he and Beal wanted to issue a task order to FSA to hire four SFFSs to be based in Boston, Seattle, Houston, and Columbus. The COR then sent an email to Garcia authorizing FSA to recruit candidates for each city. On or about August 23, 2011, FSA released job postings seeking applicants.

Beal told us that the AFD wanted FSA to hire individuals with investigative backgrounds and accounting skills to provide asset forfeiture assistance. She stated further that the plan was to create a "jump team" of 8 or 9 people, who could live anywhere in the United States, but would be ready to travel "at the drop of a hat" to assist federal law enforcement agencies with complex white collar crime cases. According to AFD Assistant Chief Mark Ritz, the AFD determined which cities received jump team members based upon strategic need and where the best candidates were interviewed.<sup>13</sup>

Gregory Nevin, a former Senior Special Agent (SSA) with Homeland Security Investigations (HSI), told us that he was going to retire in 2011 and that he submitted his resume to several companies, including FSA, seeking post-retirement employment. His resume showed that he graduated with a Bachelor of Science degree in Criminal Justice and was a SSA with HSI for approximately 28 years. It also established that as a SSA he had conducted financial investigations and was assigned to a money laundering/financial fraud group. Nevin's resume also highlighted his asset forfeiture experience and showed that he had made "numerous criminal and civil seizures and forfeitures" and that he "[r]outinely conduct[ed] financial analysis and asset identification in investigations," "[i]dentif[ied] and trace[d] illegitimate funds" by reviewing financial records, and had conducted pre-seizure analyses. Nevin did not possess any financial

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<sup>11</sup> The cost to the U.S. Government for an FFS in Boston, MA was \$177,764 per year and \$204,867 per year for an SFFS based in the same city; a difference of \$27,103.

<sup>12</sup> Todd Garcia and Kyle Dalton are pseudonyms.

<sup>13</sup> Mark Ritz is a pseudonym.

investigator certifications, such as Certified Public Accountant, Certified Internal Auditor, or Certified Fraud Examiner.

Nevin told us that prior to applying for a job with FSA, he had spoken to FSA's national lead recruiter, Jacob Polanco, who told him that FSA had a position that was opening and inquired as to whether he would be interested in applying.<sup>14</sup> He told us that he told Polanco that he was interested in applying for the position. On September 7, 2011, Polanco sent an email to Garcia asking if the USMS would consider filling the position in Boston at the FFS level because he only had a single applicant who met all of the SFFS position requirements and four, including Nevin, who did not. Garcia responded that he would check the resume. Nevin submitted his resume to FSA on September 9, 2011, and on September 12, 2011, Polanco forwarded all of the candidates' resumes, including Nevin's, to Garcia.<sup>15</sup>

Polanco told us that, per the task order described above, FSA was recruiting for a single SFFS position in Boston, which required a 4-year degree in an accounting field and a financial investigator certification. Nevin did not possess those two qualifications. However, Polanco told us he considered Nevin for the position because it was not unusual for FSA to interview individuals who did not have all qualifications when filling positions under the AFPS contract because it was sometimes difficult to find candidates who satisfied all of the position requirements and FSA could obtain a waiver of qualifications from the USMS.

Nevin told us Polanco contacted him sometime in the fall of 2011 and asked if he was interested in a contract position with USMS. He stated that he told Polanco he was interested and that his understanding from Polanco was that FSA was "looking for . . . an experienced agent with a law enforcement background regarding . . . asset forfeiture" and he was being considered for an SFFS position.

According to Nevin, after he spoke with Polanco, he contacted then-USMS Director Stacia Hylton to inquire about the position.<sup>16</sup> Nevin stated that Hylton was a friend from college and that the two of them had reconnected sometime between 2008 and 2010 after a chance-encounter at an airport.<sup>17</sup> He told us that prior to the airport encounter, he last saw Hylton in 1984 or 1985 and that the "only way [he] kind of knew what was going on with [Hylton] was through other people that [he] went to college with." He also described himself as being a "memory" to Hylton.

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<sup>14</sup> Jacob Polanco is a pseudonym.

<sup>15</sup> We did not find evidence that FSA ever followed up on Polanco's suggestion to Garcia that USMS consider filling the position in Boston at the FFS level. Garcia declined our request for a voluntary interview. The OIG lacks testimonial subpoena authority over non-DOJ employees and therefore was unable to compel Garcia's attendance at an interview.

<sup>16</sup> The Senate confirmed Stacia Hylton as Director of the USMS on December 22, 2010. She served as Director until July 2015.

<sup>17</sup> Both Nevin and Hylton told us that they met at Northeastern University and participated in a federal co-op program together and that the members of the program remained in contact with each other since graduating from college in the early 1980s.

USMS records show that between September 14 and 16, 2011, Nevin and Hylton exchanged several emails attempting to arrange a time to speak about the SFFS position and that the two of them spoke by telephone on September 16, 2011. According to Nevin, Hylton knew nothing about the contract position with FSA. He stated that he told Hylton that he would send her his resume and that he did so because he wanted Hylton to see what he had “been doing for the last 25 years and that [he] was qualified [for the position].” Nevin told us that Hylton told him she would forward his resume to the “appropriate people.” He stated further that while he did not explicitly ask Hylton for a favor or a recommendation, and that she did not offer either, he hoped that Hylton would give him a “character reference” to help him get a job offer from FSA.

Hylton described Nevin as being a “close associate,” similar to “someone that you grow up . . . with in the past . . . like all [of] your college colleagues.” She stated that she did not socialize with him personally on a regular or recurring basis and that Nevin was somebody she knew in college as part of a federal co-op program. She described him as “different than somebody you kind of knew on the job for a year or something.” She told us that she did not communicate with him often and had “probably seen [him] three times in 35 years.” Hylton said that during the telephone call Nevin told her that he was applying for a contractor position with AFD, but believed he was getting the “runaround” and wanted to know the status of his application. Hylton stated further that she agreed to contact someone in AFD to point Nevin in the “right direction.” However, Nevin told the OIG that he had “no reason to believe” that his resume was not getting the attention it deserved from FSA and that he and Hylton did not discuss a concern regarding FSA’s treatment of his resume.

At 8:26 a.m. on September 16, 2011, Nevin sent his resume to Hylton’s personal email address. In the body of the email, Nevin wrote:

I was told by the FSA recruiter that they are looking for someone to do financial investigations and asset identification. Not so much the forfeiture end. That is right down my alley as I have been doing that most of my career. I was told it will be working with the USMS asset forfeiture unit in Boston. Interviews are expected to be scheduled in the next few weeks.

Later that day, Hylton called then-AD for AFD Morales about Nevin, but he was unavailable. She then called Beal, at 5:29 p.m., and the two spoke for 14 minutes. According to Hylton, she told Beal that Nevin was a person she knew in college who applied for a contractor position with the AFD and that he was concerned he was not getting a “fair shake” or was getting the “runaround.” She stated she told Beal that Nevin was a “really good guy” who “was a customs agent for a long time before he retired.” Hylton said she “knew that he liked asset forfeiture because one of the few times [she] ran into [Nevin] was back in the . . . early 2000s” when she was stuck in an airport and saw him and a few Assistant U.S. Attorneys (AUSA) and learned that they were in Phoenix for an asset forfeiture matter. She stated to the OIG that she told Beal that this was the “extent of her knowledge on [Nevin’s] asset forfeiture [experience]” and she could not speak

about it any further, but the AUSAs could provide more information to [Beal] about Nevin. She said that she asked Beal what she should do and that Beal told her to forward Nevin's resume to her. Hylton also told us that she did not "feel like [she] recommended [Nevin]" to Beal.

After reviewing a draft of this report, Hylton, through her attorney, submitted written comments to the OIG that included the assertion that Hylton provided information to the OIG regarding Nevin's skill and experience. However, the testimony we described above is the extent of Hylton's testimony to us on that subject. According to the comments Hylton submitted, she "had insight into Nevin's basic qualifications as an investigator throughout the years, his character and knowledge of his interest and involvement on investigations involving complex seizures," and that "over the years, [Hylton and Nevin] crossed paths at law enforcement related functions including . . . training events in D.C. and an investigation in Arizona." Hylton also asserted in her comments that she and Nevin "made congratulatory calls to one another regarding graduations from the Federal Law Enforcement Academy, law enforcement accomplishments/specialized certifications such as the Special Operations Group membership, promotions from inspector to agent, award ceremonies, media events, and appointments." In addition, with respect to their chance meeting in a Phoenix airport, Hylton asserted in her comments that she spoke with Nevin and the AUSAs about their "current investigation and seizure . . . [and] recalls that there were several accolades given by these individuals about Agent Nevin's work on this case and others."

Beal told us that "she did not know [Stacia Hylton]" and the two of them were not friends. She stated that she remembered her telephone conversation with Hylton about Nevin because she had never before received a phone call from Hylton and had "never really had a conversation with the Director before then." She said that during that telephone call Hylton told her that she and Nevin had gone to college together and he had some forfeiture experience. According to Beal, Hylton asked her to "take a look at [his] resume" and Beal agreed to do so. She stated that "the fact that [Hylton] picked up the phone and called [her] meant something to [her]" and while Nevin had relevant experience that AFD was looking for in candidates, the fact that he knew Hylton was something she had to consider.

In her interview with the OIG, Hylton told us that she knew Beal in her first 30 years with the USMS, but did not know her "personally or socially." Hylton also stated that she did not "actually know" Beal until she returned to the USMS as Director in December 2010. In the comments Hylton submitted after reviewing a draft of this report, she asserted that she had spoken to Beal on prior occasions and that as a senior manager for the Asset Forfeiture Division, Beal was regularly in contact with Hylton "for briefings, quarterly performance reviews, strategic planning sessions, budget meetings, recurring senior staff meetings and spoke with her often." Hylton also stated in her comments that she and Beal "spoke frequently and comfortably as colleagues when [Hylton] was in Judicial Security and Beal was in Asset Forfeiture."

On September 16, 2011, at 5:52 p.m. – shortly after their telephone call – Hylton forwarded Nevin's 8:26 a.m. email and resume to Beal with the message,



"Thx Kim." At 6:06 p.m., Beal responded to Hylton: "Absolutely – I will keep you posted as we go through the process." One minute later, Beal forwarded Hylton's email containing Nevin's resume to Dalton and Ritz with the message, "See below." Dalton responded a few minutes later: "Impressive resume but no reference to any certifications that [are] a pre requisite [sic]. Let's see if FSA forwards the resume or not based on the lack of a certification." Beal replied 2 minutes later: "Shit – this could get complicated".

According to Beal, what made the situation complicated was that Hylton was the Director of the USMS and had forwarded to her Nevin's resume. Beal stated that while Hylton did not direct her to take any particular action on Nevin's behalf, it was her "interpretation" that Hylton was recommending Nevin for the FSA position and that Beal "needed to consider [his] resume." She also told us that she "paid attention to the phone call." She told us that Hylton calling her "mean[t] something" and that if Nevin was qualified for the position by having investigative and asset forfeiture experience, he was more likely to get hired because of what Beal interpreted to be Hylton's recommendation. Beal's supervisor at the time, then-AD for AFD Eben Morales, told us that it is an "uncomfortable thing" to receive a request from the Director because you have "to act on it."

At 6:24 p.m. that same evening, Beal forwarded Hylton's email with Nevin's resume and message to Morales. In the email, Beal wrote: "See below – [Director] called and has forwarded the resume of a Customs agent that she highly recommends for the jump team FFS in Boston." We asked Beal whether she was considering Nevin for an FFS position in Boston, rather than the SFFS position that was the subject of the task order, when she sent this email to Morales. She told us that she "used those terms interchangeably" and did not know to which position she was referring. Morales told us that he recalled Hylton sending a resume to AFD, but did not recall the name "Nevin" or specifically how he came to learn that the Director had recommended Nevin for a contractor position with FSA.<sup>18</sup>

At 6:33 p.m., Dalton responded to Beal's email regarding her concern that Nevin's lack of required qualifications made things "complicated." He wrote that it was not complicated because if Nevin was not qualified, FSA would not forward his resume to the USMS and that Hylton should understand. Later that same evening Dalton sent another email to Beal stating that Nevin's resume would likely not be sent to the USMS because Nevin lacked two requirements for FSA to consider him for the SFFS position. Beal responded that they would "see what happens."

On Saturday, September 17, 2011, at 6:52 a.m. Hylton sent an email to Beal thanking her for offering to keep her posted about the SFFS hiring process. Hylton also wrote:

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<sup>18</sup> Morales told us that during the period in which the events described in this section occurred, he was in the nomination process to become the U.S. Marshal for the District of Florida and was not running "day-to-day" operations in AFD. He stated that he believes that this is why he could not recall many details surrounding Nevin's hiring.

[Nevin] is a great investigator, extremely dedicated to government, but has always worked hard on the [asset forfeiture] side with AUSAs and wants to still work in gov. after retirement. Thank you and most of all for your dedication to the [asset forfeiture] program[.] [W]e are so lucky to have you over at [AFD]!

At 7:50 a.m. Beal responded to Hylton and thanked her for the "kind words." Beal then forwarded the email to one of her subordinates stating: "Look what I woke up to!" The subordinate responded: "Wow!! Great timing and wonderful words to hear!! All things happen for a reason!"<sup>19</sup> Beal told us that she had "no idea" what her subordinate's email response meant. We asked Beal whether the subordinate was referring to Morales's anticipated departure from AFD that fall and that Beal was in line to replace him as AD. Beal told us she could not remember exactly when Morales was due to leave AFD and that she "wasn't sure if [she] even wanted [the AD] job" at that time. According to the subordinate, she wrote this response because Beal's application to become AD was likely in progress at that time and Hylton reaching out directly to Beal, as opposed to Morales, was a positive event for Beal.

On Monday, September 19, 2011, Dalton requested from FSA the resumes of the candidates that met all qualifications for the SFFS position. In response, Polanco sent to Dalton three candidate resumes; Nevin's resume was not included in this group.

At 8:29 a.m. on September 20, 2011, Dalton sent an email to Beal and Ritz that contained a draft email to Hylton informing her that Nevin did not meet the qualifications for the SFFS position. Beal responded at 8:49 a.m. that she wanted to speak to Morales first and that neither Dalton nor Ritz should "say anything to anyone." Beal told us that Dalton drafted this email on his own initiative and that she was not going to send the email to Hylton because by September 20, 2011, she was considering Nevin for an FFS position in Boston.

At 4:38 p.m., still on September 20, Polanco sent an email to Beal with the subject heading "SFFS–Boston." In it, Polanco stated that he had attached "the resumes for the SFFS Boston" position and that three candidates met "all position requirements" and three other candidates, one of whom was Nevin, did not "meet all position requirements." He also asked Beal if she wanted him to schedule all six individuals for interviews to be held in October 2011. According to Beal, she felt that she "needed to consider" Nevin for a position with FSA in Boston and that she told Polanco either directly or through a subordinate that she wanted to interview all six candidates, including Nevin. She also told us that she was not going to force FSA to hire Nevin as an SFFS if he was not qualified.

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<sup>19</sup> In the fall of 2011, AD Morales was preparing to leave AFD for another position with the USMS and Beal, who was Morales's Deputy, was in line to replace Morales as AD. In fact, as discussed in Section IV.B. below, Beal was named acting AD when Morales was moved to a different position in USMS.

Polanco told us that he did not recall speaking with Beal and that in 2011 FSA could obtain a waiver of qualifications from USMS if a candidate was chosen for the SFFS position but did not meet all position requirements. He told us that he included the three candidates who did not meet all SFFS requirements in his email to Beal to expand the applicant pool and to give the USMS more hiring options. Polanco said that he exchanged emails with Beal to coordinate the interview schedule and that Beal did not tell him that Nevin was Hylton's friend, nor did she express a desire for FSA to hire Nevin over any other candidate.

On September 22, 2011, personnel from FSA and USMS, in an email exchange with the subject heading "SFFS Boston Interviews," agreed to conduct the interviews of the 6 candidates, including Nevin. The next day, Beal sent an email to Hylton. She stated:

As a follow up to our previous conversation, we have 6 qualified candidates, including Greg Nevin for the FFS position in Boston. Interviews will take place on October 12/13, 2011 and I will sit on the interview panel. I'll get back to you once we have completed the interviews. Have a nice weekend.<sup>20</sup>

We asked Beal if in this email to Hylton she was using the term "FFS" interchangeably with SFFS or if she had decided to interview Nevin for an FFS position. She told us that she used the term FFS interchangeably with SFFS because Hylton did not know the difference between the two and she was not being specific about the position for which she and FSA were considering Nevin.<sup>21</sup>

Hylton responded to Beal that evening and thanked her for the update. She also acknowledged that there were six candidates for a single position with FSA in Boston.

On September 27, 2011, the CO approved the task order allowing FSA to hire four SFFSs. It contained a list of all available SFFS and FFS positions at USMS offices across the country that FSA could fill and the cities in which the SFFS or FFS would be based. The list identified two SFFS positions that could be based in Boston, but did not identify any available FFS positions for that city.

Nevin and the other five candidates were interviewed on October 11 and 12, 2011, at the U Marshal's Office in Boston. The interview panel consisted of Beal, Ritz, an FSA employee, and an AUSA from the District of Massachusetts. Beal told us that she attended because Morales required a senior AFD manager to participate in the FSA interviews.<sup>22</sup>

Beal and Ritz told us that the panel interviewed 3 candidates for an SFFS position and Nevin and two other candidates for an FFS position; both positions

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<sup>20</sup> The interviews were actually held on October 11 and 12, 2011.

<sup>21</sup> As described earlier, the task order initiated by Beal was for four SFFS positions; it did not include any FFS positions.

<sup>22</sup> Beal also participated in an SFFS interview panel in Brooklyn, New York.

would be based in Boston. However, Ritz told us that he initially believed that he would be only interviewing candidates for an SFFS position and that sometime after he was notified that Nevin had applied for a position with FSA the decision was made to interview candidates for an FFS position as well. Ritz told us he did not know who made this decision. He stated further that the FFS position was created to “potentially” give Nevin an opportunity to interview for a position with FSA.<sup>23</sup> However, the AUSA and the FSA representative each told us that their understanding was that the panel was interviewing candidates to fill a single SFFS position in Boston.

All of the members of the interview panel – Beal, Ritz, the AUSA, and the FSA employee – told us that of the six candidates, Jessica Shae was the group’s first choice for the SFFS position and that Nevin, based upon his experience, was also highly qualified.<sup>24</sup> According to the FSA employee, on October 12, 2011, after all of the interviews were completed, the interview panel met and Beal proposed hiring Nevin as well as Shae and asked for the group’s opinion. He told us that “[the interview panel] knew all along that Greg Nevin had a friend in a high place,” and that Beal or Ritz told the panel that Nevin was “recommended by another person in the [USMS]” and “to give him a real good look and to really think about hiring him because people liked him.”<sup>25</sup> We asked the FSA employee if the group unanimously agreed that Nevin should be hired. He stated he was not part of that decision and would have been upset if FSA had hired Nevin instead of Shae because Shae was more qualified to fill the SFFS position.

At 8:04 p.m. on October 12, 2011, a subordinate of Beal’s from AFD sent Beal an email inquiring how the interviews went. Beal responded: “So many qualified folks – tough decision – particularly since [Hylton] has recommended a candidate – not #1 – but close 2nd – gonna toss this one to [Morales] for decision!!”

We asked Beal why, if Nevin was interviewing for an FFS position and the other candidate for the SFFS position, she stated in her email to her subordinate that Nevin was a “close 2nd.” Beal responded that the email “does imply that [Nevin] was a close second as an SFFS,” but that he did not qualify for that position and that she did not know why she used this language. We also asked Beal whether the decision to hire Nevin as an FFS was made in consultation with Morales after the interviews. Beal responded that “we [did not] interview all six of them as SFFSs,” and that her “memory” was that she and the other interviewers decided prior to the interviews that USMS was going to have FSA hire one SFFS and one FFS for Boston. In fact, both Beal and Ritz told us that the interview panel agreed that FSA should hire Nevin for the FFS position and Shae for the SFFS position. However, as described above, the AUSA and the FSA representative who

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<sup>23</sup> As discussed below, the FFS position was created on October 20, 2011, after Nevin had interviewed for the single SFFS position located in Boston.

<sup>24</sup> Jessica Shae is a pseudonym.

<sup>25</sup> The FSA employee also told us that he was led to believe that Nevin had worked on investigations with USMS and that the USMS was “happy with [Nevin and] his work.”

participated in the interviews each told us that it was their understanding that the panel was interviewing candidates to fill a single SFFS position. They also told us that they did not participate in any decision to hire Nevin for an FFS position.

The next day, Polanco sent an email to Beal informing her that he had spoken to the FSA employee who was part of the interview panel and heard that the group had a leading candidate and a "very close second," and that Beal should contact him if she needed anything. Beal responded: "We had great applicants! I will brief [Morales] and will let you know who the selection is." According to Morales, he did not recall speaking with Beal about the hiring of Nevin. Beal told us she was "sure" she spoke to Morales, but could not remember what, if anything, they discussed.

On October 20, 2011, Garcia sent an email to Polanco and other FSA employees informing them that he had spoken to Beal. In the email, Garcia wrote that USMS was "considering adding an additional position [in Boston] and would be happy to make two selections from [the] original pool of interviewees," but that Polanco should not act because "budget issues" could impact the USMS's decision. On October 21, 2011, at approximately 10:00 a.m., Beal and Garcia spoke by phone and, according to an email written by Garcia, Beal told him that USMS was adding a second SFFS position in Boston and would be sending the selectees' names that day.<sup>26</sup> As described earlier, Beal, as a financial manager in AFD, had the authority to authorize the procurement of an FSA contract employee.

That same day, at 10:17 a.m., the COR sent an email to Garcia in which he authorized FSA to hire an FFS in Boston and advised him that Nevin was the selectee for that position. Garcia wrote back to the COR at 10:43 a.m. asking if USMS was authorizing two SFFSs in Boston. The COR responded that USMS was authorizing the hiring of Nevin as an FFS and Shae as an SFFS.

At 12:38 p.m., Beal sent an email to Garcia and Polanco asking them if Nevin was informed that he only qualified for the FFS position and not the SFFS position. Polanco responded that Nevin was aware of that and FSA offered Nevin the FFS position.

On October 24, 2011, FSA submitted a draft task order to the CO that would authorize the hiring of an FFS in Boston with an effective date of October 21, 2011. Three days later, Nevin accepted an offer to join FSA as a USMS contract employee in Boston as an FFS. That evening, Beal sent an email to Morales in which she asked him to "let [Hylton] know that we hired Greg [Nevin]." Beal also wrote that Hylton would "be very happy."

Nevin started his position with FSA as an FFS in Boston on January 3, 2012. He resigned on March 30, 2012. Nevin told us that he resigned because he had worked for 32 years, retired, and did not want to sit at a desk all day when there

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<sup>26</sup> We believe Garcia's reference to "a second SFFS" position was mistaken, or he misunderstood what USMS intended to do. We were unable to address this issue with Garcia because he declined our request for an interview.

were other things he could be doing in retirement. He stated further that there were discussions about sending him for additional training and he did not want the USMS to waste money on him if he was going to resign.

## **B. Kimberly Beal's Promotion to AD for AFD**

On January 25, 2012, Hylton named Beal the Acting AD for AFD. Two years later, on July 21, 2014, Hylton selected Beal to be the AD for AFD. In this section, we address whether Hylton's decision to appoint Beal as Acting AD in 2012 and as AD in 2014 was based upon a *quid pro quo* arrangement between Beal and Hylton whereby Hylton promoted Beal in exchange for her efforts to have FSA hire Nevin.

Beal joined the USMS and the AFD in 1989 and in September 2009 became a Program Manager for the Operations Section of the AFD. One year later she was promoted to DAD of the AFD, the chief deputy position in the division. In this role she provided policy and procedural guidance and direction to all AFD employees performing asset forfeiture-related duties at USMS headquarters and in field offices. It was also in this role that, as described above, Beal was responsible for the hiring of Hylton's friend, Gregory Nevin, in October 2011.

On January 25, 2012, Hylton sent a memo to all USMS employees stating that the Associate Director for Operations had retired and that effective January 30, 2012, Morales, who was AD for AFD, would be assuming the Associate Director for Operations' role in an acting capacity and that Beal would serve as the acting AD for AFD.<sup>27</sup> As the Acting AD, Beal performed all of the duties and responsibilities associated with the AD position including, among other things, managing, overseeing and guiding the USMS asset forfeiture program and formulating and executing the AFD's budget.

On September 12, 2012, approximately 240 days after Beal was made Acting AD, the USMS published a "Detail Opportunity" which permitted AFD personnel at the grade 14 and 15 levels to apply to be the acting AD for a period of 1 year. The position was open to both ES-340 and ES-1811 employees. Beal was the only employee who applied for the position and she began her 1-year term as acting AD on October 8, 2012.

On December 13, 2012, the USMS published an announcement on USAjobs.gov seeking a permanent AD and classified the position as an ES-340 administrative position. The posting described the duties of the AD for AFD as "managing, administering, and executing the development, implementation, and operation of programs, policies, and procedures pertaining to the United States Marshals Service Asset Forfeiture Division" and to qualify for the position, candidates had to have "an expert level [of knowledge of] the Asset Forfeiture program, [including] the seizure, management, and disposal of forfeited properties and assets." The position also required a "substantive knowledge of the policies

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<sup>27</sup> Under 5 C.F.R. § 317.903(b)(3), "an agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days. . .".

and prescribed rules, regulations, and procedures governing the execution of the Asset Forfeiture program."<sup>28</sup>

Beal and eight other individuals applied for the AD for AFD position. Beal told us that several of her subordinates helped draft her Executive Core Qualifications submission to the Executive Review Board, and that the assistance was provided during work and non-work hours. One of the subordinates received 1.5 hours of compensatory time for the time she spent working on Beal's submission.

The Human Resources Division determined that four of the candidates, including Beal, met the qualifications. An Executive Review Board reviewed those four application packages and ranked Beal the top candidate. Beal told us that she interviewed for the position and subsequently was unofficially informed that she was selected and that her SES package was being sent to the Department for review. She said that shortly after being told this, an anonymous complaint was submitted to the Office of Special Counsel (OSC) alleging unfair hiring practices in the AFD and that she came under investigation. Beal said she was told her selection as AD for AFD was placed on hold pending the results of the investigation, and that because of delays with the case, the USMS cancelled the December 2012 posting for the position on June 14, 2013. USMS records confirm that a formal selection was never made and other witnesses also told us that the posting was canceled because of the pending investigation. Beal continued to serve as the Acting AD for AFD during this period of time.

On September 19, 2013, about 1 year after Beal was named Acting AD for AFD, the USMS published a new "Detail Opportunity," which permitted AFD personnel at the grade 14 and 15 levels to apply to be the acting AD for a period of 1 year. This position was open to both ES-340 and ES-1811 employees. Unlike the September 25, 2012 posting, this one limited the opportunity to those AFD employees who lived within the local commuting area of Arlington, Virginia. A whistleblower alleged to us that the USMS limited the detail opportunity to the Arlington commuting area because Beal was preselected for the position and to ensure that ES-1811 law enforcement employees in field offices outside of the commuting area would be ineligible for the detail opportunity. However, according to three witnesses from the USMS's Human Resources Division, the decision to limit

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<sup>28</sup> The AD position for AFD was originally created in June 2008 as an ES-340 administrative, non-law enforcement position. According to Lisa Dickinson, the USMS's Principal Deputy General Counsel, when the first AD for AFD left the USMS in 2010, former Director John Clark decided that the successor AD would be a law enforcement officer because he believed that ES-1811 (law enforcement officer) employees should hold all senior management positions. A new position description was written that reclassified the AD position from ES-340 administrative to an ES-1811 law enforcement position, and Morales, a law enforcement officer, was selected as AD. When Morales became Acting Associate Director for Operations, Clark's successor as Director – Hylton – decided that administrative employees should lead divisions that are largely administrative in nature, such as AFD. Hylton, in consultation with Dickinson and the Human Resources Division, directed that the position description for the AD for AFD be reclassified as an ES-340 administrative position before it was posted in December 2012.

the detail opportunity to the Arlington commuting area was financial in that the USMS was unwilling to pay the extra costs associated with detailing an employee from another part of the country to the Arlington area. Dickinson told us that the position was limited to the Arlington commuting area because the government was operating under a sequestration budget and there were concerns that the following year's budget would be smaller than previous years.<sup>29</sup>

Beal, Dalton, and another AFD Assistant Chief Inspector applied for the acting position. Dalton and the other AFD Assistant Chief Inspector were not eligible for selection because they did not live in the Arlington commuting area. Beal, as the sole candidate in the commuting area, was selected to be the acting AD for AFD on October 30, 2013.

The OSC inquiry regarding alleged improper hiring practices in AFD was closed in January 2014. On February 26, 2014, the USMS posted a position announcement on USAjobs.gov seeking a permanent AD for AFD. This position was classified as an ES-340 position. This posting stated that:

the Assistant Director for the Asset Forfeiture Division provides executive leadership in the development, implementation and operation of programs, policies and procedures pertaining to the United States Marshals Service (USMS) Asset Forfeiture Program. The incumbent serves as the principal advisor to USMS leadership on all matters involving the Asset Forfeiture Program which includes identification, seizure, management and disposal of seized and forfeited assets as a result of illegal drug trafficking, racketeering, white collar crime and other organized crime activities.

The position posting also identified the same two mandatory technical qualifications relating to asset forfeiture that appeared in the December 2012 posting and required candidates to provide evidence of:

1. Experience in leading and managing others within an organization responsible for the management and oversight of assets subject to forfeiture. This includes knowledge of asset management, budget and acquisition policies and internal control procedures; and
2. Demonstrated knowledge and experience in managing and overseeing a pre-seizure/financial investigation program, including domestic and international forfeiture operations.

Beal, along with 18 other candidates, were identified by the USMS Human Resources Division as meeting the mandatory technical qualifications. The Executive Resources Board, which was chaired by the USMS AD for the Witness Security Division, referred 4 of the 19 candidates to a structured interview panel; 1

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<sup>29</sup> In 2013, the U.S. Government was operating under a sequestration budget, which led to automatic budget cuts for most federal agencies and uncertainty about funding levels associated with those cuts.



candidate was a current member of the SES and the 3 others, including Beal, were GS-15 federal employees. The top 4 candidates from the ERB were Beal, who scored a 95, the second candidate - the SES detailee – who scored a 73, a third candidate who scored a 61, and a fourth candidate who scored a 53.

The structured interview panel, which was chaired by Associate Director for Administration David Musel, chose to interview the top three candidates identified by the ERB. Musel told us that the interview panel consisted of him; the Associate Director for Operations, William Snelson; and the Director of the Asset Forfeiture Management Staff for DOJ's Management Division. The third member of the panel was a DOJ employee, not a USMS employee like Musel and Snelson. According to Musel, he chose this individual to be part of the structured interview panel because he wanted the interviewers to have diverse backgrounds.

Musel told us that he worked with the USMS's AD for Human Resources to develop a "battery of questions" that would provide "consistency" in the types of questions that were asked of each candidate. The interviewers asked eight questions to examine each candidates': (i) technical knowledge of the AD position, (ii) strategic thinking and vision, (iii) leadership, (iv) accountability, (v) technology management, (vi) partnering and political savvy, (vii) creativity/innovation, and (viii) financial management. The interview panel graded each candidates' responses "low," "moderate," or "high." Musel stated further that he assigned which questions each member of the structured interview panel would ask the candidates and that the interviewers rated the interviewees' responses with a number grade of 1, 2, or 3. Musel's interview notes show that he gave Beal 23 out of 24 possible points, the second candidate 18 out of 24 possible points, and the third candidate 10 out of 24 possible points.

According to Musel's notes, the three interviewers were unanimous in their assessment of all three candidates and their selection of Beal to be the permanent AD. The notes stated that Beal was the "acting AD," "came prepared," had "extensive knowledge of [the] asset forfeiture program," had "very strong leadership skills," and was a "strong/viable candidate" who "knows/understands the [asset forfeiture] program."

On July 21, 2014, Musel sent a memorandum to Hylton advising her that the structured interview panel was recommending Beal for the position of AD for AFD. That same day, Hylton, as the selecting official, chose Beal to be the permanent AD. On July 29, 2014, the USMS Human Resources Division submitted Beal's selection certificate and supporting documents to OPM for approval by its Quality Review Board. A little over 1 month later, OPM approved Beal's appointment to the SES as AD for AFD.

#### **IV. Analysis**

In this section, we assess whether Hylton's or Beal's efforts to help Nevin obtain employment with FSA violated the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635. We also examine whether

Beal's promotion in 2014 to AD for AFD improperly resulted from her efforts on behalf of Nevin in 2011. In sum, we concluded that Hylton's recommendation of Nevin to Beal for an FSA contractor position violated Section 702(a)'s prohibition on using one's public office in a manner that is intended to induce another to provide any benefit to the employee's friend or to a person with whom the employee is affiliated in a nongovernmental capacity. We concluded that Beal's actions on behalf of Nevin violated Section 2635.101(b)(8) of the Standards of Ethical Conduct, which provides that "employees shall act impartially and not give preferential treatment to any private organization or individual." However, we did not substantiate the allegation that Beal's promotion to AD was in exchange for her efforts on behalf of Nevin. We also found that Beal violated Section 705(b) of the Standards of Ethical Conduct by having at least one of her subordinates use official time to help draft Beal's Executive Core Qualifications. Section 705 prohibits an employee from encouraging or requesting a subordinate to use official time "to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation."

#### **A. Hiring of Gregory Nevin**

As described earlier, Section 702 prohibits the use of public office "for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity." Section 702(a) sets forth a non-exclusive "specific prohibition" against using any authority associated with a public office "in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity."

To find a violation of Section 702(a), three elements must be met: 1) the employee must use her public office, 2) the use of office must be in a manner that is intended to induce or coerce another person to provide a benefit, and 3) the benefit must be for a person with whom the employee was affiliated in a nongovernmental capacity. We found that each element was established by the facts relating to Nevin's hire. Beginning with the first element, we found that Hylton used her public office as the Director of USMS to recommend Nevin for a contractor position with FSA. After unsuccessfully attempting to contact then-AD for AFD Morales about Nevin's application, Hylton called DAD Beal and they spoke for 14 minutes. Beal told us that she had never really had a conversation with the Director before this telephone call and that this was the first time that she had ever been contacted by Hylton. Hylton asserted in comments submitted to the OIG after reviewing a draft of this report that she had spoken to Beal often by virtue of her position as a senior manager in the Asset Forfeiture Division.

According to Beal, Hylton told her during this telephone call that she and Nevin had attended college together and that he had some forfeiture experience, and asked Beal to review his resume. Hylton told us that she told Beal she knew Nevin "liked" asset forfeiture work because she encountered him and some AUSAs at an airport and learned they were in Phoenix for an asset forfeiture matter. She told Beal that this was the extent of her knowledge about Nevin's forfeiture experience, but that the AUSAs could provide more information.

Hylton then forwarded Nevin's resume to Beal and thanked her. Beal responded that she would "keep [Hylton] posted as we go through the process." The next day, Hylton sent an email to Beal, first thanking her for the offer to provide updates, and then taking the opportunity to endorse Nevin, stating that he "is a great investigator, extremely dedicated to government" who is looking to continue his asset forfeiture work after retirement. We believe Hylton's actions and statements amounted to a recommendation of Nevin, and found them particularly problematic because the recommendation could not have been based upon actual knowledge of Nevin's skill as an investigator or his experience with asset forfeiture considering Hylton's testimony to the OIG that she did not communicate with Nevin often and had seen him maybe three times in the past 35 years, and that her knowledge of his asset forfeiture work was based upon a chance encounter at an airport.<sup>30</sup>

We also found that Hylton made the recommendation of Nevin in a manner that was intended to induce Beal to provide some benefit to Nevin, thus satisfying the second element of Section 702(a). Hylton's intention was evident in her request of Beal – a subordinate official – that she review Nevin's resume, in her endorsement to Beal of Nevin's qualifications about which Hylton had no personal knowledge, and in her explanation to Beal that Nevin wanted to continue with asset forfeiture work for the government in retirement – the very opportunity that FSA was offering. We believe Hylton's intention to induce was also subtly evidenced by the praise she offered Beal in the same email that she endorsed Nevin, thanking Beal for her "dedication to the [asset forfeiture] program" and telling Beal that the USMS was "so lucky to have you over at [AFD]," even though Beal told us that this was the first time she had interacted with Hylton. The praise had what we believe

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<sup>30</sup> We considered the comments Hylton submitted in response to the draft report, in which she asserted that she had actual knowledge of Nevin's skill and experience and had "remained in some contact" with Nevin during their government service through law enforcement-related functions and communications with one another after "major milestones in their careers." This description of Hylton's relationship with Nevin and her knowledge of his work is at odds with Hylton's, Nevin's, and Beal's sworn OIG testimony. Moreover, even if we credit Hylton's comments, we do not believe the additional information prevented her conduct from running afoul of Section 702 because she still used her public office to benefit Nevin. In this regard, we also considered the comments submitted by USMS OGC suggesting the potential applicability of Section 702(b) of the Standards of Ethical Conduct to Hylton's actions regarding Nevin. Section 702(b) provides that an employee:

may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

5 C.F.R. § 2635.702(b). Hylton denied during her OIG interview that she made a recommendation on behalf of Nevin, and she did not rely upon Section 702(b) in the comments she submitted in response to the draft report in which she maintained that she merely made a "referral." The factual disparity between Hylton's sworn OIG testimony and her comments regarding her contact with Nevin makes it difficult to evaluate her conduct under Section 702(b). Further, we found the provision inapplicable to Hylton's recommendation because she did not work with Nevin in the course of her federal employment and she recommended him for a contractor position, not federal employment.

was the intended effect: Beal forwarded Hylton's email to a subordinate, exclaiming, "Look what I woke up to!"

We considered Hylton's testimony to us that she contacted Beal because she was concerned that Nevin was getting the "runaround" by FSA, or not getting a "fair shake." However, we found Hylton's explanation difficult to reconcile with other evidence, including Nevin's testimony that he had no reason to believe his resume was not receiving fair consideration by FSA and that he and Hylton did not discuss such a concern when they spoke. In addition, Nevin did not make any reference to such a concern in the email he sent Hylton attaching his resume, and we did not identify any evidence of Nevin being treated unfairly in our interviews with FSA staff or in our review of FSA records. On this record, we did not find Hylton's explanation for contacting Beal persuasive.

With respect to the "benefit" that Hylton intended to induce Beal to provide to Nevin, the actual actions that Beal took need not have been specifically sought by Hylton in order to find a violation of Section 702(a). Indeed, by the regulation's terms, an employee can violate Section 702(a) by inducing another to provide "any benefit." In this matter, we found that the intended benefit to Nevin was the preferential treatment of his application for the FSA contractor position, in whatever form that took.

Lastly, we found that Hylton's relationship with Nevin satisfied the third element of a Section 702(a). Hylton told us that Nevin was a "close associate" from college, but that she had had limited contact with him in the past 35 years. Hylton also told us that when she first contacted Beal about Nevin's application for the FSA position, she referred to Nevin as a person she knew in college. According to Nevin, he and Hylton were friends from college and the two of them had reconnected in 2009 or 2010 after a chance-encounter at an airport. He told us that he contacted Hylton about the FSA position in the hopes she would provide him a "character reference." Based on this testimony, we concluded that Nevin was Hylton's "friend" or a "person with whom [Hylton] is affiliated in a nongovernmental capacity" for purposes of Section 702.<sup>31</sup>

In sum, we concluded that under this totality of facts and circumstances, Hylton's recommendation of Nevin to Beal for an FSA contractor position violated Section 702(a)'s prohibition on an employee using her public office in a manner

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<sup>31</sup> In her comments submitted in response to the draft report, Hylton argued that she knew Nevin in a governmental capacity, not in a "nongovernmental capacity," and that the third element of Section 702 could not be met. We disagree. Hylton and Nevin's relationship began as college classmates where they participated in a federal co-op program. They both joined the federal service after college, but never worked together and had only rare contact in the 35 years that preceded Nevin contacting Hylton with his resume. We believe that these circumstances support our conclusion that the third element of Section 702(a) is satisfied. We also believe our determination is consistent with the purpose of Section 702. According to the commentary to the regulation, "[i]ssues relating to an individual employee's use of public office for private gain tend to arise when the employee's actions benefit those with whom the employee has a relationship outside the office . . . ." 57 Fed. Reg. 35030 (Aug. 7, 1992).

that is intended to induce another to provide any benefit to the employee's friend or to a person with whom the employee is affiliated in a nongovernmental capacity.

Beal's initial reaction to Hylton's recommendation of Nevin vividly demonstrates the conduct that Section 702 is intended to prevent. Hylton was Director of the USMS when she reached out to AFD for assistance with Nevin's application. Beal told us that despite Nevin lacking two qualifications for the SFFS position being filled in Boston, she "needed to consider [Nevin's] resume" because she believed that Hylton, as the USMS Director, was recommending him. According to AD Morales, such contact can be an "uncomfortable thing" because you must "act on it." When Dalton, to whom Beal forwarded Nevin's resume, observed to Beal that the resume was impressive but lacked the required certifications, Beal responded, "Shit – this could get complicated." When Dalton replied that the situation was not complicated because Hylton should understand why FSA would not forward Nevin's resume to USMS, Beal responded that they would "see what happens." When, after Nevin's resume was not included among those FSA sent to USMS as meeting the SFFS position qualifications, and Dalton sent an email to Beal that included a draft email to Hylton informing her of the situation, Beal responded that no one should "say anything to anyone" and that she wanted to speak to Morales first. According to Beal, she did not intend to send the draft email explaining that Nevin was not qualified for the SFFS position to Hylton because by this time she was already considering Nevin for an FFS position in Boston – a position that had not existed prior to Hylton's recommendation of Nevin. Thus, what is evident in her contemporaneous emails, and made clear by her testimony to the OIG, is that Beal intended to do what was necessary to ensure that Nevin obtained an FSA contractor position, which is precisely what she did.

As we described earlier in this report, prior to Hylton recommending Nevin, Beal had only approved FSA to hire four SFFSs to be based in four different cities, one of which was Boston. Nevertheless, for the Boston position, FSA provided the USMS the resumes of three candidates who qualified for the SFFS position and three, including Nevin, who did not. According to FSA, the non-qualifying resumes were provided because USMS can provide a waiver of qualifications if it wanted FSA to hire a candidate who did not possess the required certifications. We found no evidence that USMS sought such a waiver for Nevin. Instead, Beal merely communicated to FSA that USMS wanted to interview all six candidates and the hiring process went forward.

We received conflicting testimony from the members of the interview panel about the position they were tasked with filling. According to Beal, the panel was interviewing three candidates for an SFFS position and the other three for an FFS position, both to be based in Boston. Ritz told us that he initially understood the panel was interviewing for an SFFS position, but that at some point before the interviews he was informed that Nevin had applied for a position with FSA and that the panel would also be interviewing for an FFS position, one that Ritz told us was created to "potentially" give Nevin an opportunity to interview. However, according to the FSA representative and the AUSA on the panel, the interviews were being conducted to fill a single SFFS position. Further, the task order issued to FSA just 2 weeks prior to the interviews did not include an FFS position in Boston, and the

panel's actual hiring decision – unanimous agreement about the top choice – indicated that they were interviewing for a single SFFS position. The FSA representative recalled that Beal proposed to the panel that Nevin also be hired, but both the FSA representative and the AUSA told us that they were not part of any decision to hire Nevin. Notably, the FSA representative also told us that, among other things, the panel was aware that Nevin “had a friend in a high place.”

Beal appeared to take matters into her own hands after the panel completed its work. According to contemporaneous emails, on October 20, about 1 week after the interview panel met, Beal informed FSA that the USMS was considering adding an additional position in Boston and was prepared to make the selection for the second spot from the applicants the panel recently interviewed. The next day, Beal informed FSA that a second position in fact would be added and that USMS would send the selectee's name that day. That discussion was followed by the USMS contracting officer sending FSA the authorization to hire an FFS in Boston and advising FSA that Nevin was selected for the position. On October 27, after the administrative steps were completed and Nevin had accepted the FFS position, Beal emailed Morales to request that he inform Hylton of the news, telling Morales that Hylton would “be very happy.”

Beal offered us no business justification for adding the second FSA position to Boston, and we did not identify any USMS documents that explained the decision in terms of operational considerations. Based upon witness testimony and our review of contemporaneous records, we found that Beal manipulated the hiring process specifically to benefit Nevin and did so because of Hylton's recommendation. Beal's actions, which included authorizing a second position in Boston, designating the position an FFS slot so Nevin could qualify, and then selecting Nevin for the position, clearly violated the general principles of the Standards of Ethical Conduct, which provide, among others, that “employees shall act impartially and not give preferential treatment to any private organization or individual.” 5 C.F.R. § 2635.101(b)(8).

## **B. Beal's Promotion to AD for AFD**

We next examined whether Beal's efforts were part of a “*quid pro quo* exchange of favors” with Hylton to improve her chances of being selected as the AD for AFD.

In short, we did not find that such an arrangement existed. While there was evidence that Beal undertook efforts to ensure that Nevin was hired with the hope that doing so would improve her chances for future promotion, we did not find that Hylton extended Beal preferential treatment in her application to become the AD for AFD in exchange for these efforts. We examined several aspects of Beal's selection in arriving at this conclusion. First, we considered Hylton's decision in late 2012 to classify the AD position as an ES-340 administrative position. When the position was first created in June 2008, it was designated an ES-340 administrative position; however, in 2010 former Director John Clark reclassified the position as an ES-1811 law enforcement position because he believed law enforcement officers should fill all senior management positions at the USMS. Clark's successor, Hylton,

took a different approach and decided that administrative employees should run primarily administrative divisions at the USMS, such as AFD. We did not find persuasive evidence that Hylton made this agency-wide change specifically to benefit Beal.

Second, we considered the multiple decisions to select Beal as the Acting AD for AFD after Morales left the position in January 2012. Hylton initially named Beal as Acting AD when Morales assumed his new duties as Acting Associate Director for Operations, just 2 months after FSA hired Nevin. While Hylton's decision was close in time to FSA's hiring of Nevin, as the DAD for AFD, Beal was the logical choice to be named Acting AD. We did not find evidence that caused us to question Hylton's motivation under those circumstances. Similarly, when the USMS announced in September 2012 a 1-year "detail opportunity" as the AD for AFD that was open to both ES-340 and ES-1811 employees, Beal was the only applicant and we therefore had little basis to question her selection. Beal was selected again for a detail opportunity in September 2013 in response to an announcement open to ES-340 and ES-1811 employees. According to multiple witnesses in the Human Resources Division, this opportunity was limited to candidates who resided within a specific commuting area in order to reduce potential costs associated with detailing a non-local employee to the position. The USMS, like other federal agencies at the time, was operating under a sequestration budget and concerns existed about reduced funding for the agency in the next budget. Of the three candidates who applied for the detail opportunity, only Beal resided in the designated commuting area and therefore was selected. We did not find evidence in USMS records, emails, or witness testimony to substantiate a claim that the commuting-area requirement or Beal's selection as Acting AD was improper or was made in exchange for her efforts on behalf of Nevin.

We also considered Beal's apparent selection as the permanent AD for AFD in connection with the December 2012 posting. We did not find in the records we reviewed any evidence of improper favoritism or preferential treatment in this selection of Beal, much less evidence that Beal was selected based on her involvement in Nevin's hire. Beal's and several other candidates' applications were reviewed by the Human Resources Division and an independent Executive Review Board. Beal received the highest scores and was told unofficially that she was selected for the position. The selection process was suspended, and the posting eventually cancelled, pending the results of an OSC inquiry into alleged improper hiring practices within AFD.

We lastly examined Beal's selection in July 2014 as the permanent AD for AFD. Here, again, we did not identify persuasive evidence to substantiate the allegation that Beal was promoted in exchange for her efforts on behalf of Nevin. As detailed earlier, the announcement for the vacancy was posted in February 2014 – about 1 month after the OSC inquiry was closed – and included the same requirements and mandatory qualifications as the announcement posted in December 2012. We did not identify evidence of impropriety or favoritism in the selection process that followed. The Human Resources Division identified 19 candidates, including Beal, who satisfied the mandatory qualifications, and of these, three – with Beal ranked highest based upon the candidates' applications – were

selected by the Executive Review Board for structured interviews. The interview panel was chaired by the Associate Director for Administration, and included the Associate Director for Operations and the Director of the Department of Justice's Asset Forfeiture Management Staff. The panel asked each candidate a series of identical questions in order to evaluate such qualifications as technical knowledge, strategic vision, and financial management. Based upon the responses to these questions, the panel unanimously assessed Beal as the top candidate and recommended her to Hylton, the selecting official for the position. Hylton followed the panel's recommendation and selected Beal as the next AD for AFD.

We did not find evidence in the selection process to indicate that Beal was the favored or preferred candidate because of her efforts on behalf of Nevin, nor did we find evidence that Hylton attempted to influence the deliberations of the Executive Review Board or the structured interview panel. We are mindful of the fact that Beal's time as Acting AD significantly benefited her application to become the permanent AD, and that Hylton was responsible for naming Beal to the Acting AD role on multiple occasions. However, for the reasons previously described, we did not find persuasive evidence that those decisions were made in exchange for Beal's efforts to get Nevin hired. We therefore did not find an improper advantage in a qualification – Beal's experience as Acting AD – that was not itself obtained improperly.



## **CHAPTER THREE**

### **ALLEGATIONS INVOLVING *QUID PRO QUO* HIRING ARRANGEMENT BETWEEN WILLIAM SNELSON AND DAVID SLIGH AND RELATED MATTERS**

On April 23, 2015, Senator Grassley, sent a letter to then-Acting Deputy Attorney General Yates alleging that as far back as 2009-2010 senior leadership in different divisions at the U.S. Marshals Service (USMS) agreed to “hire each other’s wives.” According to the letter, multiple whistleblowers alleged that then-Associate Director for Operations William Snelson and then-Chief Inspector for the Judicial Security Division (JSD) David Sligh engaged in a *quid pro quo* hiring arrangement whereby each agreed to hire the other’s spouse into his division.

The April 23 letter also stated that, according to whistleblowers, the USMS may have violated “basic internal controls standards” by allowing Snelson’s spouse, Benton, to manage the budget for a Tactical Operations Division (TOD) program that was under the supervision of Snelson. In addition, whistleblowers alleged that following Snelson’s promotion to Associate Director for Operations in 2014, Benton was “hired” within the Asset Forfeiture Division (AFD) despite having no asset forfeiture experience.

In this Chapter, we describe the results of the OIG’s investigation of the *quid pro quo* allegation and related matters raised by Senator Grassley in his April 23, 2015 letter. The Chapter is divided into three sections addressing the three allegations described in Senator Grassley’s April 23 letter.

#### **I. Allegation Involving *Quid Pro Quo* Hiring Arrangement between William Snelson and David Sligh**

##### **A. Background**

###### **1. William Snelson**

William D. Snelson joined the USMS in 1991 and has served in a number of positions throughout his career. From October 2006 to July 2008, Snelson served as the Chief of the Office of Inspection (later renamed the Office of Professional Responsibility). In August 2008, he was appointed to the Senior Executive Service and named the AD for TOD, and in October 2012 he was named the AD of the Investigative Operations Division. In March 2014, then-Director Stacia Hylton appointed Snelson to the position of Associate Director for Operations of the USMS. As Associate Director for Operations, Snelson oversaw all of the operational divisions within the USMS and advised the Director and Deputy Director on the agency’s law enforcement activities. He retired from the USMS on December 31, 2017.

## **2. David Sligh**

David T. Sligh joined the USMS as a Deputy U.S. Marshal in the Western District of Texas in San Antonio in 1991. In 2004, he was reassigned to Tyler, Texas upon being promoted to Chief Deputy U.S. Marshal for the Eastern District of Texas, a position he held until November 2008. In December 2008, Sligh was named Chief of the Office of Protective Operations in JSD, a position located at USMS headquarters in Arlington, Virginia. He moved to Arlington the following month and served as Chief of the Office of Protective Operations until December 2011. In January 2012, the USMS selected Sligh to be its Discipline Proposing Official and in September 2012 he relocated from USMS headquarters to San Antonio, Texas after receiving approval for a change of station. On September 29, 2016, he was designated Acting U.S. Marshal for the Western District of Texas in San Antonio. Sligh retired from the USMS on November 30, 2017.

### **B. Factual Findings**

#### **1. Relationship between William Snelson and David Sligh**

Snelson and Sligh told the OIG that they first met in July 2006 while attending a week-long Critical Incident Response Team training course at the Federal Law Enforcement Training Center in Glynco, Georgia.<sup>32</sup> Sligh stated that the next time he saw Snelson was sometime around September 2008, when he ran into Snelson and his spouse, Julie Benton, at a shopping mall in Arlington, Virginia. Sligh stated that he was first introduced to Benton during this encounter. He further stated that this encounter occurred while he was on a temporary detail to the Director's Office at USMS headquarters, prior to his appointment as Chief of the Office of Protective Operations in December 2008. Sligh told us that Palmer moved with him to Arlington, Virginia in January 2009.

Snelson and Sligh told us that shortly after the Slighs moved to Virginia, they and their spouses developed a friendship and the group would occasionally socialize outside of work. Palmer stated that she remembered meeting Benton within the first few weeks of moving to Virginia, and that the two of them quickly became friends. She stated that Benton helped her and Sligh search for a house. Palmer further stated that, although she could not recall a specific conversation, within the first few months of moving to Virginia she discussed with Benton her career background and the fact that she was looking for a job in the Washington, D.C. area.

#### **2. Hiring of Julie Benton into the USMS**

Benton was a city police officer from 1987 to 1992. From February 1992 to April 1996, she worked for a state public safety agency as a program coordinator,

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<sup>32</sup> The Critical Incident Response Team, which is made up of volunteer peers who are specially trained and certified in Critical Incident Stress Management, provides crisis intervention services and stress management education following critical incidents such as shootings or other types of traumatic incidents. Sligh was a member of the Critical Incident Response Team from 2000 until April 2012, when he voluntarily resigned due to his position as USMS Discipline Proposing Official.

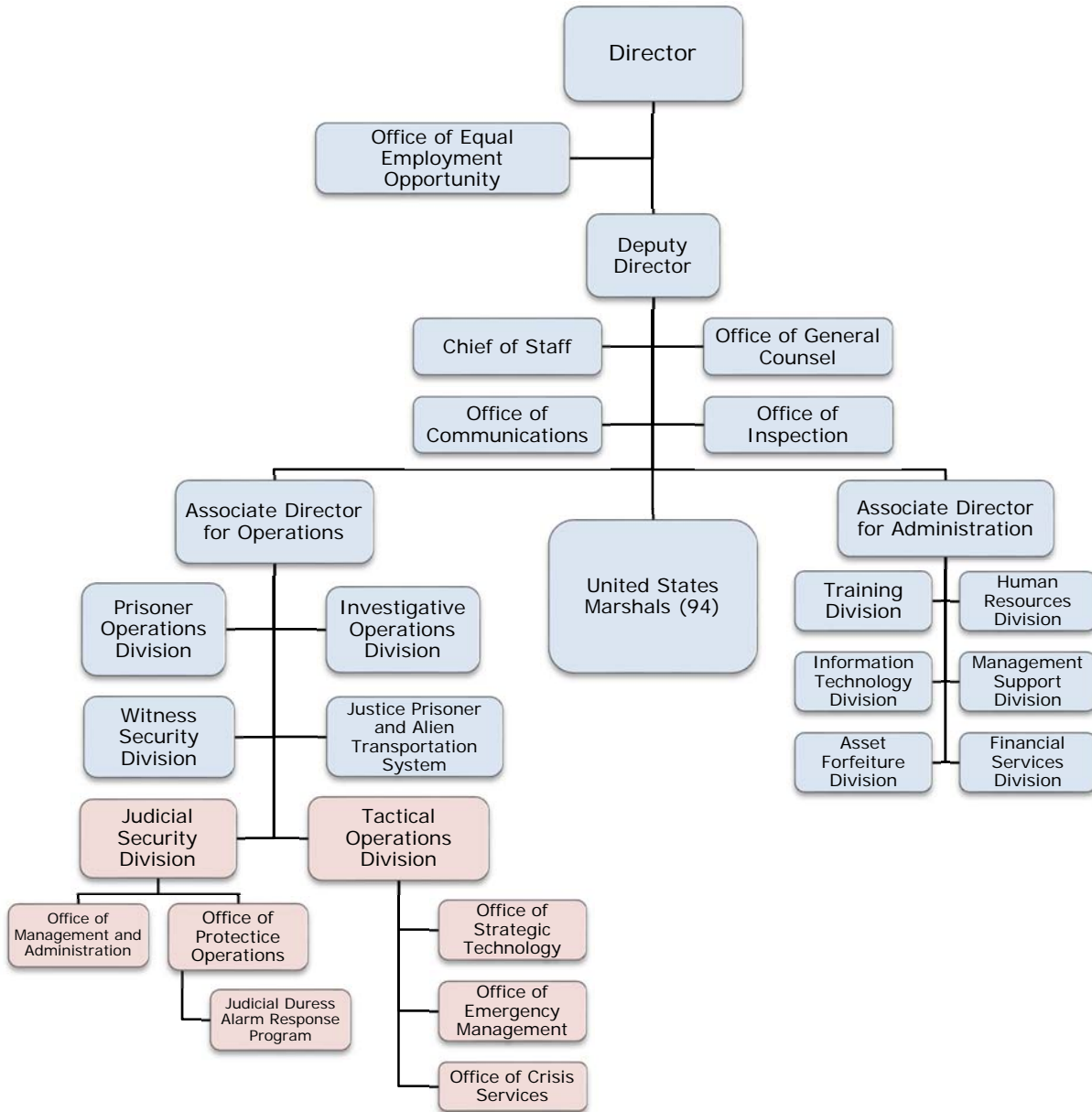
and from July 1993 to August 1996 she served as a volunteer deputy sheriff for a county sheriff's department. From 1996 to 2002, she held several part-time jobs, including an insurance agent for a property and casualty insurance company, a legal assistant for a real estate law firm, and an office manager for a home building company. After moving to Virginia, she worked as a contractor for a federal law enforcement agency and was responsible for providing logistical support to special agents and operational support staff.

In July 2007, Benton applied for employment with Project Support Services in Ashburn, Virginia, a company that provides administrative services to federal agencies, including the USMS. Project Support Services hired her as a Senior Homeland Security Specialist and assigned her to the USMS's Office of Management and Administration, JSD in October 2007. During her employment as a Project Support Services contractor from October 2007 to March 2008, she was responsible for maintaining financial databases and reviewing and approving requests for funding on special assignments related to judicial security, high threat trials, and judicial protection missions.

Benton applied for a position as a Management and Program Analyst at the GS-13 level with the Office of the Assistant Director, JSD in January 2008 and was hired into the USMS that April. Benton told us that although she was technically an employee of the JSD's Office of Management and Administration, she actually supported the Office of Protective Operations.

Figure 3.1 below shows an organizational chart of the USMS during 2009-2010, including the offices and programs within JSD and TOD relevant to the allegations examined in this section of the report.

**Figure 3.1**  
**Organizational Chart of the USMS**



Source: USMS.

### **3. Promotion of Julie Benton to Judicial Duress Alarm Response Program Manager**

In July 2009, Benton applied for a position as a Supervisory Budget Analyst at the GS-14 level in the Financial Services Division. She told us that she applied for the position because she had “burned out” reviewing and approving requests for funding on high-threat trials in the Office of Management and Administration and was interested in doing different work and pursuing other opportunities to advance

in her career. Benton stated that after she had been selected for the position she told then-AD for JSD Michael Prout of her intention to leave JSD, but decided to stay when Prout offered to give her new responsibilities within the division.

According to Benton, approximately 1 month later, Prout called her into his office to ask if she would be interested in being part of a working group to develop the Judicial Duress Alarm Response (JDAR) Program in JSD's Office of Protective Operations, which would serve as an additional protective measure for federal judges.<sup>33</sup> Benton told us that she accepted the assignment. In early September 2009, Prout formed the working group and named Benton as coordinator for the JSD headquarters team assigned to assist the working group.<sup>34</sup> Benton told us that her role in the working group was to help create the plans, policies, and procedures that would eventually form the basis for the JDAR Program and that the working group was able to deploy the first judicial duress devices in October 2009.

Benton stated that in November 2009, Prout named her an Acting Assistant Chief of the Office of Protective Operations for the purpose of managing the JDAR Program (still at the GS-13 level). Prout told us he received approval from USMS leadership to upgrade an existing GS-13 Management and Program Analyst position that had been recently vacated to a GS-14 Assistant Chief position. Prout obtained this approval prior to naming Benton the Acting Assistant Chief.

In January 2010, then-Chief of the Office of Protective Operations, Sligh, who reported to Prout, initiated a position description for the Assistant Chief position that would manage the JDAR Program under his supervision.<sup>35</sup> Sligh stated that he initiated the position description at the request of either Prout or then-Deputy Assistant Director (DAD) Carl Caulk. In February 2010, Caulk and Prout requested and authorized, respectively, the personnel action to recruit for the position and on March 2, 2010, the Human Resources Division posted the vacancy announcement for the position on USAJobs.gov. Six USMS employees, including Benton, applied for the position.

Sligh told us that either Prout or Caulk asked him to review the applications that were submitted for the position and to rank the candidates. He told us that he believed that he sought assistance from other staff within the Office of Protective Operations to review the applications, compare them to the position description, and rank them. Sligh also said that he probably ranked Benton's application first among the applicants, but that Caulk and Prout, as the selecting officials, had the

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<sup>33</sup> The impetus for the JDAR Program arose in the summer of 2009, when federal judges along the Southwest border expressed concerns about personal safety to then-Director John Clark and requested additional security measures be provided.

<sup>34</sup> The working group included representatives from JSD, TOD, the Investigative Operations Division, the Western District of Texas, and the District of Arizona.

<sup>35</sup> As described earlier, Sligh became Chief of the Office of Protective Operations in December 2008.

final say on how the candidates should be ranked based on their judgment of the candidates and knowledge of the position.<sup>36</sup>

We asked Sligh what influence, if any, his friendship with Benton and her husband had on his ranking of the candidates. He responded that it had no influence and told us that the program was “so important to us that we were looking for the person that could hit the ground running and . . . had a reputation for being driven, capable, savvy with our budgeting system . . . and capable of dealing appropriately with district personnel.” We also asked Sligh if he had considered recusing himself from participating in the selection of candidates, or seeking an ethics opinion about his participation, because of his friendship with Benton. He responded that he had not considered either. According to Sligh, his friendship with Snelson and Benton was well-known within JSD, and both Prout and Caulk were aware of it and never raised concerns about his involvement in the selection process. Sligh also told us that Snelson never discussed with him the JDAR Program Manager position, though he could not recall if Snelson ever mentioned Benton’s application for the position to him.

On March 23, 2010, Prout signed the Certificate of Eligibles and selected Benton for the position. Prout told us that he made the decision to select Benton for the position, though Caulk may have also recommended her. Prout stated that he did not convene an interview panel for the position because he was already aware of Benton’s qualifications. He further stated that his decision to select Benton for the position was based upon her success in establishing the JDAR Program, her proven acumen in financial management, and his direct observation of her work in JSD dating as far back as 2007. He said that Benton was well-qualified for the position and described her as a “competent professional” who completed projects efficiently and “handled her duties with grace under fire.” Caulk told us that he felt very strongly that Benton was qualified to receive the promotion based on his experience working with her and the positive feedback he had received from others who had worked with her, and he was comfortable with recommending her for the position.

#### **4. Hiring of Brooke Palmer into the USMS**

On March 5, 2009, Benton sent an email to Palmer’s personal email address. In the email, Benton wrote, among other things: “How are things with . . . the job search? If you’re not too busy, you should meet me for lunch tomorrow.” Later that morning, Benton sent another email to Palmer and wrote: “BTW . . . even if you can’t come for lunch, can you meet me and bring me a copy of your resume?” A few minutes later, Palmer responded that she could meet Benton for lunch the

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<sup>36</sup> The USMS was unable to provide documentation that described additional information on the selection process. In response to numerous allegations about improper hiring and promotion practices within the USMS, the Department’s Justice Management Division (JMD) conducted a review of the USMS “Human Resources Environment.” In a January 2016 report detailing its findings, JMD wrote that the “USMS displayed a consistent lack of documentation in case files, making full reconstruction and validation of merit promotion decisions impossible.”

following day and that she had a second interview scheduled with a local community college.

On March 6, 2009, Palmer emailed her resume to Benton. Palmer's resume listed her work experience as a high school teacher, high school guidance counselor, and student advisor at a community college. About 20 minutes later, Benton responded, stating: "Thank you for sending this to me. I enjoyed seeing you for lunch." Later that day, Benton forwarded Palmer's resume to Snelson.

Palmer told us that she sent her resume to Benton because "she knew a lot of different people, not necessarily people in government." She further stated that although she believed she mentioned to Benton she was looking for a job in the Washington, D.C. area, she could not remember whether Benton gave her any suggestions as to where she should look for employment. Palmer also said that it was "very likely" she discussed her career background with Benton, but did not recall any such discussion with Snelson.

Benton stated that Palmer told her and Snelson that she had a background as a school counselor and teacher, and that she was looking at job opportunities at a local community college and another federal agency. According to Benton, the only job search advice she offered to Palmer was to "look on OPM [Office of Personnel Management] jobs. Because that's what I had done."

On March 30, 2009, Snelson emailed Benton, stating: ". . . By the way, what is the proper spelling of David Sligh's wife's name? Brook???" About 20 minutes later, Benton responded: "Brooke – she got an offer from [a local community college]." On May 5, 2009, Benton forwarded Palmer's resume to Snelson a second time. In the body of the email, Benton wrote: "As requested."

Sligh told us that he had no recollection of Palmer sending her resume to Benton and he did not know why she did so. He also told us that he did not know why Snelson requested Palmer's resume from Benton. He further stated that he did not believe he ever shared Palmer's resume with Benton, Snelson, or anyone else in the USMS, and he could not recall if he ever discussed with Benton or Snelson his spouse's interest in seeking employment with the USMS.

Snelson told us that the USMS Office of Crisis Services, which provides support to individuals affected by crisis or traumatic situations through the Critical Incident Response Team and the Employee Assistance Program, needed an administrative employee, known as a Program Support Specialist.<sup>37</sup> On August 10, 2009, he signed the position description for the position so that the USMS could fill

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<sup>37</sup> Snelson told us that he created the Office of Crisis Services to combine the Critical Incident Response Team and Employee Assistance Program, which had been formerly managed in the Human Resources Division, under one office. Although he said he could not recall when he created this office, we found an email the then-Chief of the Critical Incident Response Team sent on May 3, 2009 to members of the Critical Incident Response Team stating that the two programs had been consolidated under the new office.

the slot through a vacancy announcement.<sup>38</sup> That same day, Victor Chang, then-Human Resources Officer, approved it.<sup>39</sup> According to Snelson, the new position required skills in handling finances on behalf of the office and employee travel, as well as some background in counseling, or the ability to “triage” and refer phone calls for assistance to the appropriate points of contact, such as the Employee Assistance Program Administrator.<sup>40</sup>

On August 12, 2009, Snelson and Anton Slovacek, then-Chief of the Office of Emergency Management, signed the Standard Form 52 requesting authorization to recruit for the Program Support Specialist position.<sup>41</sup> That same day, according to an electronic calendar appointment, Snelson met with Taylor Donnelly, a Human Resources Specialist, to discuss the Program Support Specialist and Employee Assistance Program Administrator positions.<sup>42</sup>

We asked Donnelly to discuss her involvement in screening the applicants for the Program Support Specialist position. Donnelly told us that she remembered the Human Resources Division posted a vacancy announcement for an “EAP [Employee Assistance Program] position” sometime during the fall or winter of 2009.<sup>43</sup> She stated that after reviewing the applications, ranking and scoring the candidates, and applying veterans’ preference, only veterans were referred to the hiring manager for selection consideration. She stated that during this time the Human Resources Division was following the “Rule of Three,” which limited selection to the top three candidates with the highest numerical scores, all of whom happened to be veterans that the Human Resources Division determined had met the position’s minimum qualifications.<sup>44</sup> Donnelly also stated that one or two of the veterans were a “perfect match” for the position because they had experience treating post-

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<sup>38</sup> He also told us that the office also needed a new Employee Assistance Program Administrator, as this position had recently been transferred from the Human Resources Division to TOD.

<sup>39</sup> Victor Chang is a pseudonym.

<sup>40</sup> Snelson told us that he did not remember when he first saw Palmer’s resume. He also stated that he could not recall if he had any knowledge of Palmer’s work experience prior to creating the Program Support Specialist position. Sligh told us that he was “sure” he would have discussed with Snelson and Benton Palmer’s career background during the course of general conversation, though he could not recall any such specific conversation.

<sup>41</sup> Aside from signing the Standard Form 52, Slovacek told us that he had no involvement in hiring for the Program Support Specialist position. He stated that he had no recollection of signing the form and noted that he was the Chief of the Office of Emergency Management when he signed it. He stated further that he may have been asked to sign the form because the GS-15 position overseeing the Office of Crisis Services may have been vacant at the time, and under this circumstance he would have been the next logical person to sign it. Anton Slovacek is a pseudonym.

<sup>42</sup> Taylor Donnelly is a pseudonym.

<sup>43</sup> Although Donnelly did not use the term “Program Support Specialist” during her interview with the OIG, the context of her testimony made it clear that she was referring to this position and not the EAP Administrator position.

<sup>44</sup> In November 2010, the “Rule of Three” process was replaced by the “Category Ratings” system, which provides more candidates from which to choose, not just the top three.



traumatic stress disorder. Furthermore, she said that someone in the USMS, though she could not recall who, had told her the position had been created to provide counseling services to Deputy U.S. Marshals who were returning from Afghanistan and Iraq.<sup>45</sup>

Donnelly told us that she remembered that Palmer applied for the position. She stated that after reviewing her resume she did not find Palmer to be among those best qualified for the position. According to Donnelly, Palmer's experience as a school counselor had not given her sufficient qualifications to be considered best qualified for the Program Support Specialist position, especially at the GS-13 level.

Donnelly stated that although she could not recall whether Palmer appeared on the certificate of eligibles, she remembered that Snelson returned the certificate to the Human Resources Division unused. She also stated that the Human Resources Division later sought assistance from OPM to revise the vacancy announcement and repost the position on USAJobs.gov.<sup>46</sup>

Rebecca Schwartz, then-Chief of Administrative Staffing and Donnelly's supervisor, told us that she recalled Snelson was not pleased with the candidates on the certificate of eligibles and wanted to re-announce the job.<sup>47</sup> According to Schwartz, Snelson told her that after the candidates were interviewed he realized that none of them were a good fit for the position. Schwartz told us that Snelson then decided that the position was not correctly described, and consequently not correctly announced, and therefore needed to be posted again. She also stated that her conversations with Donnelly and other Human Resources Division staff about the announcement gave her the impression that Snelson believed Palmer had some qualifications that he thought the position needed, and that he wanted the opportunity to have Palmer be among those candidates he could select for the position.

When we asked Snelson how many times the Program Support Specialist position was posted, he stated that he had no recollection of the position being posted more than once. He also stated that he had no recollection of receiving a certificate of eligibles for the position where none of the candidates met the qualifications he was looking for.

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<sup>45</sup> The Standard Form 52 indicated that the funding for the position came from supplemental appropriations for the Global War on Terror.

<sup>46</sup> We requested from the USMS all vacancy announcements and all applications and supporting documents for the Program Support Specialist position that originated from the position description signed by Snelson and approved by Chang in August 2009. According to a Human Resources Division official, the USMS had to rely on OPM's backup information to obtain the documentation we requested because the USMS had not independently retained any of the records. However, according to the USMS, OPM reported that the official case file was no longer available because of OPM's document destruction practices in accordance with recordkeeping guidelines. OPM was only able to produce a draft of the vacancy announcement that, as we discuss later, was posted in 2010, and the resume of the individual who was selected for the position – Brooke Palmer.

<sup>47</sup> Rebecca Schwartz is a pseudonym.

Andrew Carr, then-Administrative Officer for the TOD, said he recalled that his division “may have done two recruitments” for the Program Support Specialist position.<sup>48</sup> According to Carr, the team that reviewed the candidates who had applied to the first job posting found that none of them were satisfactory, and therefore the TOD “went through the process again.” Carr could not recall if he was part of the team that reviewed the candidates.<sup>49</sup>

We asked Palmer whether the vacancy announcement for the Program Support Specialist position was cancelled and reposted, and whether she had to resubmit her application. She stated that she remembered seeing either an automated message on USAJobs.gov or receiving an email from USAJobs.gov that a position she had applied for was no longer available and to continue looking for future employment opportunities, but she could not recall whether she resubmitted her application. We also asked Palmer whether she ever discussed the position with Snelson. She stated that she could not recall, but that she may have mentioned to Benton that she had applied for the position.

Sligh stated that he became aware of the Program Support Specialist position when Palmer told him that she had discovered the vacancy announcement on USAJobs.gov. He said that he may have told Caulk, Prout, and some colleagues from the Critical Incident Response Team that Palmer had applied for the position, but he did not believe that he discussed her application with Snelson. He told us that he had no involvement in his spouse’s hire, and that after she had applied for the position, he stopped meeting with his colleagues from the Critical Incident Response Team for morning coffee breaks because he wanted to avoid creating the perception that he was inappropriately influencing the hiring process.

On December 14, 2009, Schwartz approved a Standard Form 39, Request for Referral of Eligibles, tasking OPM to prepare the vacancy announcement, evaluate the applicants, and generate the certificate of eligibles for the Program Support Specialist position.<sup>50</sup> Attached to the form were the position description,

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<sup>48</sup> Andrew Carr is a pseudonym.

<sup>49</sup> As part of the comments Snelson submitted to the OIG after reviewing a draft of this report, he included an unsworn written statement from John Altman, who during the relevant time period was the Chief Inspector of the Critical Incident Response Team. The written statement described Altman’s recollection of his involvement with the Program Support Specialist announcement. We contacted Altman and requested a voluntary interview in order to obtain his sworn testimony, which is how the OIG obtains testimonial evidence from witnesses in its reviews and is what we received from all other individuals we interviewed in this matter, including former USMS employees. Altman did not agree to an interview during our first contact with him, and did not respond to our subsequent attempts to contact him. Altman is no longer a federal employee and the OIG lacks testimonial subpoena authority to compel his testimony. Under these circumstances, we did not rely upon Altman’s written statement for purposes of the factual record or the investigative findings regarding the alleged *quid pro quo* arrangement between Snelson and Sligh. John Altman is a pseudonym.

<sup>50</sup> Schwartz told us that during the period in which this form was sent, the Human Resources Division had severe staffing shortages and audit issues, and that “[the Human Resources Division] needed to clean up [its] act.” She stated one of the options she identified to accomplish this goal was to enter into a contract with OPM to announce USMS jobs.

assessment tool, and a December 1, 2009, email from another USMS Human Resources Specialist to OPM that included the following message: "Here is the [position description] and the draft assessment tool that we prepared. Could you please prepare [a selective placement factor] statement so I can show it to our [Human Resources] officer?"<sup>51</sup> Schwartz told us that the "[Human Resources] officer" in the email referred to Chang.

On January 6, 2010 at 2:28 p.m., Snelson sent an email to Chang.<sup>52</sup> He stated:

Yes . . . it is me again. Can you advise where we stand on getting the [position description] re-written and the selective placement factor drafted for the announcement? I assumed it would be pretty quick after we talked to the man from OPM. I really need to get this position filled and it has been close to a year now. Any help you can offer and anything you can do to make this happen this week would be extremely appreciated!!!!

At 2:34 p.m., Chang forwarded Snelson's 2:28 p.m. email to Schwartz with the message: "Can you give me a status of where we are on getting a selective placement factor for [Snelson's] job?? He and I talked to [an OPM employee] before Christmas and based on that conversation we thought he would come up with something very soon."

Chang told us that he did not remember his conversation with Snelson, but with regard to Snelson's comment about wanting the position description re-written and the selective placement factor drafted, he recalled that Snelson was looking for a candidate who had the ability to befriend a Deputy U.S. Marshal, his or her spouse and family, as well as counsel the workforce, in the event of a shooting or other critical incident. He also said that although Schwartz had full responsibility for addressing hiring issues for administrative employees, Snelson would come to him for assistance whenever he felt things "weren't moving swiftly enough."

Schwartz told us that adding a selective placement factor, such as the one Snelson requested for the Program Support Specialist position, required a lot of justification and the Human Resources Division did not often approve them. She also stated that using a selective placement factor could result in a "potential misuse of the system" because it serves as a "screen-in, screen-out factor" – for example, the hiring manager could require an ability as a selective placement factor

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<sup>51</sup> According to OPM, selective factors are knowledge, skills, abilities, or special qualifications that are in addition to the minimum requirements in a qualification standard, but are determined to be essential to perform the duties and responsibilities of a particular position. Applicants who do not meet a selective factor are ineligible for further consideration.

<sup>52</sup> According to calendar appointments, earlier that day, Snelson had met with TOD staff to discuss the interview of a candidate for the EAP Administrator position, as well as the interview of another candidate the previous day.

that only the applicant he wanted to hire possessed, while the other applicants who did not have this ability would not be eligible for consideration.

On January 12, 2010, an OPM Human Resources Specialist emailed the draft vacancy announcement to Schwartz and Donnelly. Later that same day Schwartz responded stating that she had forwarded the vacancy announcement to Snelson for his review.

Two days later, Snelson sent an email to Chang that contained comments Snelson made to the vacancy announcement. The announcement included a selective placement factor that required applicants "to demonstrate the ability to provide counseling services in times of crisis to employees and family members in order to assess the overall needs of the individuals, and to plan the appropriate type of Employee Assistance Program (EAP) services." Snelson added a comment to this narrative suggesting the following changes: ". . . describe your ability to provide counseling services to employees, family members, students, and/or other affected persons. Clearly denote your ability and experience in assessing the overall needs of individuals and defining appropriate assistive services."

Other parts of the announcement asked applicants to describe their experience or training with counseling and providing referral services to employees and family members dealing with emotional trauma or crisis. Snelson suggested replacing the term "employees and family members," which appeared in several places throughout the announcement, with the term "individuals," and commented "we should not limit [counseling experience] to 'employees and family members.'"

Additionally, the announcement included a statement requesting applicants to ". . . provide specific examples (within the past 2 years) of procurement advice and assistance you provided to management [and to] describe the situation, the nature of the procurement action, what the desired outcome was, your role, and what you specifically advised, and the actual outcome." To this statement, Snelson added the following comment: "I would prefer to take this paragraph out of the announcement. It is not germane to selecting the right applicant. It might also cause us to receive the same list of 'unqualified' candidates that we did last time." When we asked Snelson to explain this request, he told us, as he did in response to several of our questions about actions he took relating to this announcement, that he had no recollection of the events.

On February 2, 2010, Donnelly sent an email to the OPM Human Resources Specialist stating: "Attached is a revised PD [position description] for the Program Support Specialist, GS-0301-13 position. Can you please disregard the PD sent earlier, and use this one in its place? Also, AD Snelson would like to have Brooke Palmer as a Name Request. [Name of OPM employee] just a friendly reminder, can you please send a copy of the draft and assessment tool before releasing to USA Jobs? Thanks so much for all of your help in this matter." According to a former USMS human resources official, a hiring manager would submit a "name request" to

OPM to signal his interest in a particular applicant. Snelson told us that he had no recollection of making a name request for Palmer.<sup>53</sup>

On February 3, 2010, Donnelly sent another email to the OPM Human Resources Specialist with the subject heading "Call Back – Revised PD." In the email, Donnelly wrote: "In reference to your question regarding the draft and assessment tool you submitted, [Snelson] did review your documents and decided to make some changes to the PD in order to incorporate the modifications into the announcement . . . please do whatever you have to do to incorporate those modifications into the announcement . . . please review the new PD carefully as [Snelson] wants to ensure that the announcement reflects the revisions from this new PD."

The rewritten position description, which was signed by Snelson on February 1, 2010, and approved by Chang the following day, included edits to the position's major duties and required knowledge factors. For example, while the original position description cited "knowledge of the Employee Assistance Program" as a knowledge factor, the revised position description cited "knowledge of Employee Assistance Programs, or programs offering similar assistance to individuals." In addition, the knowledge factors "ability to provide assistance to employees on EAP issues" and "ability to provide counseling services to employees and their family members . . ." were rewritten to "ability to provide assistance to individuals on EAP related issues or programs offering similar assistance to individuals" and "ability to provide counseling services to individuals," respectively.

On February 3, 2010, the OPM Human Resources Specialist emailed Donnelly and Snelson stating that the changes Snelson made to the position description had been incorporated into the vacancy announcement. The next day, Snelson responded to the OPM Human Resources Specialist and Donnelly. In the email, Snelson wrote:

My office has reviewed the attached documents and has made several comments (see amended attachments). As had been previously noted (and why we just amended the Position Description), we are seeking qualified candidates with experience providing individuals with assistive services. Those services may (or may not) be through an Employee Assistance Program. A candidate could have experience as a social worker, a red cross worker, a high school counselor, a college advisor, etc. Further, the Employee Assistance Program and the Critical Incident Response Team help vastly more people than just employees and their family members. So, we should not limit any criteria to having experience dealing only with "Employees and Family Members". Bottom line: we do not want to limit the candidate pool by only stating "EAP" services or only referring to EAP experience.

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<sup>53</sup> In the rule of three rating process, name requests are used if there is a tie and one of the persons in the tie was a name request. In these circumstances, the name request is selected over the other applicants in the tie.

When we asked Snelson to explain why he wanted to expand the pool of qualified candidates to include individuals with experience providing “assistive services” and not just those with EAP experience, Snelson stated that the USMS previously had “tons of issues with EAP,” including significant concerns and issues with the past two EAP Administrators. Snelson further stated that he was not looking for another “EAP person” because he was already selecting an EAP Administrator from a different job announcement. He said he “wanted somebody that was more generic [who] understood how to deal with people in intake.”

On February 5, 2010 at 1:48 p.m., the OPM Human Resources Specialist emailed Snelson and Donnelly stating that the suggested changes had been made to the vacancy announcement. At 6:24 p.m., Snelson responded: “I have reviewed the latest version and I believe it captures the requirements well. I truly appreciate your hard work on this and believe it is ready to be posted, but will defer to [Donnelly] and [Schwartz] on that.”

The vacancy announcement for the Program Support Specialist position was posted on USAJobs.gov on February 22, 2010, and closed on March 5, 2010. On March 8, 2010, the OPM Human Resources Specialist emailed Donnelly the certificate of eligibles.<sup>54</sup> She stated that there were three names included on the certificate rather than the typical five because the name request, which was Palmer, held the third position and therefore served as the cutoff.

On March 15, 2010, Snelson sent an email to the OPM Human Resources Specialist stating that he and Nathaniel Wagner, then-Chief of the Office of Crisis Services, had some questions and concerns about one of the applicants and that Wagner would be contacting her to explain those concerns.<sup>55</sup> The applicant in question was also a veteran and was ranked higher than Palmer.<sup>56</sup> At 3:55 p.m. on March 25, 2010, Wagner emailed the OPM Human Resources Specialist informing her that upon reviewing the candidate’s application he and Snelson believed that the candidate did not meet the “minimum qualifications” for the position. The OPM Human Resources Specialist wrote back at 4:15 p.m. stating that, after giving the candidate’s application a second review, she and her manager agreed to remove the candidate from the certificate and reissue it.<sup>57</sup> The OPM Human Resources Specialist further stated that because only two names remained on the certificate

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<sup>54</sup> The USMS was unable to provide the OIG with a copy of the March 8, 2010, certificate of eligibles. According to a Human Resources Division official, the USMS was unable to locate the original certificate because, as noted above, OPM no longer has the official case file for the announcement.

<sup>55</sup> Nathaniel Wagner is a pseudonym.

<sup>56</sup> We were unable to determine whether this candidate was ranked first or second because, as noted above, the USMS was unable to locate a copy of the March 8, 2010, certificate of eligibles. However, we can infer that the candidate was ranked higher than Palmer because the OPM Human Resources Specialist stated that the certificate included three names and Palmer held the third position. Additionally, after contacting the candidate, we were able to confirm that the candidate claimed veterans’ preference when he applied for the position, which would have given him additional points resulting in a higher rating than Palmer.

<sup>57</sup> The reissued certificate actually had an issue date of March 23, 2010.

after the removal of the candidate, she reviewed additional candidate materials and added three names to the certificate to provide the USMS with more options, resulting in five names in total on the reissued certificate.

When we showed Snelson a copy of Wagner's March 25 email describing their concerns about the applicant who was a veteran, he stated: "I don't have any recollection of this whatsoever." Wagner told us that he could not recall specifically why he had concerns about this applicant, but remembered there was an applicant whom he felt was not qualified for the position, and that Snelson, Slovacek, or Altman may have also shared these same concerns. He stated that he could not recall whether the applicant he described in his March 25 email was a veteran. Wagner also stated that he was concerned a lot of the applicants did not have financial management experience.

Wagner, Altman, and Carr interviewed Palmer and the four other candidates on the reissued certificate for the Program Support Specialist position between June 1 and 3, 2010. Wagner told us that of the five candidates on the reissued certificate that the panel interviewed, he believed that Palmer was the best qualified, but, as described below, she lacked financial management experience and therefore Wagner recommended canceling the announcement. Carr told us that the interview panel reached a consensus that Palmer was the first choice.

At 2:37 p.m. on June 4, 2010, Wagner sent an email to Snelson stating that the panel had finished interviewing all five candidates. In the email, Wagner wrote that although all of the candidates were qualified to provide crisis intervention support to employees and family members, none of the applicants, including Palmer, "express[ed] the propensity to fulfill the [position's] financial management responsibilities."<sup>58</sup> He also wrote:

Given the emphasis that the agency and this position has on financial management, I recommend that we cancel this announcement. In moving forward, I suggest that we modify the major duties section to put more of an emphasis on financial management and reorganize the specialized experience to put financial responsibilities first and counseling duties last. Some other tweaking of the announcement may also be needed to ensure we are generating a pool of best qualified with both a financial and some sort of counseling background. I recommend that I brief you both in person on Monday.

Two minutes later, Snelson responded stating: "Let's talk Monday."

According to Wagner, he met with Snelson the following week and reiterated his view that the announcement should be canceled and re-announced with a stronger emphasis on financial management because the essential duties and responsibilities of the position included handling travel expenses for members of the

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<sup>58</sup> Anton Slovacek, who by this time was the DAD of the TOD, was copied on the email. As noted above, Slovacek told us that he had no involvement in hiring for the Program Support Specialist position, aside from signing the Standard Form 52 requesting authorization to recruit for the position.

Critical Incident Response Team, managing the office's budget, and procuring goods and services for the office. Wagner told us that Snelson held the opposite view and considered the counseling aspects of the position to be more important. Wagner also told us that he raised concerns about the perception of hiring the wife of another USMS employee. According to Wagner, Snelson told him that there was "nothing wrong with hiring anyone on the list . . . because it went through the process." As a result of his conversation with Snelson, Wagner stated that he felt compelled to hire Palmer because she was the "leading candidate" who had applied to the announcement.

Snelson stated to the OIG that he had no recollection of anyone expressing concerns to him that any of the applicants were unqualified for the position. When shown Wagner's June 4, 2010 email during the OIG interview, Snelson stated that he "absolutely never persuaded anybody" to hire Palmer.

On June 14, 2010, Wagner wrote a memorandum requesting permission to pass over another applicant with a veterans' preference on the reissued certificate of eligibles due to suitability concerns.<sup>59</sup> Wagner wrote that although the applicant was the "highest rated candidate" on the reissued certificate, the applicant, during the course of her interview, "admitted [to] being in a five year financial debt counseling program."<sup>60</sup> Wagner concluded the memorandum by stating that the applicant's counseling for financial debt was an "extreme cause for concern" because the position was responsible for "the financial matters of the office and the infraction relates directly to the duties the incumbent will be performing."

Wagner told us that he would have discussed this memorandum regarding the veteran candidate with Snelson, Altman, and Slovacek but could not recall the specifics of those conversations. He stated that he "wouldn't know how to write something like this" without seeking guidance from someone in the Human Resources Division, most likely Donnelly, because this was one of his first experiences with hiring an administrative employee.<sup>61</sup> He further stated that Snelson was actively engaged in the hiring process for the position and would have had influence on the decision to write the memorandum and make the pass over request. Snelson told us that although he "absolutely would have discussed" the memorandum with Wagner, he had no specific recollection of any such conversation.

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<sup>59</sup> According to OPM, a pass over request is an objection filed against a preference eligible that results in the selection of a nonpreference eligible. An appointment official may not pass over a preference eligible to select a lower-ranking nonpreference eligible without approval from OPM.

OPM defines suitability as identifiable character traits and conduct which are sufficient to determine whether or not an individual is likely to be able to carry out the duties of a federal job with integrity, efficiency, and effectiveness.

<sup>60</sup> The applicant with veterans' preference had a rating of 102. Palmer and the remaining three applicants on the certificate, none of whom had veterans' preference, all had a rating of 100.

<sup>61</sup> Wagner told us he was also involved in the hiring of the EAP Administrator, who was the other administrative employee in the Office of Crisis Services.



On June 16, 2010, Chang signed off on a form approving the request to pass over the applicant with veterans' preference in order to select Palmer for the position. That same day, another USMS HR Specialist sent the form and June 14, 2010, memorandum to OPM for its review and approval. Chang told us he did not recall approving the pass over request. However, he stated that he had approved several pass over requests while he was at the USMS and he "would never pass over a veteran unless OPM would support [him] on that pass over."

Even though the June 14, 2010, memorandum was addressed to Donnelly, Donnelly told us that she never saw or received the memorandum.<sup>62</sup> She said that had she received the memorandum, she would have been required to submit it to her chain of command for review and approval; first to Schwartz, then to Chang. She stated that the memorandum looked unusual to her because hiring "managers more often than not . . . don't even want to entertain [the idea of] passing over a veteran." She stated further that Human Resources Division managers were reluctant to get involved in reviewing and sending forward to OPM a request to pass over a veteran because the justification for doing so had to meet a very high threshold.

Schwartz told us that she never saw the memorandum and was not involved in any conversations about it. She stated that veteran pass over requests were uncommon and not often approved. She further stated that both she and Chang were supposed to review veteran pass over requests before they went to OPM, and that Chang did not typically approve them.

Palmer received her job offer from the Human Resources Division on July 20, 2010, and started her position as a Program Support Specialist on August 15, 2010. Palmer began working at the USMS at an initial salary of \$89,033 (GS-13, Step 1), an increase of almost 84 percent from the \$48,500 salary of her prior position at a local community college. In November 2012, Palmer was reassigned from USMS headquarters in Arlington, Virginia to Tyler, Texas, in connection with her husband's move.

### **C. Analysis**

Our investigation examined an allegation from multiple whistleblowers that then-AD for TOD Snelson and then-Chief Inspector of the Office of Protective Operations in JSD Sligh engaged in a *quid pro quo* hiring arrangement whereby each agreed to hire the other's spouse into his division. Our review focused on personnel actions involving Benton and Palmer during 2008-2010, namely the hiring of Benton into JSD in 2008, the promotion of Benton to a GS-14 position in JSD in March 2010, and the hiring of Palmer into TOD in July 2010. We address these three issues in that order.

Although we did not substantiate the allegation of a *quid pro quo* hiring arrangement between Snelson and Sligh, we did conclude that Snelson committed

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<sup>62</sup> Upon reviewing the memorandum during an OIG interview, Donnelly also observed that her name was misspelled on it.

prohibited personnel actions and violated the Standards of Ethical Conduct in connection with the hiring of Palmer.

### **1. Hiring of Julie Benton into the USMS**

Benton was hired into JSD in April 2008, approximately 6 months before Sligh moved to Arlington, Virginia to work as Chief of the Office of Protective Operations. At the time of Benton's hiring, Sligh was working in Tyler, Texas as Chief Deputy U.S. Marshal for the Eastern District of Texas. Furthermore, Sligh told us that he did not meet Benton until sometime around September 2008, approximately 5 months after she was hired. Therefore, we concluded that there could not have been a *quid pro quo* hiring arrangement between Sligh and Snelson regarding her initial hiring by the USMS because Sligh had no involvement in that decision.

### **2. Promotion of Julie Benton to JDAR Program Manager**

Although Sligh was not involved in Benton's hiring, he was involved in Benton's promotion to the position of JDAR Program Manager in March 2010, an action that preceded Palmer's hiring into the USMS by about 4 months. Given the proximity of these personnel actions, we sought to determine whether Benton's promotion in JSD and Palmer's hiring into TOD resulted from a *quid pro quo* exchange of favors.

We did not find evidence that Benton's promotion was part of a *quid pro quo* arrangement between Snelson and Sligh. The decision to promote Benton was made by then-AD for JSD Prout. As described earlier, Benton told us that she passed up an opportunity to accept a promotion to a GS-14 position in the Financial Services Division after Prout offered to give her new responsibilities within JSD. Prout assigned Benton an important role with key responsibilities on the working group that was tasked with developing the JDAR Program. He created a separate branch within the Office of Protective Operations dedicated to the JDAR Program, and sought and received approval to upgrade an existing GS-13 Management and Program Analyst position that had been recently vacated to a GS-14 Assistant Chief position for the purpose of managing the JDAR Program. Furthermore, then-DAD Caulk requested the personnel action to recruit for the Assistant Chief position, while Prout authorized the action.

Sligh told us that he initiated the position description for the Assistant Chief position at the direction of either Prout or Caulk. He stated that he probably ranked Benton highest among the candidates he reviewed, but that his friendship with her had no bearing on his assessment. He also said Caulk and Prout had the final say on how the candidates should be ranked based on their judgment of the candidates and knowledge of the position. Prout signed the Certificate of Eligibles and selected Benton for the position. He told us that the decision was his own based on his direct observation of Benton's work experience in JSD dating back to 2007, particularly her success in helping to stand up the JDAR Program. Likewise, Caulk told us that he believed Benton was qualified for the position.

Based on these facts, we concluded that Benton's promotion to the position of Assistant Chief of the Office of Protective Operations and JDAR Program Manager was not the result of any *quid pro quo* arrangement between Sligh and Snelson, or any other improper considerations or favoritism. However, notwithstanding Sligh's testimony that his friendship with Benton did not affect his assessment of her application, we also examined whether Sligh should have participated in the selection process for the position at all. Section 502 of the Standards of Ethical Conduct directs employees to seek the approval of an agency ethics official or other designee if the employee is concerned that circumstances would raise a question regarding his impartiality in a particular matter. 5 C.F.R. § 2635.502(a)(2). Section 502 also provides that an employee may seek assistance from a supervisor, agency ethics official, or agency designee in considering whether the employee's impartiality might be questioned. Where an employee's participation would raise such a question in the mind of a reasonable person, the agency ethics official or other designee may authorize the employee's participation "based upon a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d).<sup>63</sup>

We believe that Sligh's participation in the selection process for the JDAR Program Manager position qualifies as a "particular matter" for purposes of Section 502. We also believe that Sligh's friendship with Benton would cause a reasonable person to question his impartiality in the selection process. Sligh told us that he was not concerned about his involvement in the matter because Caulk and Prout were well aware of his friendship with Benton, and they would not have sought his input had they been concerned about the relationship's effect on his impartiality. We were not persuaded by this explanation and believe that an explicit conversation between Sligh and his supervisors about the situation – the type contemplated by Section 502(a)(1) – should have occurred. However, we also did not find Sligh's position altogether unreasonable, and it points to what we believe was a shared responsibility under the circumstances. As supervisors with knowledge of the friendship between Sligh and Benton, we believe it was incumbent on Prout and Caulk to identify the issue of Sligh's involvement in the selection process and to seek authorization from the agency ethics official or other designee prior to allowing Sligh to participate. We thus concluded that both Sligh and his supervisors gave insufficient consideration to the question of Sligh's impartiality in the selection process and that Sligh should not have been involved in the process without authorization from the agency ethics official or designee.

### **3. Hiring of Brooke Palmer into the USMS**

We found that Snelson engaged in prohibited personnel practices by violating 5 U.S.C. § 2302(b)(6). That provision prohibits an official from granting:

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<sup>63</sup> Notably, Section 502(f) of the Standards of Ethical Conduct provides that "[a]n employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section."

any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

Section 2302(b)(6) is directed at purposeful discrimination to help or hinder particular individuals in obtaining employment without regard to their merit.<sup>64</sup> Defining the scope and manner of competition to facilitate selection of a particular candidate is among the actions that have been held to constitute prohibited personnel practices in violation of Section 2302(b)(6).

We found that Snelson manipulated the hiring process to improve the chances that Palmer was hired when he (1) instructed the Human Resources Division to request from OPM a selective placement factor that was consistent with Palmer's experience, (2) rewrote the position description and edited the vacancy announcement to include required knowledge factors and experience consistent with Palmer's resume; and (3) submitted a "name request" for Palmer.

We found that Snelson provided Palmer an improper advantage for the Program Support Specialist position when he requested from OPM a selective placement factor that was consistent with Palmer's work experience. Palmer could not have met the selective placement factor that OPM originally drafted for the position because she lacked experience with the Employee Assistance Program and providing counseling services to USMS employees and family members. However, her background as a high school counselor and college advisor enabled her to meet the selective placement factor that Snelson edited, which required applicants to demonstrate the "ability and experience [to assess] the overall needs of individuals and [define] appropriate assistive services" and provide counseling services to "students, and/or other affected persons."

We also found that Snelson rewrote the position description and edited the vacancy announcement to improve Palmer's chances of securing the position. The rewritten position description cited "knowledge of Employee Assistance Programs, or programs offering similar assistance to individuals" and the "ability to provide counseling services to individuals" as required knowledge factors for the position. In contrast, the original position description required a more narrowly focused "knowledge of the Employee Assistance Program" and the "ability to provide counseling services to employees and their family members," which would have excluded Palmer from hiring consideration. According to an email that Donnelly sent to the OPM Human Resources Specialist on February 2, 2010, Snelson had rewritten the position description in order to incorporate similar changes he had made to the vacancy announcement. Snelson further explained his rationale for these changes in an email he sent to the OPM Human Resources Specialist the following day. In the email, Snelson wrote that "[the Office of Crisis Services] should not limit any criteria to having experience dealing only with 'Employees and

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<sup>64</sup> See *Department of Treasury v. Federal Labor Relations Authority*, 837 F.2d 1163, 1170 (D.C. Cir. 1988).

Family Members” or “limit the candidate pool by only stating ‘EAP’ services or only referring to EAP experience.” He stated that the Office of Crisis Services was seeking candidates with “assistive services” that “may (or may not) be through an Employee Assistance Program,” and that the candidate could have experience as a “high school counselor” or “college advisor.”

We determined that Snelson had Palmer in mind for the Program Support Specialist position when he made these comments and the revisions to the vacancy announcement. According to Benton, Palmer told her and Snelson that she had a background as a school counselor and teacher, and that she was looking for positions with a local community college – something she obtained by March 2009. In addition, Palmer’s work experience as a high school counselor and college advisor would have been evident in her resume, which Snelson requested and then received from Benton in May 2009, around the same time when we believe he created the Office of Crisis Services. Furthermore, Snelson clearly expressed an interest in selecting Palmer for the position when he instructed the Human Resources Division to submit a “name request” for Palmer. We concluded that Snelson’s efforts to request a selective placement factor, rewrite the position description, edit the vacancy announcement, and submit a name request were taken with the purpose of improving Palmer’s prospects for employment in violation of 5 U.S.C. § 2302(b)(6).

We also examined Snelson’s decision to cancel the initial vacancy announcement for the Program Support Specialist position. We received testimony that Palmer was not among the candidates best qualified for the position, and that after the candidates were ranked and scored, only veterans were referred for selection consideration. According to witness testimony, Snelson was not pleased with the certificate of eligibles he was presented and decided the position needed to be reposted because it had not been correctly described. Additionally, we received witness testimony indicating that Snelson wanted the opportunity to have Palmer be among those candidates he could select for the position. We found this testimony concerning, especially in light of our adverse finding regarding Snelson’s manipulation of the second vacancy announcement. However, we also received testimony that indicated the panel responsible for reviewing the candidates for the initial posting did not find any of them satisfactory and for that reason the announcement had to be reposted. From this perspective, Snelson was merely accepting the panel’s finding when he decided to cancel the initial vacancy announcement, which had the effect of creating an additional opportunity for Palmer to apply for the position. Further, our examination was significantly disadvantaged by the absence of records relating to the initial vacancy announcement; the USMS did not maintain any documentation and informed the OIG that OPM had reported that the official case file it maintained was no longer available because of OPM’s document destruction practices. On this troubling but ultimately incomplete record, we could not find that Snelson’s decision to cancel the initial vacancy announcement violated 5 U.S.C. § 2302(b)(6).

In addition, we examined Snelson’s involvement in eliminating from consideration two veteran candidates ranked higher than Palmer in connection with the second posting. OPM agreed to remove one veteran from consideration

because, based upon further review at Snelson's and Wagner's request, the candidate did not meet the minimum qualifications for the position. Snelson told us he had "no recollection whatsoever" of these concerns; Wagner could not recall particulars, but did recall there was an applicant he did not feel was qualified and that others may have shared his concern. OPM also approved the USMS's request to pass over a second veteran based upon suitability concerns stemming from the candidate's participation in a debt counseling program. The USMS memorandum to OPM was drafted by Wagner, who told us Snelson would have had influence on the decision to draft the document and make the pass over request.

Again, we found the circumstances relating to Snelson's involvement in the removal of the two veteran candidates concerning, especially when considered alongside his rejection of Wagner's concern about the perception of hiring the wife of another USMS employee and recommendation that the second posting be canceled because none of the candidates for the second posting possessed the requisite financial management skills. However, in light of the incomplete recollection of Wagner, the mixed information about the impetus to seek OPM approval to remove and pass over, respectively, two veteran applicants, and the lack of evidence showing that Snelson in some manner coerced or improperly influenced these actions, we could not conclude that Snelson's involvement in eliminating from consideration two veteran candidates ranked higher than Palmer constituted prohibited personnel practices in violation of Section 2302(b)(6).

In sum, we concluded that Snelson impermissibly favored the appointment of Palmer in violation of 5 U.S.C. § 2302(b)(6) when he instructed the Human Resources Division to request from OPM a selective placement factor that was consistent with Palmer's experience, revised the position description and vacancy announcement to include experience consistent with Palmer's resume, and submitted a "name request" for Palmer. Through witness testimony and contemporaneous records, we were able to reconstruct the events surrounding Palmer's hire that Snelson, despite his conspicuous and sustained involvement, told us he could not remember. We did not find credible Snelson's statements that he was unable to recall key events in Palmer's hire or actions that he clearly took, and therefore believe his testimony to the OIG lacked candor.

We also found that Snelson's actions violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which prohibits an employee from using his public office for the private gain of friends. The evidence establishes that Snelson, as then-AD for TOD and the selecting official for the Program Support Specialist position, used his government position for the private gain of his friends, Palmer and Sligh. Snelson had known Sligh since 2006, when they first met at the Federal Law Enforcement Training Center. Snelson and Sligh told us that after the Slighs moved to Virginia in January 2009, they and their spouses developed a friendship and the group would occasionally socialize outside of work. Palmer told us that she quickly became friends with Benton after moving to Virginia, and that Benton assisted her and Sligh in their search for a house. Benton also assisted Palmer in her search for employment when she asked Palmer for her resume and then sent that resume to Snelson. Benton later forwarded Palmer's resume to Snelson a second time after Snelson requested it.

We concluded that under these circumstances, Sligh and Palmer were friends with Snelson for purposes of Section 702. We also concluded that with the several actions Snelson took to secure Palmer's selection as a Program Support Specialist – as we detailed above – Snelson clearly used his public office for the Slighs' private financial gain. In doing so, Snelson violated Section 702 of the Standards of Ethical Conduct.

We also concluded that Snelson displayed very poor judgment in failing to follow the procedures described in Section 502 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.502(a)(2). As noted above, Section 502 provides that an employee should refrain from participating in matters that would "raise a question regarding [the employee's] impartiality" and sets forth a process the employee should use to obtain authorization to participate. Snelson should have recused himself from participating in the hiring of Palmer unless an agency ethics official or designee authorized his involvement.

Snelson retired from the USMS on December 31, 2017. We are referring our findings about Snelson's conduct to the USMS so that the information can be placed in his administrative file.

With respect to Sligh, we did not find evidence that he was aware of Snelson's actions related to Palmer's selection for the Program Support Specialist position. However, we also examined what involvement Sligh had in his wife's hire. Under the federal anti-nepotism statute, a public official may not "appoint, employ, promote, advance, or *advocate for appointment, employment, promotion, or advancement,*" a relative in or to a position in the agency where the official serves. 5 U.S.C. § 3110(b) (emphasis added). Similarly, under USMS Policy Directive 3.2 (March 9, 2009), a USMS supervisor, manager or appointment official may not advocate for a relative seeking employment in the USMS or another DOJ organization. The policy defines "advocacy" as making a recommendation, referring a relative for consideration to an individual lower in the chain of command than the public official, or otherwise indicating an interest in securing or facilitating a relative's consideration for employment.<sup>65</sup>

According to Sligh, he may have mentioned that his wife applied for the position during conversation with his colleagues on the Critical Incident Response Team, some of whom worked in TOD and were members of the interview panel for the position, but then ceased meeting with them for coffee breaks during the pendency of the application process in order to avoid creating the perception that he was trying to influence the hiring decision. We do not believe these actions constituted "advocacy" under the federal anti-nepotism statute or under the USMS policy directive. Furthermore, these individuals worked in a different USMS division (TOD) than Sligh (JSD) and therefore did not fall under his chain of command, a relevant factor under USMS Policy Directive 3.2. Sligh also said he did not share Palmer's resume with Snelson or anyone else in the USMS, and he had no recollection of ever discussing his wife's interest in working for the USMS with

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<sup>65</sup> The USMS policy directive also cites the federal anti-nepotism statute.

Snelson or Benton. In short, Sligh told us that he had no involvement in his wife's hire, and we did not find evidence that contradicted this testimony.

## **II. Allegation that Julie Benton's Management of the JDAR Program Budget Violated Basic Internal Controls Standards**

As described earlier, Senator Grassley's April 23, 2015, letter to then-Acting Deputy Attorney General Yates stated that whistleblowers alleged that the USMS may have violated "basic internal controls standards" by allowing Benton to manage the budget for a TOD program that was under the supervision of her husband, Snelson.<sup>66</sup>

As noted above, Benton was a member of a working group that included representatives from JSD and TOD charged with developing the JDAR Program in 2009 as an additional protective measure for judges. In March 2010, Benton was promoted to Assistant Chief of the Office of Protective Operations in JSD, a position responsible for managing the JDAR Program and its budget. At the time of Benton's promotion and subsequent management of the JDAR Program, Snelson was AD for TOD, until he was named the AD for Investigative Operations in October 2012.

In this section, we address the allegation in Senator Grassley's letter that the USMS may have violated basic internal controls standards by allowing Benton to manage the budget for the JDAR Program while her husband was the Assistant Director for a separate division responsible for supporting the program's operation. While we did not substantiate the allegation that the USMS violated basic internal control standards by allowing Benton to manage the JDAR budget, we did find that her doing so created the *appearance* of a conflict of interest, a fact that USMS officials did not consider at the time.

### **A. Factual Findings**

The JDAR Program was officially launched in fiscal year 2010. According to an internal USMS study on the JDAR Program, total spending on the JDAR Program was about \$844,500, \$330,500, \$204,400, and \$234,500 in fiscal years 2011, 2012, 2013, and 2014, respectively.<sup>67</sup> Snelson's tenure as AD for TOD overlapped with Benton's tenure as JDAR Program Manager during fiscal years 2011, 2012, and 2013.

During the period in which the events described in this section occurred, the JDAR Program operated interdependently among multiple USMS headquarters divisions. The Office of Protective Operations in JSD was responsible for the

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<sup>66</sup> In short, internal control comprises the plans, methods, and procedures used to meet missions, goals, and objectives. It also serves as the first line of defense in safeguarding assets and preventing and detecting errors and fraud.

<sup>67</sup> Although the USMS launched the JDAR Program in fiscal year 2010, the program did not receive base funding until fiscal year 2011.



oversight and funding of the program. Within TOD, the Office of Emergency Management's Communication Center provided 24-hour monitoring of the judicial duress devices, while the Office of Strategic Technology operated and maintained systems equipment and software. The Information Technology Division provided network infrastructure and systems maintenance. As described below, these divisions received JDAR Program funding based on budgetary recommendations made by Benton.

Then-AD for JSD Michael Prout stated that JSD approved the planning and execution of funds that it provided to TOD and the Information Technology Division to implement the JDAR program. Then-DAD for JSD Carl Caulk told us that JSD provided funding to TOD for equipment and blocks of "air-time" (cellular signals) needed to run the JDAR devices. It also provided funding to TOD and the Information Technology Division for personnel support provided by contractor employees. Caulk stated that Benton was given the responsibility of creating a budget and making budgetary recommendations for the JDAR program, but only he and Sligh had the actual authority to approve the allocations and make the budgetary decisions. He also stated that TOD did not have any authority over the JDAR Program or its budget.

Benton told us that staff from TOD would make requests for additional resources to support the program's operation, and that her requests for justification caused some "consternation." She also stated that multiple signatures were required for budgetary actions, and the approvals required to spend money for various projects, including the JDAR Program, resided with staff in the Financial Services Division.

Anton Slovacek, Chief Inspector of the Office of Emergency Management, told us that there was nothing inappropriate in terms of Benton's management of the JDAR Program budget because JSD entirely controlled the program's funding stream. He also said that because JSD is a separate division from TOD, Benton was never subject to Snelson's chain of command while he was AD for TOD.

Prout stated that he was aware that Snelson and Benton's relationship as husband and wife "had the potential to create the appearance of a conflict of interest." However, he stated that their spousal relationship never posed an actual conflict of interest. According to Prout, JSD never received any favors or benefits from TOD while Snelson was its Assistant Director, and we did not identify agency records or email communications that showed otherwise. Furthermore, Prout described JSD's interaction with TOD as "a bit of a challenge" because for everything TOD was expected to do for the JDAR Program, it wanted more money from JSD.

Both Caulk and Sligh told the OIG that they never had any concerns about Benton's management of the JDAR Program budget. They also stated that no one ever raised any concerns or complaints to them about her handling of JDAR Program funds.

## B. Analysis

We did not substantiate the allegation that the USMS violated “basic internal controls standards” by allowing Benton to manage the JDAR Program budget. We understood that this allegation was premised on the belief that a “conflict of interest” was created by Benton managing the budget of a program that provided funding to other USMS divisions responsible for supporting the program’s operation, one of which fell under her husband’s direction and authority.<sup>68</sup> The circumstances that created this alleged conflict no longer existed at the time we conducted our review and we therefore did not perform an audit to assess the USMS’s system of internal controls for funding the JDAR Program. However, the evidence we reviewed indicated that the USMS had control activities in place, such as the establishment of an organizational structure and segregation of duties, to mitigate the risk of improper expenditure of JDAR Program funds during the relevant time period.

We found that JSD’s Office of Protective Operations, not TOD run by Snelson, was responsible for the oversight and funding of the JDAR Program. Both Prout and Caulk told us that TOD did not have any authority over the JDAR Program, and neither of them expressed any concerns about Benton’s management of the program’s budget. Caulk told us that although Benton could make budgetary recommendations for the program, only he and Sligh had the authority to approve the allocations and make the budgetary decisions. Slovacek stated that there was nothing inappropriate about Benton’s management of the JDAR Program budget because JSD entirely controlled the program’s funding stream and Benton, as an employee of JSD, was never subject to Snelson’s chain of command while he was AD for TOD.

We did not find evidence that contradicted this witness testimony or that suggested any improprieties in funding decisions related to the JDAR Program. Benton’s authority was limited to making budgetary recommendations that required the approval of the Chief of the Office of Protective Operations and the DAD for JSD before being adopted. Neither Snelson nor any other official in TOD had authority over JDAR budget decisions. Under these circumstances, we do not believe that Benton’s management of the JDAR Program budget created a conflict of interest that violated “basic internal controls standards.” However, we also considered whether the situation created the *appearance* of a conflict of interest, a potential that the former AD for JSD (Prout) acknowledged in his OIG interview.

Whether particular circumstances create the appearance of a conflict of interest is typically determined from the perspective of a reasonable person with knowledge of the relevant facts. Here, the relevant facts included that in fiscal years 2011, 2012, and 2013, Benton was responsible for developing and then managing the budget for the JDAR Program. Her duties included making funding recommendations, which were reviewed and approved by her superiors. Multiple

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<sup>68</sup> In an organization’s internal control system, a conflict of interest is present when a government official participates in approving or deciding a matter in which the official or a relative has a financial interest.

USMS divisions supported the program's operation and received JDAR Program funding to do so, including a division that fell under her husband's direction and authority. We believe that these facts, viewed from the perspective of a reasonable person, likely created an appearance of a conflict between two potentially competing interests: Benton's official interests in making responsible budget recommendations relating to the funding of the JDAR Program, and her personal interests in making funding recommendations that benefited the USMS division that was headed by her spouse. Under those circumstances, the appropriate course of action would have been to consult with the USMS Ethics Officer about the situation and consider whether any additional measures should have been implemented to address the appearance concerns, such as a special review and approval requirement prior to making any JDAR Program funding decisions. This did not occur. It is not necessary to address the situation currently, however, because Benton is no longer the JDAR Program Manager and Snelson is no longer AD for TOD. Nevertheless, we believe this situation serves as an important reminder to agency officials to be alert to potential conflict of interest concerns that can arise in the context of agency operations and to remain informed about how to address them appropriately.

### **III. Allegation Involving Julie Benton's Reassignment to the Asset Forfeiture Division**

In this section, we examine the allegation in Senator Grassley's April 23, 2015, letter to then-Acting Deputy Attorney General Yates that, following Snelson's promotion to Associate Director for Operations in 2014, Benton was "hired" within AFD despite having no asset forfeiture experience. We found that Benton's "hire" was, in fact, a reassignment, and that its purpose was to remove Benton from being within her husband's chain of command, a situation created by his promotion. We found no evidence that the reassignment was handled improperly or that Benton received inappropriate preferential treatment.

#### **A. Factual Findings**

Snelson told us that sometime around March 2013, about 1 year prior to his appointment as Associate Director for Operations, Hylton called him into her office where she discussed her plans to appoint him as Associate Director for Operations. He said that he told Hylton he could not accept the position unless Benton, who at that time was an Assistant Chief managing the JDAR Program, was reassigned to be outside of his chain of command. According to Snelson, Hylton told him that this would not be a problem because the USMS would reassign her from the operational directorate to the administrative directorate. He said that Hylton asked him what Benton's interests were, to which he replied Benton would prefer working in the Training Division.

Benton told us that Snelson informed her about this meeting with Hylton at around the time it occurred. According to Benton, Snelson told her that he conveyed to Hylton he would not accept the Associate Director for Operations

position unless Hylton could provide assurances that the USMS would handle Benton's reassignment in a manner that accommodated her interests.

Hylton told us that she delegated the task of reassigning Benton to David Harlow, the USMS Deputy Director. Hylton stated that sometime between March and May of 2014, after she had appointed Snelson as Associate Director for Operations, she met with Harlow to discuss the status of Benton's reassignment. According to Hylton, Harlow told her that the USMS was considering moving the JDAR Program out of the operational directorate and into the administrative directorate because Benton knew the JDAR Program intimately. Hylton said that she instructed Harlow to offer Benton a list of existing positions that she was qualified for but not to move any existing programs or create any new positions.

David Musel, Associate Director for Administration, said that Harlow directed him to work on Benton's reassignment. Musel said that he contacted Katherine Mohan, AD of the Human Resources Division, and asked her to review Benton's resume and personnel file and identify "any place that would be suitable for her to go." Musel also said he recalled asking Mohan to present Benton with at least two options because he wanted to avoid creating the perception that the reassignment was management-driven, against Benton's will.

Mohan told us that her discussions with Musel about where to reassign Benton began sometime in April 2014. Mohan said that following her review of Benton's resume and personnel file, she originally recommended her for a "fleet management" position in the Management Services Division. Mohan said she made this recommendation during a period of time when there was still some discussion about how to handle the matter.

Mohan stated that in early May 2014 Musel gave her four options to present to Benton. According to Mohan, the four options included the fleet management position in the Management Services Division that she had originally recommended for Benton, a property management position in AFD, a position in the Information Technology Division, and a position in the Financial Services Division. Mohan told us that, to her knowledge, all four options included available and vacant positions in the administrative directorate.

On May 12, 2014, Caulk sent an email to Benton asking her to contact Mohan for the purpose of discussing her reassignment options. Benton contacted Mohan on May 14 and the two spoke that day. Among other things, Mohan presented Benton with the four reassignment options and told Benton that the USMS was planning to make the reassignment action effective on Sunday, May 18. According to Mohan, she had several calls with Benton about her reassignment from May 14 until Benton was able to make a decision. She said that Benton told her she was frustrated with the options provided because she felt that she had been "promised" a position in the Training Division at USMS headquarters, and because none of the options were positions she was interested in pursuing. Benton also told us that she was frustrated because no one had contacted her until May 14 to discuss the reassignment options.

On May 16, Benton sent an email to Mohan requesting additional time to consider her options because she had been given only 2 days to make a decision. Mohan forwarded this email to Musel inquiring if Deputy Director Harlow would be willing to grant an extension. Musel responded by instructing Mohan to inform Benton that he was making the ADs of AFD, Financial Services Division, Information Technology Division, and Management Support Division available to meet with her to discuss the available positions. In the email to Mohan, Musel stated that the ADs wanted the matter resolved so that they could release for hiring those positions that Benton did not select. He further stated that the Deputy Director was requiring a decision by the close of business on May 19.

On the evening of May 16, Mohan sent an email to Musel stating that she had just spoken with Benton by phone. In the email, Mohan stated that Benton and Snelson were "still very angry and upset" and that "both feel betrayed by the Director who promised that [Benton] would be taken care of and be happy," and that Benton had asked again why a reassignment to the Training Division was not being offered.

On May 19, Benton emailed Mohan indicating that she had spoken with the AD of the Management Support Division and Kimberly Beal, AD for AFD, about the available positions in those divisions. In the email, Benton also requested additional time in order to meet with the senior managers in the two divisions and gather the information she needed to make a decision.

On May 20, Deputy Director Harlow sent an email to Benton requesting that she inform Mohan of her decision by no later than 3:00 p.m. the following day. In the email, Harlow wrote "if you do not make Mohan aware of your choice by that time, I will affect [sic] a management directed reassignment to a new position that I deem most critical."

On May 21, Benton emailed Mohan stating that she made the decision to accept the position in AFD, and that she confirmed with Beal that the Division was willing to accept her. Benton told us that, although she did not have asset forfeiture experience, she selected the position in the "asset management" real property section of AFD because she had a background in real estate and found the work interesting.

Musel told us that sometime after Benton and Beal met to discuss the position, Beal approached him and said that she believed Benton was qualified and a "good fit" for the position. Musel also told us that AFD was in the process of creating two new position descriptions for the purpose of splitting in two an existing GS-14 level position that was responsible for asset management of both real property and personal property. Benton selected the position responsible for real property asset management, and another Asset Forfeiture Division employee was placed in the position responsible for personal property asset management. Musel further stated that the new position description was not created for Benton and

characterized the timing of its creation in relation to Benton's reassignment as a coincidence.<sup>69</sup> Other witness testimony was consistent with Musel's account.

Musel and Mohan told us that no one ever expressed to them any concerns that Benton was not qualified for the position. Mohan stated it was important to the USMS that Benton be reassigned to a position that she was already qualified for and that the intent behind the reassignment was to place Benton in a position that she could be productive in immediately. Mohan also commented that although an agency has the authority to modify or waive qualification requirements for an employee's reassignment through an "in-service placement action," she was confident that Benton was capable of acquiring the skills needed to successfully perform the position's duties.<sup>70</sup> Mohan further stated that an agency has the authority to reassign an employee to a position on a noncompetitive basis, as long as the position is at the same federal General Schedule (GS) level and does not have a higher promotion potential than the position the employee currently holds or has held competitively.<sup>71</sup>

Benton's reassignment from JDAR Program Manager (GS-14 level) in JSD to Supervisory Property Management Specialist (also at the GS-14 level) in AFD became effective on June 1, 2014. According to Mohan, the AFD position did not have a higher promotion potential than the previous position in JSD.

## **B. Analysis**

The purpose of Benton's reassignment from JSD to AFD was to address the situation created when Snelson was promoted to the position of Associate Director for Operations, thereby placing Benton directly in her husband's chain of command. Benton's reassignment to the position responsible for asset management of real property in AFD was not the optimal fit in terms of her particular qualifications and experience, but it did reflect a good faith effort to manage the situation created by Snelson's promotion while attempting to reasonably accommodate Benton's preferences.

However, we did consider whether there was evidence that the reassignment was handled improperly or reflected inappropriate preferential treatment. We did not identify any such evidence. To the contrary, Benton expressed frustration with the process because she believed she had been "promised" a position in the Training Division, and because she was not contacted to discuss her reassignment until the AD of the Human Resources Division called her with the four available

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<sup>69</sup> Beal signed the new position description on April 14, 2014.

<sup>70</sup> According to OPM, an in-service placement action can include an appointment in which a position is filled with a current employee through reassignment. The agency may determine that the employee can successfully perform the work of the position even though that individual may not meet all the position's requirements. Mohan told us that she did not recall if the USMS completed an in-service placement action for Benton's reassignment. We did not identify any records showing that this authority was used for the reassignment.

<sup>71</sup> According to USMS Policy Directive 3.10, Merit Promotion Plan, competitive procedures do not apply to reassignments.

options just days before she was expected to make a choice. In addition, Director Hylton made the decision not to move any existing programs – such as the JDAR Program Benton managed – or create any new positions to accommodate the reassignment. In short, we found that the effort to reassign Benton was governed by an interest in minimizing disruption to USMS operations while being fair, but not inappropriately deferential, to Benton.

## **CHAPTER FOUR**

### **DOJ'S INACCURATE RESPONSE TO CONGRESSIONAL INQUIRIES REGARDING ALLEGED IMPROPER HIRING PRACTICES**

As we described in the Introduction, on March 19, 2015, Senator Grassley sent a letter to then-Acting Deputy Attorney General Yates that described an alleged *quid pro quo* hiring arrangement between Director Hylton and Assistant Director Kimberly Beal whereby Beal influenced subordinates to waive contract qualification requirements in order to hire an individual personally recommended by Hylton, Gregory Nevin, in exchange for Beal being promoted to Assistant Director (AD) for the Asset Forfeiture Division (AFD). We examined this allegation in Chapter Two of this report. The Department responded to Senator Grassley with a letter dated March 26, 2015, that contained inaccurate information about the circumstances surrounding Nevin's hire, including whether Hylton had taken actions to recommend Nevin for the contractor position.

In this chapter, we describe the results of the OIG's investigation of the events that led to the Department sending Senator Grassley an inaccurate letter. We examined a similar occurrence in our 2012 report, *A Review of ATF's Operation Fast and Furious and Related Matters*, and described measures the Department took at that time to prevent such errors from occurring in the future.<sup>72</sup> As part of the instant review, we assessed what effect, if any, these measures had on the process that led to the Department's inaccurate March 26, 2015, letter. We also examined an allegation that staff in the USMS Office of General Counsel were aware of the allegations about the Nevin hire prior to receiving Senator Grassley's March 19 letter, yet failed to ensure that the Department's March 26 response was accurate and complete.

This chapter begins with some background information about actions the Department took in response to the letter it sent to Congress in 2011, and subsequently formally withdrew, that contained inaccurate information related to Operation Fast and Furious. We also describe the Department and USMS components that are responsible for drafting congressional correspondence. We then describe the OIG's factual findings about the drafting and approval of the inaccurate March 26, 2015, letter, and how the error was identified. We conclude with our analysis of the facts and circumstances that resulted in the Department sending an inaccurate letter to Congress.

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<sup>72</sup> This report can be found at <https://oig.justice.gov/reports/2012/s1209.pdf>. Chapter Six of the report examined the facts and circumstances surrounding the Department's inaccurate response to Senator Grassley's letter raising concerns about ATF firearms trafficking investigations on the Southwest border.



## **I. Background**

### **A. The Cole Memorandum**

On January 26, 2012, then-Deputy Attorney General James Cole issued a memorandum (Cole Memorandum) titled, "Gathering Information in Response to Congressional Inquiries," to the heads of Department offices, boards, divisions and components and all U.S. Attorneys. Cole issued the memorandum following the Department's decision in December 2011 to withdraw its initial response to congressional inquiries concerning ATF's Operation Fast and Furious because the response contained inaccurate information about the firearms trafficking investigation.

The Cole Memorandum was written "to remind" component heads that "ensuring accuracy and completeness of information that the Department provides to Congress is a matter of utmost importance," and that it is "essential that each component undertake rigorous efforts to obtain accurate and complete information from employees with the best knowledge of the matters relevant to the congressional inquiry." According to the memorandum, incoming congressional correspondence is usually sent to the relevant components to prepare a response and although the Assistant Attorney General (AAG) for Legislative Affairs signs most of the Department's communications to Congress, the content of the communications usually originates with the components. The memorandum instructs component leaders to "assign ultimate responsibility for submitting or reviewing a draft response to [the Office of Legislative Affairs] to an appropriate senior manager, such as a Deputy Assistant Attorney General or comparable official," to "solicit information directly from employees with detailed personal knowledge of the subject matter at issue," and to incorporate into the draft response pertinent information that is based upon the available relevant records. The memorandum charges the assigned senior manager with ensuring that "all appropriate units and sections within the component provide the necessary information" and that "the component's response is properly fact-checked and vetted before it is shared with either OLA or [the component's] legislative affairs personnel."

The memorandum reminds component leaders that while the Department works to answer congressional inquiries quickly and to meet requested deadlines when practical, the Department's "top priority must be to ensure the accuracy and completeness of the information provided." It also states: "regardless of any applicable deadline, components should not clear a proposed response until they are satisfied that the response is accurate and complete and has been properly vetted." Regarding the role of OLA, the memorandum reminds components that OLA will continue its practice of asking questions, and requesting documents, where appropriate, to confirm the accuracy of draft responses and asks that components cooperate with OLA's requests.

We questioned staff in the offices that played a role in preparing the Department's March 26, 2015, response to Senator Grassley about their familiarity with the Cole Memorandum. The Deputy Assistant Attorney General (DAAG) and

line attorney in OLA told us they were familiar with the memorandum and the basic message that it conveyed: that Department components must fact check information contained in the draft responses before they are provided to OLA.

Officials at the USMS we interviewed were not familiar with the Cole Memorandum. After reviewing the document during her OIG interview, former Director Hylton told us that she did not recall the memorandum. However, she described the memorandum's content as "normal protocol" and "what everyone works to meet." She also said that the memorandum did not reflect a change in policy. While she could not identify a senior USMS manager who, in response to the Cole Memorandum, had been specifically tasked with ensuring that information provided to OLA is accurate, she told us that the responsibility rested with the Chief of the Office of Congressional and Public Affairs and the Associate Director for Administration. However, these two officials told us that they were not familiar with the Cole Memorandum.

On May 8, 2015, partly in response to events that are the subject of this chapter, the Cole Memorandum was updated by then-Acting Deputy Attorney General Yates. Most significantly, the updated memorandum requires that the senior component official responsible for ensuring that the component's draft response is fact-checked and vetted be identified to OLA. The memo also requires the responsible senior official to answer any questions from OLA and to notify OLA by email "of the accuracy and completeness of the information contained in the response" when the component "clears" it to OLA. According to the Associate Deputy Attorney General (ADAG) at the time who handled oversight matters, the Yates memorandum was designed to supplement the Cole Memorandum and to clarify that although the components collaborate with OLA in formulating responses to congressional inquiries, the components are ultimately responsible for the facts upon which the responses are based.

## **B. The DOJ Office of Legislative Affairs**

According to the Department's website, the Office of Legislative Affairs is responsible for developing and implementing strategies to advance the Attorney General's initiatives before Congress. OLA's principal duties include preparing the Department's response to Congressional oversight inquiries, articulating the Department's views on pending legislation, preparing department nominees for Senate confirmation, and coordinating the appearance of Department witnesses for Congressional testimony. OLA is led by a presidentially-appointed AAG and is staffed by three DAAGs – including one who oversees oversight and nomination matters – and 15–20 line attorneys. During the events described in this Chapter, Peter Kadzik was the AAG for OLA and Alicia O'Brien was the DAAG responsible for oversight and nominations.

According to Kadzik and O'Brien, OLA staff members are not subject-matter experts for most of the inquiries the Department receives. When a congressional inquiry comes into the office, OLA typically sends it to the component that is the subject of the inquiry to prepare a draft response. An OLA line attorney with the involved component in his or her portfolio is assigned to work with the component.

Initial discussions between the OLA attorney and the component might include how labor intensive the response will be, the feasibility of responding by deadline imposed in the congressional inquiry, and whether there are policy or other Departmental concerns to consider in formulating a response. The draft response prepared by the component is reviewed and edited by the OLA line attorney and one of the DAAGs before the final version is signed by the OLA AAG. However, OLA staff relies upon the component to identify the relevant documents and individuals that should be consulted, and does not independently verify the accuracy of the information in the component's draft response. Under some circumstances, the Office of the Associate Attorney General and Office of the Deputy Attorney General will review the draft response before it is finalized and sent out.

### **C. USMS Office of Congressional and Public Affairs**

The USMS's legislative affairs functions are performed by its Office of Congressional and Public Affairs (OCPA). William Delaney has been the Chief of OCPA since March 15, 2015, when he joined the USMS. The office acts as the liaison between the USMS and Congress, and between the USMS and OLA, and is responsible for responding to Congressional constituent and oversight inquiries. OCPA also coordinates the U.S. Marshal nomination process and assists in preparing the USMS Director and other senior managers for congressional testimony.

Delaney told us that oversight letters concerning the USMS typically come to his office through OLA, though some are sent directly to the USMS. Upon receipt, OCPA sends copies of the letters to the Director's office, the USMS Office of General Counsel (OGC), and to the AD of the affected USMS division. Delaney said that prior to preparing a response, OCPA usually consults with OLA regarding the substance of the oversight requests and how the department plans to respond, and thereafter works with employees in the relevant USMS divisions to gather the appropriate information and draft a response.

## **II. Factual Findings**

### **A. The March 19, 2015, Congressional Inquiry**

On Thursday, March 19, 2015, Senator Grassley sent a letter to then-Acting Deputy Attorney General Yates expressing concern over "allegations of inappropriate hiring practices" within the AFD. The letter stated, in part:

Whistleblowers with specific knowledge of the process have alleged that the AFD improperly waived qualification requirements in order to hire Gregory Nevin as a Senior Forfeiture Financial Specialist (SFFS), a highly paid contractor position.

Information obtained by the Committee suggests that Director Stacia A. Hylton personally recommended Mr. Nevin for this position and that Kimberly Beal, then AFD Deputy Assistant Director, influenced subordinates to waive contract qualification requirements in order to hire him. It is further alleged that Ms. Beal violated these contracting

standards in order to receive favorable consideration from Director Hylton in Ms. Beal's effort to become the AFD Assistant Director, a position she now occupies.

This *quid pro quo* exchange of favors, if true, would raise serious doubts about the operational practices of the USMS AFD under Ms. Beal as well as, frankly, Ms. Hylton's leadership of the USMS.

The letter requested that the Department provide the Committee, by no later than March 26, 2015, a written explanation of the circumstances surrounding Nevin's hiring and a variety of related documents. Committee staff sent the letter to Yates by email. OLA DAAG O'Brien was copied on the email, and she in turn forwarded the letter to OLA line attorneys, one of whom then forwarded the letter that afternoon to USMS OCPA Chief Delaney and USMS Associate Director for Administration David Musel. The OLA line attorney who was assigned to the matter told us that OLA relied upon the component to gather the necessary information and that she did not recall whether OLA and the USMS discussed how to prepare the response to the letter. O'Brien also forwarded the letter to the Office of the Attorney General (OAG) and the Office of the Deputy Attorney General (ODAG) for their awareness and to assist with the preparation of Yates' confirmation hearing as the Deputy Attorney General, which was scheduled for the following Tuesday, March 24, 2015, before the Senate Judiciary Committee.

O'Brien and others in OLA told us that because Senator Grassley was Chairman of the Committee, OLA wanted to respond timely to as much correspondence from him as possible. As described to us by the assigned OLA line attorney, "the Chairman was in control of whether the [Deputy Attorney General] was going to get confirmed or not, to a large extent. So we want him to be happy . . . [w]e don't want him upset that we haven't responded to his letters."

## **B. Preparation of a Draft Response**

AD Musel and OCPA Chief Delaney were the USMS officials most closely involved with gathering the information needed to respond to the March 19 letter and preparing a draft response for OLA. Delaney served as the primary liaison with OLA during this process.

Musel told us that after he received the March 19 letter, he took it to Hylton's office to inform her that she had been named in the letter. Hylton was meeting with USMS General Counsel Gerald Auerbach and Principal Deputy General Counsel Lisa Dickinson at the time, and they remained in the office as Musel had a brief conversation with Hylton about the allegations in the letter. Musel told us that Hylton made four specific points in response to the allegations: 1) there was nothing wrong with making a recommendation; 2) she did not recommend Nevin for any position; 3) she wanted to make sure Nevin had a fair opportunity for the position that he had applied for; and 4) she had forwarded Nevin's resume to Kim Beal (the then-DAD for AFD).

Dickinson also told us that during this conversation Hylton denied recommending Nevin for a position, and similarly denied there was a connection

between Nevin's hire and Beal's promotion, noting that Beal's selection as AD for AFD was based upon a panel's recommendation. Dickinson also told us that at this time she thought the allegations in the letter sounded familiar, but could not immediately recall from where.

Shortly after this meeting, Dickinson recalled that the allegations were similar to those that had first come to OGC's attention in December 2013 in connection with a USMS employee's alternative dispute resolution session. As we describe below in Section II.F., upon realizing this, Dickinson and others in OGC attempted to reconstruct how the allegation was handled in 2013. However, she told us that it did not occur to anyone in OGC during the drafting of the Department's response to Senator Grassley to acknowledge that OGC had received allegations in the past similar to those described in his March 19 letter.

Hylton told us that after she reviewed the letter Musel had brought to her and saw that she was personally named in connection with the alleged improper hiring, she felt that she could not be directly involved in preparing the response because she did not want anyone to misread her directions or question her actions. Musel at this time was already working with OLA to respond to a March 18 letter from Senator Grassley about the alleged misuse by AFD of Assets Forfeiture Fund resources. Hylton directed Musel to continue to work with OLA to prepare a response to the March 19 letter and "get this piece done." Hylton also told Musel to ensure that OGC was included in the process of responding to Senator Grassley's letter.

Hylton said that after this initial discussion with Musel, she recalled speaking with him on more than one occasion to provide her recollection of events relating to the allegations in the letter, but that she could not recall the length of these conversations or when they took place. Musel similarly could not recall when these conversations took place, but told us that it was during these exchanges that Hylton told him that she had attended college with Nevin, that he was retired from another law enforcement agency, and that she had wanted to make sure that he received "a fair shot" at the contractor position in Boston. She also confirmed to Musel that she forwarded Nevin's resume to Beal, and told him words to the effect of, "but that's all I did."

Beal told us that she first learned about Senator Grassley's letter during an AFD staff meeting when a colleague showed it to her, along with Senator Grassley's related press release, on a Blackberry device. The same colleague also emailed the letter and press release to Beal, who in turn forwarded the message to the Deputy Assistant Director (DAD) for AFD DAD with the comment, "I think I'm going to lose my job." Beal told us that she believed her job was in jeopardy because she had now been "implicated" in two letters from Senator Grassley: the March 18 letter alleging misuse of Assets Forfeiture Fund resources, and the March 19 letter alleging unfair hiring practices.

Beal said that she went directly to Musel's office to talk about the March 19 letter when the staff meeting concluded. She told us that she described to Musel the circumstances surrounding Nevin's hire, but that the primary focus of the

conversation was on how to prepare a response. Musel told us that Beal addressed aspects of the contractor position for which Nevin was hired, such as information about forfeiture “jump teams” and the titles “Forfeiture Financial Specialist” and “Senior Forfeiture Financial Specialist.” However, he did not recall asking Beal if Hylton had recommended Nevin to her for the contractor position.

Musel provided Delaney an overview of the information he learned from speaking to Hylton and Beal so that Delaney could begin drafting a response. Musel told us that he recognized that Delaney had only recently joined the USMS and would not have been able to draft the letter independently. Delaney said that he relied heavily on the information Musel provided to him, and that he did not personally speak to Hylton about the allegations in the March 19 letter. He also said that in addition to the information from Musel, he obtained relevant documents – such as Nevin’s resume and various contracting records – from AFD employees and the representative for Forfeiture Support Associates (FSA) who handled the USMS contract under which Nevin was hired. Delaney told us that at the time he began drafting a response to the March 19 letter, any email communications that had been collected were the result of employees self-identifying responsive records; the USMS was not at this time conducting a systematic search of employee email accounts.

Beal told us that AFD staff conducted manual searches of records responsive to Senator Grassley’s March 18 and March 19 letters. She said that with respect to emails, she conducted searches of her account with terms such as “Greg Nevin” and “FFS” and requested that her staff do the same. During the morning of Monday, March 23, 2015, Beal sent herself two, nearly identical emails with the term “Timeline” in the subject line. The content of the emails sets forth in chronological fashion the facts about Nevin’s hiring from September 16, 2011, through March 2012, when he resigned from the contractor position. One of the timelines also included the fact that Beal became the Acting AD for AFD in January 2012. Each timeline indicates that Hylton forwarded Nevin’s resume to Beal by email on September 16, 2011, and that Beal sent her superior, AD Eben Morales, an email that same day stating that Hylton had forwarded the resume of a customs agent that she “recommends” for the forfeiture “jump team” in Boston. Beal told us that she would have reviewed the September 2011 email chain in order to make this entry on the timeline.

According to Beal, she created the timelines for her own reference because she could not recall when events relating to Nevin’s hire had occurred, and that she relied upon her memory, emails, and various records to create the document. Beal said she gave Musel a hard copy of one of the timeline emails that she sent to herself and discussed it with him before the Department sent its response to Senator Grassley, which occurred on March 26, as described below. She said that she probably provided Musel with the timeline in hard copy because she was “afraid to do anything electronically.”

However, Musel denied receiving the timeline from Beal and told us that he first saw it during his OIG interview. Musel also told us that reviewing the document would have altered his approach to responding to Senator Grassley by,

for example, acknowledging that Hylton recommended Nevin, but then stating there was *no quid pro quo* arrangement between Hylton and Beal. We did not identify any witness involved in the process of responding to Senator Grassley's March 19 letter who recalled seeing Beal's timeline before the Department sent its official reply on March 26.

By the afternoon of March 23, 2015, Delaney had completed a draft response to the March 19 letter and emailed it to Musel for review. The draft, written from Hylton's perspective and for her signature, stated the following about Nevin's hire:

Mr. Nevin applied for the SFFS position with AFD in September 2011, but contrary to the assertion in your letter, he was not hired because he did not possess the requisite qualifications for it. He was, however, highly qualified for a lesser position, which he interviewed for with a three member panel consisting of USMS, the Assistant US Attorney's office and FSA. He was offered that position, accepted it, and worked for three months until he resigned for personal reasons.

With regard to the allegation that Mr. Nevin's hire was somehow unduly influenced by me, you should know that while I met Mr. Nevin many years ago when we went to college together, I only know him as a casual acquaintance and do not have a meaningful or ongoing friendship with him. After he applied for this SFFS job, he reached out to me by email, and I forwarded the email to Ms. Beal for her awareness. I also recall mentioning the resume to Ms. Beal in a very brief telephone conversation. Most importantly, I never instructed or implied to Ms. Beal or anyone else to take any action, officially or otherwise, on behalf of Mr. Nevin's application.

In summary, I did not recommend Mr. Nevin, no contract requirements were waived as alleged, and these events had no bearing whatsoever on my selection of Ms. Beal as Assistant Director of the Asset Forfeiture Division in 20Xx.

Delaney included a comment with the draft letter proposing that the following statement be added to the end of the summary paragraph:

However, this incident has taught me that the perception of impropriety, even if there is none present, can raise questions in some quarters. I pledge to you that I will be more careful in my communications with subordinates going forward.

The next day, Musel made several edits to the draft letter, and by that afternoon, provided Delaney with an updated version that Musel said reflected "what the [Director] gave me, and my conversation with AD Beal." The updated version identified Musel as the Associate Director for Administration and stated that Hylton had requested that Musel and the Office of General Counsel review the allegations. The updated version also stated that a *four*-member interview panel had "unanimously recommended" Nevin for the FFS contractor position, and that

Hylton and Nevin's friendship was "intermittent," with their paths crossing on a few occasions in the 34 years since they attended college together.

Later that same afternoon on March 24, Delaney emailed Beal the draft letter asking that she review the document before it was sent to OLA. About 20 minutes later, Delaney sent Musel a copy of the draft with the message in the subject line, "hiring practice final draft with minor [Kimberly Beal] edits, pls use this as the final when discussing with OGC[.]" Beal's edits included adding language to indicate FSA was a contractor that supported the Department's Asset Forfeiture Program.

According to Beal, she did not recall the timeline she created and sent to herself the previous day, or the information that it memorialized, at the time she reviewed the draft letter. Beal also told us that when she reviewed the draft, the fact that it said Hylton did not recommend Nevin was not notable to her and did not appear inaccurate because the letter was written from Hylton's point of view, not hers. Beal said it was her interpretation that Hylton had recommended Nevin and that "[i]t wasn't anything that [Hylton] had said, so I felt like that was a fair statement to include in the memo."

General Counsel Auerbach and Principal Deputy Dickinson also reviewed the draft letter before a final version was provided to OLA. They told us that OGC's involvement in preparing responses to Congressional inquiries is typically limited to responding to questions from USMS staff about legal matters. They each said OGC did not review or gather any information in order to formulate the Department's response, craft any original language for the March 26 letter, or verify the accuracy of the statements made in the letter. They reviewed the letter with Hylton in the afternoon of March 24 and provided Musel and Delaney some minor edits, including adding "ample experience" to describe Nevin's qualifications and inserting language to make the point that Nevin's hire and Beal's promotion were separated by 3 years. They also dealt with privacy-related issues associated with Senator Grassley's request for the resumes of the applicants for the contractor position for which Nevin applied. Auerbach and Dickinson both told us that the portion of the draft letter that stated Hylton directed Musel to work with OGC to review the allegations made in the March 19 letter, was a reference to Hylton's desire that OGC review the draft before it was sent to OLA. Dickinson said that OGC did not conduct any type of investigation and described the characterization of Musel working with OGC as "fairly loose."

Delaney emailed the final version of the draft letter to OLA on the morning of March 25. The draft, still written for Hylton's signature, stated the following about Nevin's hire:

I directed the Associate Director for Administration, David Musel, working with the Office of General Counsel, to review the allegations in your letter and have included, as you requested, the resumes of all individuals who have filled the contractor positions of Senior Forfeiture Financial Specialist (SFFS) as well as Forfeiture Financial Specialist (FSS) [sic] hired by Forfeiture Support Associates (FSA) . . . . I have



also included the contract qualification requirements used to hire SFFS and FSS [sic] contractors from 2010 to the present.

Mr. Musel has identified the circumstances surrounding the hiring of Mr. Gregory Nevin by FSA and I welcome the opportunity to share those with you. Mr. Nevin applied for the SFFS position with FSA in September 2011, but contrary to the assertion in your letter, he was not hired in that position because he did not possess the requisite qualifications for it. A four member interview panel consisting of personnel from the USMS, the US Attorney's office, and FSA unanimously recommended another individual for the SFFS position, which FSA offered and was accepted. Accordingly, no contract requirements were waived to hire Mr. Nevin. He was, however, highly qualified for a lesser position and was unanimously recommended by the same four member interview panel. FSA offered him the lower position, which he accepted, and he worked for three months until he resigned for personal reasons.

With regard to the allegation that Mr. Nevin's hire was somehow unduly influenced by me, you should know that while I met Mr. Nevin many years ago when we went to college together, I only know him as a casual acquaintance whose paths have crossed a few times in the 34 years since college. Quite on his own, Mr. Nevin was an experienced federal employee with ample experience. After Mr. Nevin applied for this SFFS job, he reached out to me by email and included his resume, and I forwarded the email and resume to Ms. Beal for her awareness. I also recall mentioning Mr. Nevin to Ms. Beal in a very brief telephone conversation. Most importantly, I never instructed or implied to Ms. Beal or anyone else to take any action, officially or otherwise, on behalf of Mr. Nevin's application to FSA.

In summary, I did forward Mr. Nevin's resume to Ms. Beal in September of 2011, but I did not recommend Mr. Nevin for any position, no contract requirements were waived, and these events had no bearing whatsoever on a unanimous recommendation by a three-member senior executive interview panel for Ms. Beal's selection as Assistant Director of the Asset Forfeiture Division in August 2014, nearly three years after these events.

Musel said that Beal was the source for the statements about Nevin's unanimous selection by a four-member panel and that no contract requirements were waived, and told us that he recalled pressing Beal on the issue and asking whether she was certain the recommendation was unanimous. As we described in Chapter Two, two members of the interview panel that Beal claimed recommended Nevin told us that the panel's function was to fill a single SFFS position in Boston and that they did not participate in any decision to hire Nevin.

According to our interviews of Musel and Delaney, the characterization of Hylton's relationship with Nevin was based upon information from Hylton, and the

description of the contact between Hylton and Beal regarding Nevin's resume was based upon information that came from both of them. Delaney told us that the statement about Hylton not recommending Nevin for the contractor position was based upon Hylton's characterization of events, and that Hylton was adamant that the statement be included in the letter.

About 2 hours after receiving the draft letter from the USMS, OLA's O'Brien replied with an updated version. Among the significant edits was the decision to write the letter for the signature of AAG Peter Kadzik, and not Hylton. O'Brien told us that OLA wanted the letter to be the Department's response, and not Hylton's personal response. In addition, the OLA attorney told us that OLA is officially responsible for responding to congressional letters addressed to the Attorney General or Deputy Attorney General (DAG) and proper protocol was for Kadzik to sign the letter. The OLA line attorney also said they also removed some of the details from the letter in order to "pull it back to 30,000 feet." For example, OLA removed the information about Hylton having attended college with Nevin and being only a casual acquaintance of his for the past 34 years.

O'Brien and the line attorney both told us that OLA also thought it was best to remove the sentence in the USMS draft that referenced Hylton's "very brief telephone conversation" with Beal about Nevin. According to the line attorney, neither she nor O'Brien had spoken to Hylton and therefore did not know whether the conversation had actually taken place. The line attorney also said the sentence suggested Hylton had some doubt about the call, "seemed pretty in the weeds," and that OLA did not want to provide this level of detail regarding Hylton's conversations in its response. O'Brien told us that she thought the sentence did not seem like something they could "know with certainty" and that OLA did not want Hylton to "speculate." According to the line attorney, OLA discussed these and the other revisions to the letter with Delaney and possibly Musel and the USMS was "mostly okay with it."

O'Brien and the line attorney did not review any relevant USMS emails in connection with their work on the draft letter, nor did OLA request the USMS to collect or preserve individual email accounts prior to sending Congress the Department's official response on March 26. However, the line attorney also told us that she thought the USMS had "proactively looked through some chunk of e-mails" and had collected some emails to help prepare the draft letter and verify its contents, steps the line attorney thought were "pretty logical."

After Delaney received the revised letter from OLA at about 10:00 a.m. on March 25, he worked with OGC and Beal to gather the resumes and other documents the Department intended to attach to the letter as responsive to Senator Grassley's request and to redact any personally identifying information therein. At about 6:00 p.m., Delaney emailed O'Brien a copy of the draft letter with the USMS's response to OLA's edits, as well as some minor edits to language regarding the contractor position for which Nevin was hired and an explanation for the privacy-related redactions made to the applicant resumes. Delaney informed O'Brien at that time that he would forward OLA electronic copies of the redacted documents the following morning, which he did.

About an hour before Delaney sent O'Brien the USMS's responses to OLA's edits, Musel sent Beal an email requesting "any/all communications and/or records you or anyone in AFD has on Gregory Nevin," and asked that Beal provide any responsive records to him as soon as possible. Beal forwarded Musel's email to her deputy, the DAD for AFD, a few minutes later. She also replied to Musel, first to request that he call her, and then to ask if he wanted her to ask the former AD for AFD, Eben Morales, to perform a search as well. Within the hour, the DAD for AFD sent an email to Beal and nine other AFD employees requesting that each conduct a document search for "any/all communications and/or records you have on Gregory Nevin." The DAD for AFD stated in the email that the request was being made in order to respond to a congressional inquiry and asked for responses by noon on Friday, March 27.

We asked Musel why he sent the email request to Beal at a time when they were working to meet the March 26 deadline to respond to Senator Grassley's March 19 letter. Musel responded that he could not recall. He also was not certain what records were collected in response to the request, nor could he recall how he responded to Beal's request that he call her or to her question about having Morales conduct a search of his emails.

Though the March 25 email the DAD for AFD sent to AFD staff indicated the request for relevant documents was being made to respond to a congressional inquiry, the DAD for AFD told us that he did not recall why the email was sent and that he could not recall whether he or Musel established the response deadline as March 27 at noon. The DAD for AFD said that Musel and Beal were making the decisions about what to request and that because Beal was a subject of Senator Grassley's inquiries, responsibility for circulating the tasking to the other AFD staff fell to him as Beal's deputy.

Delaney told us that he did not believe Musel's document request was made in order to prepare the response to the March 19 letter; rather, he believed that Musel wanted the USMS to continue to investigate the hiring allegations in order to fully understand what had transpired, even though they intended to meet the March 26 deadline to respond to Senator Grassley. Delaney said that in his experience working in congressional affairs, there are occasions when you have to make a judgment call about whether you have sufficient information to present something as a fact, or to share information even when you do not know all the facts. Delaney called this a "balancing act," adding that "we get some right and we get some wrong."

Despite being included on Musel's email to Beal, Delaney told us that he could not recall, but that he may have informed OLA of this ongoing effort to identify relevant records in his communications with the office as he prepared the draft response. Asked to explain why he forwarded the draft response to OLA before the documents responsive to Musel's request were collected, Delaney told us, "I think that there was a strong feeling from the Director and from Beal that there was nothing to the, there was no *quid pro quo* . . . I really, I think . . . that was it."

### **C. Final Approval of the Department's March 26 Response to Senator Grassley**

The final step in preparing the Department's response to Senator Grassley was for the draft to be reviewed and approved, or "cleared," by the appropriate individuals in the Department, a process that was coordinated by OLA. The OLA line attorney who worked on the letter told us that ODAG had to clear the letter because it was a response to an inquiry from the chairman of an oversight committee. In this instance, ODAG was also included in the clearance process because of the pending nomination of Acting DAG Yates. The OLA line attorney said that ODAG typically reviews such responses after the appropriate OLA DAAG – O'Brien, in this instance – has approved them, and just prior to final approval and signature by Kadzik, the AAG for OLA.

On the morning of March 26, DAAG O'Brien sent the draft response to the ADAG responsible for oversight matters affecting the Department via email.<sup>73</sup> The ADAG told us that his responsibilities included ensuring that oversight requests are answered, that the DAG is briefed on them as necessary, and that the answers are consistent with Department policy and do not include unnecessary information or anything that will be "inflammatory" to the requesting oversight committee.

The ADAG said that he is not copied on all Congressional inquiries the Department receives, but is typically copied on inquiries from the House and Senate Judiciary Committees because they are of heightened interest to the Department. He also told us that in high profile oversight matters, ODAG may get involved during the early stages in order to help develop a response, resolve differences of opinion between components about the approach, or raise questions about issues that need to be addressed in the response. As part of its involvement, ODAG may question OLA about whether certain facts have been verified and whether there is documentation to support the response, but ODAG rarely asks to review all of the supporting documents and expects OLA to identify areas that require particular attention.

The ADAG told us that although Senator Grassley's March 19 letter was addressed to the Acting DAG and alleged improper hiring practices by a Department component head, he was not involved in the preparation of the response. He called this "a process foul," meaning the March 19 letter was the type of inquiry that should have been flagged for his attention so he could participate in discussions about the strategy for responding. The ADAG recalled speaking to an OLA line attorney about the response on March 25 and asking the attorney to walk him through the allegations in the incoming letter and the process by which the draft response was formulated. He also asked whether there were any disagreements or issues about which he should be aware that arose during the drafting process.

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<sup>73</sup> OLA also sent the draft letter to the Office of Legal Counsel (OLC) for clearance because OLA had sought the advice of OLC and the General Counsel for the Department's Justice Management Division on redacting the personally identifiable information from the resumes and other documents to be attached to the response letter. OLA also sent a copy of the draft letter to the Counsel to the Attorney General for informational purposes.

According to the ADAG, the OLA line attorney did not identify anything significant and he cleared the letter on that basis when he received it from OLA on March 26.

Final clearance and signature was completed by AAG Kadzik. Kadzik told us that he was made aware of Senator Grassley's March 19 letter when it first arrived, but that he did not participate in drafting the response letter and did not review any drafts of the response until it was presented to him for his approval and signature late in the afternoon on March 26. Kadzik told the OIG that pursuant to OLA's normal practice, he was not given any of the underlying documents used to craft the letter. According to the OLA line attorney, this was because it is expected that the line attorney and the appropriate DAAG will have sufficiently "kicked the tires enough" and resolved any issues by the time the correspondence goes to the AAG for signature. Kadzik received a folder containing the incoming correspondence from Congress, the final draft reflecting any edits from O'Brien, the resumes and other documents being produced, and a clean copy of the response letter for his signature. Kadzik signed the letter sometime after 5:00 p.m. on March 26 and the OLA line attorney emailed the letter and requested documents to Senator Grassley and his staff shortly thereafter.<sup>74</sup>

**D. Senator Grassley and His Staff Question the Accuracy of the Department's March 26 Letter**

At 6:37 p.m., approximately an hour after the Department's March 26, 2015, response letter was sent to the Committee, a staff member contacted O'Brien by email and asked her to call about the letter. The two spoke at about 8:30 p.m. and O'Brien subsequently sent the OLA line attorney an email stating:

Just got off the phone with [the staffer]. Totally fine on the extension for the other letter.<sup>75</sup> Follow-up questions related to process and any ongoing review on the one we sent today. Will fill you in tomorrow a.m., but we'll need to run down a couple of things with Bill [Delaney] (for our own purposes and Hill response).

O'Brien told us that the following day, Friday, March 27, while attending a briefing with the Committee on an unrelated matter, a different staff member approached her and said the Department needed to look more closely at the Nevin hire. O'Brien said that she asked the staffer if he could point her in the right direction, but the staffer did not provide any additional information.

O'Brien and the OLA line attorney spoke about these contacts later that day. O'Brien told us that she thought there must have been more to the Nevin story, such as the existence of more resumes, and that the March 26 letter may have been incomplete, but she did not suspect it was inaccurate. O'Brien also told us

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<sup>74</sup> About 15 minutes before Kadzik signed the letter, the OLA line attorney sent Delaney the final version of the letter. Five minutes later, Delaney responded, "We are good with this!"

<sup>75</sup> The extension was obtained to respond to Senator Grassley's March 18, 2015, letter concerning the alleged misuse of AFD funds.

that she was concerned but not particularly alarmed about the comments from the staffers because in the normal course of responding to Congressional inquiries, the Department sometimes gives “rolling” responses, meaning, “this is what we’ve been able to find out to date on this.”<sup>76</sup> O’Brien told us that based upon her communications with Committee staff, she anticipated the Department would have to supplement its response and tasked one of the OLA line attorneys to work with the USMS to see what else they could find.

The following Monday, March 30, Delaney sent the OLA line attorney an email with the subject “Grassley staff call” in which he stated “We would like to speak with them this morning to resolve the hiring issue.” Delaney participated in a telephone call with Committee staff members later that day. Delaney told us Musel led the call and that he believed the OLA line attorney was on the call, but could not be certain. The OLA line attorney acknowledged receiving an email from Delaney about the call, but did not recall why the USMS wanted to call the Committee staff, nor did she recall whether she or anyone else in OLA participated on the call.

According to Delaney, the purpose of the call was to informally tell the Committee staff that the USMS was continuing to look into Nevin’s hiring; he told us that he could not recall why he used the phrase, “to resolve the hiring issue,” in his email with the OLA line attorney. Delaney described this effort as the USMS “trying to do the right thing” and recalls Musel explaining during the call that the USMS was still in the process of conducting a more comprehensive review. Delaney told us that at the time of the call he had no reason to question the contents of March 26 letter and that he was unaware that Committee staff members had told OLA the Department needed to look more closely at the Nevin hire. He also told us that Committee staff did not offer much response during the call and that he did not recall if they raised concerns about the accuracy of the March 26 letter. He said the call was not unusual because establishing a rapport and trust with staff members in this manner is a common practice among congressional affairs professionals.

One week later, on April 7, Senator Grassley sent Yates a follow-up letter. The letter referenced the March 19 letter and the alleged improper hiring practices it described and stated that documents and other information obtained by the Committee raised questions about the accuracy of the Department’s March 26 response. The letter specifically challenged three aspects of the response. First, the letter noted that USMS officials informed Committee staff on March 30 that the USMS was “still in the process of conducting a more comprehensive internal review of the issues raised in my letter,” and that the continuing review included a request for USMS employees’ email correspondence and other information relating to Nevin’s hire. The letter questioned “how the Office of Legislative Affairs could conclude that no *quid pro quo* occurred before the USMS has gathered all the facts.”

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<sup>76</sup> The Department’s March 26 response did not include any such qualification regarding the information it provided to Senator Grassley.

Second, the letter stated that while the Department's March 26 response implied that no *quid pro quo* occurred because Nevin was hired as an FFS, rather than an SFFS, and his hiring was based on the impartial assessment of a four-person panel, the Committee possessed documents showing that there was no FFS position to be filled in Boston when Nevin was hired and that Beal was a member of the hiring panel, a situation that was not typical according to what Committee staff learned from USMS officials on March 30.

Third, the letter stated that although the Department's response suggested that no *quid pro quo* occurred because nearly 3 years passed between Nevin's hire and Beal's appointment as AD for AFD, the Committee was aware of a number of personnel actions, allegedly requested by Hylton, that occurred closer to Nevin's hire and clearly benefitted Beal's candidacy. These actions included Beal's appointment as Acting AD for AFD in January 2012 and the decision to reclassify the Assistant Director position from 1811 (Criminal Investigator) to 0301 (Administrator) specifically to accommodate Beal.

Senator Grassley's letter requested additional information to "further clarify the circumstances of Mr. Nevin's recruitment and hiring," including all USMS employee email correspondence concerning the hiring, onboarding, and resignation of Nevin, the names and titles of the individuals who sat on the four-member panel that interviewed Nevin, agency policy outlining the role of USMS officials in hiring contractors, and information about whether an open FFS position existed in or around the Boston area at the time Nevin interviewed. The Department was asked to respond by April 22, 2015.

#### **E. Discovery of Kimberly Beal's Email Stating that Stacia Hylton "Recommends" Nevin**

As described above, on March 23 Beal created a timeline of events about Nevin's hiring that included a reference to an email she sent to her boss, then-AD for AFD Eben Morales, in September 2011 that stated: "See below – Director called and has forwarded the resume of a Customs agent that she highly recommends for the [forfeiture] jump team FFS in Boston." Beal told us that at the time she reviewed the draft response to Grassley's March 19 letter, she did not recall having made the timeline, though she also told us that she believes she delivered a hardcopy of the document to Musel and discussed it with him sometime before the Department's March 26 letter was sent. Musel denied receiving the timeline from Beal in any form.

Beal claimed that at some point after the Department sent its March 26 response to Senator Grassley, she "found" the email she had sent Morales and that she referenced in her timeline. Beal told us she could not recall when or how she located the record, but thought she came across it as she conducted additional searches of her email account. According to Beal:

I don't remember that email at all until I found it. I would have never let something like [the Department's March 26 response] go out,

because . . . it's ridiculous, because somebody is going to find it. You know? I had no idea. I almost died when I found that e-mail.

Beal also said that she knew immediately when she found the email that Grassley would accuse the USMS of trying to withhold documents from Congress, which she said was not true. Beal told us that she believes her late discovery of the email resulted from the stress she was experiencing in reaction to Senator Grassley's inquiries and the pace of work at the USMS as staff was attempting to provide responses. Beal denied to us that she withheld the timeline and the September 2011 email until after the Department's March 26 response was sent in order to protect Hylton: "It was not intentional to withhold that information, because I knew they were going to get it anyway. I mean it would be stupid of me to withhold something that critical."

Beal said that she went to Delaney immediately after finding the September 2011 email and told him that she found the record after "further review," and Delaney recalls this being the time he first learned of the email. However, neither Beal nor Delaney could recall the exact date on which this meeting took place. We believe, based upon our review of pertinent records, that the meeting likely occurred sometime between April 8 and 10, 2015, shortly after Senator Grassley sent a follow-up letter to DAG Yates on April 7, 2015, raising questions about the accuracy of the Department's March 26 response.<sup>77</sup>

Delaney told us that he immediately recognized the problem and told Beal that this was "not good" and that it was a "big deal." He asked Beal why she had not provided the record previously, and she replied something to the effect of because she had not searched the "right places." Delaney said he did not find Beal's explanation "satisfactory." He also said that one of the first things Beal told him was that it was she, and not Hylton, who had used the word "recommend." Delaney responded to Beal that the distinction would not make a difference to the Committee.

Delaney and Beal next reported the discovery to Musel, who told us that he recalls "feeling struck" by the revelation and wondering to himself, "how did we miss this?"<sup>78</sup> Musel said that Beal was upset and very emotional when they spoke. He asked Beal why she had used the word "recommend" in her email and she responded by shaking her head and stating, "I don't know." Musel told us that he never received a satisfactory explanation from Beal, and recalls counseling her

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<sup>77</sup> Delaney told the OIG that he firmly believed, based in part upon his review of his emails, that Beal brought the September 2011 email to him in his office on April 13, 2015. However, our review of emails, Beal's time and attendance records, and other documents revealed that Beal was on annual leave and traveling out of town from April 13, 2015, until April 17, 2015. Delaney told us that it was unlikely Beal would have come into the office on a day that she was on leave. Emails that we reviewed reflect that Delaney was out of the office on April 7, 2015, but returned mid-day on April 8, 2015.

<sup>78</sup> Delaney told the OIG that he most likely informed Musel of the September 2011 email on the same day he learned of it from Beal and that it is likely that he walked to Musel's office with it. However, documents we reviewed reflect that although Delaney and Musel communicated by email on April 13, 2015, Musel was out of the office on travel April 13th and 14th.



about paying attention to detail and telling her that they could not make another misstep like this.

Musel did not recall what steps were taken regarding Beal's discovery after this conversation. According to Delaney and documents we reviewed, on April 13, 2015, Delaney requested the USMS Information Technology Division to conduct a search of all USMS employee accounts for emails containing the terms "Gregory Nevin," "resume," and "Director's friend" for the period from September 16, 2011, to October 31, 2011. Deputy Director Harlow approved the search on April 15, and it generated 11 responsive emails on April 16. Delaney could not recall the details of the results, but said the responsive emails were duplicates of emails he had already seen by that time.

Delaney informed the OLA line attorney of the situation on April 15. He also emailed OLA a copy of the September 2011 email that evening. The OLA line attorney told us that upon receiving the email from USMS, OLA's priority was to inform Congress and "correct the record." Kadzik said that in light of what had happened previously with the Department's inaccurate correspondence regarding Operation Fast and Furious, he wanted to notify Congress as soon as possible.

Two days later, on April 17, OLA sent Senator Grassley a "correction" letter stating:

As you know, we replied to your March letter on the stated deadline of March 26, 2015, but in light of concerns raised by your staff, the USMS has continued its review of the issues raised in your letter. As part of that ongoing review, the USMS provided us with the enclosed email chain, which we bring to your attention because it appears to be inconsistent with representations in our March 26, 2015 letter.

We are extremely concerned that we may have provided you with inaccurate information in our previous response.

The letter was drafted by O'Brien and the OLA line attorney, approved by the ODAG and OAG, and signed by Kadzik. Delaney and Musel provided very little input on the letter, and OLA staff did not speak with Hylton, Beal, or Morales about the September 2011 email. Kadzik told us that he unsuccessfully attempted to contact Hylton before the letter was sent, and did not speak with her until the following Monday, April 20. He told us that when they spoke, Hylton denied that she had recommended that Beal hire Nevin and denied that the March 26 letter was inaccurate. She also told him that she had only forwarded Nevin's resume to Beal and that the September 2011 email chain did not accurately reflect what had occurred. Hylton described her conversation with Kadzik as a "heated political blowout," and said that she told Kadzik that he should have come to her if he had questions. According to Hylton, she said to Kadzik, "now while it may look good for you that you've responded, it looks horrific for the Marshals Service and me personally. So don't do that again."

Adding to the confusion about the circumstances surrounding the discovery of the September 2011 email chain, we learned during our investigation that on

March 20, 2015, a news agency submitted a request to the USMS under the Freedom of Information Act for “[a]ll internal communications, reports, and memoranda concerning the hiring of Gregory Nevin as a Senior Forfeiture Financial Specialist (SFFS),” including communications from Hylton and Beal. Delaney was responsible for compiling the documents responsive to this request, and he told us that he relied upon the materials that were collected in response to Musel’s March 25 document call for this purpose. According to email communications we reviewed, that collection was completed on March 30, 2015, the date on which Beal provided the results of her search for relevant communications. Three days later, on April 2, Delaney informed the USMS FOIA representative that he was “sifting through about 500 emails today to find the responsive ones.” On April 3, Delaney emailed the USMS FOIA representative “all relevant communications provided to us about the Nevin hiring.” The September 2011 email chain stating that Hylton recommended Nevin was among the documents Delaney sent.

We asked Delaney to respond to these facts. He maintained that he had not seen the September 2011 email chain until Beal brought it to him, sometime after April 7, 2015. Delaney told us that his primary focus in selecting the documents for the FOIA response was to avoid sending duplicates. He speculated that because he had seen the lower portion of the September 2011 email chain – showing only that Hylton forwarded Nevin’s resume to Beal – multiple times, he failed to recognize when he was reviewing materials for the FOIA response that the top portion of the chain – which included Beal’s statement that Hylton “recommends” Nevin – was different. Delaney said that it was a mistake to have overlooked the email.<sup>79</sup>

#### **F. USMS Office of General Counsel’s Prior Knowledge and Handling of Allegations about Gregory Nevin’s Hiring**

As described earlier, allegations about the circumstances of Nevin’s hire had previously come to the attention of OGC in December 2013 in connection with an employee-requested alternative dispute resolution (ADR) session. The fact of OGC’s prior knowledge was referenced in an April 23, 2015, letter Senator Grassley sent to Acting DAG Yates about the Nevin hire and other allegations the Committee had received from whistleblowers. The additional allegations included the *quid pro quo* relationship between Snelson and Sligh that we examined in Chapter Three, and that the improper hiring practices at the USMS extended to lower-level positions and interns.

With respect to the Nevin matter, the letter stated that the alleged *quid pro quo* arrangement between Hylton and Beal had been reported to OGC in December

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<sup>79</sup> The documents Delaney forwarded to the FOIA representative on April 3 also included several of the other highly significant emails we described in Chapter Two. We asked Delaney specifically about two of them, the email in which Beal advised Dalton and Ritz not to “say anything to anyone” and the email in which Hylton described Nevin to Beal as a “great investigator.” Delaney told us that he had seen those emails when preparing the FOIA response, but that neither stood out to him or caused him any concern.

2013, but that OGC still failed to carefully examine the Department's March 26 letter for accuracy. Senator Grassley's April 23 letter stated:

Not only was the Department's initial response inconsistent with the evidence, but information obtained by the Committee also clearly shows that this matter was reported to the USMS Office of General Counsel (OGC) as early as December 2013. Yet, the OGC apparently failed to take the allegation seriously or take any steps to address it. Moreover, USMS officials informed my staff that they consulted with OGC about the allegations before the Department's initial response was submitted to my office. These facts raise serious questions about whether and to what extent the USMS OGC reviewed the Department's initial reply to this Committee without correcting its inaccuracies.

We questioned the USMS OGC attorneys identified in Senator Grassley's letter, Dickinson and OGC attorney Keith Zimmermann, as well as Auerbach, regarding OGC's receipt and handling of information concerning the alleged *quid pro quo* agreement between Hylton and Beal and whether the information was considered during OGC's review of the Department's March 26 response letter.<sup>80</sup> The OGC attorneys told us the office had received a set of documents in connection with a grievance from an employee in December 2013, and that among the documents was a summary of emails concerning Nevin's hire. The employee called Nevin's hire "contrary" to ethical and other standards and said it created "the perception of *quid pro quo*."

Auerbach and Dickinson told us that at the time the March 26 response letter was being prepared, they were aware that the allegations in Senator Grassley's March 19 letter "seemed to mirror" those previously received from a USMS employee. They told us that they found little support for the allegations when they reviewed them in 2013 and 2014, although as we describe below Auerbach and Dickinson relied solely on the materials submitted by the USMS employee in reaching that conclusion and took no action to have the USMS investigate the allegation. Auerbach and Dickinson also stated that, in their limited role reviewing the draft of the Department's March 26, 2015, letter, it did not occur to them to suggest the letter be edited to reflect their prior knowledge of the allegations. Auerbach and Dickinson also told us that at the time they reviewed the draft of the March 26 letter, they did not have any information to suggest that Hylton had done anything more than refer Nevin, and they did not view her conduct as improper.

As part of our investigation, we sought to understand how the allegations about Nevin's hire first came to OGC's attention and how OGC responded. On December 20, 2013, OGC attorney Keith Zimmermann acted as counsel for the AD for the Human Resources Division during an employee-requested ADR session. The session was held in conjunction with the employee's grievance of the geographic limits established for a "Detail Opportunity" to serve as the Acting AD for AFD. This is the same posting we described in Chapter Two, and as we explained there, the

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<sup>80</sup> Keith Zimmermann is a pseudonym.

opportunity was limited to those AFD employees who lived within the local commuting area of Arlington, Virginia. Zimmermann, who does not usually work on employment-related matters, was assigned to the ADR session because the attorney who normally would have handled the matter was not available. Zimmermann told us the ADR session was unsuccessful for the employee, meaning the posting for the detail opportunity remained unchanged.

The employee raised additional concerns during the ADR session that were outside the scope of his grievance, and Zimmermann told the employee that he would see if he could help get them addressed. That same afternoon, the employee sent Zimmermann three emails with attachments that described concerns about several employment-related actions involving Beal, who at that time was the Acting AD for AFD. None of the concerns were directly related to the employee's ADR grievance.

One of the three emails concerned Nevin's hire.<sup>81</sup> It had 11 attachments and set forth a summary of a series of emails about Nevin's hire that the employee had "pieced together." According to the employee's summary, the records he attached showed that Beal had taken actions in the hiring of Nevin that violated "standards outlined in statute, regulation, and USMS policy, as well as summarized in the annual ethics training." The employee asked Zimmermann to offer him a good time to call, stating that he would like to talk about Zimmermann's "next course of actions," while "understandably recognizing that [he] must continue to work for Beal." The employee also made reference to the OIG having previously found that Beal had retaliated against a whistleblower.<sup>82</sup>

Zimmermann told us that he received the employee's emails, but did not review them in detail and did not review their attachments. Zimmermann responded to the employee at 5:37 p.m., stating that he was sorry he did not get back to the employee that day because of projects he needed to complete before leaving for the holidays, and that he would contact the employee after he returned to the office. Zimmermann returned on January 2, 2014, but never followed up with the employee.

On the evening of February 20, 2014, shortly after Musel became the Associate Director for Administration, this same employee sent Musel an email congratulating him on his selection as the Associate Director for Administration and raising allegations that Beal had engaged in misconduct. However, the employee's allegations were unrelated to the hiring of Nevin. The employee attached Zimmermann's December 20, 2013, email indicating that he would get back to the

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<sup>81</sup> The remaining two emails did not contain information relevant to Senator Grassley's inquiries.

<sup>82</sup> The employee was referring to the OIG's November 21, 2012, "Report of Investigation" for Case Number 2012-002687. In that case, the OIG determined that "there was a reasonable basis to believe" that Beal and others had retaliated against an FSA contractor employee for reporting to an AUSA that he suspected a USMS supervisor of committing fraud and having conflicts of interest in the performance of his duties. After reporting this information to the AUSA, the contractor was removed from the USMS contract and was eventually terminated by FSA.

employee upon his return to the office after the holidays and stated that he had raised his concerns with OGC 2 months prior but had yet to be contacted and informed how Beal's conduct would be addressed, "if at all."

Musel forwarded the employee's email to Dickinson the following morning, Friday, February 21, 2014, and asked whether she or Zimmermann knew anything about the issues. The following Monday, February 24, Zimmermann forwarded to Dickinson the email the employee sent to him on December 20, 2013. That same day, Musel responded to the employee by email, stating that he "would look into this."

About 2 weeks later, on March 10, Musel informed Zimmermann by email that he had discussed the employee's February 20, 2014, email with Dickinson and that it had been decided "that it would be most appropriate for [Zimmermann] to more fully respond." Zimmermann told us that within the hour, he reviewed the employee's December 20 email to him more closely and saw that it included allegations related to Nevin's hiring, which he said was outside his area of expertise. Zimmermann forwarded Musel's March 10, 2014, email to Dickinson that afternoon and stated: "Yes. We should discuss this." He also commented that the documents the employee provided to him were not the same as those the employee sent to Musel.

According to Dickinson, when she asked Zimmermann what had happened with the employee's original communications to him, Zimmermann told her that the press of business following the holidays caused him to inadvertently fail to reach back out to the employee. Dickinson told Zimmermann to respond to the employee. However, Zimmermann said that he recalled being told, probably by Dickinson or Auerbach, that the employee's concerns would be handled by someone else and that he therefore took no further action.

Dickinson told us that she reviewed the information the employee submitted in late February or early March 2014. Dickinson did not ask Hylton about the allegations at the time, but based upon the materials provided by the employee, she did not agree that a *quid pro quo* arrangement between Hylton and Beal could be inferred. Dickinson identified several factors to us that led her to this judgment, including the nearly 3-year time period between Nevin's hire and Beal's selection as AD, the lack of evidence that contract requirements were waived for Nevin, and Nevin's ample qualifications for the FFS contractor position.

Dickinson also discussed the *quid pro quo* allegation with Auerbach, who believed the matter would need to be investigated by the USMS Office of Professional Responsibility (OPR) because it involved allegations of employee misconduct, which OGC does not investigate.<sup>83</sup> Following his discussion with Dickinson, Auerbach was under the impression that Dickinson or Zimmermann

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<sup>83</sup> USMS policy requires that all allegations of employee misconduct be reported to USMS OPR or to the OIG. USMS Policy Directive 2.3, *Misconduct Investigations* (Last Updated: 5/2/2010).

would refer the hiring allegation to OPR. However, this did not occur, and no one from OGC ever responded to the employee about the subject.

Returning to Senator Grassley's March 19 letter, as we described earlier, Dickinson told us that when she first read it on March 19 she thought the allegation sounded familiar. That same day, she forwarded to Auerbach the employee's December 2013 email to Zimmermann, and stated: "This is what I was recalling. You need to read all of this." Auerbach responded the following day that Beal needed to explain whether there was a waiver of qualifications for Nevin. Dickinson replied that she agreed and stated that she did not know more about the issue since, pursuant to Hylton's instructions, Musel was handling the response to Senator Grassley. According to Auerbach, when he asked Zimmermann and Dickinson what they had done in 2014 regarding the employee's *quid pro quo* allegations, they responded that things "got screwed up" and that they had "dropped the ball" due to poor communications.

On Monday, March 23, Dickinson forwarded to Beal the employee's February 20, 2014, email to Zimmermann. Dickinson also said that she spoke to Beal about the Nevin hire prior to the March 26 response letter being completed and that her conversation with Beal did not change her previous assessment that the *quid pro quo* allegations appeared unsubstantiated. She and Auerbach did not see a link between Nevin's hire and Beal's promotion and therefore focused on the allegation in Senator Grassley's letter about qualification requirements being waived for Nevin, an issue they felt was more "salient." With respect to Hylton's alleged recommendation of Nevin, Dickinson told us that they did not have any information indicating that Hylton had done anything more than what she had claimed, which was to refer Nevin's resume to Beal. Dickinson stated that at the time, she and Auerbach "both felt that it was not improper for the Director to make the referral." Notwithstanding the effort to reconstruct what happened to the employee's December 2013 email to Zimmermann, Dickinson told us that it did not occur to OGC during the drafting of the Department's March 26 letter to acknowledge that OGC had received allegations in the past similar to those described by Senator Grassley, or that not doing so would be perceived as an omission.

### **III. Analysis**

The Department issued a letter to Senator Grassley on March 26, 2015, that contained information that was plainly inconsistent with representations made in an email communication written by one of the individuals whose conduct was the subject of Senator Grassley's inquiry. We concluded that this occurred because the USMS relied on an inadequate and flawed process to gather the information used to draft the response to Senator Grassley, and because the individuals primarily responsible for gathering, as well as providing, the information failed to exercise reasonable care in investigating the allegations and crafting the USMS's draft response. We found Beal's conduct in particular, and her explanations for the same, especially troubling because she allowed the Department to send a letter to Congress that contained information she knew to be inaccurate. We also concluded that the information contained in the USMS's draft response about the relationship

between Hylton and Nevin, and about Hylton's communications with Beal regarding Nevin's application, should have caused OLA to seek assurances from USMS about the accuracy of the information and inquire about the due diligence performed in arriving at the statements made in the draft response the USMS submitted.

The 2012 Cole Memorandum established an expectation that "each component undertake rigorous efforts to obtain accurate and complete information from employees with the best knowledge relevant to the congressional inquiry." The USMS's efforts to collect information to respond to the *quid pro quo* allegation in Senator Grassley's March 19 letter did not meet this expectation. Musel and OCPA Chief Delaney were the officials most closely involved with gathering the information needed to respond to the letter. Musel spoke both to Hylton and Beal on multiple occasions after the USMS received the letter from OLA. These discussions, the content of which Musel shared with Delaney, were necessary and important, but they were not sufficient, especially in view of the fact that Musel was aware through these discussions that Hylton and Beal communicated on at least two occasions about Nevin: first, when Hylton forwarded Nevin's resume to Beal, and, second, when Hylton mentioned Nevin to Beal in a subsequent telephone call. As immediate follow-up to this information, we believe Musel should have requested that Hylton and Beal provide to him and Delaney all documentation, including email correspondence, relating to Nevin's hire. Better still, Musel could have directed the Informational Technology Division to perform searches of Hylton's and Beal's accounts for emails relating to Nevin. Musel did not take either of these steps, at least not before the USMS submitted a draft response to OLA.

As we described in this chapter, there was some effort to collect documents relevant to Nevin's hire, including records requested by Senator Grassley, and Delaney told us that he reviewed various records in order to prepare an initial draft response. In addition, Beal said AFD staff performed manual searches for responsive documents, and claimed that she and others searched their email accounts with terms such as "Greg Nevin" and "FFS." However, these efforts were undertaken without direction from Musel, whom Hylton directed to "work through" the March 18 and 19 letters, nor were the results of the efforts reviewed by Musel. In addition, Hylton was not at this time requested to search her emails for relevant communications, and the Information Technology Division was not directed to perform searches of any employee email accounts. As a result, there was no meaningful check against the representations made by Hylton and Beal about the content and extent of their communications regarding Nevin before Delaney and Musel drafted the response that was provided to OLA.

Musel's belated direction to Beal to provide any communications or records that she or other AFD staff had relating to Nevin compounded the mistakes already made, and created the additional problem of assigning the subject of serious misconduct allegations the responsibility of identifying and producing relevant records. Musel's direction, given on the same day that Delaney provided OLA with the USMS's draft response to Senator Grassley, highlighted the inadequacy of the fact gathering that had been done to that point in that his actions created the situation where the USMS was still investigating the circumstances surrounding Nevin's hire at the same time the Department was making unequivocal and

unqualified representations to Congress about that very subject. We found no evidence to support Delaney's testimony that he may have informed OLA of the ongoing effort, and we believe it is highly unlikely the Department would have issued the March 26 letter to Senator Grassley as it was written under those circumstances.<sup>84</sup>

The ongoing collection of relevant records was not the only significant information the USMS did not share with OLA before the Department responded to Senator Grassley. Allegations about Beal's improper involvement in Nevin's hire first came to the attention of the USMS OGC in December 2013, and then again in early 2014 when the complainant resubmitted the allegations after not being contacted by OGC about the matter in response to his December 2013 submission. When General Counsel Auerbach and Deputy General Counsel Dickinson reviewed the allegation about Nevin's hire in early 2014, they concluded that a *quid pro quo* arrangement between Hylton and Beal could not be inferred from the materials the complainant provided. However, Auerbach also believed – correctly, in our view – that the matter should have been referred by OGC to OPR for investigation because it involved allegations of employee misconduct. Unfortunately, no referral was ever made by OGC, and no one ever responded to the complainant.

OGC did not think to include any information in the USMS draft response to Senator Grassley about the history relating to the *quid pro quo* allegation, nor did OGC take steps to inform OLA of the history – in particular, the fact that no investigation of the allegation had ever been conducted – so that OLA could evaluate how that might impact the Department's response. Instead, on March 23, 2015, Dickinson shared with Beal the allegation submitted by the complainant in early 2014 and spoke to her about it. On that basis, Dickinson and Auerbach concluded, again, that the *quid pro quo* allegation appeared unsubstantiated. In doing so, OGC committed the same mistake it made in 2014 – it failed to refer a serious allegation of employee misconduct to OPR for proper investigation.

In the comments submitted after reviewing a draft of this report, the USMS placed responsibility for reporting the *quid pro quo* allegation to OPR on the complainant employee, and stated that the "reasonable expectation" was that the employee "had done so since [the employee] was very familiar with the USMS OPR

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<sup>84</sup> In comments the USMS submitted after reviewing a draft of this report, Musel stated that the OIG's characterization of the actions the USMS took to help prepare the Department's March 26 response letter is substantively incorrect. According to Musel, he recalled asking Hylton and Beal to search their records for email communications, and telling Hylton that she needed to search her personal computer at home. Musel also stated that he recalled being in Hylton's office when she searched her work computer and that no additional records were found. However, Musel did not provide any specificity about when he made these requests or how the searches were conducted, and as we described earlier in this report, the only contemporaneous record we identified on this subject is Musel's email to Beal on March 25 directing her to search her emails. Further, during his OIG interview, Musel told us that he could not recall the sequence of events regarding efforts to gather communications about Nevin, but said that at some point "the Department says, okay, we need to start searching e-mails. We need to start doing [a] records search. I'm the one who went in to say to the Director, to her office that they wanted her to check her personal computer." We did not identify any evidence that the Department made such a request before the USMS provided its draft response to OLA.



filing process" and "knew the process intimately." According to the USMS, it is not OGC's practice or responsibility to refer to OPR allegations of misconduct it learns through tort claims, lawsuits, and employee complaints, and OGC is not informed by OPR of what complaints it receives. The USMS also stated in its comments that because OGC had no basis for believing the validity of the *quid pro quo* allegation, "it is unclear how the filing of the same untrue allegation would be relevant to the Congressional response." We found the USMS's comments surprising and concerning. First, we believe absolving OGC of any responsibility for the handling of the *quid pro quo* complaint on jurisdictional grounds is not only bad policy, but it ignores what we believe was the complainant's reasonable expectation that OGC would address his allegations in some manner. As we described earlier, the OGC attorney involved in the ADR mediation told the complainant that he – the attorney – would see if he could get the complaint addressed, and later told the complainant that he would contact him after returning from the holidays. At minimum under those circumstances, OGC had a responsibility to inform the complainant that he should pursue his *quid pro quo* and other allegations with OPR because OGC would not be taking any action. Second, we believe the existence of an uninvestigated 2013 internal complaint that made the same allegations against the USMS Director that appeared in a letter from Senator Grassley, was clearly relevant to the Department's evaluation of how to respond to the Senator. The Cole Memorandum emphasized that component leadership is to work with OLA to gather the most accurate and *complete* information in preparing Congressional responses. We concluded that OGC shares responsibility for that not occurring in this instance.

We thus found multiple areas where the USMS's handling of the draft response to Senator Grassley was seriously deficient. However, we found Hylton's and Beal's conduct especially troubling. Multiple witnesses told us that Hylton insisted she did not recommend Nevin for the contractor position, and Delaney told us that Hylton was adamant that such a statement be included in the letter to Congress. Hylton maintained that position consistently, including during her interview with us, and for the reasons set forth in Chapter Two, we strongly disagree with her on this point. Our criticism of Hylton here is directed at her failure to fully disclose to those working on the draft response to Senator Grassley the contacts she had with Beal about Nevin. According to Musel, Hylton told him that she forwarded Nevin's resume to Beal, and said words to the effect of, "but that's all I did." That simply is not true. The day after she forwarded the resume to Beal, Hylton fully endorsed Nevin's qualifications, writing to Beal:

[Nevin] is a great investigator, extremely dedicated to government, but has always worked hard on the [asset forfeiture] side with AUSAs and still wants to work in gov. after retirement. Thank you and most of all for your dedication to the [asset forfeiture] program[.] [W]e are so lucky to have you over at [AFD]!

We understand that prior to the USMS submitting a draft response to OLA, Musel failed to ask Hylton to provide any email correspondence she had with Beal or any other records relating to Nevin. However, we believe that as Director of the agency and as one the individual's against whom serious allegations of misconduct had been made, Hylton had a responsibility to be forthcoming with her staff and the

Department by locating and providing any relevant communications or other records. Regardless of whether Hylton viewed her actions as a recommendation to hire Nevin, we believe she had an obligation to disclose the communication to her staff because inarguably it was relevant to the question of how to respond to Senator Grassley. The communication is at least as problematic as the email chain that caused the Department to “correct the record,” and we are confident that had Hylton been more forthcoming, the Department would not have responded to Senator Grassley as it did. As the head of the agency, and the person about whom the allegations concerned, we concluded that Hylton bears primary responsibility for the inaccurate letter being provided to Senator Grassley.<sup>85</sup>

With respect to Beal, we found her conduct highly concerning, both prior to and after the Department’s March 26 response was sent to Senator Grassley. Beal interpreted Hylton’s actions to be a recommendation of Nevin’s candidacy for a contractor position; indeed, she told her supervisor in the critical September 11 email described in this chapter that Hylton “highly recommends” Nevin. Yet when confronted with the letter from Senator Grassley alleging just that, Beal told no one about her interpretation of Hylton’s conduct, nor did she share with anyone the email record reflecting this. As the recipient of the alleged recommendation that Senator Grassley stated was made as part of a *quid pro quo*, we believe it was incumbent on Beal to disclose to those working on the draft response her interpretation of Hylton’s actions, and perhaps more importantly, the existence of an email record lending credibility to the allegations contained in Senator Grassley’s letter. Beal took neither step, and we found her explanations for not doing so unpersuasive.

Beal claimed to us that she provided Musel with a hardcopy of one of the timelines she created on March 23 to refamiliarize herself with events related to Nevin’s hire; each timeline she created included an entry about Hylton’s recommendation. She told us that she provided the timeline in hardcopy because she was “afraid to do anything electronically.” She also claimed that she discussed the timeline with Musel prior to the Department sending its response to Congress. Musel denied to us that Beal shared and discussed the timeline with him, and we found her account difficult to reconcile with events. Beal’s purported concern about leaving an electronic trail – a concern that suggests Beal thought the email was in some manner inculpatory – is undermined by her own use of electronic email to send the timeline to herself, twice. Further, Beal’s highly agitated reaction in early April 2015 to discovering the September 11 email chain, and the content of her conversations with Delaney and Musel about the discovery, strongly indicate that

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<sup>85</sup> We did not find evidence that Hylton was provided an opportunity to review the letter signed by Kadzik before it was sent to Senator Grassley. We believe that staff at OLA and the USMS responsible for working on the response should have ensured that such a review occurred. However, this failure did not affect our assessment of Hylton’s responsibility for the inaccurate letter. As described above, Hylton insisted that she did not recommend Nevin and, according to Delaney, was adamant that such a statement be included in the letter to Congress. That statement appeared in the draft letter the USMS provided to OLA and in the final version of the letter the Department sent to Congress. We have no basis to believe that Hylton’s review of the final version would have resulted in any substantive changes to that representation.

that was the first time Beal brought the subject of her interpretation of Hylton's conduct and the September 11 email chain to Musel's attention.

Beal also claimed that when Delaney asked that she review the USMS draft response to Senator Grassley stating, among other things, that Hylton did not recommend Nevin, she forgot about the timelines she had created just the previous day, including the entry in each timeline stating that Hylton "highly recommends" Nevin. We recognize that Beal was under considerable stress at this time and unusually busy gathering material to respond to Senator Grassley's March 18 and 19 letters; however, Beal found the time to collect emails and other records to create the timelines, and given the salience of the issue of whether Hylton recommended Nevin for a contractor position, we found Beal's forgetfulness convenient. Our skepticism about Beal's memory lapse was reinforced by the circumstances surrounding Beal's belated discovery of the September 11 email chain, as we discuss below.

We also found problematic Beal's testimony that when she reviewed the USMS's draft response for OLA, she did not consider Hylton's statement denying that she had recommended Nevin significant. According to Beal, because it was *her* interpretation that Hylton made a recommendation, and the draft response was written from *Hylton's* perspective, Hylton's denial "was a fair statement to include[.]" However, about 2 weeks later, when Beal "found" the September 11 email chain and rushed it to Delaney's attention, she clearly recognized immediately the contradiction between the Department's March 26 response and her own contemporaneous characterization of Hylton's conduct. In fact, she told us that she "would have never let something like [the Department's March 26 response] go out" in light of the September 11 email chain, and that she "almost died when [she] found that e-mail." The dissonance in Beal's feelings at these two critical points in time about the integrity of the letter contributed to our judgment that Beal's explanations for her conduct were not credible.

Beal's failure to timely disclose the fact or the contemporaneous record of her interpretation of Hylton's conduct was not the only information she did not share with those working on the draft response. The USMS's proposed response, as well as OLA's revised version, described the process and decision to hire Nevin as being above board. But as we described at length in Chapter Two, that was not the case, and Beal knew it. She manipulated the hiring process specifically to benefit Nevin by authorizing a second contractor position in Boston, designating the position an FFS slot so Nevin could qualify, and then selecting Nevin for the position; Nevin was not selected unanimously by an interview panel. Beal alone had complete knowledge about how Nevin came to be hired and therefore bore primary responsibility for how it would be described in the response to Senator Grassley. By providing incomplete and misleading information about Nevin's hire to those drafting the response to the Senator, Beal caused the Department to send a letter that seriously mischaracterized the events about which Congress was inquiring.

Beal's conduct after the Department's March 26 response was sent also was troubling. As discussed above, on or shortly before March 23, Beal reviewed the

September 11 email chain in connection with the timelines she drafted relating to Nevin's hire, but claimed that she did not recall this email at the time she reviewed the USMS draft response on March 24. On about March 30, Beal provided Delaney with documents she identified as being responsive to Musel's request for communications relating to Nevin. Although the September 11 email chain was among the records Beal provided, she did not specifically bring the email to anyone's attention and presumably was unconcerned that it posed a problem for the Department's March 26 letter. Then, at some point in time that Beal could not specifically recall but that we believe was between April 8 and April 10, Beal brought the September 11 email chain to Delaney's and then Musel's attention.

The timing of Beal's discovery is conspicuous – on April 7, Senator Grassley sent Acting DAG Yates a follow-up to his March 19 correspondence, writing that the Committee had received documents and other information raising questions about the accuracy of the Department's March 26 response. Beal denied to us that she withheld the September 11 email chain until after the Department's response was sent in order to protect Hylton. We are skeptical of her denial. Beal knew that she viewed Hylton's actions as a recommendation of Nevin, and she knew that she manipulated the process to ensure that Nevin got hired, yet she did not disclose this information when given the opportunity to review the USMS draft response on March 24. In that context, her belated discovery of the September 11 email chain, shortly after Senator's Grassley's April 7 follow-up letter, appears calculated and ill-motivated. We concluded that Beal's actions raised significant performance issues, and constituted misconduct. We did not refer Beal to the USMS for disciplinary or other administrative action, however, because she retired from federal employment in October 2015.<sup>86</sup>

Finally, consistent with the Cole memorandum, we also concluded that the nature of Senator Grassley's March 19, 2015, letter to Acting DAG Yates, and the substance of the information contained in the USMS's draft response, should have caused OLA to review the response with enhanced scrutiny. The March 19 letter did not merely inquire about the USMS Director's role in an agency program; rather, the letter set forth allegations that the Director had engaged in potentially serious misconduct. The draft response submitted by the USMS denied the allegations, but included information about Hylton's relationship with Nevin and her communications with Beal that arguably were at odds with aspects of the denial and that lent at least some credence to the allegations. We believe that under those circumstances, OLA should have sought assurances from the USMS about the accuracy of the information and inquired about the due diligence performed in arriving at the statements made in the draft response. Indeed, according to the Cole memorandum, as well as OLA staff that we interviewed, asking questions about the representations in a draft response and ensuring that they are consistent is one of the primary means by which OLA tests the accuracy of statements.

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With the March 19 letter, however, rather than delve deeper into the facts – by, for example, asking to review any correspondence between Hylton and Beal – OLA staff removed additional details about the circumstances of Nevin’s hire that called into question the overall conclusion of the letter, which was that Hylton had not recommended Nevin and that no contract requirements were waived. According to OLA staff, certain details were removed to conform the letter to the style and tone of correspondence traditionally sent from OLA, and because staff considered some of the details vague and speculative. The result was a letter that included information that was more consonant with the denial of the allegations, but that also omitted significant information: following OLA’s edits, a reader was unaware that Hylton knew Nevin from college and might conclude that Hylton was merely a pass-through for Nevin’s resume. We found that OLA’s revisions and its lack of scrutiny of the USMS’s basis for its representations produced a letter that was neither accurate nor “a complete written explanation of the circumstances surrounding the hiring of Mr. Nevin,” as Senator Grassley requested.

We understand that the pending confirmation for Acting DAG Yates created significant pressure at the USMS and OLA to respond to Senator Grassley by the March 26 deadline he imposed. We are also mindful that the Cole memorandum assigns primary responsibility for accuracy to the Department’s components, and that OLA is not staffed to investigate matters that are the subject of incoming and outgoing correspondence. However, we do not believe these significant considerations excused OLA’s uncritical examination of the basis for the USMS’s denial of the allegations contained in the Senator’s letter. As the Cole memorandum cautions: “the Department strives to answer congressional inquiries promptly and undertakes to meet deadlines set by requestors when practical. However, our top priority must be to ensure accuracy and completeness of the information provided to Congress.” We concluded that OLA should have done more to ensure the accuracy of the Department’s March 26 response.

## CHAPTER FIVE CONCLUSIONS

In this review, we examined several allegations relating to improper hiring practices at the USMS. Two of the allegations related to *quid pro quo* arrangements involving senior level officials. The first of these alleged arrangements was that then-Deputy Assistant Director Kimberly Beal took steps to ensure that Gregory Nevin – an individual personally recommended by then-USMS Director Stacia Hylton – was hired for a contractor position within the USMS’s Asset Forfeiture Division (AFD), and that in exchange, Beal received favorable treatment from Hylton in her efforts to become AFD’s Assistant Director (AD). The second alleged *quid pro quo* arrangement was between then-AD of the Tactical Operations Division William Snelson and then-Chief of the Office of Protective Operations in the Judicial Security Division David Sligh, and involved each official hiring the other’s spouse into his division. In addition to these *quid pro quo* allegations, we examined two allegations regarding the management of a USMS program overseen by Snelson’s spouse and her reassignment to another division after she fell under her husband’s chain of command following his promotion to Associate Director for Operations. Finally, we examined the facts and circumstances surrounding the Department’s submission of an inaccurate letter to Senator Grassley that was written in response to the Senator’s inquiries about the hiring of Nevin and whether it was part of a *quid pro quo* arrangement between Hylton and Beal.

We did not substantiate the *quid pro quo* allegation involving Hylton and Beal. We did not find evidence that Beal was selected as AD because of her efforts to get Nevin hired, nor did we find evidence that Hylton attempted to influence the process that resulted in Beal’s selection. However, we did find that Hylton and Beal each took actions that violated the Standards for Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635. We concluded that Hylton’s recommendation of Nevin to Beal for a contractor position with the USMS violated Section 702(a), which prohibits the use of one’s public office in a manner that is intended to induce another to provide any benefit to the employee’s friend or to a person with whom the employee is affiliated in a nongovernmental capacity. We also concluded that the actions Beal took to manipulate the hiring process to benefit Nevin violated Section 101(b)(8), which provides that “employees shall act impartially and not give preferential treatment to any private organization or individual.” Hylton and Beal both retired from federal employment during the pendency of our review. We are referring our findings about their conduct to the Department and the USMS so that the information can be placed in their administrative files.

We did not substantiate the allegation of a *quid pro quo* hiring arrangement between Snelson and Sligh by which each hired the other’s spouse into his division. However, we found that Snelson committed prohibited personnel actions when he took a series of steps to improve the chances that Sligh’s spouse was hired at the USMS. These steps included instructing the Human Resources Division to request from the Office of Personnel Management a selective placement factor that was consistent with Sligh’s spouse’s work experience, and revising the position

description and vacancy announcement to match the resume of Sligh's spouse. Snelson's conduct violated 5 U.S.C. § 2302(b)(6), which prohibits a government official from granting an unauthorized preference or advantage to an applicant "for the purpose of improving or injuring the prospects of any particular person for employment." We also found that Snelson's actions violated Section 702 of the Standards of Ethical Conduct, and that he displayed very poor judgment in failing to follow the procedures described in Section 502. Section 702 prohibits an employee from using his public office for the private gain of friends, and Section 502 provides that an employee should refrain from participating in a particular matter when the employee's impartiality might be questioned unless the employee is authorized to participate by the agency designee. We did not find evidence that Sligh was aware of Snelson's actions on behalf of his spouse, nor did we find evidence that Sligh was involved in his spouse's hire or that he advocated for her employment or candidacy. Snelson retired from the USMS on December 31, 2017. We are referring our findings about Snelson's conduct to the USMS so that the information can be placed in his administrative file.

With respect to the allegation regarding Snelson's spouse's management of the budget of a USMS program that was operated by multiple USMS divisions, including one run by Snelson, we found that the circumstances created the appearance of a conflict of interest and that the USMS did not consider this issue at the time. With respect to the allegation involving Snelson's spouse's reassignment to another division after she fell under her husband's chain of command following his promotion, we did not find evidence that the reassignment was handled improperly or that Snelson's spouse received inappropriate preferential treatment.

Finally, we concluded that the inaccurate letter the Department sent to Senator Grassley responding to his inquiry about the Hylton-Beal *quid pro quo* allegation resulted from an inadequate and flawed process within the USMS to examine the allegation and to gather relevant information. While we believe the Department's Office of Legislative Affairs (OLA) should have sought assurances from the USMS about the accuracy of the information in the draft response that was submitted to OLA, we concluded that Hylton, as head of the agency and the focus of the *quid pro quo* allegation, bears primary responsibility for the inaccurate letter being provided to Senator Grassley. Hylton asserted that she did not recommend Nevin for the contractor position when her communications with Beal indicated otherwise; she reportedly was adamant that this inaccurate assertion be included in the response to Congress; and by failing to locate and provide all relevant communications, she was not fully forthcoming with her staff and the Department. We also found that Beal's actions that contributed to the letter's inaccuracy – including her failure to inform those working on the letter that she viewed Hylton's actions as a recommendation of Nevin and that she manipulated the process to ensure Nevin's hire – raised significant performance issues and constituted misconduct. Again, although Hylton and Beal both retired from federal employment during the pendency of our review, we are referring our findings about their conduct to the Department and the USMS so that the information can be placed in their administrative files.



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