IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE:	DOUGLAS BAKER,) STEVEN CUNNINGHAM,) CELESTE LATHAM, and) DORIS HOOKER DAY)	OEIG Case #14-01383

OEIG FINAL REPORT (REDACTED)

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

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report's factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor's Office of Executive Inspector General ("OEIG") and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor's Executive Inspector General, and to Douglas Baker, Steven Cunningham, Celeste Latham, and Doris Hooker Day at their last known addresses.

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

I. ALLEGATIONS

Between July 20, 2014 and May 16, 2015, the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) received five complaints that made various allegations of improprieties relating to the hiring of Northern Illinois University (NIU) "affiliate" employees, as well as allegations that affiliate employees were improperly reimbursed for their travel, and were permitted to stay overnight in NIU facilities without charge.[1] Former affiliate employees Ron Walters, Nancy Suttenfield, Ken Wilson, and William Pfeiffer were specifically mentioned in these complaints; an additional allegation regarding former affiliate employee Magaly Rodriguez was raised in an earlier complaint, case number 14-00841. The allegations

[1] One complaint also alleged that [redacted allegation that is not the subject of this investigation].

relating to these five NIU affiliate employees were consolidated under case number 14-01383 for investigation.

II. BACKGROUND

Douglas Baker has been the President of NIU since July 2013, although he began performing work for NIU during the transitional period prior to taking office. In that position, President Baker has the "authority and responsibility, within the framework of policies established by the Board [of Trustees] for the organization, management, direction and general supervision of the University . . . ."[2]

In addition to President Baker, the following other current and former NIU personnel also took actions relevant to this investigation:

Jerry Blakemore	General Counsel
Kathryn Buettner	Former Vice President for Marketing and Communications
Steven Cunningham	Former Acting Vice President for Administration and Director of Human Resources
Doris Hooker (Day)[3]	Executive Assistant, Office of the President
Keith Jackson	Former Controller
Celeste Latham	Assistant Vice President for Human Resources
F. William Nicklas	Former Vice President for Operations and Community Relations

NIU's Academic Policies and Procedures Manual describes "affiliate" employees as "individuals whose primary job is not with NIU, but who teach an off-campus extension class (typically non-credit) for the university on an occasional basis."[4] The Manual states that affiliate appointments are "always made on a part-time 10 percent basis."[5] In addition, at the time relevant to this investigation, NIU's Human Resources webpage described affiliate appointments as "professional positions of a short duration (usually less than 3 months) to conduct a non-credit seminar, teach an extension class or otherwise fulfill some short-term professional responsibility." Affiliate employees are not entitled to receive benefits, or to participate in the State University Retirement System.[6]

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[2] *See* NIU Board of Trustees Bylaws, Art. VII, § 1.
[3] During the investigation, Ms. Hooker changed her surname to "Day." For the sake of clarity and consistency, she is referred to as "Ms. Hooker" throughout this report.
[4] NIU Academic Policies and Procedures Manual, § 2, item 27; *see also* item 6.
[5] NIU Academic Policies and Procedures Manual, § 2, item 27.
[6] NIU Academic Policies and Procedures Manual, § 2, items 6 & 27.

The Illinois Procurement Code requires State contracts for professional services by an independent contractor to be awarded using a competitive request for proposal process, unless an exception applies.[7] For example, an exception is made for small purchases, including professional services for less than $20,000 that have a non-renewable term of one year or less.[8] The Procurement Code does not apply to the hiring of an individual as an employee, rather than as an independent contractor.[9]

III. INVESTIGATION

In light of the requirement that NIU generally must bid out professional services by independent contractors for $20,000 or more, investigators sought to determine whether NIU improperly hired individuals under the affiliate employee classification in an effort to circumvent that competitive process. Investigators also examined whether NIU improperly paid for affiliate employees' travel and lodging expenses.

A. Investigation of Employment of Affiliate Employees

NIU records reflect that between June 2013 and May 2015, the university hired about 213 individuals under the affiliate classification, including the five individuals named in the complaints the OEIG received. As detailed below, investigators confirmed that all five of those affiliate employees were paid more than $20,000 during their terms of employment as affiliates, and that three of the five were employed as affiliates for more than one year:

Affiliate	Dates of Employment as Affiliate	Total Salary Paid
Ron Walters	June 16, 2013 to Dec. 31, 2014	$463,125
Nancy Suttenfield	Nov. 1, 2013 to Feb. 21, 2015	$425,041
Ken Wilson	Feb. 3, 2014 to June 30, 2015	$135,963
Magaly Rodriguez	May 16, 2014 to Jan. 31, 2015	$ 85,031
William Pfeiffer	May 16, 2014 to June 15, 2014	$ 23,516

In total, nine affiliate employees hired between June 2013 and May 2015 were paid $20,000 or more during that time period. Because the affiliate employees named in the OEIG complaints included the highest-paid affiliates in this period, the OEIG elected to focus the investigation on these five, rather than expanding the investigation.[10]

As discussed below, investigators next examined how each of the five affiliate employees, listed above, came to be employed under the affiliate classification, and whether they fit the criteria for an affiliate employee.

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[7] *See* 30 ILCS 500/35-30(a); Ill. Admin. Code tit. 44, § 4.2035.
[8] Ill. Admin. Code tit. 44, § 4.2020(b)(4).
[9] 30 ILCS 500/1-10(b)(4).
[10] [Redacted]

1. Employment of Ron Walters

a. Review of Documents Regarding Ron Walters

An NIU Personnel Action Form[11] indicates that Ron Walters was initially appointed as an affiliate employee on June 16, 2013, for a term through September 15, 2013; the form shows a typewritten contract amount of $64,999.98, but handwritten notes indicate a figure of $48,750.[12] Mr. Walters' appointment was subsequently extended three times, to December 31, 2013, then to June 30, 2014, and finally to December 31, 2014.[13] In total, Mr. Walters served as an NIU affiliate employee for over 18 months, and received total compensation of $463,125. Mr. Walters was the third-highest paid employee at NIU in 2014, after NIU's head football coach and President Baker.

No written agreement was executed for Mr. Walters' hire. In biographical information, Mr. Walters described himself as "an independent design thinking and strategy consultant . . ." NIU records indicated that Mr. Walters worked at NIU as a "Strategic Initiatives Advisor," and that his scope of services included supporting the President in initiating a leadership plan for NIU. Mr. Walters' scope of services did not include teaching any classes at NIU.

Investigators reviewed NIU internal emails relating to the decision to hire Mr. Walters as an affiliate employee. The emails are between Vice President for Marketing and Communications Kathryn Buettner, Assistant Vice President for Human Resources Celeste Latham, Acting Vice President for Administration and Director of Human Resources Steven Cunningham, and President Douglas Baker. Relevant exchanges are set forth below:

6/4/13	Buettner to Latham	Can we pay an independent contractor more than $19,500……?
6/5/13, 8:25 a.m.	Latham to Buettner	I talked with Keith [Jackson].[14] There is no IRS limit but we could raise an issue with procurement limit for consulting services – errr. So it looks like the best approach would be the temp SPS hire. I could get Steve's [Cunningham] thoughts on an Affiliate which we have also done rarely in the past.
6/5/13, 7:28 p.m.	Latham to Buettner	I talked with Steve [Cunningham] and we can use the affiliate category.
6/13/13	Cunningham to Baker	We are working to complete Ron's appointment with start date of June 15 . . . We have processed the appointment as an "Affiliate." This is a salaried position where we will convert the anticipated number of hours per month into a salary . . . .

[11] A Personnel Action Form is a document NIU uses to process employment actions, such as hires, rehires, and salary changes.

[12] Former Acting Vice President for Administration and Director of Human Resources Steven Cunningham's signature appears on Mr. Walters' initial Personnel Action Form.

[13] Mr. Cunningham's signature appears on the Personnel Action Form for the first extension. President Baker's signature appears on the Personnel Action Forms for the second and third extensions (with dates of November 11, 2013 and February 28, 2014, respectively).

[14] At the time of this exchange, Mr. Jackson was the NIU Controller.

6/14/13	Baker to Cunningham	Steve, I have been thinking about Ron's appointment and also want to be conscious of our limited funding. Recently, I followed up with Ron to discuss the scope of his consulting with us. I would like to pull back on the time we will initially commit with Ron to 260 hours at his approximate $250/hour rate (total engagement = $65,000) . . . . We can do that work over the next three months. If we need to regroup and ask him for more time down stream, we can leave that door open; but, I would like to see if we can get the work done in a shorter time frame. Go ahead and make those changes and we can proceed.

Investigators reviewed all of the 2013 Board of Trustees meeting minutes. The minutes do not reflect that the Board was asked to approve Mr. Walters' appointment.

b. Interview of Former Acting Vice President for Administration and Director of Human Resources Steven Cunningham Regarding Ron Walters' Employment as an Affiliate

OEIG investigators interviewed Steven Cunningham on July 8, 2015. Mr. Cunningham previously served as NIU's Acting Vice President for Administration and Director of Human Resources.[15] In that position, Mr. Cunningham oversaw both Human Resources and procurement at NIU, and reported to NIU's President.

Mr. Cunningham said that in June 2013, then-newly-appointed President Baker told him he wanted to bring in Mr. Walters, whom he described as a "turnaround consultant" and an "organizational consultant." Mr. Cunningham said that President Baker initially told him that Mr. Walters' appointment would last six months. Mr. Cunningham said he told President Baker that the Illinois Procurement Code limited his ability to pay Mr. Walters more than $20,000 as a consultant, but that he could employ Mr. Walters instead. According to Mr. Cunningham, President Baker showed a "high degree" of dissatisfaction with the Procurement Code and the civil service system, and said that when he (Mr. Cunningham) described the requirements and limitations of each, it had a material effect on his working relationship with President Baker. Mr. Cunningham said President Baker told him to find a way to bring Mr. Walters in as an employee, and indicated that he wanted "maximum flexibility" for the position.

Mr. Cunningham said that soliciting bids for the position was not an option, because President Baker wanted to use Mr. Walters' services, and that he had to "customize" Mr. Walters' appointment to fit the duties President Baker described. Mr. Cunningham said he discussed Mr. Walters with Assistant Vice President for Human Resources Celeste Latham, who suggested using the affiliate classification. Mr. Cunningham said he approved of Ms. Latham's suggestion, and recommended it to President Baker. Mr. Cunningham said he explained to President Baker and Mr. Walters that it was important for Mr. Walters to document his time spent working on NIU activities.

[15] Mr. Cunningham is no longer an NIU employee.

According to Mr. Cunningham, President Baker later asked him to extend Mr. Walters' appointment, and he told President Baker that he would complete the paperwork for the extension. Mr. Cunningham explained that he did not see a problem with Mr. Walters completing an academic year under the affiliate classification, and added that most temporary appointments last one year. Mr. Cunningham said that by that time his relationship with President Baker was changing, and that President Baker "didn't always respond well to . . . 'Well, we have this limitation or that limitation.' It's more . . . how do we kind of get this done." Mr. Cunningham said that although he was aware of the subsequent extension of Mr. Walters' appointment to December 31, 2014, he did not discuss it with President Baker; Mr. Cunningham noted that by the time that extension occurred his interactions with President Baker were extremely limited.[16]

Mr. Cunningham said he helped draft the affiliate employee description in the Academic Policies and Procedures Manual. He also said that in 2000 he wrote a memorandum to NIU's Deans, Directors, and Chairs that stated:

> Affiliate appointments will continue to be utilized as they have been traditionally for hiring individuals who teach non-credit courses on an occasional basis. These appointments are usually one semester in duration and may relate to on-campus as well as off-campus assignments.[17]

Mr. Cunningham clarified that the Academic Policies and Procedures Manual's statement that affiliate appointments are "always made on a part-time 10 percent basis" was intended as a "placeholder" to describe a part-time position without benefits, and said that affiliates did not necessarily actually work a 10% schedule.

When asked whether Mr. Walters' activities at NIU fit the description of an affiliate, Mr. Cunningham acknowledged that Mr. Walters taught no academic classes, but said that he (Mr. Cunningham) believed Mr. Walters' appointment would be short-term, at most six months, and noted that the position had been used as a "flexible" classification in the past.

c. Interview of Associate Vice President for Administration and Human Resources Celeste Latham Regarding Ron Walters' Employment

On October 29, 2014 and July 22, 2015, OEIG investigators interviewed Assistant Vice President for Administration and Human Resources Celeste Latham. Ms. Latham stated that she is responsible for hiring NIU employees and ensuring that proper hiring processes are followed. Ms. Latham reported to: Mr. Cunningham until February 2014, Vice President for Operations and Community Relations F. William Nicklas from February through October 2014, and Executive Vice President and Provost Lisa Freeman beginning in November 2014.

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[16] Mr. Cunningham said that in approximately February 2014, President Baker notified him that his NIU employment would end in February 2015; Mr. Cunningham's responsibilities were reassigned or otherwise significantly reduced.

[17] Mr. Cunningham explained in his interview that he wrote the memorandum to address issues raised by the NIU instructors' union after some academic departments hired affiliates for positions that should have been filled by instructors.

According to Ms. Latham, she became involved in discussions about how Mr. Walters was to be employed after the decision had already been made to hire Mr. Walters. Ms. Latham said that in June 2013, then-Vice President of Marketing and Communications Kathryn Buettner asked her about bringing in a consultant, who was later identified as Mr. Walters. Ms. Latham stated that Ms. Buettner asked her about the limitations on paying an independent contractor, and that she (Ms. Latham) responded that any contract for consulting services over $20,000 needed to go through the procurement bidding process. Ms. Latham said she told Ms. Buettner that a temporary Supportive Professional Staff[18] or affiliate classification might also work.

Ms. Latham said that affiliates are typically employees who teach short-term, non-credit courses, and that the use of the affiliate employee classification for individuals outside the academic context "has been very rare." For example, she recalled one instance in 2001 or 2002, when an individual was hired as an affiliate employee to do long-term consulting work for NIU's financial aid director.

Ms. Latham said she was aware that Mr. Walters would not be providing any instruction at NIU, but said she was told that Mr. Walters' term of employment would be "very short." Ms. Latham said she discussed the Supportive Professional Staff and affiliate options with her supervisor, Mr. Cunningham, and that he told her to use the affiliate classification to hire Mr. Walters.

Ms. Latham said that after Mr. Walters began working for NIU, he submitted invoices accounting for his time spent working on NIU projects, a practice she characterized as "unusual" for a salaried employee. She also noted that no other employees submitted invoices for completing their primary duties. Ms. Latham said that Mr. Walters' time records showed that he was working the hours of a full-time employee.[19]

Ms. Latham said that Mr. Cunningham and Doris Hooker, President Baker's Executive Assistant, gave her directions about extending Mr. Walters' appointment. Ms. Latham said she felt the affiliate classification eventually ceased to fit Mr. Walters because his appointment was not short-term. According to Ms. Latham, if she had known Mr. Walters' appointment was going to continue to be extended, "I think a different recommendation would have been made, and probably it would have been more of a temp[orary] [Supplemental Professional Staff] position and not an affiliate position." However, in order to hire Mr. Walters under that designation, Ms. Latham explained, a requirement for a search for candidates would have had to have been waived, and Mr. Walters would have been entitled to benefits, and required to contribute to the retirement system. Ms. Latham observed that the most difficult part of working

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[18] Supportive Professional Staff employees are "faculty, administrators, and professional staff whose primary responsibilities are administrative or academic professional support who are exempt from Civil Service . . . , and who are under appointment by the Board of Trustees without academic rank." *See* NIU Academic Policies and Procedures Manual, § II, item 15.

[19] Investigators reviewed monthly invoices Mr. Walters submitted to NIU for his work between June 2013 and June 2014, which indicated the total number of "Consulting Hours" he worked each month. Investigators confirmed that the hours reported on these invoices averaged more than 10% of a full-time schedule (the schedule prescribed for affiliate appointments in NIU's Academic Policies and Procedures Manual), based on an eight-hour work day and excluding weekends and holidays.

in Human Resources was that "by the time you get the paperwork, everything has been pre-approved, and lots of times way above your head."

2. Employment of Nancy Suttenfield

a. Review of Documents Regarding Nancy Suttenfield

Investigators reviewed documents relating to Nancy Suttenfield's initial retention through an executive search firm, and her eventual hire as an affiliate employee.

[This redacted paragraph contains information that may be protected by attorney/client privilege.] [20] [21]

Investigators obtained and reviewed a Temporary Interim Employment Agreement between NIU and the Registry relating to Ms. Suttenfield, which bore Mr. Cunningham's signature, dated January 21, 2014. [redacted], the Temporary Interim Employment Agreement described Ms. Suttenfield as an employee, rather than as an independent contractor and consultant. Under the Temporary Interim Employment Agreement, NIU agreed to hire Ms. Suttenfield as a full-time temporary Interim Chief Financial Officer beginning November 1, 2013, for a term anticipated to extend through September 30, 2014. The agreement provided that NIU would pay Ms. Suttenfield a salary at an annual rate of $220,000, and that NIU would pay the Registry a placement fee at the annual rate of 33% of Ms. Suttenfield's salary. Written expectations for the position included duties such as "manag[ing] all facets of the fiscal and financial affairs of the University." The position expectations did not include teaching any classes at NIU.

Minutes from a December 5, 2013 Board of Trustees meeting indicate that the Board was asked to approve Ms. Suttenfield's appointment as interim Chief Financial Officer, based on a requirement for Board approval for the appointment of personnel to vice president or dean positions.[22] The Board approved Ms. Suttenfield's appointment through September 30, 2014. The minutes do not reflect any Board discussion about classifying Ms. Suttenfield as an affiliate employee.

An NIU Personnel Action Form indicates that Nancy Suttenfield was initially appointed as an affiliate employee effective November 1, 2013, for a term through June 30, 2014, at a semi-monthly rate of $9,166.67.[23] Ms. Suttenfield's appointment was subsequently extended three more times: to December 31, 2014; then to January 31, 2015; and finally to February 21, 2015.[24] In total, Ms. Suttenfield served as an NIU affiliate employee for over 15 months, and received total compensation of $425,041. Ms. Suttenfield was the fourth-highest paid employee

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[20] [Redacted].
[21] [Redacted].
[22] *See* Regulations of the NIU Board of Trustees, § II.A.2.b.1.
[23] Mr. Cunningham's signature appears on the initial appointment form, with a date of December 16, 2013.
[24] President Baker's signature appears on the Personnel Action Forms for all three extensions (with dates of May 28, 2014; December 8, 2014; and January 13, 2015, respectively).

at NIU in 2014, after NIU's head football coach, President Baker, and affiliate employee Ron Walters.

Investigators also reviewed email exchanges discussing Ms. Suttenfield's hire. On December 31, 2013, the Registry's Placement Manager emailed President Baker, stating that Ms. Suttenfield had advised him that "the State of Illinois ruled that NIU and the Registry shouldn't have been doing business back in October because our relationship did not result from a formal RFP [request for proposal] process," and further told him that NIU's General Counsel had said that NIU had hired Ms. Suttenfield as a temporary employee and intended to void the contract with the Registry. [These redacted three sentences contain information that may be protected by attorney/client privilege.].[25]

b. Interview of Mr. Cunningham Regarding Nancy Suttenfield's Employment as an Affiliate

Mr. Cunningham told OEIG investigators that in July 2013, President Baker decided to bring in an interim Chief Financial Officer to handle the finance duties for which Mr. Cunningham had previously been responsible, and proposed retaining the Registry to search for candidates. According to Mr. Cunningham, he told President Baker that he would be limited to paying the Registry under $20,000 under the procurement rules, or he could use an executive search firm that was on a preapproved list. Mr. Cunningham said NIU retained the Registry, which identified candidates for the interim Chief Financial Officer position, including Ms. Suttenfield, and that President Baker decided to retain Ms. Suttenfield.

Mr. Cunningham said that the Registry billed NIU over $60,000 in fees for the interim Chief Financial Officer search, which NIU Controller Keith Jackson refused to pay because the amount exceeded what the procurement rules allowed. Mr. Cunningham said he and Mr. Jackson discussed paying the Registry's fees with discretionary NIU Foundation[26] funds instead, which he said were not subject to the same procurement rules. Mr. Cunningham said he also worked with Mr. Blakemore to hire Ms. Suttenfield as an employee rather than as a contractor through the Registry. Mr. Cunningham said he explained to President Baker in October 2013 why Ms. Suttenfield had to be hired as an employee.

Mr. Cunningham said that he approved Ms. Suttenfield's appointment as an affiliate employee, and explained that that classification was "probably" used "because that was . . . the path had been developed with the Ron Walters appointment." Mr. Cunningham said Ms. Suttenfield's appointment was similar to Mr. Walters' appointment because she was a temporary resource being brought in to work closely with President Baker. Mr. Cunningham acknowledged that Ms. Suttenfield did not teach any classes, and that her appointment lasted longer than he initially envisioned. Mr. Cunningham did not recall if President Baker was told that Ms. Suttenfield was hired as an affiliate employee.

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[25] [Redacted].

[26] According to its website, the NIU Foundation is an organization whose mission is "[t]o energize and connect the private sector with the NIU community to secure and steward resources that support the future and growth of NIU." *See* http://niufoundation.org/about-northern-illinois-foundation/mission-vision/ (last visited Mar. 15, 2016). In his OEIG interview, President Baker confirmed that the NIU Foundation paid the Registry's fees.

c. Interview of Former Controller Keith Jackson Regarding Nancy Suttenfield

OEIG investigators interviewed former NIU Controller Keith Jackson on July 22, 2015. Mr. Jackson stated that when Mr. Cunningham gave him a contract for Ms. Suttenfield, he (Mr. Jackson) refused to sign off on it because it made Ms. Suttenfield an independent contractor, and the contract amount was well above the limits imposed by the procurement rules for such services. Mr. Jackson said it also required approval by the Board of Trustees.

Mr. Jackson said he told Mr. Cunningham that one option was to pay Ms. Suttenfield as an employee, but noted that there was already a contract in place for Ms. Suttenfield's services. Mr. Jackson said he also told Mr. Cunningham that another option was to pay her with NIU Foundation funds.

d. Interview of General Counsel Jerry Blakemore Regarding Nancy Suttenfield

OEIG investigators interviewed NIU General Counsel Jerry Blakemore on July 2, 2015. According to Mr. Blakemore, President Baker and Mr. Walters negotiated an agreement with the Registry to bring Ms. Suttenfield in as interim Chief Financial Officer. Mr. Blakemore said he first learned of the agreement in approximately October or November 2013, when the Registry's president contacted him with questions. Mr. Blakemore said he advised President Baker that [portion of sentence redacted that may contain matters protected by attorney/client privilege]. Mr. Blakemore said Chief Procurement Officer Ben Bagby was asked whether Ms. Suttenfield's retention would be exempt from the request for proposal requirement as an emergency hire, but Mr. Bagby said that NIU's need did not amount to an emergency and that a request for proposal should be issued for the contract.[27]

Mr. Blakemore said that the "deal" to retain Ms. Suttenfield was "basically . . . already done." Accordingly, he said, he participated in discussions about paying the Registry with NIU Foundation funds; however, he said he was not involved in the decision to hire Ms. Suttenfield as an affiliate employee, and that he did not know what Ms. Suttenfield's employment classification was. Mr. Blakemore noted that around this time President Baker had significantly limited Mr. Cunningham's responsibilities and authority, and that Mr. Cunningham had to work within this limited capacity to get the deal with Ms. Suttenfield done. Mr. Blakemore added that Ms. Suttenfield's hire came "from the top down."

3. Employment of Ken Wilson

a. Review of Documents Regarding Ken Wilson

An NIU Personnel Action Form indicates that Ken Wilson was initially appointed as an affiliate employee on February 3, 2014, for a term through June 30, 2014, at a semi-monthly rate

[27] NIU may make an emergency procurement without going through the competitive bidding process, when an emergency condition arises and the need cannot be met through normal procurement methods. *See* Ill. Admin. Code tit. 44 § 4.2030(a).

of $5,500.[28] The Personnel Action Form relating to his initial appointment contained the comment: "Hired as an affiliate provide consulting to the CFO." Mr. Wilson's appointment was subsequently extended to June 30, 2015.[29] In total, Mr. Wilson served as an NIU affiliate employee for 17 months, and received total compensation of $135,963.

b. Interview of Ms. Latham Regarding Ken Wilson's Employment as an Affiliate

According to Ms. Latham, Ms. Suttenfield hired Mr. Wilson as an advisor. Ms. Latham said that the initial understanding was that Mr. Wilson was to be a temporary employee, and that his term of employment was to last until June 2014. Ms. Latham said Mr. Wilson did not provide any instruction at NIU, and was commonly referred to as "the consultant's consultant."

Ms. Latham said that after Ms. Suttenfield told her that Mr. Wilson would be a salaried employee, she (Ms. Latham) consulted Mr. Cunningham, who directed her to hire Mr. Wilson as an affiliate employee. Ms. Latham said she objected to Mr. Cunningham that the affiliate classification had become "a perpetual default of employment category," but Mr. Cunningham reiterated that she was to hire Mr. Wilson as an affiliate employee.

According to Ms. Latham, she subsequently received an extension of Mr. Wilson's affiliate appointment from Ms. Suttenfield. Ms. Latham said she did not believe the extension was appropriate because Mr. Wilson's employment was not short term. However, she said she did not tell Ms. Suttenfield about her objection.

c. Interview of Mr. Cunningham Regarding Ken Wilson

Mr. Cunningham said Mr. Wilson was hired as an assistant to Ms. Suttenfield to help her with her responsibilities as interim Chief Financial Officer. Mr. Cunningham said he did not know how NIU hired Mr. Wilson, and did not recall signing Mr. Wilson's employment paperwork.[30]

4. Employment of Magaly Rodriguez

a. Review of Documents Regarding Magaly Rodriguez

Investigators reviewed documents relating to Magaly Rodriguez's company's initial retention as a consultant, and Ms. Rodriguez's subsequent hire as an affiliate employee.

NIU records reflect that under a December 13, 2013 written agreement, NIU retained Magaly Rodriguez's company, Volentum, as a consultant for a term through December 19, 2013. NIU's purchase requisition described Volentum's services as providing "[s]peakers for

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[28] The signature on the initial Personnel Action Form is illegible.
[29] Former Vice President for Operations and Community Relations F. William Nicklas's signature, which appears to have been stamped, is on the Personnel Action Form for the extension, along with Ms. Suttenfield's signature.
[30] Although the approval signature on Mr. Wilson's Personnel Action Form is illegible, it does not appear to match Mr. Cunningham's signature on other documents.

presidential workshop on December 18th and 19th." The agreement stated that Volentum was to perform these services "as an independent contractor," and "shall not be considered an employee or agent of the University for any purpose." NIU paid Volentum $15,000 for the services.

An NIU Personnel Action Form indicates that Magaly Rodriguez was subsequently appointed as an affiliate employee on May 16, 2014, for a term through December 31, 2014, at a semi-monthly rate of $5,000.[31] Ms. Rodriguez's affiliate appointment was ultimately extended to January 31, 2015.[32] In total, Ms. Rodriguez served as an NIU affiliate employee for over eight months, and received total compensation of $85,031.

b. Interview of Executive Assistant Doris Hooker (Day) Regarding Magaly Rodriguez's Employment as an Affiliate

On April 29, 2016, investigators interviewed President Baker's Executive Assistant, Doris Hooker. Ms. Hooker said that President Baker and NIU Provost Lisa Freeman made the decision to ask Ms. Rodriguez to return to NIU in 2014 to conduct additional workshops with other NIU departments. According to Ms. Hooker, President Baker, Ms. Freeman, and Mr. Cunningham decided to appoint Ms. Rodriguez as an affiliate, rather than bringing her in as a consultant, because Ms. Rodriguez would be working at NIU for a longer period of time than consultants usually did. Ms. Hooker said she was not involved in any discussions about the application of the Procurement Code relating to the services Ms. Rodriguez was to provide.

Ms. Hooker said Ms. Rodriguez was hired to do work similar to what she had previously done as a consultant at NIU, and that Ms. Rodriguez did not teach any classes. Ms. Hooker said Ms. Rodriguez worked full time during her affiliate appointment.

c. Interview of Mr. Cunningham Regarding Magaly Rodriguez

In his OEIG interview, Mr. Cunningham denied any involvement in hiring Ms. Rodriguez as an affiliate employee.

d. Interview of Ms. Latham Regarding Magaly Rodriguez

According to Ms. Latham, Ms. Hooker told her that Ms. Rodriguez was to be hired for a short term to provide training to NIU departments. Ms. Latham said that based on that information, she advised Ms. Hooker that Ms. Rodriguez should be hired as an affiliate employee. Ms. Latham said that at that time, she had not seen any contract between NIU and Ms. Rodriguez's company, and she was unaware that Ms. Rodriguez had previously worked at NIU as an independent contractor. Ms. Latham stated that Ms. Rodriguez's employment was later extended, at Ms. Hooker's request.

5. Employment of William Pfeiffer

[31] President Baker's signature appears on the initial Personnel Action Form.
[32] President Baker's signature appears on the Personnel Action Form for the extension (with a date of December 8, 2014).

a. Review of Documents Regarding William Pfeiffer

Investigators reviewed documents relating to William Pfeiffer's initial retention as a consultant, and his subsequent hire as an affiliate employee.

NIU records reflect that under a March 31, 2014 written agreement, NIU retained Mr. Pfeiffer as a consultant for a term through June 30, 2014, to "assess personnel practices and procedures of the University's Human Resources department and related entities. . . ." The agreement stated that Mr. Pfeiffer was to perform these services "as an independent contractor," and that he "shall not be considered an employee or agent of the University for any purpose." Mr. Pfeiffer also completed an "Independent Contractor Certified Work Statement" form, in which he certified that he had been "engaged as an independent contractor." NIU agreed to pay Mr. Pfeiffer a total amount not to exceed $19,999.99; the agreement stated that "[u]nder no circumstances will [NIU] pay for charges in excess of the agreed upon fees." On June 5, 2014, NIU and Mr. Pfeiffer executed an amendment to the March 31, 2014 consulting agreement, which increased Mr. Pfeiffer's compensation to a total amount not to exceed $20,699.99.[33]

After the consulting agreement was executed, Mr. Pfeiffer submitted an invoice dated April 8, 2014 for $9,102, for consulting services rendered during March 2014, and meetings he attended between March 30 and April 2, 2014. Mr. Pfeiffer subsequently submitted two additional invoices to NIU for consulting services:

Invoice Date	Amount	Summary of Services
May 8, 2014	$11,557	Consulting services rendered during April-May 2014; meetings May 5-8, 2014
June 6, 2014	$11,959	Consulting services rendered during May-June 2014; meetings June 3-4, 2014
TOTAL:	**$23,516**	

An NIU Personnel Action Form indicates that Mr. Pfeiffer was initially appointed as an affiliate employee effective May 16, 2014, for a term through May 31, 2014, for compensation of $11,557.[34] Mr. Pfeiffer's affiliate appointment was subsequently extended to June 15, 2014, for compensation of $11,959.[35] For the one month that Mr. Pfeiffer served as an NIU affiliate employee, he received compensation in the amount of $23,516.

b. Interview of Former Vice President for Operations and Community Relations F. William Nicklas Regarding William Pfeiffer

On December 11, 2014, OEIG investigators interviewed F. William Nicklas, who was NIU's Vice President for Operations and Community Relations from February through October

[33] Ms. Suttenfield signed both the consulting agreement and the amendment on behalf of NIU.
[34] Then-Vice President for Operations and Community Relations F. William Nicklas's signature, which appears to have been stamped, is on the initial Personnel Action Form.
[35] Mr. Nicklas's signature, which appears to have been stamped, is on the Personnel Action Form for the extension.

2014. In that position, Mr. Nicklas assumed Mr. Cunningham's responsibilities for overseeing NIU's Human Resources Department.

Mr. Nicklas stated that in March 2014, President Baker directed him to retain Mr. Pfeiffer to conduct an analysis of NIU's Human Resources Department. According to Mr. Nicklas, he consulted Ms. Latham about the process for retaining Mr. Pfeiffer, and Ms. Latham told him she would handle it. Mr. Nicklas explained that Mr. Pfeiffer's consulting agreement was capped at $19,999 to remain under the $20,000 limit established by the procurement rules. Mr. Nicklas said he was not part of any discussion to amend Mr. Pfeiffer's consulting agreement to pay him more than $20,000.

c. Interview of Ms. Latham Regarding William Pfeiffer's Employment as an Affiliate

Ms. Latham told investigators that Mr. Pfeiffer made three visits to NIU, and that she received a copy of his consulting agreement within a couple of days of his first visit. She said that she felt there was no longer an independent contractor relationship between Mr. Pfeiffer and NIU for his second visit because he received direction regarding his activities and was conducting workshops on that visit, and therefore he was paid as an affiliate employee. When asked whether Mr. Pfeiffer was still providing consulting services on his second visit to NIU, Ms. Latham responded, "I guess," and said she did not know why those services were not covered by his consulting agreement. Ms. Latham said she helped Mr. Nicklas determine that the affiliate classification would be appropriate for Mr. Pfeiffer's second visit.

Ms. Latham said that on his third visit to NIU, Mr. Pfeiffer mainly worked for the Provost's Office, but she did not otherwise know what Mr. Pfeiffer's duties were. Ms. Latham acknowledged that she probably would have approved the paperwork to pay Mr. Pfeiffer as an affiliate employee on his third visit. Ms. Latham said she had reservations about using the affiliate classification for Mr. Pfeiffer's third visit because she did not know the scope of his duties, and conceded: "It's quite possible by default we just ended up doing it so we could get [Mr. Pfeiffer] paid." Ms. Latham said she did not voice any concerns to Mr. Cunningham or Mr. Nicklas.

6. Discussions with the Board of Trustees and President Baker Relating to Affiliate Employees

Investigators interviewed an NIU Trustee regarding information that was provided to the NIU Board of Trustees about the employment of affiliates, and subsequent discussions with President Baker. OEIG investigators also reviewed relevant documents and audio recordings.

a. Interview of NIU Board of Trustees Vice Chair John Butler

OEIG investigators interviewed John Butler on July 9, 2015. Mr. Butler was the Board Chair from June 2013 to June 2015, and has been the Board's Vice Chair since June 2015.

Mr. Butler said that when he first met Mr. Walters in approximately June 2013, he thought Mr. Walters was a consultant. Mr. Butler said that on January 29, 2014, he learned that Mr. Walters had been hired as an affiliate employee. According to Mr. Butler, it was clear to him and to Trustee Marc Strauss that this was "not a good situation." Mr. Butler also said that at some point he reviewed Mr. Walters' invoices, which he thought resembled invoices used to account for a consultant's time, and felt that this accounting seemed "wrong on all levels." Mr. Butler said that about a week after January 29, 2014, in a meeting with Mr. Strauss, Mr. Nicklas, and General Counsel Jerry Blakemore, he asked Mr. Blakemore whether there was anything unusual or unlawful about the use of the affiliate classification for Mr. Walters or others. According to Mr. Butler, Mr. Blakemore responded that the Board of Trustees should ask those questions of President Baker rather than him.

According to Mr. Butler, the Board of Trustees also received anonymous letters in July or August 2014, that alleged problems with affiliate hiring, among other issues. Mr. Butler said that the Board of Trustees issued a letter to President Baker that raised a concern about the hiring of professionals into temporary senior administrative roles and consulting positions, as well as other concerns.[36] Mr. Butler said the Board of Trustees met with President Baker in a closed session on August 28, 2014, and discussed the use of the affiliate classification.

b. Board of Trustees' August 28, 2014 Closed Session

OEIG investigators obtained an audio recording of the Board of Trustees' closed session held on August 28, 2014. During that meeting, President Baker told the Trustees that he had asked Mr. Walters to do work for NIU, and that he (President Baker) trusted that staff members "knew what they were doing to set this up." President Baker acknowledged that Mr. Walters was "essentially full time." President Baker said the plan was for Mr. Walters' work to end in December 2014, and he noted that Ms. Suttenfield's contract was also set to end in December 2014. Although President Baker outlined his reasons why he believed Mr. Walters and Ms. Suttenfield's services were necessary to NIU, he did not argue that it was appropriate to hire them under the affiliate classification, and did not discuss the appointments of Mr. Wilson, Ms. Rodriguez, or Mr. Pfeiffer at all.

c. [Redacted]

These redacted three paragraphs contain information that may be protected by attorney/client privilege.][37]

[36] Investigators confirmed that the Board of Trustees issued a memorandum to President Baker on August 6, 2014, as part of President Baker's evaluation process, which raised various concerns, including "whether professionals hired into temporary senior administrative roles and consulting positions have been hired in accordance with proper state employment practices and procurement protocols . . . ."

[37] [Redacted].

7. Subsequent Extensions of Ms. Suttenfield's and Ms. Rodriguez's Affiliate Appointments

NIU Personnel Action Forms indicate that after the above discussions took place between President Baker and the Board of Trustees, Ms. Suttenfield's affiliate appointment was extended from January 1, 2015 to January 31, 2015, and again to February 21, 2015. In addition, Ms. Rodriguez's affiliate appointment was extended from January 1, 2015 to January 31, 2015. President Baker's signature appears on all three Personnel Action Forms for the affiliate extensions, which were dated December 8, 2014 (with respect to Ms. Suttenfield and Ms. Rodriguez's January 2015 extensions), and January 13, 2015 (with respect to Ms. Suttenfield's final extension), and identified Ms. Suttenfield and Ms. Rodriguez's employment classification as affiliates.

Former Board Chair John Butler told OEIG investigators that in about January 2015, he told President Baker that he needed to inform the Board of Trustees about retaining Ms. Suttenfield or extending her a contract. Mr. Butler said President Baker did not advise the Board members that Ms. Suttenfield would remain at NIU until February 2015.[38] In her OEIG interview, President Baker's Executive Assistant, Ms. Hooker, said that President Baker instructed her to extend Ms. Suttenfield's appointment into 2015, so that Ms. Suttenfield could wrap up her interim Chief Financial Officer duties. Ms. Hooker said President Baker also directed her to extend Ms. Rodriguez's appointment through January 2015, so that Ms. Rodriguez could conduct additional workshops.

8. Corrective Actions Taken Regarding Use of Affiliate Classification

Mr. Butler told investigators that the Board of Trustees amended its regulations in June 2015, to increase presidential oversight. Investigators reviewed the amended regulations, which added requirements for Board or Executive Committee approval for certain types of personnel actions, and for the President to notify the Board of matters with significant financial implications.

On December 14, 2015, Ms. Latham informed investigators that effective January 1, 2016, the affiliate employee designation would no longer be available for non-academic employees. Ms. Latham also stated that the affiliate employee description was removed from NIU's website on approximately November 16, 2015.[39]

B. Investigation of Reimbursement of Affiliate Employees' Travel Expenses and Provision of Free Lodging

Investigators also examined whether NIU improperly reimbursed affiliate employees for their travel expenses between their residences and NIU's DeKalb, Illinois campus, and improperly provided them lodging on campus at no charge.

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[38] General Counsel Jerry Blakemore also told investigators that President Baker did not inform the Board of Trustees that he planned to retain Ms. Suttenfield past 2014.

[39] OEIG investigators confirmed that NIU's Human Resources webpage no longer lists the affiliate classification as a type of employment. *See* http://www.hr.niu.edu/hrs/employment/types.shtml (last visited Mar. 21, 2016).

1. Regulations and Policies Governing Employee Travel Reimbursements and Lodging Expenses

The Higher Education Travel Regulations, which govern travel and lodging for NIU employees, provide:

> As a condition of employment, employees expect to incur commuting expenses between their residence and headquarters. These expenses are not reimbursable. Meals, lodging and per diem are not reimbursable at headquarters or at residence.[40]

The regulations further provide: "Reimbursement of expenses between the residence and the official headquarters of any individual subject to this Part shall not be allowed."[41]

State agencies, including public universities, are required to file reports with the Legislative Audit Commission identifying any employees "for whom official headquarters have been designated at any location other than that at which their official duties require them to spend the largest part of their working time," along with the reason for the designation.[42] These reports are commonly referred to as "TA-2 forms."

NIU's travel regulations state that generally, an employee's official headquarters is the place where official duties will require the largest part of the individual's working time to be spent, and that DeKalb, Illinois is therefore the official headquarters for most NIU employees.[43] However, the regulations state that in instances in which an employee's official headquarters is elsewhere, a request for official headquarters at another location should be indicated on a TA-2 form and submitted to the Provost's Office.[44]

Thus, if a TA-2 form indicates that an employee's official headquarters is his or her place of residence, the employee may be reimbursed for travel expenses between the residence and NIU's campus. However, if the form indicates that the employee's official headquarters is DeKalb, Illinois, or if no TA-2 form is submitted, he or she cannot be reimbursed for travel expenses between the residence and the NIU campus. Consultants do not need to be listed on a TA-2 form to be reimbursed for travel.

NIU policy states that employees "should not be . . . provided any fringe benefits unless appropriate and prior authorizations are obtained and confirmed by Human Resource Services. . . ."[45] Fringe benefits are required to be included in employee earnings and appropriately taxed.[46]

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[40] Ill. Admin. Code tit. 80 § 2900.60(f)(2).
[41] Ill. Admin. Code tit. 80 § 2900.60(a)(5).
[42] 30 ILCS 105/12-3; 30 ILCS 5/1-7.
[43] NIU Business Procedure Manual, Procedure No. 4-30, § I.
[44] NIU Business Procedure Manual, Procedure No. 4-30, § I.
[45] NIU Compensation and Fringe Benefits Policy (July 29, 2009).
[46] NIU Compensation and Fringe Benefits Policy (July 29, 2009).

2. Documents Relating to Travel Reimbursements and Free Lodging Provided to Affiliate Employees

Documents obtained from NIU showed that NIU paid travel expenses and/or provided free lodging, either at NIU's Holmes Student Center[47] or in student dormitories, for all five affiliate employees discussed in this report. The following sentence and chart contain information that may be protected by attorney/client privilege.][48][49]

TA-2 forms submitted by NIU to the Legislative Audit Commission listed Mr. Walters and Ms. Rodriguez and identified "DeKalb Campus" as their official headquarters, although they identified their respective residences in the States of Washington and Minnesota as the locations where the majority of their working time was spent.

3. Interviews Relating to Travel Reimbursements and Free Lodging Provided to Affiliate Employees

Investigators interviewed various individuals about travel reimbursements provided to affiliate employees. Mr. Cunningham said that President Baker told him that Mr. Walters would be reimbursed for his travel, and that he (Mr. Cunningham) believed such reimbursement was appropriate because Mr. Walters would be doing the majority of his NIU work from his home in Washington. According to Ms. Latham, after Ms. Hooker asked about the status of Mr. Walters' travel reimbursements, she consulted Mr. Jackson about how to complete a TA-2 form, and then passed the information along to Ms. Hooker; however, she (Ms. Latham) said she later learned that that information was incorrect. Ms. Hooker said that she completed the TA-2 forms that listed Mr. Walters and Ms. Rodriguez, with guidance from Mr. Blakemore. Mr. Jackson told investigators that Mr. Walters' forms were processed as if Mr. Walters was a consultant, rather than as an employee, based on his (Mr. Jackson's) understanding from his conversations with Mr. Cunningham that Mr. Walters was a consultant; Mr. Jackson also said he recalled that Mr. Walters' travel reimbursement forms listed him as a consultant.[50]

Regarding free lodging provided to affiliate employees, Ms. Latham said that the paying department is responsible for notifying Human Resources' payroll section of the payment of employee fringe benefits such as hotel stays, for tax purposes, and that she would be the contact person to receive such information. Ms. Latham acknowledged that she was aware that at least Mr. Walters, Ms. Suttenfield, and Mr. Pfeiffer stayed on campus, but said that the paying departments did not provide information to her regarding payments made by NIU for affiliate

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[47] NIU's Holmes Student Center contains a hotel with 74 guest rooms and 3 executive suites.
[48] [Redacted].
[49] As discussed in further detail below, the figure provided for Ms. Rodriguez's travel did not include additional payments made for Ms. Rodriguez's travel on an NIU procurement card.
[50] Investigators confirmed that a number of Mr. Walters' travel reimbursement forms between July and September 2013 referenced "Consultant interviews" in the "Business Purpose of Travel" section, although the forms did not specifically list Mr. Walters as a consultant. The forms listed an employee identification number for Mr. Walters, which would indicate that he was an employee; Mr. Jackson told investigators that he had not looked at the forms "from that perspective."

employee lodging. Ms. Hooker, who handled the on-campus lodging reservations for Mr. Walters, Ms. Suttenfield, and Ms. Rodriguez, said she did not have any conversations with President Baker about lodging for affiliates, and that at the time the affiliate employees stayed on campus, she was unaware that their lodging was considered a fringe benefit.

4. External Audit for the Year Ended June 30, 2014

Investigators obtained and reviewed an external audit report relating to NIU for the year ended June 30, 2014.[51] In that report, a Special Assistant Auditor for the Illinois Auditor General found that $31,945 of the $46,501 of travel expenditures tested (69%) were improper reimbursements for travel between a single employee's home and the official headquarters listed on the TA-2 forms.[52] The auditor recommended that NIU implement procedures to ensure that TA-2 forms are accurately completed, and that NIU recoup unreimbursable travel expenses from the employee. NIU responded that it concurred with the auditor's comments, and that it would "review the circumstances surrounding the employee and evaluate the necessity of recouping any unreimbursable travel expenses that have been paid to the employee."

5. President Baker's Requests for Exceptions to Travel Regulations

In October 2014, President Baker submitted letters to the Higher Education Travel Control Board that requested exceptions from the Higher Education Travel Regulations for Mr. Walters, Ms. Suttenfield, and Ms. Rodriguez's expenses.[53] In all three letters, President Baker explained that although through initial internal discussions he had understood that the expenses were handled appropriately, "[l]ately I have been briefed on the travel policy and now submit the request for exemptions to be fully compliant." Ms. Hooker emailed President Baker's requests for exceptions to the Higher Education Travel Control Board.

Higher Education Travel Control Board meeting minutes indicate that on January 27, 2015, the Board declined to act on President Baker's requests for exceptions for Ms. Suttenfield's expenses and some of Ms. Rodriguez's expenses, because they were headquartered in DeKalb, and therefore were not on "travel status" when they incurred the expenses. The Board postponed acting on President Baker's requests for an exception for Mr. Walters, and relating to one of Ms. Rodriguez's trips, to obtain additional information. On April 28, 2015, the Board denied President Baker's requests for exceptions for Mr. Walters and Ms. Rodriguez's remaining travel, on the basis that their headquarters were located in DeKalb.

6. Subsequent Charges for Affiliate Employees' Lodging and Travel

Documents obtained from NIU reflect that while President Baker's request for an exception for Ms. Suttenfield's expenses was pending before the Higher Education Travel Control Board, NIU continued to pay for an additional 57 nights of lodging on campus for Ms. Suttenfield, for a total value of $3,210.24.

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[51] The audit report is dated March 11, 2015.

[52] Although the audit report did not identify the employee by name, the auditor's findings appear to relate to Mr. Walters' travel between his residence in Washington, and NIU's DeKalb, Illinois campus.

[53] The Higher Education Travel Control Board may approve exceptions to the travel regulations "when they are deemed to be in the best interest of the Agency." *See* Ill. Admin Code tit. 80 § 2900.105(a).

In addition, documents obtained during the investigation revealed that while President Baker's request for an exception for Ms. Rodriguez's travel was pending before the Higher Education Travel Control Board, his Executive Assistant, Ms. Hooker, charged Ms. Rodriguez's airfare between Minnesota and Illinois on her (Ms. Hooker's) NIU procurement card on four dates between November 8, 2014 and January 5, 2015, for a total of $1,471.80. In her OEIG interview, Ms. Hooker said President Baker did not direct her to charge this travel, and that she asked no questions before she did so. When asked why she continued to charge Ms. Rodriguez's travel while the request for a travel exception was pending,[54] Ms. Hooker stated: "I understood that we should not be paying for travel, I can't explain it," and added that she was "hopeful for an exemption." Ms. Hooker said that she no longer uses a procurement card.

7. Corrective Actions Taken Regarding Reimbursement of Affiliate Employees' Travel Expenses and Provision of Free Lodging

[This redacted paragraph contains information that may be protected by attorney/client privilege.][55]

On May 15, 2015, NIU sent a letter to Mr. Walters asking him to repay $35,265.20 in travel reimbursements, and noting that new W-2 forms would be issued to him for 2013 and 2014 to reflect additional compensation of $26,478.45 for free lodging and dry cleaning. Mr. Walters objected to NIU's request, through counsel, on the basis that NIU had agreed to reimburse his reasonable travel expenses and pay for his lodging on campus. In a subsequent audit report for the year ended June 30, 2015, a Special Assistant Auditor for the Illinois Auditor General noted that in fiscal year 2016, Mr. Walters had returned $17,515 in unreimbursable travel expenses identified in the prior report.[56]

In addition, on July 5, 2015, NIU sent a letter to Ms. Rodriguez asking her to repay $380.88 in travel and meal reimbursements, and noting that a new W-2 form had been issued to her for 2014 to reflect additional compensation of $2,136 for free lodging.

On June 24, 2015, the OEIG asked NIU to produce any W-2 forms and fringe benefit authorizations for Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, and Mr. Pfeiffer. In response, NIU produced corrected 2014 W-2 forms for those employees, which reported the value of lodging provided to them as additional compensation:[57]

Affiliate	Amount of Additional Income Reported on Corrected 2014 W-2s
Ron Walters	$ 13,511.85
Nancy Suttenfield	$ 17,250.00

[54] Ms. Hooker acknowledged that she emailed President Baker's exception requests to the Higher Education Travel Control Board, and followed up on the requests while they were pending.
[55] [Redacted].
[56] Although the auditor did not identify the employee with the unreimbursable travel expenses by name, the report appears to be referring to Mr. Walters' expenses.
[57] The OEIG is unaware whether NIU also issued corrected W-2 forms for tax years other than 2014.

Ken Wilson	$ 2,750.00
Magaly Rodriguez	$ 1,691.00
William Pfeiffer	$ 600.00
TOTAL:	**$ 35,802.85**

C. Interview of President Douglas Baker

On October 29, 2015, investigators interviewed President Baker. President Baker acknowledged that as president of NIU, he is responsible for following Illinois procurement rules, including complying with the requirement to use an open bidding process for contracts for professional services over $20,000.[58] President Baker said he does not recall when he first learned of that requirement, but said he suspects he was made aware of it in late 2013.

President Baker described Ron Walters as a friend, and said Mr. Walters previously worked as a consultant at the University of Idaho when President Baker also worked there. According to President Baker, he spoke with then-Board Chair Cherilyn Murer about appointing Mr. Walters to provide temporary help with his presidential transition at NIU, and that she approved of Mr. Walters' appointment. President Baker said he did not recall whether he told Ms. Murer that Mr. Walters would be a consultant or an NIU employee, and did not recall telling Ms. Murer how much Mr. Walters would be paid. President Baker said he viewed Mr. Walters as a consultant to NIU.

President Baker said he contacted Mr. Cunningham and Ms. Buettner at NIU to set up Mr. Walters' temporary appointment. President Baker did not recall any detailed discussion with either about the affiliate classification, and said he did not ask Mr. Cunningham any questions about it after Mr. Cunningham sent him an email stating that Mr. Walters was to be hired as an affiliate employee. President Baker said he did not know of any other employment classification to use for Mr. Walters, and added that no senior staff member offered an alternative. President Baker said that he relied on senior NIU staff when he hired Mr. Walters using the affiliate employee classification, and maintained that no one from his staff at NIU raised any concerns to him at that time about the Procurement Code, or rules relating to independent contractors.

President Baker said he subsequently asked Mr. Walters to find and retain an interim Chief Financial Officer, and that they discussed using the Registry search firm. President Baker said that he, Mr. Walters, NIU General Counsel Jerry Blakemore, and a Registry representative discussed the interim employment, the employment period, and the Registry's fee. President Baker said that the Registry's contract for the search was also discussed with NIU's Board Chair and Vice Chair, and that the Board approved the plan to retain the Registry.[59] President Baker noted that the Board also approved Ms. Suttenfield's contract after the search concluded. President Baker said he did not know Ms. Suttenfield before he met her at NIU.

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[58] President Baker also acknowledged that prior to his employment at NIU, he was an Executive Vice President and Provost at the University of Idaho, where he was similarly responsible for following hiring and procurement rules; President Baker said that his previous duties at the University of Idaho included selecting employees.

[59] Investigators reviewed minutes for the Board of Trustees meetings held in 2013, but did not identify any meeting at which the Board approved the retention of an executive search firm to search for an Interim Chief Financial Officer, or specifically approved the retention of the Registry.

President Baker said he did not recall being briefed on State procurement rules and the $20,000 limit for professional services at that time, and did not recall NIU senior staff members raising questions about procurement problems relating to the Registry contract or Ms. Suttenfield's hire. However, President Baker said that after Ms. Suttenfield was retained and the contract was signed, Mr. Blakemore told him that the Chief Procurement Officer for Higher Education did not deem Ms. Suttenfield's appointment to be an emergency, and therefore refused to approve a waiver of the procurement rules to allow NIU to pay Ms. Suttenfield under the Registry contract. President Baker said that in December 2013, Mr. Blakemore told him that NIU could instead hire Ms. Suttenfield as an affiliate employee, and that Mr. Cunningham suggested using NIU Foundation funds to pay the Registry's fees. President Baker said that he relied on senior NIU staff when he hired Ms. Suttenfield using the affiliate employee classification.

President Baker said Mr. Cunningham, Ms. Buettner, and Ms. Latham set up the reimbursement of Mr. Walters' travel expenses, and that Mr. Cunningham made the arrangements for Mr. Walters and Ms. Suttenfield to stay at the Holmes Student Center. President Baker said he assumed Ms. Latham was aware of the lodging arrangements and kept track of them for tax purposes.

President Baker said that Ms. Suttenfield subsequently hired Ken Wilson to assist her in the Finance Office. He said Mr. Wilson worked on a full-time basis directly for Ms. Suttenfield, and that he did not teach any academic classes. President Baker said he did not learn that Mr. Wilson was hired under the affiliate employee classification until after the hire took place, and that he learned in early 2015 that Mr. Wilson had stayed in an NIU dormitory without charge.

According to President Baker, at his suggestion NIU retained Magaly Rodriguez and her company to conduct workshops with senior staff members and deans at NIU, for approximately $15,000. President Baker said that when he previously worked at the University of Idaho, he retained Ms. Rodriguez to do work there; he said that they have a professional relationship, and that they are not friends.

President Baker said that following Ms. Rodriguez's initial workshops, the academic deans asked him whether Ms. Rodriguez could conduct similar presentations to individual departments. President Baker said he directed Ms. Hooker to hire Ms. Rodriguez for the project, and that he assumes Ms. Hooker told him about hiring Ms. Rodriguez as an affiliate employee. President Baker said Ms. Hooker and Ms. Latham established the process to pay Ms. Rodriguez as an employee, and that he authorized funds to pay for Ms. Rodriguez's travel expenses, and for her to stay in a hotel room at the Holmes Student Center while she was at NIU.

President Baker said William Pfeiffer was retained as a consultant to NIU's Human Resources Department, at Mr. Walters' suggestion. President Baker said he did not recall if he knew Mr. Pfeiffer was initially retained as a consultant, and later rehired as an affiliate employee. President Baker said he probably knew his office paid for Mr. Pfeiffer to stay in a hotel room at the Holmes Student Center.

President Baker acknowledged that his August 6, 2014 performance evaluation referenced the Board's concerns about the use of the affiliate employee classification, and said he discussed those concerns with the Board at a meeting in August 2014. However, according to President Baker, after that meeting no one at NIU informed him that the use of the affiliate classification for Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, or Mr. Pfeiffer needed to be changed or was no longer appropriate.

According to President Baker, different definitions of the affiliate classification applied to academic and non-academic units at NIU, and that the definition in the NIU's Academic Policies and Procedures Manual applied only to employees of academic departments.[60] President Baker maintained that the description of affiliate employment that appeared on NIU's website governed affiliate hiring by non-academic units.[61] President Baker said that after he recognized that he had received bad advice about the use of the affiliate employee classification, staff members worked to recoup Mr. Walters' travel reimbursements. He added that the affiliate employee classification has been eliminated at NIU.

When asked at his interview what he now thinks of hiring Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, and Mr. Pfeiffer as affiliate employees, President Baker responded that there "probably were better ways to bring them on."

IV. ANALYSIS

The OEIG's investigation revealed that since President Baker took office in mid-2013, NIU has repeatedly misclassified high-level, highly paid consultants as affiliate employees, for the purpose of circumventing the Procurement Code's requirements. As a result of those actions, since 2013 NIU has paid over $1 million in public funds to consultants who were not selected through a competitive procurement process. Although various NIU staff contributed to this wholesale disregard for procurement requirements or otherwise allowed the misconduct to occur, ultimately President Baker is responsible for mismanaging NIU's resources.

As a public institution, NIU is required to award independent professional services contracts for $20,000 or more, or for more than one year, through a competitive request for proposal process, unless another exception to the procurement rules applies.[62] While NIU can instead choose to hire an individual to provide professional services as an employee if it complies with rules relating to hiring and employment,[63] the evidence gathered in this investigation shows that NIU hired individuals who were understood to be consultants, under an employment classification that was invalid as applied to them.

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[60] As noted above, that manual describes affiliate employees as individuals whose primary job is not with NIU, but who teach an off-campus extension class (typically non-credit) for the university on an occasional, 10% basis.
[61] As noted above, the Human Resources page on NIU's website described affiliate appointments as "professional positions of a short duration (usually less than 3 months) to conduct a non-credit seminar, teach an extension class or otherwise fulfill some short-term professional responsibility."
[62] *See* 30 ILCS 500/35-30(a); Ill. Admin. Code tit. 44, §§ 4.2035 & 4.2020(b)(4).
[63] *See* 30 ILCS 500/1-10(b)(4).

The records obtained and interviews conducted show that all five of the affiliate employees examined in this investigation were at least initially intended to be consultants, and it appears that most of them continued to function as consultants during their time working for NIU:

Ron Walters

- Described as a consultant in written materials Mr. Walters provided to NIU;
- Described as a consultant in an email President Baker sent to Mr. Cunningham;
- Submitted invoices and travel reimbursement forms to NIU for his work on NIU projects, which characterized the work as consulting;
- President Baker told OEIG investigators that he viewed Mr. Walters as a consultant to NIU.

Nancy Suttenfield

- Initially intended to be retained under an independent contractor/consultant agreement with the Registry.

Ken Wilson

- NIU personnel records commented that Mr. Wilson was hired to "provide consulting to the CFO";
- Commonly referred to at NIU as "the consultant's consultant."

Magaly Rodriguez

- NIU initially retained Ms. Rodriguez's company as a consultant and independent contractor, then subsequently engaged her to provide similar services as an affiliate employee.

William Pfeiffer

- NIU initially retained Mr. Pfeiffer as a consultant and independent contractor, then subsequently engaged him to provide the same services as an affiliate employee while his consulting agreement was still in effect;
- NIU paid amounts to Mr. Pfeiffer as an affiliate employee that Mr. Pfeiffer invoiced as consulting services.

Based on the amounts NIU paid for these individuals' services, procurement rules required NIU to use a competitive process unless the individuals were appropriately hired as employees. As noted above, NIU paid each of these affiliate employees more than the $20,000 procurement limit for small purchases; indeed, Mr. Walters and Ms. Suttenfield were among the highest-paid individuals at NIU. In addition, Mr. Walters, Ms. Suttenfield, and Mr. Wilson provided their services under the affiliate classification for well over the one-year limit for small purchases.

Moreover, the investigation discovered that NIU's employment of Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, and Mr. Pfeiffer as affiliate employees was a sham, because the work they did for NIU did not fit within the definition of affiliate employment.

NIU's written policies and procedures describe affiliate employees as individuals "who teach an off-campus extension class (typically non-credit) for the university on an occasional basis," and state that affiliate appointments are "always made on a part-time 10 percent basis."[64] In addition, Mr. Cunningham and Ms. Latham told investigators that affiliate appointments are typically short term. Although NIU's Human Resources staff may have viewed affiliate appointments more "flexibly," as reflected in the Human Resources webpage's description as including positions that "otherwise fulfill some short-term professional responsibility," the so-called "non-academic" affiliate position that President Baker and other NIU staff discussed in their interviews is not memorialized in NIU's formal policies.

Despite NIU's policy's description of affiliates as individuals who teach an extension class, none of the five affiliate employees examined in this investigation taught a class at NIU. In addition, most, if not all of these affiliate employees worked a full-time schedule. Moreover, only Mr. Pfeiffer's one-month affiliate appointment could be viewed as short term; by contrast, Ms. Rodriguez's affiliate appointment lasted over eight months and the other three affiliate appointments extended well over one year. For all of these reasons, these individuals were improperly classified as affiliate employees.

Finally, it is clear that NIU staff deliberately misclassified at least Mr. Walters, Ms. Suttenfield, Ms. Rodriguez, and Mr. Pfeiffer as affiliate employees for the purpose of circumventing the requirement that NIU use a competitive process to retain professional services by independent contractors for $20,000 or more:

Ron Walters — Hired as an affiliate employee after Ms. Latham pointed out that paying him more than $19,500 as an independent contractor "could raise an issue with procurement limit for consulting services."

Nancy Suttenfield — Hired as an affiliate employee to avoid the procurement problems caused when President Baker contracted for her services as a consultant well in excess of the procurement limits, and the Chief Procurement Officer refused to approve the deal as an emergency procurement.

Magaly Rodriguez — Hired as an affiliate employee shortly after NIU paid $15,000 for consulting services she and her company had performed as independent contractors, and it was apparent that her contemplated similar future work would exceed the $20,000 procurement limit.

William Pfeiffer — Hired as an affiliate employee while his consulting agreement was in effect, to cover consulting work he performed when his invoices for the work exceeded the $20,000 procurement limit.

In addition to the potential waste inherent in selecting highly paid consultants without using a competitive process, improperly classifying these consultants as affiliate employees also created confusion relating to their travel and lodging expenses. As employees ostensibly

[64] NIU Academic Policies and Procedures Manual, § 2, item 27.

headquartered in DeKalb, Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, and Mr. Pfeiffer were not entitled to be reimbursed for their travel to and from their residences, or to free lodging on campus, but they were nevertheless promised and provided those benefits. NIU's efforts to correct these mistakes after the fact, by seeking exceptions to the travel regulations, trying to recoup some travel expenses, and retroactively treating lodging expenses as fringe benefits, proved difficult.

A. Steven Cunningham and Celeste Latham Misused the Affiliate Classification

The evidence gathered in this investigation shows a pattern in which President Baker and others engaged consultants to perform work for NIU at compensation levels that exceeded the $20,000 small purchases limit for professional services (whether at the outset of the engagement or subsequently), and submitted the deals to Human Resources personnel to process. When presented with problematic deals that were already done and instructed to make them work, Mr. Cunningham and Ms. Latham attempted to resolve the problems after the fact by cloaking the transactions in an improper affiliate designation.

As the Acting Vice President for Administration and Director of Human Resources, Steven Cunningham oversaw both Human Resources and procurement at NIU until approximately February 2014. Mr. Cunningham was thoroughly familiar with the affiliate classification description in NIU's Academic Policies and Procedures Manual, which he helped draft, and which he discussed in a 2000 memorandum. Nevertheless, Mr. Cunningham approved Mr. Walters' and Ms. Suttenfield's affiliate appointments, and the first extension of Mr. Walters' appointment, despite the fact that neither individual met the affiliate criteria. The allegation that Mr. Cunningham misused the affiliate employment classification by approving the appointments of Ron Walters and Nancy Suttenfield as affiliate employees is **FOUNDED**.[65]

As the Assistant Vice President for Administration and Human Resources, Celeste Latham is responsible for hiring NIU employees, and ensuring that proper hiring processes are followed. Although Ms. Latham and Mr. Cunningham's statements about how Mr. Wilson was initially approved as an affiliate hire are inconsistent, Ms. Latham acknowledged that she did not object to subsequently extending Mr. Wilson's affiliate appointment, even though she understood the extension was inappropriate. In addition, Ms. Latham approved the hire of Mr. Pfeiffer as an affiliate employee, despite the fact that he was already providing similar services under a consulting agreement. The allegation that Ms. Latham misused the affiliate employment classification by approving the continued affiliate appointment of Ken Wilson, and the initial and continued affiliate appointment of William Pfeiffer is **FOUNDED**.

B. President Douglas Baker Mismanaged NIU

This investigation revealed that President Baker repeatedly directed NIU staff to engage the consultants he selected. For example, as Mr. Cunningham described the discussions that resulted in Mr. Walters' hire, President Baker directed him to find a way to bring Mr. Walters in,

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

and indicated that he wanted "maximum flexibility" for the position. Initially, President Baker may have relied on staff recommendations relating to the affiliate appointments of consultants he brought in, and the investigation did not reveal evidence that President Baker specifically directed that any of the hires should be made under the affiliate classification. However, President Baker is responsible for the organization, management, direction and general supervision of NIU, and thus is obligated to ensure that the University engages consultants and employees in a way that complies with applicable law and NIU policy.

Moreover, there is evidence that at various times after he took office, President Baker was informed of applicable procurement limitations. For example, Mr. Cunningham told investigators that he informed President Baker of the $20,000 small purchases limitation before President Baker retained the Registry to search for an Interim Chief Financial Officer, although President Baker said he did not recall being briefed on the limitation at that time. In addition, by at least December 2013, when Mr. Blakemore advised President Baker that the Chief Procurement Officer had not approved the Suttenfield transaction as an emergency exception to the procurement requirements, President Baker should have begun to appreciate the procurement limitations on his ability to bring consultants in to do work at NIU. Indeed, when asked in his OEIG interview when he became aware of the requirement to use an open bidding process for contracts for professional services over $20,000, President Baker said he suspected he was made aware of it in late 2013. Nevertheless, in February and May 2014, President Baker signed paperwork that approved the extensions of Mr. Walters and Ms. Suttenfield's affiliate appointments through December 31, 2014, even though their compensation was well over $20,000.

Certainly by August 2014, President Baker was on notice as to procurement problems raised by hiring senior administrators and consultants as affiliate employees. In an August 6, 2014 memorandum, the Board of Trustees advised President Baker of its concerns regarding "whether professionals hired into temporary senior administrative roles and consulting positions have been hired in accordance with proper state employment practices and procurement protocols. . . ." [This redacted sentence contains information that may be protected by attorney/client privilege.] In light of these communications, it is not credible for President Baker to claim that he was unaware that the continued use of the affiliate classification for Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, or Mr. Pfeiffer was inappropriate after the August 2014 Board meeting.

Despite being on notice of the Board and others' concerns relating to procurement problems caused by hiring senior administrators and consultants as affiliate employees, President Baker subsequently extended Ms. Suttenfield and Ms. Rodriguez's affiliate appointments through early 2015, even though Ms. Suttenfield and Ms. Rodriguez's compensation exceeded $20,000, their appointments clearly were not short term, and neither individual did any teaching at NIU.

President Baker also understood the problems with paying for the affiliate employees' travel and lodging expenses by at least October 2014, when he submitted requests for exceptions from the Higher Education Travel Regulations for Mr. Walters, Ms. Suttenfield, and Ms. Rodriguez's expenses. Nevertheless, NIU continued to pay for Ms. Suttenfield's lodging, and

for four additional trips by Ms. Rodriguez while his requests for exceptions from the travel regulations were pending.

Over a nearly two-year period after President Baker took office, NIU administrators committed a pattern of circumventing procurement requirements and violating employment policies and rules, largely in an effort to meet President Baker's directives to select high-paid consultants (one of whom was a friend), and pay for their travel and lodging, without restrictions. It appears that NIU staff focused more on doing what President Baker asked of them with regard to his employment choices, rather than recommending or insisting the proper rules and procedures were followed. President Baker initially may have reasonably relied on some staff recommendations regarding affiliate hiring and employee travel and lodging; however, President Baker also has an obligation to ensure the rules are being followed. At the very least, he disregarded known rules and policies relating to procurement and affiliate employment in 2014 and 2015 when he continued to approve extensions of affiliate appointments.

As NIU's President, Mr. Baker is charged with the important responsibility for the management of the University. Contrary to this responsibility, President Baker mismanaged NIU by, at minimum, improperly reappointing Magaly Rodriguez and Nancy Suttenfield as affiliate employees, and failing to end payments for their lodging and travel. Thus, the allegation that NIU President Douglas Baker mismanaged Northern Illinois University by allowing the improper hiring of individuals into the affiliate position is **FOUNDED**.

C. Allegation that NIU Improperly Paid for Affiliate Employees' Travel and Lodging

As discussed above, Mr. Walters, Ms. Suttenfield, Mr. Wilson, Ms. Rodriguez, and Mr. Pfeiffer's improper classification as affiliate employees caused confusion relating to their entitlement to be paid for their travel and lodging expenses. Because NIU has already taken some corrective actions relating to these expenses in response to the Illinois Auditor General's findings, and because it is unclear which NIU staff member or members bear the primary responsibility for incorrectly causing NIU to pay for affiliate travel and lodging (other than Ms. Hooker's use of her procurement card to charge certain of Ms. Rodriguez's travel expenses, as discussed below), the OEIG is administratively closing its investigation of this allegation. The OEIG refers this issue to NIU to continue its corrective actions, including making efforts to recoup any unaddressed reimbursements for affiliate employee travel (including any such expenses charged on NIU procurement cards), and ensuring that all taxable compensation provided to affiliate employees has been fully reported on W-2 forms.

D. Doris Hooker Used Her NIU Procurement Card for an Invalid Business Purpose

NIU's Procurement Card Policies and Procedures Manual required a "valid business purpose" to exist for any purchases made with an NIU procurement card.[66] The Higher Education Travel Regulations prohibit NIU from reimbursing employees' commuting expenses between their residences and NIU's DeKalb headquarters.[67]

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[66] NIU Procurement Card Policies and Procedures Manual, § F.
[67] Ill. Admin. Code tit. 80 § 2900.60(a)(5).

Because affiliate employee Magaly Rodriguez was not entitled to have NIU pay for her travel between her home and DeKalb, Ms. Hooker did not have a "valid business purpose" for charging Ms. Rodriguez's travel on her (Ms. Hooker's) procurement card. Ms. Hooker was aware of these circumstances because she personally emailed President Baker's request for an exception for Ms. Rodriguez's travel expenses to the Higher Education Travel Control Board in October 2014, and admitted that she "understood that we should not be paying for travel" while that request remained pending.[68] Nevertheless, during the three months after she submitted President Baker's exception request, Ms. Hooker used her NIU procurement card to charge four additional trips for Ms. Rodriguez, from her residence in Minnesota to NIU's DeKalb campus. The allegation that Ms. Hooker used her NIU procurement card for an invalid business purpose by using it to pay for Ms. Rodriguez's commuting expenses is **FOUNDED.**

V. FINDINGS/RECOMMENDATIONS

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

- **FOUNDED** – Northern Illinois University President Douglas Baker mismanaged Northern Illinois University by allowing the improper hiring of individuals into the affiliate position.

- **FOUNDED** – Former Northern Illinois University Acting Vice President for Administration and Director of Human Resources Steven Cunningham misused the affiliate employment classification by approving the initial and continued appointment of Ron Walters as an affiliate employee, and by approving the appointment of Nancy Suttenfield as an affiliate employee.

- **FOUNDED** – Northern Illinois University Assistant Vice President for Human Resources Celeste Latham misused the affiliate employment classification by approving the continued appointment of Ken Wilson as an affiliate employee, and by approving the initial and continued appointment of William Pfeiffer as an affiliate employee.

- **FOUNDED** – Northern Illinois University Executive Assistant Doris Hooker (Day) improperly used her procurement card for an invalid business purpose, by paying for employee Magaly Rodriguez's commuting expenses between November 2014 and January 2015, in violation of the Higher Education Travel Regulations and NIU's Procurement Card Policies and Procedures Manual.

As discussed above, NIU has already taken steps to increase the Board of Trustees' oversight, limit the use of the affiliate classification in the future, and address improper payments for affiliate travel and lodging. The OEIG recommends that NIU continue with this course of action. The OEIG further recommends that the Northern Illinois University Board of Trustees:

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[68] As noted above, the Higher Education Travel Control Board ultimately denied President Baker's exception requests.

- take whatever action it deems appropriate with regard to President Baker;
- counsel Ms. Latham; and
- counsel Ms. Hooker.

No recommendation is made as to Mr. Cunningham, who is no longer a State employee. No further investigative action is needed and this case is considered closed.

Date: August 23, 2016

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60602

By: **Angela Luning**
Deputy Inspector General

Daniel Ostrovsky
Assistant Inspector General

Steven Hochstetler # 164
Investigator

Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 14-01383 Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☐ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

☒ We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within 50 days from the original return date. (November 1, 2016)

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

Signature

Northern Ill. University Ethics Officer
Print Agency and Job Title

James Guagliardo
Print Name

9-8-16
Date

FORM 700.7 Revised March 2013

NORTHERN ILLINOIS
UNIVERSITY

BOARD OF TRUSTEES

ALTGELD HALL 300 • DEKALB, ILLINOIS 60115
(815) 753-0877

October 31, 2016

CONFIDENTIAL

Via Certified Mail

Fallon Opperman
Deputy Inspector General and Chief
Office of Executive Inspector General
For the Agencies of the Illinois Governor
69 West Washington Street, Suite 3400
Chicago, Illinois 60602

Re: OEIG Case No. 14-01383 – Final Report and Agency or Ultimate Jurisdictional Authority Response Form

Dear Deputy Inspector General Opperman:

In response to your letter of August 23, 2016 regarding the above-referenced case, I write to provide you with the enclosed Response Form and with some additional information regarding (a) the status of Northern Illinois University's response to the OEIG's Final Report in the above matter and (b) the status of [unrelated matter redacted].

As reflected on the enclosed Response Form, at this juncture, the University has implemented some of the recommendations set forth in the OEIG's Final Report in Case No. 14-01383 but will require additional time to address the other recommendations in that report because [unrelated matter redacted].

The actions taken to date in response to OEIG's Final Report in Case No. 14-01383 include:

- Elimination of the "affiliate employee" classification at the University.
- Resolution of the travel reimbursement issues noted in the OEIG's Final Report (including transmittal of corrected W-2s).
- Counseling the two University employees identified in the OEIG's Final Report in accordance with the OEIG's recommendation to do so.

- Initiation of various process improvements, including a comprehensive review of procurement and contracting policies and practices at the University, which is to be conducted under the supervision of the Board of Trustees and appropriate employees within the senior administration. The goal of this process is to improve accountability, ensure compliance, and increase transparency.

- Drafting and considering an updated whistleblower policy to (1) bring together in one location on the University's web site information about how to bring concerns and complaints to the attention of the University or the OEIG, (2) clarify the policy so that they can be easily understood by the campus community, and (3) thereby encourage good faith reporting by strengthening the protections that will be afforded to those who engage in good faith protected activity under applicable law or University policy.

[unrelated matter redacted]

appropriate to complete its response to the OEIG's Final Report in Case No. 14-01383) within thirty (30) days of this interim response. [unrelated matter redacted] and any further action to be taken regarding the recommendations set forth in the OEIG's Final Report in Case No. 14-01383.

Please feel free to contact me with any questions.

Sincerely,

James G. Guagliardo,
Northern Illinois University Ethics Officer
On Behalf of the Board of Trustees

Att. Executed OEIG Response Form

cc: Marc Strauss, Chair, Board of Trustees

Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 14-01383

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☐ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

☒ We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within 30 days ~~from the original return date.~~ (on December 1, 2016).

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

Signature

Northern Illinois University
Ethics Officer
Print Agency and Job Title

James Guagliardo
Print Name

11-1-16
Date

FORM 700.7

Revised March 2013

Northern Illinois University
Office of General Counsel

Office of General Counsel
Altgeld Hall, Suite 330
DeKalb, Illinois 60115-2828
815-753-1774
Fax 815-753-7818

January 25, 2017

CONFIDENTIAL
Via Certified Mail

Ms. Fallon Opperman
Deputy Inspector General and Chief of Chicago Division
Office of Executive Inspector General
69 West Washington Street, Suite 3400
Chicago, Illinois 60602

Re: OEIG Case No. 14-01383 – Final Response to OEIG's Final Report

Dear Deputy Inspector General Opperman:

This is Northern Illinois University's final response to the OEIG's Final Report dated August 23, 2016 in No. 14-01383 (hereinafter "OEIG Final Report"). In its October 31, 2016 letter, which constituted the University's partial response, the University identified the following actions already taken to address the findings made in the OEIG Final Report:

- Elimination of the "affiliate employee" classification at Northern Illinois University.
- Resolution of the travel reimbursement issues noted in the OEIG Final Report.
- Counseling of the two current University employees who were identified for counseling in the OEIG Final Report.
- Initiation of various process improvements, as detailed in the University's October 31, 2016 letter.
- Drafting and preliminary consideration of an updated Whistleblower Policy, again as detailed in the University's October 31, 2016 letter.

Since filing its partial response dated October 31, 2016, the University has taken the following additional actions, including counseling, communicating, and working with the President to address the findings made in the OEIG Final Report and the need for process improvements:

- The University has continued its work on significant process improvements, including review of procedures, training, and other structural enhancements. The purpose of this

comprehensive review is to better ensure that the University executes its strategic initiatives and projects in a manner that is not only timely but also fully consistent with applicable laws and policies.

- The Board and University leadership adopted an updated, comprehensive Whistleblower Policy. The updated policy includes multiple channels for complaints, encourages employee reports, and addresses concerns about possible retaliation. Regarding the revised Whistleblower Policy, the University is also exploring options to upgrade its ability to receive and investigate anonymous complaints, again for purposes of enhancing its compliance and addressing retaliation concerns.

- The Board has counseled the President about the OEIG Final Report and need for process improvements. The President agrees with the Board that process improvements and policy upgrades are necessary and appropriate steps. The President has been charged with leading the process improvement and policy upgrade initiative.

- The Board has requested, and the President has agreed, that the President should rededicate himself publicly to (i) taking leadership responsibility for ensuring compliance; and (ii) communicating with the campus community about the upcoming process improvements, Whistleblower Policy, and other steps being taken to ensure improved compliance.

This constitutes the University's final response to the OEIG Final Report. Please feel free to address any questions or other requests directly to me. Thank you for your consideration.

Very truly yours,

James G. Guagliardo
Northern Illinois University Ethics Officer
On Behalf of the Board of Trustees

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: DOUGLAS BAKER) #14-01383

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

__X__ Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

_____ 5/16/17
Respondent's Signature Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

Northern Illinois University
Office of the President

Douglas D. Baker, President
Altgeld Hall 300
DeKalb, Illinois 60115-2828
815-753-9500
Fax 815-753-8686
www.niu.edu

May 1, 2017

Chad Fornoff, Esq.
Executive Director
Illinois Executive Ethics Commission
401 Spring Street, #403
Springfield, IL 62706

OEIG Case #14-01383

Dear Mr. Fornoff:

I have reviewed a copy of the OEIG Final Report in the above-referenced matter as one of the named respondents. While I respect the work of the Office of the Executive Inspector General (OEIG), I want to be unequivocally clear regarding my disagreement with certain factual findings against me in the report. In fact, a number of the adverse factual findings and related conclusions stated in the report are counter to other information that is cited in the document, either by virtue of statements from other witnesses or with respect to written and electronic documents that were collected and reviewed by OEIG in preparation of the report.

On a specific basis, I disagree with any finding that directly or indirectly infers that as President of Northern Illinois University I instructed or implicitly gave general direction to University staff for the effect of disregarding legal requirements governing the hiring of certain employees or engagement of contractors. As the report briefly alludes to, the University faced a number of strategic and operational crises prior to my arrival, ranging from a FBI raid of the police station at the University to having an executive vice president and CFO on leave. It was this set of circumstances that led us to engage individuals with the requisite strategic background to address these key areas. It was ultimately determined at a later time (well into the 2014 calendar year) that these engagements had been done without proper compliance with relevant employment requirements and the bidding process for outside contractors.

As President of the University, I take full responsibility for these compliance errors. However, the report fails to recognize that my decision-making was made in good faith reliance on recommendations by senior staff from the operations, legal and human resources functions, and that I maintained an open communication line with the Board of Trustees with regard to my intention to address the then-present operational concerns with the assistance of qualified professionals with the requisite strategic skills to provide such assistance.

I worked closely with the Board to put a number of corrective actions and measures in place long before the report was delivered. These actions include the elimination of the Affiliate Employee classification, initiation of various process improvements and preparation of an updated whistleblower policy.

Therefore, I respectfully submit strong disagreement with the report's findings and hereby request a correction regarding the adverse finding of mismanagement that was cited with respect to me. I look forward to working with the NIU Board in continuing to address the concerns of our students and community in this difficult time for resources in higher education.

Respectfully submitted,

Douglas D. Baker, Ph.D.
President
Northern Illinois University

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: DORIS HOOKER DAY) #14-01383

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

_____Below is my public response. Please make this response public if the summary report is also made public; or

_____Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

_____ 4/27/17
Respondent's Signature Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: STEVEN CUNNINGHAM) #14-01383

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

X
_____Below is my public response. Please make this response public if the summary report is also made public; or

_____Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature

May 5, 2017
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE:	DOUGLAS BAKER, STEVEN CUNNINGHAM, CELESTE LATHAM, and DORIS HOOKER DAY	))))	OEIG Case # 14-01383

REQUEST FOR REDACTION AND PUBLIC RESPONSE OF STEVEN CUNNINGHAM

Dr. Cunningham has reviewed the OEIG's Final Report ("the Report"). He vehemently refutes and denies the allegations and finding against him. Through his attorneys, Sergio E. Acosta and Vaishali S. Rao of Hinshaw & Culbertson LLP, Dr. Cunningham files this Public Response and Request for Redactions.

INTRODUCTION

Although the Report is dated August 23, 2016, Dr. Cunningham's first and only opportunity to retain counsel and respond to the allegations against him comes now—upon receipt of the finalized Report, which was only provided to him on March 13, 2017. By contrast, President Baker has had the benefit of the assistance of counsel since 2015 when the OEIG began its investigation, and Northern Illinois University (NIU) has apparently had several opportunities to respond to drafts of the Report.

As a result of this flawed process, and the OEIG's failure to fully investigate this matter before issuing its Report, the Report contains numerous mistakes of fact and law, as well as mischaracterizations of Dr. Cunningham's actions. Dr. Cunningham is a well-respected higher education Administrator and Human Resources professional who, for over 20 years, including 3 years of service as NIU's Ethics Officer, made significant and lasting contributions to the NIU community and always acted with the utmost integrity. Unfortunately, his sterling reputation and record of professional service is being sullied because he has been made a convenient scapegoat for decisions that were made and actions that occurred: 1) after Dr. Cunningham had any remaining effective decision making authority to influence such decisions, and 2) long after his departure from NIU.

Early on in President Baker's term, Dr. Cunningham was directed to hire Ron Walters and Nancy Suttenfield. Despite his reservations, Dr. Cunningham complied with those directives in a manner that was fully consistent with the law and NIU's existing policies concerning the short-term appointment of professional staff employees. Shortly after those hires, President Baker orchestrated a reorganization of almost all long-term executive level career NIU management, including Dr. Cunningham. As a result, by late 2013, after serving 20 years as a ranking Administrator and Chief HR Officer for the institution, Dr. Cunningham essentially had no remaining authority over HR matters at NIU.

The finding concerning Dr. Cunningham states:

"**FOUNDED** – Northern Illinois University Acting Vice President for Administration and Director of Human Resources Steven Cunningham **misused** the affiliate employment classification by approving the initial and continued appointment of Ron Walters as an affiliate employee, and by approving the appointment of Nancy Suttenfield as an affiliate employee." Report at 30. (emphasis supplied).[1]

Far from circumventing the procurement code and NIU policies, Dr. Cunningham made the best choices possible at the direction of a President who insisted on operating in crisis mode. Contrary to the Report's allegations and inferences, career NIU staff like Dr. Cunningham did put up resistance to certain of President Baker's directives, described limitations to him, and attempted to counsel him into appropriate decisions.

For the following reasons, Dr. Cunningham refutes and denies the Report's finding against him, and asks the EEC to redact the Report and remove any finding of misconduct by Dr. Cunningham.

1. The OEIG Did Not Endeavor to Determine Whether the Hired Individuals At Issue Were Employees or Independent Contractors Under Illinois Law.

With respect to Dr. Cunningham, the central issues addressed in the Report pertain to decisions made by Dr. Cunningham and others to use the Affiliate Employee designation for the purpose of (1) hiring Ron Walters in June 2013 for an initial period of 90 days (6/13/2013 through 9/15/2013) (Report at 4); (2) hiring Nancy Suttenfield in November 2013 for a period of 11 months (11/1/2013 through 9/30/2014)(Report at 8); and (3) extending Mr. Walters' initial appointment for a period of an additional approximately 105 days (9/15/2013 through 12/31/2013). Report at 4.[2]

To buttress its conclusion that Walters and Suttenfield were independent contractors rather than employees, the Report states that, "The records obtained and interviews conducted show that all five of the affiliate employees examined in this investigation were at least initially intended to be consultants, and it appears that most of them continued to function as consultants during their time working for NIU."[3] Report at 25.

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[1] The Report's finding does not distinguish Dr. Cunningham's role regarding the several extensions given to Mr. Walters' affiliate employment designation. Instead, it refers to Dr. Cunningham's alleged role in the "continued appointment" of Walters. To be clear, and as detailed herein, Dr. Cunningham participated in the initial extension of Mr. Walters' affiliate employee designation and, even then, the extension was directed by President Baker and the duration of the extension was for only a short period of time.

[2] The Report correctly notes that by February 2014, Dr. Cunningham had essentially been relieved of all his duties by the President and he played no role with respect to the hiring or extension decisions made by NIU staff after that time. Furthermore, Dr. Cunningham's role in directing Human Resources extended only approximately 4 months into President Baker's term.

[3] Consultant is a term that has no independent legal significance. Nevertheless, the Report appears to equate being referred to as a "consultant" with being an independent contractor.

But the distinction between an independent contractor and an employee is a legal question requiring careful review of a number of factors within a well-established legal framework. Inexplicably, the Report contains no discussion or analysis of these factors within the context of the applicable law.

A. The Internal Revenue Service & Controlling Illinois Law Set Forth Factors as a Guide in Determining Employment Status, but the OEIG's Report Does Not Reflect an Analysis of Those Factors.

The IRS uses three main factors to determine whether a worker is an employee or independent contractor:

- Behavioral Control - whether the business has a right to direct or control how the work is done through instructions, training or other means.
- Financial Control - whether the business has a right to direct or control the financial and business aspects of the worker's job (how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.).
- Type of Relationship - how the workers and the business owner perceive their relationship. For example, will the relationship continue and is the work performed a key aspect of the business?

Furthermore, IRS Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, includes a list of questions concerning the designation of an individual as an employee or an independent contractor that is commonplace for employers to utilize in making hiring assessments. A copy of IRS Form SS-8 is attached. NIU's Human Resources Department has adopted these questions and posted them on its website.[4] A copy of the questions appearing on the website is attached. No single factor is determinative and the entirety of the relationship must be evaluated.

There is nothing in the Report to indicate that the OEIG made any effort to review the relevant factors set forth in this NIU Policy or the IRS Form SS-8 in reaching its conclusions regarding the proper determination of Walters' or Suttenfield's employment status or designation.

Moreover, the Illinois Supreme Court, and courts within its jurisdiction, analyze similar factors to those set forth by the IRS to determine whether an individual is an employee or an independent contractor. Illinois law has long recognized that the right to control the work is the cardinal consideration. Illinois law clearly holds that an independent contractor is one who undertakes to produce a given result, but uses his own discretion in the actual execution of the work, and is not under the control of the person for whom he does work with respect to the details, means and methods. *Nelson Bros. & Co. v. Industrial Commission*, 330 Ill. 27, 28, 161 N.E. 113, 114 (1928) (citing several other cases, citations for which are omitted here).

[4] http://niu.edu/hrs/resources/forms_docs/downloads/2800-Independent%20Contractor%20Questionnaire.pdf

Significantly, the label given by the parties is not dispositive of the employment status, but the facts of the case must be considered to determine the individual's employment status. *Yellow Cab Co. v. Industrial Comm'n* (1984), 124 Ill.App.3d 644, 80 Ill.Dec. 96, 464 N.E.2d 1079.

The Report reaches an important legal conclusion regarding the independent contractor versus employee issue, yet it cites to no legal authority and contains no legal analysis under the relevant standards. It is silent as to the specific factors set forth by the IRS and Illinois law. Rather, the Report seems to place substantial reliance on the labels ascribed by President Baker and others to Walters' and Suttenfield's work. *See* Report at 25. However, as set forth above, under the law, those labels and descriptions have absolutely no legal significance.

B. If the OEIG Would Have Undertaken the Appropriate Legal Analysis, It Would Have Found That Dr. Cunningham Did Not Misuse the Affiliate Employment Classification.

Undertaking the analysis of factors provided by the IRS and utilized by Illinois courts, Walters and Suttenfield were not, during the time period relevant to Dr. Cunningham, independent contractors—rather, they were properly classified as Employees under the Affiliate title. These personnel were supervised and directed by the President, participated as members of the President's Cabinet, directed university personnel and resources, and represented the President at meetings and events.

Indeed, Suttenfield was hired to be an interim Chief Financial Officer, and Walters was hired to act as the President's interim Chief of Staff—positions that are inextricably intertwined with the President, NIU's core operations, and necessarily involve taking the President's direction. When Suttenfield assumed the CFO position in November 2013, she was responsible for all aspects of the fiscal health of NIU, including accounting and procurement. In his position as Chief of Staff, Walters, at the direction of the President, conducted interviews of key executive personnel in order to advise the President, he also convened meetings of the President's cabinet, and he personally ran those meetings.

Dr. Cunningham, based on his 24 years of service and experience in the Human Resources profession, and his knowledge of the pertinent factors, made a good faith judgment identifying Walters and Suttenfield as temporary employees rather than independent contractors.

Moreover, even if the OEIG had conducted the required analysis and concluded that Walters and Suttenfield were independent contractors, the mere fact that reasonable minds could reach different opinions regarding employment versus independent contractor designations does not support, much less compel, a conclusion that Dr. Cunningham acted in bad faith or with an intent to misuse an employment classification.

2. The OEIG Cherry-Picked Portions of the NIU Affiliate Hiring Policy to Support Its Conclusion Regarding Misuse of the Affiliate Employee Designation.

The Report quotes NIU's Academic Policies and Procedures Manual describing affiliate employees and additionally quotes NIU's Human Resources webpage from the relevant time describing affiliate appointments as, "professional positions of a short duration (usually less than

3 months) to conduct a non-credit seminar, teach an extension class, or otherwise fulfill some short-term professional responsibility." Report at 2.

Indeed, the Report acknowledges that the NIU HR website indicated that affiliate hiring could be utilized to fulfill a "short-term professional responsibility." Nevertheless, the OEIG repeatedly sought verification from the persons it interviewed, especially Dr. Cunningham, that the personnel at issue did not teach classes, suggesting that teaching courses was the sole determinative factor in utilizing the affiliate designation and ignoring the language in NIU's policy that authorized the use of the affiliate designation for non-instructional short-term positions. By asking Dr. Cunningham to confirm Walters and Suttenfield were not instructors, and repeating this claim throughout the Report, the OEIG inappropriately suggests knowledge of bad intent on the part of Dr. Cunningham where none exists. Report at pp. 6, 7, 10, and 12.

3. Despite Several Years of Investigation, the OEIG's Report Omits Important, Relevant Facts from Key Witnesses

In the very brief time Dr. Cunningham has had to retain counsel and review the underlying facts contained in the Report, two witnesses provided information that is absent from the Report, but bears directly on the OEIG's conclusions.

A. Jerry Blakemore

The Report states that former NIU General Counsel, Jerry Blakemore, was interviewed with regard to Suttenfield, but the Report does not indicate that Mr. Blakemore was interviewed with respect to Walters, even though Mr. Blakemore has facts germane to the hiring of Walters. In a conversation with Mr. Blakemore, he revealed, among other things, the following:

- The Affiliate Employee designation existed in fact and was, under appropriate circumstances, a legitimate designation.

- If Mr. Blakemore would have been consulted regarding the initial use of the Affiliate Employee designation as to Walters, he would have supported it. In his opinion, there was a reasonable basis to use the Affiliate designation based on the initial description provided to him of Walters' job. Specifically, Walters' position was intended to be temporary, limited in scope, and not a long-term cabinet level position. As such, the intended tenure and job functions Walters was to perform were consistent with an Affiliate Employee designation.

- Mr. Blakemore has read the OEIG's Final Report and indicated that, in his opinion, the Report is incorrect in assessing that Walters was a consultant or independent contractor in part because he kept time and submitted invoices. Mr. Blakemore stated that Mr. Cunningham required Walters to do so not because Walters was an independent contractor, but rather to increase accountability for the position and ensure that there was not a "ghost payroll" situation taking place. Mr. Blakemore stated that Dr. Cunningham was being proactive and that he (Blakemore) fully supported Cunningham's efforts in this regard.

Without prompting, Mr. Blakemore stated that he worked closely with Dr. Cunningham over an extended period of time and that he believed Dr. Cunningham to be someone with high integrity and character.

B. Kathryn Buettner

The Report mentions Kathryn Buettner, the former Vice President for Marketing and Communications, and describes her as a person who "also took actions relevant to this investigation." Report at 2. It further cites to certain emails between Ms. Buettner and Ms. Latham regarding the decision to hire Walters as an affiliate employee. Report at 4. However, Ms. Buettner was not interviewed for the Report. In a conversation with Ms. Buettner, she revealed, among other things, the following:

- Ms. Buettner was not interviewed by the OEIG concerning the use of the Affiliate Employee designation to hire Walters or Suttenfield, even though she has information germane to those hires.

- Ms. Buettner had several conversations with incoming President Baker from April-June 2013 regarding the hiring of Walters. During those initial conversations, the President told Ms. Buettner that he was bringing Walters in with him for a short period of time—approximately 3 months, work on site at the University, serve on the President's cabinet, advise him as to the overall University operations, have authority to help transition Baker into his role as President, and function as a temporary Chief of Staff. He wanted Walters to start at the same time he did in July 2013.

- In Ms. Buettner's opinion, Walters' position was that of an interim Chief of Staff. Ms. Buettner was very familiar with the role Walters would provide to the President because Ms. Buettner had served in a very similar role to the former NIU President. She indicated that in addition to her formal role as V.P. of Marketing & Communications, she also served as an informal Chief of Staff to the former NIU President and stated that persons who worked with her at NIU considered her in this role also.

- As was customary with any senior level hire, in 2013, Ms. Buettner explained to both President Baker and Mr. Walters that Illinois personnel regulations are complex and Illinois is a highly regulated state. Therefore, they must comply with NIU HR regulations. Even though Dr. Cunningham and Ms. Buettner advised the President that Walters was in fact an employee based on the scope of his work, the President insisted on repeatedly calling him a "consultant" when referring to Walters.

- Ms. Buettner indicated that she does not recall Dr. Cunningham playing any role in the expanded scope and tenure of Walters' employment at NIU because HR had been moved in the administrative reporting structure with the Suttenfield hire in the Fall, 2013. Ms. Buettner was surprised to learn of the extensions of Walters' employment given the early conversations she had with President Baker and the financial limitations placed on President Baker by the NIU Board and/or Board Chair for this type of support during the presidential transition process.

Without prompting, Ms. Buettner, like Mr. Blakemore, indicated that she has known and worked with Dr. Cunningham for approximately 20 years and she has never known him to do anything inappropriate or ever attempt to circumvent University policies.

The fact Mr. Blakemore and Ms. Buettner have significant factual information that should have been considered and included in the Report, together with the other shortcomings set forth above, raises serious concerns about the thoroughness and accuracy of the entire investigation. It additionally calls into question whether there are other people with important facts similarly missing from the Report, which would have affected the OEIG's conclusions.

CONCLUSION

For all of the foregoing reasons, Dr. Cunningham refutes and denies the allegations and finding in the Report. Accordingly, Dr. Cunningham requests the Executive Ethics Commission to redact the OEIG Report to remove the finding that Steven Cunningham "misused" the affiliate employee designation, and all related allegations suggesting that Steven Cunningham engaged in misconduct of any kind.

Respectfully Submitted,

/s/ *Sergio E. Acosta*

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Attachments

HUMAN RESOURCE SERVICES
NORTHERN ILLINOIS UNIVERSITY

Independent Contractor Questionnaire

This questionnaire must be completed **before** any service is performed to determine if an individual is eligible to be an independent contractor. Results of the evaluation of information contained on this questionnaire should be kept as a source document to verify any independent contractor relationship. If it is determined that the individual qualifies as an independent contractor, please complete the **Certified Work Statement** signed by the Independent Contractor after the work has been completed. The **Certified Work Statement** must be submitted to Procurement/Accounting Office with the requisition/check request for the contracted services.

If it is determined that the individual should be paid as an employee, please prepare the required paperwork to have the individual employed in a position and processed through the appropriate HRS Payroll procedures. If necessary, please contact Human Resource Services (HRS) for clarification of these employment protocols.

A) Please begin by providing the following information concerning the individual providing the service to be rendered.

Name of individual/business: _____

Social Security Number or Federal Identification Number: _____

Business License Number: _____

Description of Services to be Performed: _____

_____

_____

Amount/Time Period of Services: _____

B) Please answer the following questions to assist in determining independent contractor or employee status.

1) Is this individual currently employed by Northern Illinois University? **YES** **NO**
2) If the individual was previously an employee of the University, were the work requirements of the old position similar to the new position? **YES** **NO**

If the answer is **"YES"** to either of the questions above, this individual must be paid as an employee through the HRS Payroll process. Please submit the appropriate forms to HRS to facilitate the payment for these services at the next available payroll cycle.

If the answer to all of the questions above is **"No"**, continue with the survey below.

C) **Below is a series of questions and brief explanations, as suggested by the IRS (Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding,** http://www.irs.gov/pub/irs-pdf/fss8.pdf**), to further assist in determining whether the individual is an employee or an independent contractor. If the majority of answers to questions 1-20 are yes, then the relationship is that of an employer-employee rather than an independent contractor and the payment must be processed through the appropriate HRS Payroll procedures.**

1) Instructions

Will you instruct the individual (or have the right to instruct) on when, where, and how the work will be done? YES NO

An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.

2) Training

Will you train or provide training to the individual on performing services in a particular manner? YES NO

An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchaser of their services.

3) Integration

Are the services this individual will be providing a part of the business operations? YES NO

An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.

4) Services Rendered Personally

Will the individual be personally performing the services? YES NO

An employee renders services personally. This shows that the employer is interested in the methods as well as the results.

5) Hiring Assistant

Will you be hiring, supervising, and paying others to assist the individual? YES NO

An employee works for an employer who hires, supervises and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor, and to be responsible only for the result.

6) Continuing Relationship

Will this be an ongoing relationship? YES NO

An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7) Set hours of work

Will you be setting the individual's hours of work? YES NO

An employee has set hours of work established by an employer. An independent contractor is the master of his/her own time.

8) Full-time work

Will the individual be working only for you? YES NO

An employee normally works full time for an employer. An independent contractor can work when and for whom he/she chooses.

9) Work Done on Premises

Will the individual work on the premises or at a location you designate? YES NO

An employee works on the premises of an employer, or works on a route or at a location designated by an employer.

10) Order or Sequence Set

Will you define the order or sequencing of the work? YES NO

An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

11) Reports

Will the individual be asked or required to submit a report to you describing his/her actions? YES NO

An employee submits reports to an employer. This shows that the employee must account to the employer for his/her actions.

12) Payments

Will you be paying the individual by the hour, week or month? YES NO

An employee is paid by the hour, week or month. An independent contractor is paid by the job or on a straight commission.

13) Expenses

Will you be paying any expenses for the individual? YES NO

An employee's business and travel expenses are paid by an employer. This shows the employee is subject to regulation and control.

14) Tools and Materials

Will you be furnishing the individual with tools, materials, equipment, etc? YES NO

An employee is furnished significant tools, materials, and other equipment by an employer.

15) Investment

Will the University provide the space/facilities to be used in performing these services? YES NO

An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else.

16) Profit and Loss

Is the University the only party to realize a profit or loss associated with the service to be provided? YES NO

Independent contractor can make a profit or suffer a loss.

17) Works for More Than One Person or Firm

Does the contractor provide services to only NIU? YES NO

Independent contractor provides his/her services to two or more unrelated persons or firms at the same time.

18) Offers Services to General Public

Is the general public limited in their access to the services provided? YES NO

An independent contractor makes his/her services available to the general public.

19) Right to Fire

Can you discharge the individual? YES NO

An employee can be fired by an employer. An independent contractor cannot be fired so long as he/she produces a result that meets the specifications of the contract.

20) Right to Quit

Can the individual terminate the relationship at any time without penalty? YES NO

An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

If the majority of answers to questions 1-20 are yes, then the relationship is that of an employer-employee rather than an independent contractor and the payment must be processed through the appropriate HRS Payroll procedures.

Signature of Individual Completing Form: _____

Title of Individual Completing Form: _____

Date: _____

Department: _____

Account/Budget: _____

Form **SS-8**

(Rev. May 2014)

Department of the Treasury
Internal Revenue Service

Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding

▶ **Information about Form SS-8 and its separate instructions is at *www.irs.gov/formss8.***

OMB. No. 1545-0004

For IRS Use Only:
Case Number:

Earliest Receipt Date:

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ▶ ----------

Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* in the separate instructions for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

Parts I–V. All filers of Form SS-8 must complete all questions in Parts I–IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

Part I General Information

1 This form is being completed by: ☐ Firm ☐ Worker; for services performed _____ (beginning date) to _____ (ending date).

2 Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). ----------

3 Total number of workers who performed or are performing the same or similar services: _____.

4 How did the worker obtain the job? ☐ Application ☐ Bid ☐ Employment Agency ☐ Other (specify) _____

5 **Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings).** In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue $ _____.
If both Form W-2 and Form 1099-MISC were issued or received, explain why. ----------

6 Describe the firm's business. ----------

Part I General Information (continued)

7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: _____

Previous owner's taxpayer identification number: _____ Change was a: ☐ Sale ☐ Merger ☐ Acquisition ☐ Reorganization ☐ Other (specify) _____

Description of above change: _____

Date of change (MM/DD/YY): _____

8 Describe the work done by the worker and provide the worker's job title. _____

9 Explain why you believe the worker is an employee or an independent contractor. _____

10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request? ☐ Yes ☐ No ☐ N/A

If "Yes," what were the dates of the prior service? _____

If "Yes," explain the differences, if any, between the current and prior service. _____

11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. _____

Part II Behavioral Control (Provide names and titles of specific individuals, if applicable.)

1 What specific training and/or instruction is the worker given by the firm? _____

2 How does the worker receive work assignments? _____

3 Who determines the methods by which the assignments are performed? _____

4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? _____

5 What types of reports are required from the worker? Attach examples. _____

6 Describe the worker's daily routine such as his or her schedule or hours. _____

7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. _____

8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). _____

9 Is the worker required to provide the services personally? . . . . . ☐ Yes ☐ No

10 If substitutes or helpers are needed, who hires them? _____

11 If the worker hires the substitutes or helpers, is approval required? . . . . . ☐ Yes ☐ No

If "Yes," by whom? _____

12 Who pays the substitutes or helpers? _____

13 Is the worker reimbursed if the worker pays the substitutes or helpers? . . . . . ☐ Yes ☐ No

If "Yes," by whom?

Part III Financial Control (Provide names and titles of specific individuals, if applicable.)

1 List the supplies, equipment, materials, and property provided by each party:
The firm: _____
The worker: _____
Other party: _____

2 Does the worker lease equipment, space, or a facility? . . . . . ☐ Yes ☐ No
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) _____

3 What expenses are incurred by the worker in the performance of services for the firm? _____

4 Specify which, if any, expenses are reimbursed by:
The firm: _____
Other party: _____

5 Type of pay the worker receives: ☐ Salary ☐ Commission ☐ Hourly Wage ☐ Piece Work
☐ Lump Sum ☐ Other (specify) _____
If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. $ _____

6 Is the worker allowed a drawing account for advances? . . . . . ☐ Yes ☐ No
If "Yes," how often? _____
Specify any restrictions. _____

7 Whom does the customer pay? . . . . . ☐ Firm ☐ Worker
If worker, does the worker pay the total amount to the firm? ☐ Yes ☐ No If "No," explain. _____

8 Does the firm carry workers' compensation insurance on the worker? . . . . . ☐ Yes ☐ No

9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? _____

10 Does the worker establish the level of payment for the services provided or the products sold? . . . . . ☐ Yes ☐ No
If "No," who does? _____

Part IV Relationship of the Worker and Firm

1 Please check the benefits available to the worker: ☐ Paid vacations ☐ Sick pay ☐ Paid holidays
☐ Personal days ☐ Pensions ☐ Insurance benefits ☐ Bonuses
☐ Other (specify) _____

2 Can the relationship be terminated by either party without incurring liability or penalty? . . . . . ☐ Yes ☐ No
If "No," explain your answer. _____

3 Did the worker perform similar services for others during the time period entered in Part I, line 1? . . . . . ☐ Yes ☐ No
If "Yes," is the worker required to get approval from the firm? . . . . . ☐ Yes ☐ No

4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. _____

5 Is the worker a member of a union? . . . . . ☐ Yes ☐ No

6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. _____

7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? _____

8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? _____

9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? _____

10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? _____

Part V **For Service Providers or Salespersons.** Complete this part if the worker provided a service directly to customers or is a salesperson.

1 What are the worker's responsibilities in soliciting new customers? _____

2 Who provides the worker with leads to prospective customers? _____

3 Describe any reporting requirements pertaining to the leads. _____

4 What terms and conditions of sale, if any, are required by the firm? _____

5 Are orders submitted to and subject to approval by the firm? . . . . . ☐ Yes ☐ No

6 Who determines the worker's territory? _____

7 Did the worker pay for the privilege of serving customers on the route or in the territory? . . . . . ☐ Yes ☐ No

If "Yes," whom did the worker pay? _____

If "Yes," how much did the worker pay? . . . . . $ _____

8 Where does the worker sell the product (for example, in a home, retail establishment)? _____

9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. _____

10 Does the worker sell life insurance full time? . . . . . ☐ Yes ☐ No

11 Does the worker sell other types of insurance for the firm? . . . . . ☐ Yes ☐ No

If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance . . . . . _____ %

12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation . . . . . _____ %

13 Is the merchandise purchased by the customers for resale or use in their business operations? . . . . . ☐ Yes ☐ No

Describe the merchandise and state whether it is equipment installed on the customers' premises. _____

Sign Here

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

▶ _____ Title ▶ _____ Date ▶ _____

Type or print name below signature.