

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-and-

THE VULCAN SOCIETY, INC., *for itself and on behalf of its members*, JAMEL NICHOLSON, and RUSEBELL WILSON, *individually and on behalf of a subclass of all other victims similarly situated seeking classwide injunctive relief*,

ROGER GREGG, MARCUS HAYWOOD, and KEVIN WALKER, *individually and on behalf of a subclass of all other non-hire victims similarly situated*; and

CANDIDO NUÑEZ and KEVIN SIMPKINS, *individually and on behalf of a subclass of all other delayed-hire victims similarly situated*,

Plaintiff-Intervenors,

-against-

THE CITY OF NEW YORK,

Defendant.
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07-cv-2067 (NGG) (RLM)

MONITOR’S SIXTH PERIODIC REPORT TO THE COURT

Pursuant to paragraph 55 of this Court’s Modified Remedial Order and Partial Judgment, Permanent Injunction, and Order Appointing Court Monitor, as modified following appeal, dated June 6, 2013 (the “Modified Remedial Order”) (Docket # 1143), Mark S. Cohen, in his capacity as Court Monitor (the “Monitor”) in the above-captioned matter, respectfully submits the Monitor’s sixth 90-day report concerning the status of the parties’ compliance with the Modified Remedial Order.

I. Executive Summary

This report summarizes activities relevant to the Parties’ compliance with the Modified Remedial Order from September 1, 2013 to December 5, 2013. Among other important developments, this period saw the graduation from the Fire Academy of the first class of probationary firefighters (the “July Class”) to include firefighters who took entry-level firefighter examination known as Open Competitive Exam 2000 (“Exam 2000”). The July 2013 Class graduated on December 5, 2013.¹

In view of this milestone, Part II of this report includes the Monitor’s observations regarding the City’s compliance with the Modified Remedial Order, including the themes and goals that the Monitor believes should receive the closest attention over the coming months. The Monitor has consistently highlighted these themes and goals in prior reports and in its frequent discussions with the City and the other Parties. The Monitor revisits these issues in this report to help inform the agenda over the next phases of the City’s ongoing compliance efforts.

Part III of this report summarizes general activities undertaken by the Monitor in the past 90 days pursuant to the Modified Remedial Order. These include the Monitor’s regular

¹ The Monitor’s Interim Report to the Court Regarding Certain Aspects of the Examination and Hiring Process for the July 2013 Probationary Firefighter Class, which was filed on December 5, 2013 (Docket # 1243) (the “July Class Report”), summarizes the information available to date regarding the July 2013 Class.

communication with the Parties on a range of issues; ongoing review of the progress of the July 2013 Class through the Academy and consideration of related issues raised by the Parties; consideration of certain issues relating to discovery requested by Plaintiffs-Intervenors and the United States on various issues; attendance at meetings of the Personnel Review Board (“PRB”) and preparation of an analysis of the PRB’s performance; and assessment of the City’s ongoing efforts to minimize the voluntary attrition of candidates during the selection and hiring process.

Part IV summarizes the status of the City’s compliance with the portions of the Modified Remedial Order relating to the Fire Department of New York’s (“FDNY”) recruitment and Equal Employment Opportunity (“EEO”) policies, procedures, and programs, including the City’s efforts to collect and analyze data regarding its compliance efforts in these areas. The Monitor addressed these issues in his Fifth Periodic Report, which included initial feedback on the City’s formal reports on recruitment and EEO issues pursuant to the Modified Remedial Order.² *See* Monitor’s Fifth Periodic Report (Docket #1198 at 13-47). In October 2013, the Monitor held two meetings with the City and the Parties to assess the City’s progress on recruitment and EEO issues. This report summarizes those meetings and sets forth the Monitor’s suggestions for further action in these areas.

Part V previews upcoming events relating to compliance with the Modified Remedial Order. In addition to ongoing review of progress in the areas discussed above and ongoing consideration and analysis of discovery disputes and other issues raised by the parties, the next three-month period will involve several notable developments. Among other things:

² *See* City of New York’s Recruitment Report Pursuant to Modified Remedial Order Paragraph 26 (Docket # 1166) (the “Recruitment Report”) and City of New York’s EEO Report Pursuant to Modified Remedial Order Paragraph 43 (Docket #1167) (the “EEO Report”), both filed on July 15, 2013.

- The July 2013 Class of probationary firefighters will begin service at their designated firehouses in December 2013;
- The next class of probationary firefighters will enter the Academy in January 2014;
- The City will submit an interim report on its “comprehensive top-to-bottom assessment of all steps in its process for the selection of entry-level firefighters” pursuant to Paragraphs 32 and 33 of the Modified Remedial Order;
- The Monitor (and the other Parties, on an optional basis), will provide the City with its response to that interim report and will consider whether to “certify that the City carried out its assessment of its current entry-level firefighter selection process . . . in good faith and with reasonable diligence,” pursuant to Paragraph 34 of the Modified Remedial Order; and
- The Monitor (and the Parties, on an optional basis) will submit a formal response to the City’s Recruitment and EEO Reports pursuant to Paragraphs 30 and 47 of the Modified Remedial Order, as modified by the Court’s Order of October 4, 2013 (Dkt. # 1216) (filed under seal).

II. General Themes and Priorities

Over the course of the Monitor’s work since appointment in late 2011, a number of general themes and action items have emerged as having particular importance. Many of these themes have remained consistent throughout the Monitorship, beginning with the first Monitor’s Report to the Court in March 2012 (Dkt. #823) (the “First Periodic Report”). The significance of other issues has emerged over time, as the Monitor and the Monitor’s consultants have obtained more information from the City and met with City officials and fire personnel from other jurisdictions to learn about their best practices.

This section of the report discusses several critical themes and strategies for success. The discussion herein does not provide an exhaustive list; it is meant only to highlight the issues and priorities that, based on the Monitor's work and analysis, appear likely to have the greatest impact in increasing diversity, consistent with the requirements and goals of the Modified Remedial Order.

A. Leadership and Tone at the Top Are Crucial.

In the Periodic Report, which was filed on March 7, 2012, the Monitor identified "Senior Leadership Communication with the Outside Community" and "Communication within the FDNY" as themes that were likely to merit close and ongoing attention. Monitor's First Interim Report at 19-20. In particular, the Monitor noted the importance of "positive communication by senior leadership of the FDNY about efforts to increase diversity in the FDNY . . . to ensure that all firefighters understand the FDNY's commitment to diversity and are able to work in a fair and inclusive workplace." *Id.*

The Monitor's work since that first report has confirmed these early observations. Simply put, a program of effective communication throughout the department regarding the importance and positive impact of ongoing efforts to comply with the Modified Remedial Order is among the most important single steps the FDNY can take. This lesson has emerged consistently from a range of sources, including the Monitor's observations of the FDNY's efforts to comply with the Court's orders, visits to other large municipal fire departments throughout the country that have been engaged in similar efforts, meetings with officials in the New York City Police Department and a review of that organization's diversity programs, conversations with

consultants,³ and research into best practices for improving diversity, including specifically within fire departments.

Top-level messaging about compliance with the Modified Remedial Order should occur both explicitly and through prioritization of diversity and inclusion within the overall agenda. When the Monitor met with recruiting personnel from the NYPD to discuss their success in creating a diverse workforce, interviewees credited the fact that Commissioner Kelly not only made diversity a “Top Three” agenda item, but convened weekly meetings to meet with staff and discuss progress toward department goals. During the first six months of this initiative, Commissioner Kelly personally led these meetings; thereafter, they were conducted by Chief of Personnel Rafael Pineiro.

Another example of effective messaging is provided by the City of Houston’s Fire Department, which similarly acknowledges diversity as a core value. In his first press conference, Houston Fire Chief Terry Garrison told the *Houston Chronicle* that his top two priorities were enhancing safety and promoting cultural diversity: “I want to instill that risk management piece and make sure we're being safer,” said Garrison. “The second is the cultural diversity issue. For me, it's more about inclusion in the fire service and creating a culture that identifies and accepts change.” “Safety, Diversity Rank High on HFD’s Agenda,” *Houston Chronicle*, August 25, 2010.

In a July 28, 2011 Harvard Business Review article titled “How to Make Diversity and Inclusion Real,” former Avon CEO Douglas Conant wrote “I believe that when a CEO visibly stands for openness, diversity, and inclusion, it sends an essential message to the organization.”

³ The principals of the Monitor’s consultant, Manitou, Inc., all have extensive backgrounds as fire service professionals as well as broad knowledge in current trends in fire services, with a particular emphasis on diversity issues. See Monitor’s Notice of Consultant Engagement (Docket #792).

Harvard Business Review Blog Network, July 28, 2011, <http://blogs.hbr.org/2011/07/how-to-make-diversity-and-incl/>. Mr. Conant's steps for leaders to consider offer useful input for any leader of the FDNY: confront the facts, create a plan, educate the organization, deploy mentors and support networks, and, notably, "Declare yourself." Echoing Commissioner Kelly, Mr. Conant writes: "I began every staff and global leadership meeting with the topics of diversity and inclusion." *Id.* The Monitor agrees that when diversity and inclusion are taken to heart at the highest levels, it is likely that other levels of the organization will follow the tone set at the top.

With regard to express communication, the FDNY has taken steps to convey that the City will not tolerate harassment of firefighters, or unlawful retaliation. These messages have been conveyed both by issuance of Departmental Orders and messages from the Commissioner which are read to firefighters during a morning assembly period. The Monitor has been informed that the Commissioner regularly reinforces these messages to his commanders. All officers receive EEO training upon promotion, all firefighters receive EEO instruction at the Academy, and both officers and firefighters receive refresher training on an annual basis. *See* Part IV.C.2, *infra*. In connection with the December 5, 2013 graduation of the July 2013 Class, the mayor and several senior FDNY officials made important statements regarding the fact that the class was the most diverse in the department's history and regarding the department's commitment to diversity and its positive implications for the quality of the FDNY.

The City should ensure that communications to the public and within the FDNY regarding compliance with the Modified Remedial Order make clear that priority hires have been selected and trained using the same standards applied to all other applicants. There have been erroneous and misleading statements in some press reports, and, reportedly, some confusion among members of the FDNY regarding the process for selecting priority hires, with the

apparent implication that the FDNY's standards had been lowered for priority hires. This is of course not the case. As noted in the recently issued report on aspects of the July 2013 class, priority hires are selected and trained using the same standards that are applied to all other firefighters, meaning that priority hires must take and pass the same tests and steps as other candidates. *See* July Class Report at 31. Some of the statements made in connection with the graduation of the July 2013 Class conveyed this fact, and the Monitor has been told that the Chief of Training and his team have communicated similar messages. In this vein, the Monitor commends statements made by Commissioner Cassano in a recent radio interview, where he praised the new hires – taking pains to correct false press reports that any standards had been lowered – and stated: “The quality of the candidates that we’re getting out is tremendous . . . How many great firefighters did we miss because they didn't know the benefits of the job?”

In addition, until very recently, FDNY messaging focused more on prohibited conduct than on the benefits that increased diversity and inclusion through compliance with the Modified Remedial Order will bring to the FDNY. EEO training and reiterations of anti-hazing and anti-retaliation policies, while important, are not the same as affirmative statements made to the public and within the department making it clear that diversity is among the FDNY's top priority, is consistent with the Modified Remedial Order, and is strongly supported at the most senior levels, and that the move toward diversity will strengthen, not weaken, the FDNY's culture and quality. The mayor and senior FDNY officers have made such statements on occasion. The Monitor would encourage that this message be conveyed consistently.

B. Hold Leaders Accountable.

A corollary to “Tone at the Top” is that leaders within an organization need to be personally invested in achieving diversity consistent with the Modified Remedial Order, and that

one way to create this commitment is by establishing clear diversity-related goals and standards and holding leaders accountable for performance against such standards.

As discussed below, the City has stated that it plans to take several steps to increase the accountability for diversity and EEO issues among firehouse leaders and other officers. These include modified EEO training; holding officers accountable for EEO violations within their firehouses by issuing command discipline or enforcing the mandatory reporting requirement; and revising the performance evaluation system. *See* Part IV.C.6, *infra*. The Monitor encourages the FDNY to execute these plans as quickly and thoroughly as possible, and intends to ask for updates on the department's progress toward these goals. The Monitor also encourages the City to consider other means of encouraging personal accountability for diversity among both officers and firefighters, drawing on the example set by many other fire departments and other organizations, including the U.S. military.⁴

For example, the United States Department of Defense Report "Planning for Diversity: Options and Recommendations for DOD Leaders," notes the importance and challenges of accountability in organizational diversity (and the close relationship between accountability and the ability to measure outcomes). *Id.* at 51. The DOD report included the recommendation that "accountability become a critical strategy for DoD's diversity . . . for [DoD], financial and nonfinancial incentives for individuals and components, derived from a well-designed accountability system, may be effective in changing norms and behavior. Without them, institutional change will not be possible." *Id.* at 58.

⁴ Several provisions of the Modified Remedial Order require the City to evaluate alternatives to its existing practices that may impact diversity and EEO. These include provisions relating to the "top-to-bottom assessment" of the selection process, *see* Modified Remedial Order ¶¶ 32-36, and the requirement that the City identify "best practices" in evaluating its recruitment and EEO policies and procedures. *Id.* ¶¶ 26(b), 43(e).

Likewise the United States Coast Guard's Diversity Strategic Plan Overview includes as "Goal 1: Assure a Diverse Workforce Through All-Hands Commitment With Leadership Accountability":

In line with the Commandant's guiding principal of "Respecting our Shipmates," the Coast Guard shall hold leaders at all levels accountable to sustaining a workforce climate of equity, building an organization that leverages the Coast Guard's diverse workforce, and fostering an environment where every individual has the opportunity to prosper and effectively advance their careers.

<http://www.uemso.com/documents/EvalIP.pdf>.

"Accountability" in the context of diversification is often understood as a system of rewards and punishments, but it need not be so limited. Although appropriate attention should be paid to conduct that violates FDNY values, policies and procedures (or the law), or, conversely, reflects exceptional work, these types of incentives are not the only way to build in accountability for diversity.

One way to convey commitment at the highest levels is to incorporate diversity into the messages and goals of the organization to such an extent that success on that front is indistinguishable from overall success – in much the same way that New York firefighters already embrace being "The Bravest" as part of their core identity. In other words, in addition to "tone at the top," the FDNY could spread these messages through every level of the firefighting force.

C. Effective Communication About the Hiring Process and Academy Preparation Essential to Success.

The City made a concerted effort to encourage the public to take the most recent examination to become a New York City firefighter, using live outreach, radio advertisement, social media, and call centers. That effort met with considerable success in attracting minority

and non-minority candidates who might not otherwise have considered the FDNY. As newcomers to the culture and requirements of the FDNY, however, these potential hires need a clear roadmap to help them successfully navigate this new environment. Incomplete information can increase the risk that candidates who do not fully understand the process can grow discouraged and voluntarily withdraw from the selection process. In particular, it is imperative to communicate: (1) what the hiring process entails; and (2) when and how to prepare to pass the Fire Academy and other qualifying steps.

It is overly simplistic to dismiss voluntary attrition by candidates as indicating a lack of interest or commitment in becoming a member of the FDNY or an unwillingness to undergo the challenges in the selection and training process. Some FDNY applicants seek to become firefighters to honor longstanding family traditions and are supported by a network of friends and family who can clarify selection requirements, provide tips on how to prepare for the Candidate Physical Abilities Test (“CPAT”) or the Academy, and otherwise provide other help and encouragement at every stage of the selection process based on their own experiences and knowledge of the Fire Service. Other applicants are encountering FDNY tasks, nomenclature, logistics, and culture all at once, for the first time, and understandably may need additional support to get oriented. Confusion and difficulty in the hiring process should not be permitted to weed out candidates or detract from the City’s goal of bringing in and ultimately hiring from a pool of all of the best candidates the City has to offer. The solution is not to provide preferential treatment to any category of candidates, but to provide all candidates with access to complete, accurate, and understandable information.

1. Hiring Process Communication

In addition to the specific changes discussed in the Part IV.B, regarding Recruitment, the Monitor emphasizes the overall importance of simple, clear communication throughout the hiring process. The clearer the information, and the more resources provided to answer questions about matters such as, *e.g.*, how to defer an appointment due to medical need or military service, or what do to if a college transcript is delayed, the more candidates will follow through with the process. Although the FDNY currently makes efforts to provide applicants with information (particularly if they choose to connect with the agency via social media), the City's messaging is not always geared to be user-friendly.⁵ (During the selection processes for the July 2013 and January 2014 classes, the Monitor and the Parties have considered and revised several specific notices, email blasts, and other communications with potential new hires to ensure they are complete and as clear as possible.) As one example, the Houston Fire Department "Careers" web page contains a brief overview titled "Hiring Process," with simple bullets listing each of the eight elements in sequence: civil-service exam, applicant orientation, physical ability test, interview, polygraph, background investigation, and conditional job offer. Each bullet point includes a brief description of what the hiring step will entail. Dallas' Fire Rescue Department has a similar brief overview page, and actually includes an on-line link to all of the paperwork that is necessary to apply as a Dallas firefighter.

⁵ The FDNY Website page titled "FDNY Application Process" does contain a clear and helpful description of the selection process. See http://www.nyc.gov/html/fdny/html/community/ff_app_process_080106.shtml. The webpage explains the timing of the hiring cycle and provides general information about how to apply for the written exam, what the written and physical exams entail, and other steps in the selection process.

At more advanced stages in the process, the possibility for confusion can have material consequences. Indeed, in some instances failure to follow the stated procedure can lead to final disqualification. Such consequences may be necessary and appropriate, but it is important to avoid disqualification based on inaccurate or inaccessible information. In recent months, the United States and the Vulcan Society have notified the Monitor and the City of a number of instances in which specific candidates may have been disqualified or otherwise had their candidacy jeopardized because they allegedly did not receive complete or understandable information about various stages in the selection process. In some instances, the City and other Parties have agreed to revise the communication in question and ensure that potentially affected candidates receive complete information. In light of the complexity of some aspects of the selection process and the consequences to candidates of misunderstanding the information they receive, any possible effort to make the process more self-explanatory and user-friendly is likely to lead to fewer disqualifications based on lack of information or lack of familiarity with terms of art.⁶

2. Communication Regarding Preparation for the Fire Academy

At least of equal importance is preparation for the FDNY Fire Academy. In a recent class, 63 of 318 members of the class did not graduate from this extremely challenging program, with most citing lack of preparation for one or more of the tested areas. The Academy program consists of three areas of study: (i) academics; (ii) physical skills and fitness; and (iii) functional skills. Each is described in more detail immediately below.

⁶ Plaintiffs-Intervenors have suggested that the FDNY consider creating a short, user friendly “booklet” or other form of guide for candidates, to help provide additional information about requirements and identify support mechanisms that are available to candidates. The Monitor intends to discuss this proposal with the parties, together with other suggestions.

The Monitor's observations indicate that Academy performance in each area could be significantly impacted by better advance preparation. Candidates need to be informed that days at the Academy are long and often physically demanding, so waiting until the Academy to absorb the required material puts strain on a candidate as well as on the Academy staff. In light of these demands, the FDNY should prioritize efforts to prepare candidates to succeed in the Fire Academy well in advance of their arrival date. It is especially important to convey this message to persons who have no network of friends and family to advise them what to expect.

The Monitor strongly encourages the City to seek ways to provide complete and accessible information and other support throughout the selection process and to work through the attendant logistical and legal issues. For example, the concept of offering "mini-camps" similar to those provided to professional sports teams is discussed in more detail in Part IV.B.4.g, below. Along these lines, many cities offer a "Citizen's Fire Academy," where citizens can get a taste of the fire academy experience or of fire service work. For example, Cedar Rapids, Illinois offers a three-night program,⁷ and Oklahoma City, Oklahoma offers an eight-night program.⁸ Extending and enhancing the recent FDNY mentoring initiative, for example by offering on-site mentoring or a more robust partnering with experienced firefighters, could also help. (The City's other efforts to help candidates prepare for the Academy, along with specific suggestions for improvement in this regard, are discussed in Part IV.B.4.g, *infra*.)

a. Academics

The FDNY historically recruits from a variety of professions and levels of education. The Fire Academy tests a variety of technical subject matter that a candidate might never have

⁷ See <http://www.cedar-rapids.org/government/departments/fire/programs-community-outreach/Pages/CitizensFireAcademy.aspx>

⁸ See <http://www.okc.gov/fire/citizenacademy.html>.

encountered before.⁹ In a positive step, the FDNY recently made the Manual for Probationary Firefighters available online. The Manual is several hundred pages, however, and simply reading it is not necessarily the best way to prepare for Academy academics. The Monitor recommends that in addition to making the material to be tested available through publication of the Manual, the City consider providing candidates, at an early stage in the selection process, with access to sample questions in Academy quizzes, as well as practice exams, study guides and the like geared to the material. In this regard, Plaintiffs-Intervenors have also suggested that the City should evaluate the Manual itself from the perspective of clarity and efficacy in delivering the required content. For example, the Phoenix Fire Department supplies an Exam Study Guide, which contains a glossary to familiarize test takers with definitions ranging from “Class B Burn Building” to “Chow,” and an organizational overview of the roles of fire department leadership and city agencies.

b. Physical Preparation

The Fire Academy is physically highly demanding. A person unfamiliar with firefighting could believe that the physical demands of the Academy are simply a matter of good health and general physical fitness. This is only partially correct; firefighters perform a variety of highly

⁹ An example of the type of content from the Manual about which a candidate might be tested follows here: “Transfer Valve: Position of this valve determines whether the pump impellers work in series (**PRESSURE**) or parallel (**VOLUME**). When the transfer valve is in the **PRESSURE** position all water flow is directed across one impeller, with the discharge directed toward the second impeller. Effectively, the pump discharge has had two bumps in pressure- therefore it’s possible to quickly develop pressure in discharges off the pump...however, because the pump discharge is off one impeller (all flow is from the 2nd impeller), the volume for higher flows is limited. In the **VOLUME** position the incoming flow is split- some incoming is directed to one impeller and the rest is directed to the other impeller. The discharges of both impellers are joined to create the overall pump discharge. Effectively, in this configuration the pump discharge has had only one bump in pressure (from either of the impellers). It therefore takes longer to develop discharge pressure. However, because the discharge is from two impellers, higher flows are possible. **IMPORTANT:** Standard operating procedure is to pump in the **VOLUME** position. Only in an operation where head pressures are to be overcome (i.e. standpipe operations) should the transfer valve be changed to the **PRESSURE** position.” (ellipses in original).

specific physical tasks and are tested on those tasks in the Academy, and candidates would benefit from specific physical training geared toward performing these specific tasks. For example, firefighters are required to drag a 165-pound dummy, run up five flights of stairs, move a large tire with a sledgehammer, and do other strenuous tasks – all while wearing a breathing mask. The graduation test requires probationary firefighters to complete a number of similarly specific and demanding tasks in quick succession.

As with academics, those who are more familiar with the fire service going into the Academy likely have superior insight into what will be required in terms of physical tasks and preparation for such tasks. In the Monitor's view, waiting until the Academy to expose candidates to the training requirements for the physical tests involved in the Academy places candidates in a difficult position relative to others who, armed with a better understanding of the challenge, began preparing in the months before.

Some steps are already being taken in this regard. The Vulcan Society used its own resources to hold training sessions. The City provided the Vulcan Society with candidate data for this purpose. The City recently posted a video titled "A Day in the Life of a Probationary Firefighter," which is a highly positive step in conveying the realities of the Fire Academy. As noted below, the Monitor has discussed whether the FDNY could offer short, intensive training sessions similar to pre-season "mini-camps" in professional sports to help prepare candidates. The goal should be to provide all candidates with access to information that enables them to go beyond basic physical fitness to tailor their training to the specific demands faced by probationary firefighters at the Academy. The FDNY indicated that the "mini camp" concept raised some potential concerns including the size of the classes and liability issues, which will require analysis going forward.

Other types of preparatory measures are also available; for example, the San Antonio Fire Department's website informs candidates about the need to improve fitness after the CPAT, and includes a link to a letter to entering academy students, which advises candidates to improve their physical fitness for several months before the academy.¹⁰ The letter is accompanied by an outline of a specific fitness program and describes the minimum level of fitness candidates should have going into the academy. San Antonio also provides applicants with a link to a suggested physical preparation program of "CrossFit" activities.

c. Functional Skills.

The Academy uses what is called functional skills training, which is designed to allow recruits to experience metabolic and physical demands associated with firefighting while performing actual or simulated firefighting tasks in a controlled environment. One important aspect of functional skills is improving breathing mask proficiency so that firefighters arrive on the job able to use protective breathing gear, which the FDNY believes is critical to survival in a typical city fire. Functional skills are an aspect of the Academy that appears to call for specific advance preparation, and to confer a significant advantage on those who are already familiar with the fire service.

Very few civilians (regardless of whether they have friends or family in the Fire Service) have the opportunity to practice wearing a mask for breathing during strenuous physical exertion or being placed under simulated stresses such as darkness, confined spaces and heavy gear, while performing strenuous physical tasks in a timed environment. Still, those who have friends or family in the Fire Service likely have more awareness of these tasks than those who do not. The

¹⁰ See <http://www.sanantonio.gov/safd/PDFs/Recruiting/CPAT%20Fitness%20Cover%20Letter.pdf>.

FDNY would appear to be well served by introducing candidates to functional skills instruction prior to the Academy, to the extent practicable.

D. Data Collection and Analysis is Essential.

The Monitor has consistently emphasized the need for empirical data to effectively evaluate the City's programs and to determine progress toward the objectives of Modified Remedial Order. *See, e.g.*, Fifth Periodic Report at 9-13. Collecting data at every step in the remedial process is critical to efforts by the FDNY and the parties to assess the efficacy of remedial measures over the life of the Remedial Order. As the Monitor has previously noted, the City has yet to fully develop and deploy a single comprehensive system for storing, accessing, tracking, and analyzing information and data relating to the recruitment and selection of new firefighters. For example, information gathered during the recruiting process cannot currently be linked to data from later stages of the selection process in a way that would allow complete end-to-end analysis of the effectiveness of various recruiting efforts. The City has expressed to the Monitor and parties that data from the earliest stages of the recruitment process poses particular challenges in this regard, because existing tracking is based in part on candidate social security numbers (which are converted to a more secure "hashtag" number for the candidate using an algorithm), but social security numbers are not collected until an application has been submitted.

In addition, the City has not fully analyzed all of the data it has collected to date. Further, data regarding the progress and attrition of candidates through the post-exam process is currently collected and stored by several different FDNY divisions and other City agencies, including the Department of Citywide Administrative Services ("DCAS"), the FDNY's Office of Recruitment and Diversity, the Candidate Investigations Division ("CID"), the Bureau of Training, and the Bureau of Health Services. Consequently, it is a challenge for the Monitor and

the Parties (and likely the City) to obtain single complete and consistent set of data from which to evaluate specific steps in the selection and hiring process on specific groups of candidates. A data-driven analysis of the selection process by the Monitor and the Parties requires a group effort to ascertain specific figures for different groups with respect to the various steps in the screening and hiring process. The City should have the ability to easily provide consolidated information on attrition throughout the screening and hiring process, and to resolve any inconsistencies or ambiguities with regard to such data.

The City has made important strides in the past two years in understanding the importance of data collection and analysis and attempting to allocate appropriate resources to that end. The creation of the new analytics unit (discussed in Part IV.B.1, *infra*) is a particularly important step, and the Monitor plans to work with the City to observe the activities of that group closely. It is strongly hoped that the City will further upgrade its capacity to collect, store, and analyze data in a uniform and transparent manner in the very near term. With the commencement of a new recruitment phase potentially scheduled for the summer of 2014, this effort should be prioritized as a critical requirement for purposes of the City's fulfillment of its obligations under the Modified Remedial Order. The Monitor requests that within sixty (60) days, the City provide the Monitor with a date by which the City expects to have an integrated data plan in place.

E. Complete and Timely Execution on Plans for Change Is Important for Priority Hires and Diversity Progress

The City has made progress in terms of self-evaluation and identification of steps that could be taken to increase the FDNY's accessibility to people of different ethnic and racial backgrounds. Actual change consistent with the Modified Remedial Order will not occur unless the City carries out its plans in a timely fashion. The July 2013 Class, which is the first to

include priority hires who were afforded relief by the Court due to past discrimination, graduated from the Academy on December 5, 2013, and based on current hiring practice and trends, the remainder of the priority hires will likely all have graduated in the next two years. Acting too slowly or not at all will shape the demographics of upcoming classes and the firehouse culture into which they graduate just as dramatically as prompt compliance with the Modified Remedial Order, if not more so.

The Monitor appreciates that the City faces certain logistical constraints in changing its practices, such as citywide contracting process and collective bargaining requirements, but these need not wholly prevent the City from moving forward. Thus, the imposition of specific, near-term deadlines for the City's contemplated actions is important to complying with the goals of the Modified Remedial Order. By way of example, the City's ongoing evaluation of its EEO programs has generated a number of potentially very constructive ideas. *See* Part IV.B, *infra*; Fifth Periodic Report at 40-43. Many of these ideas remain at the conceptual stage or in the very early phases of implementation. As discussed below and in the Monitor's Fifth Periodic Report, Paragraph 46 of the Modified Remedial Order requires the City to "specifically indicate how it plans to carry out the recommendations in this report, providing a specific timetable for those recommendations that cannot be carried out immediately." *See id.* In the EEO Report and at the EEO meeting, the City made important strides toward complying with this requirement, and the Monitor is hopeful that complete compliance is within reach. The Monitor urges the City to continue to convert its ideas into action, not just with respect to EEO but all aspects of the Modified Remedial Order.

F. The Frequency of Test Administration Warrants Serious Consideration.

In the comments provided to the City in February 2012 regarding the City's Draft Attrition Mitigation Plan, the Monitor noted that:

The length of time between administration of firefighter examinations creates a situation where qualified entry level firefighter candidates may wait up to five years or more after taking the examination to be hired. As a result, the City loses many qualified candidates to other employment or other factors that render candidates unable to accept an entry level firefighter position when one does become available.

The Monitor also noted the Court's observation that "the long delays in the current City hiring process disproportionately affect those candidates who do not have a strong network of family and friends encouraging them or assuring them that the merits of the job ultimately justify relinquishing another position years after the test." In view of these observations and findings, the Monitor suggested evaluation of increasing the frequency of test administration from the standpoint of how such a change would likely impact the overall representation of currently under-represented groups in the Fire Department.

To date, the City appears to have determined that more frequent testing would not be viable, at least in part because the FDNY's hiring needs do not call for frequent enough hiring. The Monitor recommends, however, that more thought be given to the effects of present practice, and to whether some degree of change is warranted to avoid such lengthy waits and corresponding attrition.

III. General Activities

The Monitor has continued to hold conference calls with the Parties on a regular basis (typically every week). During these calls, the Monitor and the Parties review upcoming deadlines, discuss ongoing tasks performed by the City pursuant to the Modified Remedial

Order, and address procedural and substantive issues raised by the Parties. The Monitor and the Parties also correspond regularly on open issues. At the Monitor's request, the Parties occasionally file written submissions on issues requiring the Monitor's attention. The issues addressed in these communications between September 1, 2013 and November 30, 2013, are described below.

A. The July 2013 Class and the Fire Academy

The Monitor has taken several steps in connection with the training of entry-level firefighters who received relief under the Court's orders in this case at the Fire Academy.

Report on the July 2013 Class. Based on information provided by the City, the Monitor prepared a report summarizing aspects of the available data regarding the examination and hiring of the July 2013. *See* July Class Report. That report was filed on December 5, 2013.

Monitoring the Progress of the July 2013 Class through the Fire Academy. The Parties provided the Monitor with updates on the progress of the July 2013 Class through the Academy. At the Monitor's request, the City provided weekly updates on the number and racial breakdown of probationary firefighters who have resigned from the Academy and the stated reasons for their resignation. The City and the other Parties have also provided periodic reports on issues relating to the training of the July 2013 Class, which have been the subject of extensive discussion on the Monitor's calls with the parties.

Visit to Fire Academy. The Monitor and members of his team visited the Academy on November 26, 2013. The Monitor met with Chief Thomas Galvin, head of the FDNY's Bureau of Training, and members of his staff, discussed the training curriculum, and witnessed probationary firefighters performing aspects of the program.

Other Issues Relating to the July 2013 Class. The Monitor and the Parties discussed a wide range of other issues regarding the selection and training of the July 2013 Class and the Academy in general. Among other things:

- The Parties raised questions and concerns regarding specific candidates who, for example, received incorrect or confusing information concerning the status of their candidacy or who had been asked to resign from the Academy;
- The Monitor and the Parties discussed issues relating to the eligibility of those who dropped out during the selection process or resigned from the Academy to join the next Academy class;
- At the request of the Monitor and the Parties, the City provided information regarding the number of priority hire claimants being considered for inclusion in the January 2014 Academy class, and the number of potentially eligible priority hires remaining on the list of candidates whose scores on Exam 2000 were high enough for them to be considered for hiring as entry-level firefighters;
- The Monitor and the Parties discussed the academic and practical competencies required at the Academy;
- The Monitor reviewed the results of a survey given to probationary firefighters who resigned from the Academy class that graduated in May 2013, and discussed potential administration of a similar survey to members of the July 2013 Class;
- As discussed in Part II.A, *supra*, the Monitor has recommended that the City engage in a messaging campaign that would depict the steps being taken by the City to comply with the Modified Remedial Order in a positive light. Among other things, the City was encouraged to provide clear, factual information regarding the process

that led to presence of priority hires in the July 2013 Class and January 2014 Class and to specify that selection standards have not been lowered for priority hires. The City was encouraged to issue frequent statements both to the public and within the FDNY, including in the firehouses to which members of the July 2013 Class will be assigned. The measures taken by the City in this regard are discussed in Parts II.A and IV.B of this report.

B. Post-Examination Attrition

In addition to close attention to the July 2013 Class, the three-month period covered by this report included ongoing review and analysis of the steps in the process of the selection and hiring of entry-level firefighters. (The July 2013 Class Report includes a description of that process and statistics concerning the attrition of members of the July 2013 Class at each of these stages.) The most notable developments on this issue are described below.

1. Background Screening

An important element of the post-examination screening process involves a review of a candidate's background. An intake review is performed by the CID, which confirms that the candidate meets the basic qualification requirements set forth in the Notice of Examination, through a review of original documents (either submitted by the candidate or obtained from third parties). CID reviews required documentary proofs related to education, past employment, military service, driving records, fingerprint results, and other data, as well as the candidate's written statements explaining any arrests, convictions or other potentially negative information. If the background investigation reveals certain negative information, the CID maintains such information in a candidate file and forwards a summary of the candidate's background to the PRB for a second level of evaluation. The CID and PRB both operate under guidelines drafted

by the Parties and reviewed by the Monitor in September and October of 2012. *See* Monitor's First Interim Report to the Court (Dkt. #1023).

This section discusses the Monitor's recent activities relating to this background review process. These included two issues relating to the residency credit, a proposed amendment to the criteria that require the CID to refer files to the PRB, and the Monitor's ongoing attendance at PRB meetings and assessment of the PRB process pursuant to the Modified Remedial Order.

a. Residency Documents

In November 2013, the City asked the Monitor and the other Parties to consider expanding the list of documents that the CID could consider in confirming that candidates are eligible for the New York City residency credit. This credit for New York City residency is separate and apart from the requirement that firefighters reside either within New York City or in Nassau, Westchester, Suffolk, Orange, Rockland or Putnam Counties. The current list of acceptable documents was set forth in the Notice of Examination ("NOE") for the required time period of July 1, 2010 through June 30, 2011, which appears as **Exhibit 1**. The NOE also provides that "[t]he Fire Department of New York reserves the right to accept other documents in lieu of the above, under special circumstances which validate various living arrangements as determined by the Department and approved by the Department of Citywide Administrative Services." The City stated in substance that this list made it too difficult for many candidates to prove that they resided within New York City during the relevant periods. The Monitor and the Parties addressed the issue on calls held by the Monitor and drafted a proposed list of documents that the CID could accept as additional evidence of residency. That list is appended to this report as **Exhibit 2**. By way of example, the proposed list includes property tax bills for the relevant period, Section 8 Housing Annual Family Composition Statements on file with City authorities,

student tuition bills and student loan statements, tax documents issued by government authorities or employers, certain military documentation, and tax returns filed by a candidate's parent for the relevant period showing that the candidate was claimed as a dependent.

b. Audit of Application of Residency Requirement

Plaintiffs-Intervenors expressed the desire for an independent review of the ways in which the residency credit had been awarded to candidates who took Exam 2000 and Exam 2500 to ensure consistency and fairness. After discussion among the Monitor and the Parties, the City proposed a draft plan for an audit to be conducted by the FDNY analytics unit, which the City will implement.

c. Criteria for Referral to PRB

The CID Guidelines drafted by the Parties and the Monitor and approved for use in October 2012 established several specific criteria to be applied in determining whether a candidate should be referred to the PRB for review. Set forth in Section 5.1 of the CID Guidelines, the criteria relate to the candidate's criminal history, employment history, driving record, and military record. (Section 5.1 as it appears in the guidelines approved in October 2011 is appended as **Exhibit 3**.) If any of these criteria were present in a candidate's file, the file would be automatically referred to the PRB (and could be disqualified as the result of a negative PRB determination); if none of the criteria were present, assuming the candidate otherwise met qualification requirements, the candidate would move to the next stage in the hiring process.

The CID has applied these criteria in reviewing candidates for inclusion in the July 2013 Class and the January 2014 Class. The City expressed its concern that these criteria were resulting in the referral to the PRB of many candidates whose backgrounds the PRB quickly determined to be clearly acceptable. For example, the City noted that a large number of

candidates were referred to the PRB solely because their record contained old and/or very minor arrest records. Accordingly, the City proposed revisions to Section 5.1 of the CID Guidelines that would slightly modify the bases for automatic referral to the PRB. The City’s proposal is appended as **Exhibit 4** and summarized in Table 1, below.

Table 1: Proposed Revisions to § 5 of CID Guidelines

	CID Guidelines as Approved 10/2/12	Draft Revision
Criminal History	§ 5.1.1: 1 or more arrests or convictions (felony convictions would result in automatic disqualification)	§5.1.1.1: 1 or more felony conviction accompanied by a Certificate of Good Conduct; § 5.1.1.2: 3 or more misdemeanor violations; § 5.1.1.3: 1 or more arrest resulting in a misdemeanor or felony charge; or § 5.1.1.4: 3 or more arrests resulting in an Adjournment in Contemplation of Dismissal.
Employment History	§ 5.1.2: 1 or more “Negative Employment Actions,” meaning suspension, discharge, or resignation to avoid discharge for specified reasons (such as violation of job safety standards or alcohol or drug use)	§5.1.4.1: Termination or resignation in lieu of termination; §5.1.4.2: discipline by an employer within past five years of intake date; §5.1.4.3: negative employment history as a City employee; or §5.1.4.2: refusal by a prior employer to recommend the candidate or a statement that the prior employer would not consider re-hiring the candidate.
Driving Record	§5.1.3: accumulation of 8 NYS point system, or the equivalent point value under another state’s system, at the time of the application.	§ 5.1.3.1: Suspended or revoked license on 3 or more unrelated occasions either during the 3 years prior to the candidate’s intake date or while his/her candidacy for appointment to the title of Firefighter is pending; or § 5.1.3.2: more than 8 active

	CID Guidelines as Approved 10/2/12	Draft Revision
		points appear on the candidate's license.
Negative Military History	§5.1.4: disciplinary measures that do not rise to the level of a Dishonorable Discharge (which results in automatic disqualification)	§5.1.2.1: A discharge other than an Honorable discharge (but not a Dishonorable discharge)
Education History	n/a	§5.5.1: Suspension by an educational institution within 5 years of intake date. § 5.2: Disciplinary or behavioral concerns that occurred within 5 years of intake date.
Miscellaneous	§ 5.1.5: CID Unit recommends the use of "considered but not selected" designation based on overall documentation or information (other than documentation and information specified above) showing a history that would call the candidate's appointment into question (e.g., unexplained extended gaps in employment).	§ 5.6.1: Negative information about the candidate provided by a reference. § 5.6.3: CID Director or Deputy Director requests referral based on overall documentation or information (other than documentation and information specified in Sections 1 to 6.1 above) showing a history that would call the candidate's appointment into question.

The Monitor and the Parties are currently reviewing this proposal.

The existing CID Guidelines were created in part in response to the Court's finding that under preexisting procedure, the CID operated without guidelines and exercised broad discretion. *See* First Interim Report at 9-12. The proposed revised guidelines do not restore discretion to the CID. As under current CID guidelines, candidates who are not referred to the PRB on any of the specified bases would continue through the selection process.

d. Monitor Attendance at PRB Meetings

Paragraph 39 of the Modified Remedial Order states that “the Court Monitor may attend any meeting of the PRB – in person, as a nonparticipating observer – that is held to consider any person who is a candidate to be hired as an entry-level firefighter off the eligible civil service list using the results of Exam 2000.” The Monitor has attended all PRB meetings that have taken place since the Second Circuit lifted the stay on the original Remedial Order in May 2013, including several meetings in recent weeks.

e. Preparation of Report on PRB Process

Paragraph 40 of the Modified Remedial Order states in part:

Based on the Court Monitor’s observations of PRB meetings, after such time as the Monitor believes it has had sufficient time to make such observations, the Monitor shall file a report critiquing the performance of the PRB and the information provided to it by CID, and recommending the adoption of any policies, practices, or procedures the Monitor believes are necessary to ensure that the CID adequately informs the PRB of necessary information, and that the PRB fairly considers all firefighter candidates consistent with the requirements of all applicable equal employment opportunity laws and policies.

The Monitor is in the process of compiling its observations of PRB meetings and other data regarding the PRB process and preparing the report required by Paragraph 40.

2. Issues Raised by the Parties

The Parties have brought to the Monitor’s attention a series of ongoing questions and issues relating to the post-examination selection process for the July 2013 Class and the next class of probationary firefighters, which will enter the Academy in January 2014. Among other things, the Monitor and the Parties have discussed the procedures for notifying candidates of the status of their candidacy, and have reviewed and revised certain forms and notices used for this

purpose. The Monitor and the Parties also discussed the procedures for informing candidates of appointments for intake interviews with the CID and CPAT dates, and reviewed forms used for this purpose, as well as reviewed specific instances in which candidates may not have received complete information on these issues.

C. Allegations of Retaliation and Related Discovery Issues

The Parties have also raised issues relating to several allegations of retaliation against firefighters, allegedly in response to the complainants' participation in or support for the litigation in this case. Counsel for Plaintiffs-Intervenors have sought discovery from the City in relation to the City's handling of these allegations. The City has objected on several grounds. These disputes were submitted to the Monitor for resolution pursuant to Paragraph 50 of the Modified Remedial Order. That provision requires the City to "make available to the United States and the Injunctive Relief Subclass . . . any non-privileged documents relating to any disputes arising under this Order," and authorizes the Monitor to file a recommendation for resolution of any dispute relating to such discovery. The Monitor and the Parties have discussed this issue in an effort to clarify and, if possible, resolve any open issues, and the Parties have submitted letters outlining their positions. The Monitor anticipates filing a recommendation in the near future.

D. Additional Issues

The Monitor and the Parties have engaged in a range of other activities relating to compliance with the Modified Remedial Order during the past 90 days. These have included:

- Reviewing the status of the implementation of the FDNY's anti-hazing policy, which was first issued on August 13, 2013;

- Dealing with the potential that the United States would be unable to participate in activities governed by the Modified Remedial Order during the partial Federal government shutdown in October 2013;
- Discussing a number of requests for information from the City, including a racial breakdown of FDNY officers and information regarding the standards applied during the medical and psychological examinations given to candidates (this request remains open and under discussion); and
- Conducting special purpose meetings in order to discuss in depth the FDNY's current and planned recruitment, data analysis, and EEO compliance activities (as discussed in Section IV.B, below).

IV. Recruitment and EEO

A. Overview

The City filed its Recruitment and EEO Reports pursuant to Paragraphs 26 and 43 of the Modified Remedial Order on July 15, 2013. The Monitor addressed both reports in detail in its Fifth Periodic Report. Among other things, the Monitor's Fifth Periodic report encouraged the City to take prompt and concrete steps toward implementing the proposals set forth in its Recruitment and EEO Reports, and suggested additional initiatives that would help bring the City into compliance with the Modified Remedial Order.

During the period covered by this report, the Monitor has continued to assess the City's progress on recruitment and EEO issues. With the goal of obtaining up-to-date reports on the City's activities and further defining the necessary next steps, the Monitor held in-depth meetings with the City on recruitment and EEO in late October. The meetings were attended by counsel for all Parties as well as FDNY officials with responsibility for recruitment and EEO.

Parts III.B and III.C of this report summarize these meetings and the steps relating to recruitment and EEO the City has stated that it will undertake, or should consider undertaking, in the coming months.

B. Recruitment

The Monitor held a meeting of the parties on October 24, 2013 to address the City's progress with regard to recruitment activities and data. In addition to representatives for each of the Parties, the meeting was attended by Michele Maglione, Assistant Commissioner for the Office of Recruitment and Diversity, and members of a newly formed FDNY analytics unit (discussed below). Generally, the discussion covered the status of the City's efforts to analyze and modify its recruitment efforts, including recruitment campaigns, filing-day events, preparation for the written exam, CPAT training, and training for the Fire Academy.

1. Recruitment Events and Related Data Issues

The City plans to launch its recruitment efforts one year before the filing period for the next written exam, perhaps as early as the summer of 2014. *See also* Part V.D, *infra*. ORD plans to hold between 2,600 and 6,500 recruiting events during the next campaign.

A key issue for the next recruiting campaign will be how ORD selects locations for recruiting events and maximizes the effectiveness of those events. The Monitor has consistently stressed that collecting and analyzing information regarding past events – for example, data regarding which sites were most effective at drawing prospective minority recruits who actually applied for and passed the written exam – will be essential in maximizing the effectiveness of

future campaigns.¹¹ As described in the Monitor's Fifth Periodic Report, the City's existing capacities regarding recruiting data do not allow thorough analysis of the Exam 2000 campaign.

For example, an important function of recruiting events is to collect Expression of Interest ("EOI") cards, hard-copy documents on which prospective candidates are encouraged to provide their basic contact data and other information and hand in to recruiters at the events. In the past, EOI cards have been completed by hand, requiring ORD to input the data manually. The City has input at least some data on EOI cards collected in advance of Exam 2000 into a Recruitment Data Tracking System ("RDTS") database, but it remains unclear whether or how ORD will make use of the Exam 2000 EOI data.

Further, the City has not yet determined how to integrate EOI data (which, as noted above, has posed particular problems for the City thus far since no social security number is associated with candidates at the EOI stage) with other information collected during the recruitment and hiring process. The City has advised the Monitor that the City is currently assessing the utility of identifiers other than social security numbers to track prospective candidates at the earliest stages of the recruitment process, before they submit an application, but at this point, the City does not yet have the ability to track individuals on an end-to-end basis through the recruitment, selection, and hiring process, which would enable ORD to identify which tactics were most effective at recruiting and eventually hiring minority applicants.

At the October 24, 2013 meeting, the City indicated a commitment to enhancing its ability to collect and analyze recruiting data. In an important step toward that goal, the FDNY

¹¹ The Monitor's Fifth Periodic Report included a more detailed discussion of the need for the City to significantly enhance its ability to collect and analyze data relating to firefighter recruitment and selection. *See* Fifth Periodic Report at 9-13. These issues were also addressed at the October 24, 2013 meeting. They are addressed more fully in Part IV.D, below.

has created a new analytics unit to support ORD (and other FDNY offices). The analytics team hopes to equip ORD to automate the collection of EOI data using tablet computers and applications that potential recruits could download and complete on their smartphones. The new data analytics unit is considering hosting a “hack-athon” in which programmers will be invited to try to create such an application. In addition, the analytics unit hopes to determine how to link information gained at recruiting events to data generated during the selection and hiring process and to conduct a broad review and update of the FDNY’s ability to collect and analyze data throughout the selection process.

Next Steps. The City should keep the Monitor informed of the progress of these data plans, including milestones such as scheduling or hosting the hack-athon; determining other means for automating data collection; and/or securing the budget to purchase, and purchasing, tablet computers. The City is asked to provide the Monitor within the next thirty (30) days with a proposed timetable indicating the dates by which it intends to complete these activities.

As the next recruiting campaign draws nearer, the Monitor also plans to ask the City to provide frequent updates on its plans for recruiting events: how many events will be held and at what locations. More generally, the City should keep the Monitor informed of the budget for ORD (as further discussed below).

2. Messaging, Marketing, and Advertising

Past recruiting campaigns have included print and radio advertisements and, to a limited extent, use of social media. In this connection, the Monitor has stressed the potential benefits of using professional techniques such as focus groups to create effective advertising messages, and using outside consultants to identify the most fruitful media outlets.

The City reportedly plans to devise a new set of themes and messages to use in the next large-scale recruitment effort. It has arranged to enlist the help of a team from the NYU-Wagner School of Public Service's "Capstone" program to assist in this regard. A similar NYU team provided input on the campaign for Exam 2000. The City also used two outside agencies, one *pro bono* and the other paid, in designing and carrying out its Exam 2000 media campaign. According to ORD, the new mayoral administration may choose to retain and/or seek *pro bono* assistance from a new set of consultants.

The Capstone team will also review the FDNY's current use of social media both for recruitment outreach and as a means of providing candidates with details on the selection process such as important dates, procedures, and training material.

Next Steps. The City should keep the Monitor informed of its plans for the next radio and print advertising campaign, including the retention of any outside vendors and the methods to be used for selecting media outlets. The Monitor has requested copies of proposals or statements of work submitted by the NYU Capstone team, and expects the City to provide these shortly and to provide periodic updates on the Capstone team's activities.

3. Filing and Pre-Exam Activities

In connection with Exam 2000, the City took several steps to encourage prospective applicants who completed EOI cards to register to take the exam. ORD principally used phone banks and direct mail in this regard, and plans to continue to do so in the future. Ideally, the City will also reach out to potential applicants through email, text messaging, and social media.

During the Exam 2000 campaign, the City also hosted 342 “filing day events,” at which applicants could register for the exam at tables set up at locations throughout the City.¹² ORD selected locations for these events based on the staff’s sense of where they would have greatest success. Although ORD has not performed a retrospective analysis to determine which sites were most useful, the City regards the filing-day events as an important and successful component of its recruitment efforts.

ORD learned important logistical lessons from the Exam 2000 filing day events. For example, the City found that prospective candidates who qualified for a fee waiver were not able to complete their applications at the events because they were required to obtain notarization of their benefits letter, and the events lacked notaries. The City said it will consider making the recruitment staff who oversee filing-day sites notaries.

Next Steps. The City should keep the Monitor informed of its plans for filing day events in connection with the next exam, including the process for selecting appropriate locations and whether the sites will be staffed with notaries. In addition, the new analytics unit should consider whether it is possible to analyze data from Exam 2000 to identify productive sites. The City should report to the Monitor on this issue.

4. Post-Filing Outreach

a. Incomplete Applications

A significant number of those who registered to take Exam 2000 submitted application packages that were incomplete or included mistakes. The City attempted to contact such applicants through phone banks to encourage them to file complete and correct applications.

¹² For a description of these events and their effectiveness at attracting a diverse applicant pool, *see* Recruitment Report at 16-19 and Fifth Periodic Report at 20.

(The City also provided contact information for applicants whose paperwork was incomplete to the Vulcan Society and other affinity groups; the Vulcan Society used this information to conduct in-person visits to encourage submission of completed applications.) The City's Recruitment Report concluded that this was not cost-effective, but the Monitor questioned the basis for that conclusion. *See* Fifth Recruitment Report at 21-22. The City should revisit this issue in the broader context of performing a more rigorous cost-benefit analysis of its recruitment activities, which is discussed in further detail below.

b. FDNY High School and Other School Outreach Efforts

The Recruitment Report noted the importance of "establishing relationships and building networks with organizations and communities that serve youth," including high schools, as part of a broader effort to attract minority firefighters. Recruitment Report at 57, 29. In addition to the FDNY High School, *see* Recruitment Report at 27-30; Fifth Periodic Report at 20-21, the City has created a program at the Urban School for Emergency Management. However, the City's other efforts in this area appear to have been minimal, and at the October 24, 2013 meeting, the City said it had no concrete plans to create programs at other New York City schools.

Next Steps. In view of the effectiveness of high school and other youth outreach programs, according to sources cited in the Recruitment Report, including the City's own recruitment consultant, the City should seek to broaden these efforts. The City should update the Monitor and the Plaintiffs concerning any plans for increasing such efforts.

c. Exam Tutorials

In advance of Exam 2000, the City sponsored tutorial sessions and made exam materials available online. (The Vulcan Society also hosted exam tutorials.) The tutorial program was

designed primarily by FDNY officers, and PSI (the consulting firm used by the City to develop Exam 2000) designed some of the on-line training material. Following the application filing period, the City ran a phone bank campaign to encourage those who completed applications to register for tutorial sessions.

As noted in the Monitor's Fifth Periodic Report, approximately 21.5 percent of those who attended tutorial sessions were black while 29.7 percent were Hispanic. *See* Fifth Periodic Report at 22; Recruitment Report at 22. However, the City did not collect comprehensive attendance data; attendees signed in by hand, and the sign-in sheets have not been entered into a database.

ORD plans to offer similar tutorial sessions in connection with future exams. Ideally, attendance will be recorded electronically, and the City will engage in additional analysis of the effectiveness of its outreach efforts and of the tutorials themselves.

Next Steps. The City should inform the Monitor whether the Exam 2000 tutorial data can be accurately captured and analyzed. In addition, the City should periodically update the Monitor with respect to plans for automating future attendance data. The City should also consider asking PSI or some other testing consultant (assuming a consultant is used in designing the next exam) to review the FDNY teaching materials before the tutorials are given. The City should provide the Monitor with its position as to this suggestion within the next sixty (60) days.

d. Surveys

Pursuant to Paragraph 25 of the Modified Remedial Order, the City administered an Optional Survey to those who took Exam 2000 at the time of the exam. Although the Optional Survey yielded some important information (the City has stated that it has not finished analyzing the results), the City believes that the survey had only limited utility, for various reasons. For example, questions regarding the effectiveness of various recruitment and outreach efforts may

be undermined by “recall bias” in light of the long period between the recruitment campaign and the administration of the survey. Those who took the survey also may have viewed the survey as part of the exam and thus given answers they believed were correct rather than those that reflected their own views. Further, the City has indicated that design of many of the questions was less than optimal. *See* Recruitment Report at 19.

Going forward, the City said it plans to reconceive the use of surveys in evaluating the recruitment, selection, and hiring processes. For example, the City might give surveys at different points in the process such as when applicants register for the exam or when the list of potentially eligible candidates is generated. In May 2013, the City conducted a survey of candidates who had dropped out of the Fire Academy, and it will consider similar surveys in the future.

Next Steps. The City should complete its analysis of the Exam 2000 Optional Survey, and report any findings to the Monitor. The Monitor plans to ask the City for updates on its plans for additional, redesigned surveys. The City should also consider enlisting the services of experts in designing the surveys themselves, and should share the questionnaires with the Monitor before they are administered. *See also* Part IV.C.5, *infra*, regarding “command climate surveys” in the EEO context. The City should provide the Monitor with the City’s position as to this suggestion within the next sixty (60) days and, if it agrees to enlist the services of experts in designing the surveys, should provide a timetable for doing so.

e. CPAT Training

The City offered training in preparation for the CPAT to all Exam 2000 test takers who were eligible for consideration based on their test scores. The City contacted candidates through a phone bank to encourage them to register for and attend training sessions. The City recorded

attendance at the training sessions, but has reportedly not yet analyzed the data to assess the effectiveness of the training in helping diverse candidates pass the CPAT.

The City will continue to provide CPAT training during future selection cycles. Ideally, the City would be able to capture data in real time so that it could respond when candidates fail the CPAT initial trials or do not appear for scheduled training sessions. Based on reports by the Plaintiffs-Intervenors, the Monitor will also consider, together with the parties, whether steps can be taken to improve communications informing candidates of the three CPAT “practice runs” (which are distinct from CPAT training sessions, and can count as an official “pass” of the CPAT test), as well as the fact that CPAT practice runs take place in Long Island City rather than the training facility on Randall’s Island.

Next Steps. The City should analyze the Exam 2000 CPAT data, and should also consider how to capture and distribute attendance data and test results in real time.

As discussed in the July 2013 Class Report, the Parties asked the City to consider various ways to make CPAT training more available to candidates whose schedules make attendance difficult or who find it hard to reach the training facility. *See* July 2013 Class Report at 11-12. The City declined to take these steps. *Id.* For the next selection cycle, the City should give these options more careful consideration, which it can do without the time pressures that were present when these measures were proposed in connection with exam 2000. The City should either adopt these measures or inform the Monitor and the other Parties why it chooses not to do so.

f. Mentorship Program

ORD launched a mentorship program for the current and upcoming probationary classes in January of 2013. ORD is maintaining records to reflect participation of both mentors and mentees in the mentorship program and is tracking mentees’ progress through the hiring process.

By comparing the success rate of mentees against that of candidates who have not had mentors, the City should be able to get an initial sense of the effectiveness of the program (although the size of the July 2013 Class is too small to support a detailed statistical analysis). In addition, Assistant Commissioner Maglione reported at the October 24, 2013 meeting that the feedback gathered to date from mentees has been largely positive.

The Mentorship program also offers an important conduit for delivering messages regarding the Modified Remedial Order's requirements regarding diversity and EEO issues. The City stated in its Recruitment Report that mentors are trained in EEO issues, and the City should encourage mentors to spread appropriate messages to their mentees. The Mentorship program also offers a way to provide candidates with information on preparing for the CPAT, the Fire Academy, and other aspects of the selection and hiring process. The City should take full advantage by providing mentors with appropriate materials and messages to issue to their mentees.

Next Steps. The City should share with the Monitor the results of participants' reviews of the program. In addition, the Monitor plans to request updates on any steps taken to integrate EEO and other preparatory messaging into the Mentorship Program.

g. Academy Preparation

ORD has taken some steps to encourage candidates to prepare for the Academy. For example, ORD reaches out to candidates on social media and makes the Academy manual available online. Most of ORD's efforts focus on preparation for the physical aspects of the Academy rather than the practical, psychological, or academic portions of their training. It is not clear, however, that Academy preparation falls fully within the ORD's area of responsibility.

Going forward, the City plans to begin encouraging and helping candidates to prepare for the Academy earlier in the post-exam screening process.

At the October 24, 2013 meeting, the Monitor suggested that ORD consider in-person training sessions prior to the Academy, similar to professional sports “mini-camps,” though as noted the City has raised some concerns. Such training, which could potentially be conducted by volunteers from within the FDNY, might better prepare probationary firefighters for the unique challenges of the Academy, particularly if it is offered sufficiently in advance of the start of the Academy class to allow candidates to train on their own or with their mentors to prepare for the Academy. The City expressed an interest in this concept.

Next Steps. The City should consider ways to publicize the availability of online training materials; evaluate the effectiveness of existing training materials and consider ways to improve those materials (for example, by increasing the emphasis on preparation for academic and practical skills portions of Academy training); and consider whether to provide condensed, “mini-camp”-style training sessions at least several weeks before classes enter the Academy. The City should provide the Monitor and the Plaintiffs with the results of this consideration within the next sixty (60) days, as well as a proposed timeline for implementation of training measures (including specifically any steps to be taken to provide such training in advance of the July 2014 Academy Class).

5. ORD and Recruiting Budget

Paragraph 26(f) of the Modified Remedial Order requires the City to “identif[y] the resources needed by ORD for those fiscal years in which no firefighter examination will be administered and separate minimum and ideal budgets for ORD for fiscal years in which the City of New York will administer a firefighter examination.”

The City's Recruitment Report provided some information regarding minimum budgets. But as noted in the Monitor's Fifth Periodic Report, this was principally limited to personnel costs, with no specific allowance for line items such as consultants or IT expenditures. The City provided additional information at the October 24, 2013 recruitment meeting, describing ORD budgeting process and the practice of requesting funds for off-budget programs outside the normal budgeting process. (Assistant Commissioner Maglione said those requests are often successful, but she is not the final authority on whether funds will be allotted). Moreover, it is not clear to the Monitor at this juncture what criteria are used in deciding whether to grant such requests or how often the funds are denied.

To date, the City has provided no cost-benefit analysis of its various recruitment efforts as required by paragraph 26(f) of the Modified Remedial Order. Assistant Commissioner Maglione said such analysis has been largely "intuitive" in the past. In addition, the Recruitment Report stated that "City and Department budgets are not developed or tracked in a manner that allows for a cost/benefit analysis of individual activities and programs." Recruitment Report at 31.

At the October 24, 2013 recruitment meeting, however, the City stated that it does maintain cost data regarding individual recruitment programs and initiatives. The City said it would determine whether a more formal cost-benefit analysis could be conducted, and would perform such an analysis if possible.

Next Steps. The Monitor will seek updates on the City's commitment to conduct a cost-benefit analysis of its recruiting expenditures. As stated in the Monitor's Fifth Periodic Report, the City should also provide more specific information on its upcoming budgets, including an explanation of how it plans to fund the many non-personnel expenses involved in the initiatives

it has pledged to undertake. *See* Fifth Periodic Report at 33-35. The City should provide an update on that information to the Monitor and the Plaintiffs within the next thirty (30) days. The Monitor also plans to request more detailed information on ORD's recent and future budgets.

6. Specific "Strategies for Inclusion"

The Recruitment Report listed eight specific "strategies for inclusion" to be employed in future FDNY recruitment efforts. *See* Recruitment Report at 52-61. Many of these are covered elsewhere in this report and/or in the Monitor's Fifth Periodic Report, but it is worth revisiting the City's list of key strategies and assessing the status of the City's efforts. The Monitor plans to request updates as to each of these proposals.

- "Create a Strategic Diversity and Inclusion Plan," *id.* at 56. The Recruitment Report did not provide detail on what such a plan would contain. At the October 24, 2013 meeting, the City reported that the FDNY's Strategic Planning Director is developing the strategic diversity and inclusion plan in conjunction with ORD. The City said it anticipated an initial draft of the plan within several weeks, but noted that the FDNY would also defer to the new mayoral administration with regard to its thoughts on the strategic diversity and inclusion plan. The Monitor plans to ask the City to provide drafts and progress reports as the plan takes shape.
- "Integrate Diversity and Inclusion into the FDNY's Mission and Core Values Statements and Other Messaging," *id.* at 56-57. Again, the NYU Capstone team will assist with this measure. The City also stated that the incoming mayoral administration is likely to wish to influence a messaging campaign, and that concrete planning would get underway once the new administration is in place.

- “Establish Goals.” The City has noted the importance of setting concrete and measurable goals for the recruitment of a diverse applicant pool for the next exam.
- “Further Develop ORD’s Relationship with Entities Serving Youth and Other Potential Recruits,” *id.* at 56-57. As noted, the City currently has no concrete plans to expand its presence in local high schools (beyond its efforts with the FDNY High School and the Urban School for Emergency Management). The Recruitment Report also emphasizes the benefits of recruiting military veterans, but the City has presented no specific plans to do so.
- “Improve Diversity Training and Deliver It Regularly,” *id.* at 58. Diversity and EEO training are discussed in connection with EEO issues, below.
- “Improve Internal Communications and Inter-Agency Coordination,” *id.* at 58-59. This appears to overlap with the second goal regarding messaging, discussed above.
- “Maximize the Use of Data,” *id.* at 59-60. Specific areas for improvement with respect to data collection and analysis are discussed in connection with the stages of the recruitment process above.
- “Continue to Invest in Technology,” *id.* at 60-61. This goal appears to encompass both the expanded use of social media and improvements in collecting and analyzing data, both discussed above.

C. EEO

The Monitor held a meeting of the parties on October 29, 2013 to address the City’s progress in assessing and reforming its EEO programs (the “EEO Meeting”). The EEO Meeting

was attended by the Monitor, representatives of each of the parties, and the FDNY Assistant Commissioner for EEO, Margo Ferrandino. Generally, the discussion covered the activities of the EEO office, particularly in the period since Ferrandino took over in October 2011. The parties discussed the EEO Office's staffing and resources as well as its current and planned EEO training, investigation, and inspection activities.

This section discusses important open issues and ongoing tasks relating to EEO. Paragraph 46 of the Modified Remedial Order states that the City's EEO report "shall specifically indicate how it plans to carry out the recommendations in the report, providing a specific timetable for those recommendations that cannot be carried out immediately." At the time of the Fifth Periodic Report, the Monitor noted that the City has not completely fulfilled this requirement. *See* Fifth Periodic Report at 47. The City provided additional details regarding its plans at the EEO Meeting, but many of the specifics as well as the timing have yet to be finalized.

1. Staffing and Resources

In its Findings of Fact in the underlying litigation, the Court found that "the FDNY EEO Office remains chronically under-resourced and over-burdened." (Dkt. #741 at 10, quoting Memorandum Findings of Fact at 78.) It is not clear whether the City has fully addressed this issue. The EEO Report noted "[t]he need for additional human, fiscal, and technical resources" and stated that "the existing staff . . . is strained." EEO Report at 36-37. The EEO Report indicated that future budget requests would be increased to expand the staff. The EEO Office has recently requested funding for an additional attorney and a statistician, and apparently plans to seek increases to its training staff once new training programs, which are discussed below, have been finalized. *See id.* at 37.

At the EEO Meeting, Assistant Commissioner Ferrandino noted that the EEO Office has had difficulty in retaining quality attorneys given the limitations in available salary. (Attorney salaries are determined on a Citywide basis and are not specific to the EEO Office.) Ferrandino also stated that as a direct report to the Commissioner, she is not subject to budget restrictions and has not been denied any requested resources.

Next Steps. In light of the Court's findings regarding EEO resources and the City's own indications that current resources may not be adequate, as well as the City's plans (discussed in the remainder of Part IV.C, below) to substantially enhance the EEO Office's efforts to prevent, detect, and deter acts of discrimination and retaliation in the FDNY, the City needs to provide more concrete information on plans to ensure the EEO Office is adequately staffed and funded. Within thirty (30) days, the City should provide the Monitor and the Plaintiffs with a date certain by which the City can provide the Monitor with a concrete timeline to carry out the tasks listed below. In addition, the Monitor intends to continue to ask for periodic updates in this regard.

2. EEO Training

The EEO Office currently provides EEO training to probationary firefighters at the Academy, to officers when they are newly appointed, and to all firefighters on an annual basis. At the EEO Meeting, the City reported that Ferrandino has revised the training curriculum for all levels, except for annual EEO training, which is in the process of being revised. These revisions reportedly align with the suggestions made by the City's EEO consultant in connection with his work under the original Remedial Order. Among other things, updated training sessions focus more on scenario-based, interactive instruction and less on lectures. The revised training has been delivered to newly promoted officers. The annual EEO refresher training sessions last roughly 1.5 to 2 hours, are conducted by an EEO attorney and a uniform firefighter, and are

typically attended by groups of 35-40 firefighters, including both officers and regular firefighters.

Ferrandino also personally attended EEO training sessions administered to members of the July 2013 Class, which focused on the FDNY's anti-discrimination, anti-hazing, and social media policies and on resources available to probationary firefighters who believe they have experienced retaliation or discrimination. The City further reported that the Fire Commissioner had reinforced the anti-hazing policy in communications with all Battalion Chiefs and other officers, although the Monitor does not have detailed information about this effort.

The EEO Office plans to undertake a more systematic review and revision of the EEO training program in the near future. The City is in the process of entering into a contract with Cornell University to study the Department's training programs and to help revise and expand the training curriculum. Among other things, the goal is to emphasize training of FDNY officers as part of a broader effort to increase officer-level accountability for EEO issues (discussed in more detail below). In advance of the broad revisions to be undertaken with help from Cornell, Ferrandino has indicated that she had been working with Chief of Uniformed Personnel Michael Gala to deliver the accountability message at the firehouse level, with a focus on the newly promoted captains.. Captains are told that they are responsible for preventing and deterring discrimination and retaliation within their own firehouses.

The new training for which Cornell is being engaged will involve the EEO Office, the FDNY's Bureau of Investigations and Trials ("BITS"), and the Bureau of Legal Affairs. A key focus will be on "training the trainers," that is, training uniformed FDNY personnel to conduct EEO training sessions. Ferrandino noted that uniformed EEO trainers are viewed by other

firefighters as having more credibility, and the “train the trainer” program will allow the EEO office to engage more officers at the battalion chief level as EEO trainers.

Next Steps. Consistent with Paragraph 46 of the Modified Remedial Order, the City should continue to provide specific details and timetables for its plans to revise and update the FDNY’s EEO training programs. The City should provide the Monitor with an overview of the services to be provided by Cornell, such as statement of work or Request For Proposal, and should notify the Monitor when the Cornell contract is finalized. This information, including the details and timeline, should be provided within the next thirty (30) days. The Monitor will also request periodic additional written and oral updates.

3. EEO Complaints and Investigations

The EEO Report included a description of the EEO Office’s policies and procedures for investigating complaints of discrimination, harassment, and retaliation, as well as data regarding the number of complaints in recent years and plans for enhancing the investigation function going forward. *See* EEO Report (Dkt. # 1167) at 20-28, 55-57. In the Fifth Periodic Report, the Monitor noted, among other things, the need for additional data and continued scrutiny regarding EEO investigations, and for more detailed information on the City’s plans to revise and update its policies and procedures. *See* Fifth Periodic Report at 37-39, 44-45. This section of the report summarizes additional details provided at the EEO Meeting and highlights important next steps.

a. Existing Investigations Policies and Procedures

Ferrandino said the EEO Office has substantially improved its handling of EEO complaints in recent years by instituting more careful intake procedures and working hard to complete investigations within 90 days after receiving complaints. She reported that at the time she joined the Department in October 2011, the EEO office had 47 cases pending, with 27 of

those pending for more than 90 days. At the time of the EEO Meeting, there were 8 cases pending, with only one pending for more than 90 days.. The vast majority of EEO Office investigations involve EMS rather than the fire service. Ferrandino reported that only two of the cases pending earlier this year were fire service cases, and neither is still pending.¹³ Through the Monitor's weekly calls with the parties, the Monitor is aware that at least one additional case that raised allegations of retaliation based upon protected EEO activity was investigated by the FDNY's Bureau of Investigation and Trials ("BITS"), and therefore was not listed among the EEO Office's fire service cases.

In the Fifth Periodic Report, the Monitor noted that there is little historical data against which to judge the effectiveness of current investigative activities. *See* Fifth Periodic Report at 45. That remains the case. The City should provide more detailed historical data regarding the number of investigations, processing time, and disciplinary actions taken as a result of EEO complaints. Further, the City should provide data regarding existing protocols and procedures for informing complaining firefighters of the outcomes of investigations, which is a topic that Plaintiffs-Intervenors have suggested requires inquiry and improvement.

Although the number of pending complaints has decreased in recent years, the reasons for this trend are unclear. Ferrandino attributed at least some of the decline to changes in intake procedures, which more carefully distinguish between actual complaints and simple inquiries and

¹³ The complainants in the two fire-service EEO cases pending during 2013 both filed complaints with the U.S. Equal Employment Opportunity Commission ("EEOC"), alleging, among other things, that the EEO Office had failed to timely or effectively investigate their claims, or to advise them of an outcome, for months. Pursuant to standing policy, the City removed the cases from the EEO Office's docket after learning that EEOC charges were filed, thereby changing their status within the EEO Office caseload so that they were no longer reflected as pending.

other calls. This is useful information, but does not necessarily reflect a decrease in the incidence of harassment, discrimination, and retaliation within the FDNY.

Next Steps. As noted, the City should provide additional historical data, if possible, to allow a more thorough assessment of recent statistics against past trends. This information should be provided to the Monitor and the Plaintiffs within the next sixty (60) days, so that a more thorough assessment can be conducted prior to the Monitor's next periodic report to the Court. The City also should advise the Monitor within thirty (30) days of existing procedures for informing complaining firefighters of the status and outcome of EEO investigations (or BITS investigations of equal employment opportunity issues).

One area for future inquiry by the Monitor is the role that BITS plays in investigating allegations of EEO violations by FDNY employees, and the methods the FDNY uses to allocate responsibility for such allegations as between the EEO Office and BITS. The City should also continue to evaluate the EEO environment within the department. In particular, the EEO Office should look beyond the number of pending investigations, which, as noted, may vary for reasons unrelated to the actual incidence of retaliation or discrimination. The command climate surveys, discussed below, will help in this regard.

b. Planned Revisions to Policies and Procedures

The City anticipates that the EEO complaint and investigations process will be reviewed and revised with assistance from Cornell. Among other things, the EEO Office plans to update its policies and procedures and create an investigations manual, which it does not currently have. The City also plans to update its policies and procedures for maintaining investigative files and data relating to EEO violations.

Next Steps. The City should keep the Monitor and the Plaintiffs informed on the revision of its investigative procedures and the development of an investigative manual. The Monitor also intends to continue discussions with the City and Plaintiffs about communication of investigation results to complainants, and about the respective roles of the EEO Office and BITS.

c. Anonymity and Confidentiality

At the EEO Meeting, the Parties discussed the benefits and feasibility of permitting firefighters to make anonymous complaints. Ferrandino noted that, although firefighters often express the desire to report EEO issues on a confidential basis, anonymity often cannot be maintained if alleged violations are fully investigated.

The Parties also discussed the desirability of having the EEO hotline number linked to a telephone in the FDNY's Fire Operations Center. *See* Fifth Periodic Report at 43 and n.6. Ferrandino said the volume of calls was likely too low to warrant creation of an outside hotline staffed by a third party.

Next Steps. The City should consider options for anonymous reporting of EEO-related incidents in the FDNY and should keep the Monitor informed of any updates with regard to anonymity and confidentiality going forward.

4. BITS Procedures

The EEO Office refers substantiated EEO complaints to BITS for prosecution or settlement of disciplinary charges. Since the beginning of 2012, only two fire-service related EEO complaints have resulted in BITS cases that resulted in formal disciplinary penalties. .

In addition, BITS itself sometimes conducts investigations involving fire service issues, either on its own (e.g., when a member of the FDNY is arrested by law enforcement officials) or in conjunction with the EEO Office. The decision to assign an investigation to BITS, the EEO

Office, or both is ultimately made by the Commissioner. There is a lack of clarity regarding precisely when BITS or the EEO Office will take jurisdiction over a given matter. For example, an October 2012 complaint of retaliation against a named plaintiff in this litigation was investigated by BITS alone rather than jointly or by the EEO Office alone.

BITS investigators traditionally have not received formal training on how to conduct EEO investigations. The City reports that BITS investigators will receive the same training as EEO lawyers going forward.

Next Steps. The City should provide clear guidelines regarding the jurisdiction of the EEO Office versus BITS. Within thirty (30) days, the City should confirm that BITS investigators are receiving EEO investigation training or provide the specific timeframe when the City intends to begin providing such training.

5. EEO Compliance Investigations

One of the EEO Office's core responsibilities is to conduct periodic firehouse inspections to identify possible EEO violations. At the EEO Meeting, the City provided statistics regarding EEO inspections from 2005 forward:

Year	# Inspections	# Violations
2005	2	3
2006	8	7
2007	0	0
2008	1	0
2009	1	0
2010	0	0
Jan-Sept. 2011	13	2

Ferrandino has significantly revised inspection procedures over the past year. Among other things, she has taken steps to prevent firehouses from learning of an inspection before the

EEO Office inspectors arrive and to minimize efforts to avoid identification of violations. She has also greatly increased the number of inspections, such that from November 2011 through the end of 2012 there were over 200 inspections, and there were an additional 230 through October of this year. Violations are reported to the Commissioner, Chief of Department, Chief of Operations, First Deputy Commissioner, the Associate Commissioner for Compliance, and others. Ferrandino said a significant percentage of violations, particularly over the past year, have involved posting of inappropriate material within firehouses.

Next Steps. The City should continue to provide updated data on compliance inspections.

6. Evaluating and Auditing EEO Office Activities

Going forward, the EEO Office has been or will be subjected to several layers of review of its various activities. These include:

- Internal review by Ferrandino, with the help of the new FDNY analytics unit, using benchmarks the EEO Office is in the process of establishing;
- A review by the FDNY Audit Unit;
- A review by the City's Equal Employment Practices Commission; and
- Ongoing feedback from firefighters and officers in the field.

The EEO Office also plans to conduct "command climate surveys" at various levels, including firehouses, to evaluate the EEO environment. The FDNY conducted one such survey, focused on probationary firefighters at the Fire Academy, in May 2013.

Next Steps. The City should execute its plans to subject the EEO Office to various levels of review, and should provide the Monitor with the results of the various reviews and audits. The City should also execute its plans to conduct command climate surveys as broadly as

possible. The EEO Office should have the assistance of the analytics unit and/or its own statistician in analyzing the results of the surveys, audits, and reviews, and should consider retaining outside experts to help design and administer the surveys.

7. Firehouse- and Officer-Level Accountability

In its Recruitment Report and at the EEO Meeting, the City stated that it plans to enhance accountability for EEO issues at the firehouse level. As discussed above, the Monitor views this as a centrally important step toward an effective EEO program. *See* Part II.B, *supra*.

The City plans to advance this goal in several ways. As noted, the EEO Office anticipates that its revised officer training programs will emphasize the need to address EEO issues at the firehouse level. In addition, FDNY officers are “mandated reporters” of discrimination and retaliation they observe. *See* EEO Report at 19. The City reported that officers have been disciplined for failure to report EEO violations in the past (although the Monitor has not seen specific information regarding such cases), and the EEO Office plans to enforce the “mandatory reporter” requirement going forward. Further, incidents of discrimination and retaliation within a firehouse can result in a “command discipline” against officers in that firehouse. Command climate surveys, discussed above, may also enhance accountability by identifying EEO issues at the firehouse level.

The FDNY also plans to restructure its performance evaluation system to emphasize officer accountability for EEO issues. At the EEO Meeting, the City characterized this as a major project for which the FDNY will likely enlist the help of an outside consultant. The City indicated that it intends to seek input on revisions to the performance evaluation systems from the Uniformed Fire Officers Association and the Uniformed Firefighters Association. The City

has initiated discussions with both unions on this topic and the Monitor plans to request updates on the status of this initiative.

Next Steps. The City should push forward on all of its plans regarding officer accountability, and keep the Monitor informed. Among other things, the City should, within the next thirty (30) days, inform the Monitor of the anticipated timeline for the planned revisions to its performance evaluation system. The City should also notify the Monitor when a consultant has been selected and retained, and provide periodic updates.

V. Additional Issues and Next Steps

The coming months will likely see a continuation of the high level of compliance-related activity engaged in by the Monitor and the Parties that characterized the period covered by this report.

A. January 2014 Academy Class

The next class of probationary firefighters will enter the Academy in January 2014. Like the July 2013 Class, the January 2014 Class will include priority hires. The Monitor expects to engage in an active review of the progress of that class, including issues relating to attrition.

B. Recruitment and EEO

The City has proposed, planned, or initiated a number of important steps to comply with the provisions of the Modified Remedial Order relating to recruitment and EEO. The Monitor will remain closely attentive to those issues going forward.

On October 11, 2013, Plaintiffs-Intervenors served discovery demands on the City seeking documents and information relating to the City's Recruitment and EEO Reports, including requests for information from the consultants hired by the City as result of the Court's December 8, 2011 Remedial Order (Dkt. # 765). The City subsequently filed objections and

responses to those discovery demands, claiming attorney-client and work-product privileges over the information requested, and Plaintiffs-Intervenors and the United States have replied to the City's objections and responses. The Monitor is considering the Parties' submissions and will be filing a recommendation on this issue with the Court. The Monitor's formal response to the City's Recruitment and EEO Reports (and the responses of Plaintiffs-Intervenors and the United States, if they so choose), will be due within 60 days of the date on which the dispute is resolved by either the Monitor or the Court. Pursuant to the Modified Remedial Order, the Monitor's response to the City's Recruitment Report "shall explain whether the Monitor believes the Fire Commissioner's final report is sufficient, and shall recommend to the court any additional action the Monitor or Party believes is necessary to accomplish the remedial purposes of this Order." Modified Remedial Order ¶ 36. Paragraph 47 sets forth the same requirement with respect to the Monitor's response to the City's EEO report.

C. Top-to-Bottom Assessment

The Monitor and the Parties discussed scheduling issues relating to City's "top-to-bottom assessment" pursuant to the Modified Remedial Order. Paragraph 32 of the Modified Remedial Order requires the City to prepare an assessment of the process for the selection and hiring of entry-level firefighters. Paragraph 33 requires the City to keep the Monitor informed on the progress of the top-to-bottom assessment and, if the Monitor so requires, to prepare reports on a schedule to be set by the Monitor. Paragraph 34 states that before the Fire Commissioner may submit the City's final report on the top-to-bottom assessment, the Monitor must "certify that the City carried out its assessment of its current entry-level firefighter selection process . . . in good faith and with reasonable diligence." Paragraph 35 allows the Monitor and the Parties to submit a formal response to the City's top-to-bottom assessment.

After discussion, the Monitor and the Parties agreed to the following schedule, which was approved by the Court (Dkt. # 1216) (filed under seal):

- The City will submit an interim report summarizing the status of its top-to-bottom assessment on December 18, 2013;
- The Monitor (and the other Parties, at their option) will provide the City with responses to the interim report on January 30, 2014, with the goal of informing the City of any additional steps that may be required before the Monitor can certify the top-to-bottom assessment;
- The Fire Commissioner will file the City's final report on the top-to-bottom assessment on March 3, 2014; and
- The Monitor (and the other Parties, at their option) will file responses to the City's final report on April 3, 2014.

D. Preparations for Creation of the Next Civil Service List

The City has informed the Monitor that the next civil service hiring list for the position of firefighter must be available by June 2017. Meeting that deadline will require the City to initiate a new recruitment campaign, prepare for a new exam cycle, and administer a new selection and hiring process in the near future. As noted above, the City hopes to launch the next recruitment campaign in the spring of 2015, with preparatory steps to begin as early as the summer of 2014. Steps necessary for adequate preparation of that campaign are discussed in Part IV.B, *supra*.

Paragraph 7 of the Modified Remedial Order provides that the Monitor shall have oversight over the development of examinations subsequent to Exam 2000. The Monitor has begun its review of the process of creating Exam 2000 and the considerations that will influence

the creation of the next exam. The Monitor anticipates close coordination with the City and the Parties on these issues in the near future.

The United States, joined by the Plaintiffs-Intervenors, has requested discovery relating to the standards applied by the City in administering the medical examination of candidates. The parties have set a briefing schedule to address the City's objections to the requested discovery. .

E. Attrition Mitigation Plan

Paragraph 31 of the Modified Remedial Order provides that “[t]he City, in consultation with the Court Monitor and the Parties, shall draft and implement a written plan to mitigate and diminish rates of voluntary candidate attrition between different steps of the City’s process for the selection of entry-level firefighters.” Modified Remedial Order ¶ 31. As noted in the Monitor’s previous periodic reports, the parties and the Monitor previously provided their initial comments regarding the City’s draft attrition mitigation plan. *See, e.g.*, Monitor’s Report to the Court (Dkt. #823) at 14-15; Monitor’s Fourth Periodic Report (Dkt. #1022 at 9). The City presented an updated plan in a meeting with the Monitor and the other Parties in June 2013. *See* Monitor’s Fifth Periodic Report at 7-8.

The Monitor believes the City should revisit its Attrition Mitigation Plan within the next 90 days. As discussed in the July 2013 Class Report, the City now has access to important data regarding attrition, and the body of information will likely continue to grow as the data regarding the January 2014 Class becomes available and the City improves its data collection and analysis capacity. Such data can help the City create an effective Attrition Mitigation Plan that focuses

on the key areas in which voluntary attrition has occurred. The Monitor will continue to review the Attrition Mitigation Plan and its implementation with the Parties.

Dated: December 13, 2013
New York, New York

/s/

Mark S. Cohen

Exhibit 1



THE CITY OF NEW YORK
DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES
APPLICATION UNIT
1 CENTRE STREET, 14th FLOOR
NEW YORK, NY 10007

REQUIRED FORMS
APPLICATION FORM

MICHAEL R. BLOOMBERG
Mayor

EDNA WELLS HANDY
Commissioner

NOTICE OF EXAMINATION

FIREFIGHTER
Exam No. 2000
Fourth Amended Notice - December 14, 2011

WHEN TO APPLY: July 15, 2011 to September 19, 2011

APPLICATION FEE: \$30.00 if you submit a paper application and/or pay by money order
\$25.00 if you pay online by credit card, bank card or debit card

CANDIDATES WHO DEMONSTRATE THAT THEY ARE UNEMPLOYED OR RECEIVING PUBLIC ASSISTANCE ARE ENTITLED TO A WAIVER OF THE APPLICATION FEE.

TEST DATES: Administration of the computer-based test will begin in late February 2012 or March 2012. You should receive an Admission Notice in the mail by January 27, 2012 assigning you to a test date and time at a testing center in the New York City area. Subject to availability of open dates and locations, you will be able to reschedule your test date to another date within the testing period and/or to select a different testing center after you receive your Admission Notice. Instructions for rescheduling your test date, time or location will be included in the Admission Notice.

The Notice of Examination is amended to include a description of the Physical Ability Test.

This examination process is being conducted under the supervision of the United States District Court for the Eastern District of New York and is subject to that Court's approval as a result of litigation captioned *United States and The Vulcan Society, et al. v. City of New York*, 07 CV 2067.

READ THIS NOTICE IN ITS ENTIRETY BEFORE YOU SUBMIT YOUR APPLICATION

WHAT THE JOB INVOLVES: Under supervision, Firefighters assist in the control and extinguishment of fires, in providing pre-hospital emergency medical care, and in the enforcement of laws, ordinances, rules and regulations regarding the prevention, control and extinguishment of fires, as well as perform Fire Safety Education activities; perform inspections and related enforcement duties to assure compliance with provisions of the Fire Prevention Code and applicable sections of the Building Code, Multiple Dwelling Code, Housing Maintenance Code, Labor Law and other laws, rules and regulations, within enforcement purviews of the New York City Fire Department; perform inspections of equipment and schedule as necessary the maintenance of various tools and equipment, including but not limited to power tools, company apparatus, Self-Contained Breathing Apparatus (S.C.B.A.) and other personal safety equipment; and perform related work.

Some of the physical activities performed by Firefighters and environmental conditions experienced are: wearing protective clothing, such as bunker suit, helmet, boots and breathing apparatus; crawling, crouching and standing, often for prolonged periods, while extinguishing fires; driving fire apparatus and other Department vehicles; climbing stairs, ladders and fire escapes; raising portable ladders; using forcible entry tools, such as axes, sledge hammers, power saws and hydraulic tools; searching for victims in smoke-filled environments; carrying or dragging victims from dangerous locations; connecting, stretching and operating hose lines; locating hidden fire by feel and smell; providing medical assistance to injured or ill citizens; and providing control and mitigation of hazardous materials incidents while wearing chemical protective clothing.

(This is a brief description of what you might do in this position and does not include all the duties.)

THE SALARY: The current minimum salary is \$39,370 per annum. Incumbents will receive salary increments reaching \$76,488 per annum at the completion of five years of employment. All rates are subject to change. In addition, employees receive holiday, night shift and overtime pay.

READ CAREFULLY AND SAVE FOR FUTURE REFERENCE

HOW TO APPLY: If you believe that you meet the requirements in the "How to Qualify" section, you may submit an application on the Online Application System (OASys) at www.nyc.gov/examsforjobs. Follow the onscreen application instructions for electronically submitting your application and payment, and completing any required forms. A valid email address is required to file online. Several internet service providers, including, but not limited to, Google, Yahoo, Hotmail and AOL, offer free email addresses. The following methods of payment are acceptable: major credit card, bank card associated with a bank account, or prepaid debit card which you may purchase online or at various retail outlets, or money order payable to DCAS (Exams). If you pay online by credit card, bank card or debit card, you will receive a \$5.00 discount. Computer terminals for online filing, money order payments and paper applications will also be available for you to apply for this examination at the DCAS Computerized Testing Centers. The centers will have extended hours Monday through Saturday from 9:00 A.M. to 7:00 P.M.:

Manhattan
2 Lafayette Street
17th Floor
New York, NY 10007

Brooklyn
210 Joralemon Street
4th Floor
Brooklyn, NY 11201

Special Circumstances Form:

This form is included in the application package available at the DCAS Computerized Testing Centers and located on the DCAS website at http://www.nyc.gov/html/dcas/html/employment/civilservice_exams.shtml#examinationforms. This form gives important information about requesting an alternate test date because of religious observance or a special test accommodation for disability, claiming Veterans' or Legacy credit, and notifying DCAS of a change in your mailing address. Follow all instructions on the Special Circumstances Form that pertain to you when you complete your "Application for Examination."

You may be given the test before we review your qualifications. You are responsible for determining whether or not you meet the qualification requirements for this examination prior to submitting your application. If you are marked "Not Qualified" your application fee will not be refunded and you will not receive a score.

AGE REQUIREMENT: Pursuant to Section 54 of the New York Civil Service Law and Section 15-103 of the Administrative Code, you must be at least 17½ years of age by the end of the application period and, except as noted below, you must not have reached your 29th birthday by the beginning of the application period to be eligible to take this examination. However, you must have reached your 21st birthday to be eligible for appointment.

Exceptions to the Age Requirement:

- Candidates who took Firefighter, Exam Nos. 6019 and 6506 must not have reached their 36th birthday by the beginning of the application period to be eligible to take this examination.
- Candidates on Special Military Lists for Firefighter, Exam No. 2043 in existence on or after July 22, 2009, must not have reached their 36th birthday by the beginning of the application period to be eligible to take this examination.
- All persons who were engaged in military duty as defined in Section 243 of the New York State Military Law (including candidates on the lists noted above) may deduct from their actual age the length of time spent in such military duty up to a maximum deduction of six years.

THE EXAMINATION: The examination will include a computer-based test (CBT) and a physical ability test. You must achieve passing scores on the CBT and the physical ability test in order to be eligible for further consideration in the selection process.

THE COMPUTER-BASED TEST: The CBT is designed to assess important abilities and aptitudes that are required to successfully learn and perform the work of a Firefighter. The test will evaluate basic abilities, such as Reading, Listening, Problem Solving, Basic Arithmetic and related areas. It also will assess the way candidates approach work, interact with others, and concentrate on details.

Before you take the exam, you will have the opportunity to view a computer-based tutorial so that you are familiar with computer-based testing and the various question types. By **January 11, 2012**, it is expected that the tutorial will be available for viewing on the DCAS website at <http://www.nyc.gov/html/dcas/html/home/home.shtml>. You are encouraged to view the tutorial.

Note: You are **not** permitted to enter the test site with cellular phones, beepers, pagers, cameras, portable media players, or other electronic devices. Calculators and electronic devices with an alphabetic keyboard or with word processing or data recording abilities such as planners, organizers, etc. are **not** permitted. If you are found to be in possession of any of these devices, you may not receive your test results, your test score may be nullified, and your application fee will not be refunded. You must leave the test site once you finish the test. If you leave the test site after being fingerprinted but before finishing the test, you will not be permitted to re-enter. If you disregard this instruction and re-enter the test site, you may not receive your results, your test score may be nullified, and your application fee will not be refunded.

ADMISSION NOTICE: You will be assigned a test date and time at one of a number of testing centers located in the New York City area. You should receive your Admission Notice in the mail by January 27, 2012. Please be sure to read your examination schedule and instructions included in this Admission Notice very carefully. Failure to follow these instructions may delay or deny your ability to take the exam.

If you do not receive your Admission Notice by January 27th, you should email fdnyschedule@psionline.com with your full name and social security number to obtain your duplicate Admission Notice. The duplicate Admission Notice will be emailed to you within 4 business days of your email being received. If you do not have an email account, you may call 1-800-701-0289 beginning February 4th to obtain a duplicate Admission Notice. Please be prepared to provide your full name and social security number when you call that number.

THE PHYSICAL ABILITY TEST: Candidates who pass the computer-based test will be scheduled to take the physical ability test prior to admission to the Fire Academy as vacancies occur. The physical ability test used will be the Candidate Physical Ability Test (CPAT), which is scored on a pass/fail basis. This test consists of a series of 8 events designed to assess the ability to perform the physical aspects of the job of a Firefighter. The test events are: stair climb, hose drag, equipment carry, ladder raise and extension, forcible entry, search, rescue, and ceiling breach and pull. A more detailed description of the physical test will be distributed to candidates before they are scheduled for the physical ability test, and is expected to be available for viewing by April 2, 2012 on the DCAS website at <http://www.nyc.gov/html/dcas/html/home/home.shtml>. You are encouraged to view this information.

You will be required to pay an additional fee of \$25.00 prior to taking the physical ability test. Failure to pay the additional fee on the date you are scheduled to take the physical ability test will result in disqualification from further participation in the examination. The additional fee for the physical ability test will be waived for candidates who demonstrate that they are unemployed or receiving public assistance at the time of the physical ability test. Medical evidence to allow participation in the physical ability test may be required and the Department of Citywide Administrative Services reserves the right to exclude from the physical ability test any candidates who are medically unfit.

NEW YORK CITY RESIDENCY CREDIT: Points equivalent to five percent of the maximum possible final exam score will be added to the final exam score of those candidates who qualify for the New York City Residency Credit. To be eligible for the residency credit, a candidate must achieve a passing score on the examination, and must produce proof, as listed below, of the candidate's continuous residency in New York City from July 1, 2010 through June 30, 2011. Candidates interested in seeking the residency credit must apply by following the instructions which will be provided on the date of the computer-based test. **Merely supplying a New York City address on the application form for this examination does not serve as a request for the residency credit. Requests for residency credit must be received by DCAS before the eligible list is established.**

Eligibility for the residency credit will be investigated and verified by the Fire Department of New York. Inability to produce the required verification of residency documents for the continuous period of residency will result in the forfeiture of the New York City Residency Credit and an adjustment in the final score. Under no circumstances shall a Post Office (P.O. Box) address be accepted as proof of residency. **As in the case of any intentional misrepresentation of a material fact on an employment application, candidates who claim New York City Residency Credit and who are determined to have intentionally misrepresented facts concerning New York City residency shall be terminated if they have already been appointed and/or disqualified and their names shall be removed from the eligible list, and they may be subject to criminal sanctions.**

Candidates applying for New York City Residency Credit must provide any three of the following:

- Mortgage in the candidate's name valid during the 12-month period between July 1, 2010 and June 30, 2011
- Cable bills for the 12-month period prior to July 1, 2011
- Telephone bills for the 12-month period prior to July 1, 2011
- Gas, electric or water utility bills for the 12-month period prior to July 1, 2011
- Checking or savings account statements for the 12-month period prior to July 1, 2011
- Credit card statements for the 12-month period prior to July 1, 2011 and
- W-2 form(s) from the candidate's employer for the 2010 and 2011 tax years.

Candidates aged 21 or younger have the option of submitting three of the proofs listed above or, as an alternative, candidates who are 21 years of age or younger at the time of their application to take the exam may provide:

- (a) A diploma from a New York City Public High School; **or**
- (b) A transcript from a private high school in New York City showing a New York City address for the candidate; **or**
- (c) A GED certificate issued from a New York City institution during the 12-month period prior to July 1, 2011 to a candidate who presents evidence that his last school enrollment was in a New York City Public High School;

-AND-

one additional proof of residency, from the list above.

The Fire Department of New York reserves the right to accept other documents in lieu of the above, under special circumstances which validate various living arrangements as determined by the Department and approved by the Department of Citywide Administrative Services.

VETERANS' PREFERENCE CREDITS AND LEGACY CREDITS: The New York State Civil Service Law provides that additional points can be added to the final score of a candidate who is, or by the date of appointment expects to be, an honorably discharged veteran or disabled veteran of the Armed Forces of the United States who has served during a time of war, as specified in New York State law; a candidate whose parent has died while engaged in the discharge of his or her duties as a Police Officer or Firefighter, a candidate who is the sibling of a Police Officer or Firefighter who was killed in the service of New York City as a result of the World Trade Center attack on September 11, 2001, or a candidate who is the child of an FDNY EMS member who was killed in the service of New York City as a result of the World Trade Center attack on September 11, 2001. To be eligible for any of these credits, a candidate must achieve a passing score on the examination. **This is only an overview;** specific conditions and instructions for requesting Veterans' Preference Credits and/or Legacy Credits and additional information are indicated in the Special Circumstances Form included in the Application Package available at the DCAS Computerized Testing Centers and on the DCAS website at www.nyc.gov/html/dcas/html/employment/employ.shtml.

EXAMINATION RESULTS: You will be notified by mail of your test results. If you pass the CBT and the physical ability test and meet all requirements and conditions, you will be considered for appointment when your name is reached on the eligible list. Use of the exam in hiring is subject to approval by the Court in *United States v. City of New York*, 07-cv2067. The Court will decide whether to approve the exam following its administration to the applicants.

HOW TO QUALIFY FOR APPOINTMENT:

Education and Experience Requirements: By the date of appointment, you must have a four-year high school diploma or its educational equivalent, and:

1. 15 college semester credits earned as a result of satisfactory completion of course work at a college or university accredited by an accrediting body recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation ("CHEA"); or
2. full-time U.S. military service with an honorable discharge; or
3. 6 months of full-time, satisfactory paid work experience.

Driver License Requirement: You must have a New York State Driver License at the time of appointment. If you have moving violations, license suspension(s) or an accident record, you may be disqualified. This license must be maintained for the duration of your employment.

Medical and Psychological Requirements: Medical and psychological guidelines have been established for the position of Firefighter. You will be examined to determine whether you can perform the essential functions of the position of Firefighter. Additionally, since employees are expected to continue to perform the essential functions of the position of Firefighter throughout their careers, you may be medically tested periodically throughout your career. Where appropriate, a reasonable accommodation will be provided for a person with a disability to enable him or her to take these medical and psychological examinations, and/or to perform the essential functions of the job.

Drug Screening Requirement: You must pass a drug screening in order to be appointed. Drug tests will also be administered to all probationary Firefighters as part of the medical examination prior to the completion of probation. Additionally, Firefighters will be subject to periodic random drug testing throughout their careers.

Residency Requirement: The New York Public Officers Law requires that any person employed as a Firefighter in the Fire Department of New York be a resident of the City of New York or of Nassau, Westchester, Suffolk, Orange, Rockland or Putnam Counties.

English Language Requirement: You must be able to understand and be understood in English.

Proof of Identity: Under the Immigration Reform and Control Act of 1986, you must be able to prove your identity and your right to obtain employment in the United States prior to employment with the City of New York.

Citizenship Requirement: United States citizenship is required at the time of appointment.

Character and Background: Proof of good character and satisfactory background will be an absolute prerequisite to appointment. Persons convicted of a felony or who have received a dishonorable discharge from the Armed Forces are not eligible for appointment to this position.

CFR-D REQUIREMENT: You will be required to possess Certified First Responder Certification with Defibrillation (CFR-D) by the end of your probationary period. This certification must be maintained for the duration of employment.

If you do not possess a CFR-D certificate at the time of appointment, you will be required to obtain the CFR-D certificate by the end of your probationary period. FDNY provides a CFR-D training program during the probationary Firefighter training course. Upon successful completion of FDNY's CFR-D course and receipt of your CFR-D certificate, payroll deductions will commence at a rate of \$30 per pay period until the total cost of the training course is recouped by FDNY.

Probationary Firefighters who fail to obtain a CFR-D certificate by the end of their probationary period will be terminated.

ADDITIONAL INFORMATION:

Investigation: You will be investigated prior to appointment and must pay a \$75 fee for fingerprint screening. This fee cannot be waived. At the time of investigation and at the time of appointment, you must present originals or certified copies of all required documents and proof, including but not limited to proof of date and place of birth by transcript of record from the Bureau of Vital Statistics or other satisfactory evidence, naturalization papers if necessary, proof of any military service, and proof of meeting educational requirements. Any willful misstatement will be cause for disqualification, and failure to present any documents required for investigation will be cause for discontinuance of the investigation process.

Probationary Period: The probationary period is 18 months. As part of the probationary period, probationers will be required to successfully complete a prescribed training course. Probationers who fail to complete successfully such training course may be terminated by the agency head.

PENALTY FOR MISREPRESENTATION: Any intentional misrepresentation on the application or during the application, examination, and appointment processes shall result in disqualification, even after appointment, from the position of Firefighter and may result in criminal prosecution.

The General Examination Regulations of the Department of Citywide Administrative Services apply to this examination and are part of this Notice of Examination. They are posted and copies are available in the Application Unit of the Division of Citywide Personnel Services, 1 Centre Street, 14th Floor, NY, NY 10007.

The City of New York is an Equal Opportunity Employer.
Title Code No. 70310; Fire Service.

For information about other exams, and your exam or list status, call 212-669-1357.
Internet: nyc.gov/dcas

Exhibit 2

ALTERNATIVE NYC RESIDENCY CREDIT DOCUMENTS

The following documents will be considered in combination with, as an alternative to, or to augment those NYC residency documents detailed in the NOE for the required time period of 07/01/2010 through 06/30/2011. All documents must show the candidate's name and address.

RESIDENCE	SCHOOLS	EMPLOYMENT	MILITARY	MISCELLANEOUS
Section 8 Housing Annual Family Composition Statements on file with the New York City Department of Housing Preservation (HPD) or New York City Housing Authority (NYCHA)	Student tuition bills or loan agreements or statements	Any tax document issued by a government entity or employer that includes the candidate's name and address and covers some or all of the period	Military DD-214 that shows a New York City address as the Home of Record, and Record of Service reflecting some or all of the required time period. (May include Mailing Address After Separation within the time period.)	Financial (portfolio) documents or statements in the candidate's name showing a New York City address for the period in question
Verification letter from the management office for a NYCHA apartment building for the period in question	Transcripts or other documents such as from a registrar or financial aid office from colleges or trade schools for the period in question showing a home address	Printed pay stubs/statements with name and address of record	Letters received from the military (e.g., GI Benefits, Department of Veterans Affairs correspondence) showing NYC residency during the period	Official letters from utilities or financial institutions in lieu of actual statements that the candidate resided at a NYC address
Property tax bills for 2010/2011	Official school letter confirming address of record			Parent's 2010 and 2011 tax returns showing a NYC address with the candidate's name included as a dependent Statements from Credit Unions, i.e., MCU, USN
				Driver's license plus registration plus insurance proof reflecting the same NYC address(es)

Exhibit 3

- B. Be permanently employed in an eligible title or the candidate's name must appear on a Preferred List for an eligible title at the time of promotion;
- C. Serve in an eligible title or titles for a period of at least two years. Time served prior to a break in service of more than one year shall not be credited to meeting the two year requirement; and
- D. Be in possession of valid required N.Y.S. EMS certifications.

5. **CASES FOR REVIEW BY THE PERSONNEL REVIEW BOARD (PRB)**

5.1 **Criteria for PRB Review** – Candidates meeting the following criteria shall be subject to review by the PRB:

5.1.1 History of one or more arrests or convictions (except as otherwise provided in section 4.8.3 above).

5.1.2 Negative Employment History: One or more negative employment actions . Examples of Negative Employment Actions shall include but not be limited to:

- A. Suspension or discharge, or resignation to avoid discharge, for neglect of duties, violation of job safety standards, violation of rules or standards; OR
- B. Suspension or discharge, or resignation to avoid discharge, for appropriating money or property for personal use or purpose; OR
- C. Suspension, discharge, resignation to avoid discharge, or any disciplinary action for use of alcohol or illegal substances while on duty.

5.1.3 Negative Driving History: accumulation of eight or more points under the New York State point system, or the equivalent point value under another state's system, on the candidate's driving record at the time of the application.

5.1.4 Negative Military History: disciplinary record not rising to the level of a Dishonorable Discharge.

5.1.5 Where the CID Unit recommends the use of "considered but not selected" designation based on overall documentation or information (other than documentation and information specified in Sections 5.1.1 to 5.1.4, above)

showing a history that would call the candidate's appointment into question (e.g., unexplained extended gaps in employment).

Exhibit 4

DRAFT

To: ALL CANDIDATE INVESTIGATION DIVISION (CID) PERSONNEL

From: DONAY J. QUEENAN
ASSISTANT COMMISSIONER FOR HUMAN RESOURCES

Re: **CASES FOR REVIEW BY THE PERSONNEL REVIEW BOARD (PRB)**

Date: _____

Commencing on _____, this memorandum will supersede *Section 5.1* of the CID Investigation Guidelines for the Firefighter Title, dated October 3, 2012, which lists those circumstances under which a candidate will be reviewed by the PRB.

Candidates meeting the following criteria shall be subject to review by the PRB:

1. **Arrest/Conviction History**

- 1.1 The candidate has been convicted of one (1) or more felony offenses and the candidate has provided a Certificate of Good Conduct. A conviction occurs when a court or jury has issued a guilty verdict, or the candidate has pled "guilty" or "nolo contendere" or "no contest."
- 1.2 The candidate has been convicted of three (3) or more violations or one or more misdemeanor offenses. A conviction occurs when a court or jury has issued a guilty verdict, or the candidate has pled "guilty" or "nolo contendere" or "no contest."
- 1.3 On one (1) or more occasions, the candidate was arrested and was charged with committing a misdemeanor or felony offense at either his or her arrest or arraignment.
- 1.4 In three (3) or more cases the candidate was issued an Adjournment In Contemplation of Dismissal (ACD) and the cases were dismissed.

2. **Military History**

- 2.1 The candidate received a less than an Honorable discharge (but not a Dishonorable discharge).

3. **Motor Vehicle Operation History**

3.1 The candidate's license for the operation of any motor vehicle was suspended and/or revoked on three (3) or more unrelated occasions during the following period of time: three (3) years prior to the candidate's intake date with CID and while his/her candidacy for appointment to the title of Firefighter is pending.

3.2 More than eight (8) active points appear on the candidate's license.

4. **Employment History**

4.1 The candidate was terminated or the candidate resigned in lieu of termination.

4.2 The candidate was disciplined by an employer during the five (5) year period prior to the candidate's intake date.

4.3 Negative employment history as a City employee.

4.4 A candidate's prior employer did not recommend the candidate for hiring by the FDNY or stated that it would not consider the candidate for re-hiring.

5. **Education History**

5.1 The candidate was suspended by an educational institution within five (5) years of the candidate's intake date.

5.2 The candidate's education history or verification indicated disciplinary or behavioral concerns that occurred within five (5) years of the candidate's intake date.

6. **Miscellaneous**

6.1 A candidate's reference provided negative information about the candidate.

6.3 The CID Director or Deputy Director requests consideration of a case based on overall documentation or information (other than documentation and information specified in Sections 1 to 6.1 above) showing a history that would call the candidate's appointment into question.

Any questions regarding this memorandum shall be directed to the CID Director or Deputy Director.