

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 TWENTY-FOURTH PERIODIC REPORT TO THE COURT

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I. Executive Summary

This report summarizes activities relating to compliance by the City of New York (the “City”) with the Modified Remedial Order during the period from April 9, 2018, when the Monitor’s Twenty-Third Periodic Report (Dkt. # 1844) was filed, to July 16, 2018. The report also summarizes activities relating to the implementation of the Parties’ settlement of Plaintiffs-Intervenors’ disparate treatment claims (the “Disparate Treatment Settlement”), which the Parties agreed would fall within the Monitor’s authority as defined in the Modified Remedial Order. *See* Stipulation and Order dated June 5, 2015 (Dkt. # 1599); *see also* Memorandum & Order dated June 5, 2015 (Dkt. # 1598) at 10.

Part II of the report summarizes activities relating to the FDNY’s recruitment efforts, including the initial steps in the hiring process for candidates who took the recent open competitive firefighter examination (Exam 7001). Since the last periodic report, the City, the Monitor, and the other Parties have focused on the FDNY’s efforts to maintain contact with test-takers, sustain their interest in becoming firefighters, and provide the resources they will need to be prepared for further stages of the hiring process. The new “eligible list” of candidates produced by Exam 7001 will last four years, and this means that many candidates will wait for years before being called up for further processing and possible appointment as firefighters. The record on which the Court based the Modified Remedial Order indicated that, historically, many firefighter candidates drop out during this period, and the wait may disproportionately affect candidates who do not have a network of friends and family to encourage them during the waiting period. It is therefore critically important for the FDNY to develop and execute effective plans to mitigate non-traditional candidate attrition over the long term. It is also important for the FDNY to ensure that candidates have access to information about how to effectively prepare

for and succeed in the hiring process, even if they do not have access to relatives or friends who are personally familiar with the FDNY.

Accordingly, since the last periodic report, the Monitor has continued to review the City's attrition mitigation plans and provide comments and recommendations. The City plans to repeat many programs that it offered to Exam 2000 candidates to help them prepare for the hiring process.

The Monitor, in consultation with its expert, has suggested that the City augment these efforts with increased emphasis on social media – including invitations from senior leadership to follow FDNY social media, establishing closed Facebook groups for candidates, and developing a smart phone app to facilitate communication. The Monitor also has suggested that the City direct resources towards candidates while they are waiting to be called from the list to help maintain engagement and interest – in addition to the help it provides to candidates after they have been called up. The City has indicated that it does not intend to adopt the Monitor's suggestions with respect to Facebook groups and a smart phone app, preferring to maintain contact with candidates via a combination of direct communications and the JoinFDNY website. However, the Vulcan Society is considering whether to set up a closed Facebook group of its own for candidates on the Exam 7001 list.

Following the release of Exam 7001 scores on June 13, 2018, the FDNY has taken the first steps in the post-exam hiring process for candidates on the new open competitive list – sending notifications to the first “band” or group of candidates to be called up and encouraging them to sign up for CPAT¹ preparatory sessions, which will begin in the first week in August.

¹ The “Candidate Physical Ability Test,” which candidates must pass to progress to the further stages of the screening process.

The City plans to administer the CPAT to this first group of candidates in the fall, and the first Academy class to include Exam 7001 candidates will begin in May 2019.

The City and the other Parties have also continued to pursue efforts to ensure that test-takers with pending applications take the necessary steps to complete their applications (either by paying application fees or by completing requests for fee waivers), that DCAS has properly processed those requests, and that eligible New York City residents claim the exam bonus points to which they are entitled. The deadline for pending applicants to complete their applications has been extended to August 6. Candidates may assert claims for the residency credit until the eligible list is established.

Now that scores for Exam 7001 have been released, the City is in a position to proceed with a complete retrospective analysis of its recruitment campaign. The Monitor expects that this process will ultimately include analysis of examination results, candidate demographics, and other data points relevant to the effectiveness of the FDNY's recruitment of black and Hispanic candidates.² The analysis is intended to identify methods that were most effective in attracting and retaining successful black and Hispanic firefighter candidates and areas where different strategies or resources may need to be implemented to aid in the goal of achieving a diverse workforce. The analytical findings will provide the City with guidance for future campaigns. The Parties will also be reviewing the City's compliance with the Disparate Treatment Settlement, which obligates the City to use its "best efforts to recruit black test-takers in proportions closely approximating the representation of age eligible blacks in the New York City labor market, plus an additional 3%." The Monitor has also asked the City to conduct a survey

² See Modified Remedial Order ¶¶ 15, 26(a), 32, 43(m).

of Exam 2000 candidates, to gain insight into the characteristics and interests of successful candidates, and the neighborhoods from which they come.

Part II also discusses the Monitor's efforts with regard to certain issues raised by Plaintiffs-Intervenors concerning initial assignments for probationary firefighters, including compliance with the requirement, under the Disparate Treatment Settlement, that New York City residents be given first priority for assignment to their home divisions "to the extent reasonable, practicable and consistent with operational needs." It also provides an update on developments and discussions regarding initiatives associated with the Working Group established by the Disparate Treatment Settlement.

Part III focuses on the City's development of data systems to provide data that will help it track its compliance with applicable equal employment laws, including its obligations to assess the impact of recruitment techniques and hiring policies on different demographic groups and to evaluate the impact of policies across the FDNY workforce. Most notably, Part III discusses the City's Consolidated Candidate Tracking System ("CCTS"). Based on a demonstration the City provided on December 19, 2017, the CCTS appears capable of serving as a repository for information from all stages of the recruitment and hiring process – from a prospective firefighter's first contact with the recruitment office through assignment to a firehouse on graduation from the Academy. The database also should be able to serve as a searchable analytical tool facilitating comparisons between outcomes for different demographic groups in each stage of the hiring process. However, as previously noted, some important search capabilities appear to be available only to administrators through the "back end" of the system, rather than through user interfaces accessible to FDNY supervisors and other non-IT personnel. As requested at the December 19, 2017 meeting, the City has provided data definitions for

categories of data from some of the sources for the CCTS (including the Electronic Medical Record database); but definitions for numerous other data fields and values have been delayed. Once these are received, the Monitor hopes to provide an update in the next periodic report concerning discussions among the Parties about building additional queries into the “front end” of the database.

Part III also discusses the City’s continuing use of its recruitment database and issues relating to the Candidate Tracking Spreadsheet, which compiled data from the hiring process for candidates who took Exams 2000 and 2500.

Part IV focuses on the FDNY’s EEO function, including activities relating to messaging, compliance and accountability, and investigations.

As reported in Part IV, since the last periodic report, the FDNY has added positions to its EEO Office, and it is in the process of filling the newly created positions. Once fully staffed, the EEO Office will include 16 attorneys and six non-attorney staff. For comparison, as of the Court’s September 30, 2011 Findings of Fact, the Office employed only four full time attorneys, one temporary attorney, and five non-attorney staff. It is hoped that the added staff will, among other things, enable the EEO Office to investigate EEO complaints more expeditiously and effectively.

Part IV also discusses the City’s efforts to enhance its EEO messaging. Before the Monitor’s previous periodic report, the City described plans for a number of messaging initiatives, some based on suggestions from the Monitor; and the Monitor has continued to track the City’s implementation of those plans. While the City’s plans generally appear encouraging, the Monitor is concerned that the rollout of at least one significant component – “voice alarm drills” in which firefighters will be shown videos of senior leadership delivering EEO messages

– has been delayed. More generally, the Monitor continues to believe that additional, personal participation by officers and senior leadership in the delivery of EEO messaging is necessary for the Department to demonstrate its commitment to diversity and inclusion. The Monitor has also expressed its view (and that of its experts) that public reports of discrimination and harassment can offer FDNY leadership a valuable opportunity to strongly condemn discriminatory conduct and publicly affirm the Department’s commitment to an inclusive and diverse workforce in principle, even if the Department deems it inappropriate to comment on specific allegations or incidents.

Part IV also reports on initiatives intended to improve compliance with EEO laws and policies and assess the EEO climate within the FDNY. On June 26, 2018, the City circulated a draft climate survey, and the Monitor and the Parties have scheduled an initial meeting for July 19, 2018 to discuss the draft. Although time is now short and the City is still attempting to finalize the logistics of the survey, the Monitor believes it is still possible for the City to administer the survey in September as it previously projected; it plans to work with the City and the other Parties expeditiously toward that goal. The Monitor has also continued to work with the City to obtain the information it needs to assess the effectiveness of the FDNY’s chain of command reporting system on workplace professionalism issues. And the Monitor and the Parties are also discussing the most informative and practicable way for the City to provide information showing how EEO criteria have been integrated into officer performance reviews. In addition, the Monitor has asked the City to provide an account of analyses it conducts, or plans to conduct, on a regular basis to examine the impact of FDNY policies and practices on its workforce; and the City plans to provide the requested information by mid-August.

Part IV also describes the Monitor’s ongoing review and assessment of the FDNY’s EEO investigative function – including topics to be covered in the report on the EEO Office that that Court has directed the Monitor to provide. It also reports on the FDNY’s EEO case management database, created during the course of the Monitorship, which enables the EEO Office to record and track allegations and investigative steps, and to identify patterns of alleged violations. The FDNY provided the Monitor and the other Parties with a live demonstration of the database on April 12, 2018.

Part V reports on efforts to analyze the degree and source of disparate impact on black and Hispanic candidates in the Medical Exam.³

The Monitor has conducted and continues to conduct a number of disparate impact analyses of Exam 2000 Medical Exam results using data from a combination of sources provided by the City, including data provided during the current reporting period. An analysis completed by the Monitor and shared with the City on May 8 indicates that there is disparate impact in the Medical Exam overall. The next step is to determine which component(s) are responsible for that impact.

With regard to the City’s long-running efforts to validate the stairmill component of the Medical Exam, the City has engaged PSI Services LLC (“PSI”), which has assisted the City with validation of the written examination and the Functional Skills Test (“FST”), to conduct a validation study of its current stairmill test. PSI has conducted conference calls, consulting with experts engaged by the Monitor, the United States, and Plaintiffs-Intervenors to create a plan for the validation. The City previously projected that the stairmill validation study would be completed in April of 2018 but has missed that target. At the June 28, 2018 status conference,

³ The Medical Exam is administered by the Bureau of Health Services (“BHS”).

the Court urged the City to complete the study before candidates from the Exam 7001 list begin to take the Medical Exam, and the Monitor plans to work closely with the City to meet that deadline.

Part VI reports on efforts by the Monitor and the Parties to determine whether and how the FDNY's character review process has a disparate impact on black and/or Hispanic candidates, and to develop reforms to reduce any such impact and ensure that screening criteria and procedures are job-related.

Part VII discusses issues related to Exam 7501 (the promotional exam given in December 2016) and Exam 7001 (the open competitive exam given in September and October 2017).

Part VIII summarizes a range of additional issues addressed by the Monitor and the Parties during the period covered by this report.

II. Recruitment and Attrition Mitigation

A. Recruitment and Follow-Up with Test-Takers

Candidate scores for the most recent open competitive firefighter examination (Exam 7001) were released on June 13, 2018.⁴ The City has indicated that the Exam 7001 eligible list is likely to be "established" in February 2019. At that point, the four-year period in which candidates may be hired from the list will commence.

At the June 28, 2018 status conference, the City reported that the first Fire Academy class to include open competitive candidates from the new eligible list would commence in May 2019. (The December 2018 Academy class will consist entirely of promotional candidates and any special military list additions.) Candidates will be invited in rank order to proceed with

⁴ The published scores include bonus points based on New York City residence and other factors, which are subject to verification, and which may change to the extent that candidates assert new claims for credits to which they are entitled or are found to have asserted claims to which they are not entitled.

subsequent phases of the screening process, beginning with the CPAT. At the June 28 status conference, the City reported that candidates would begin to go through the CPAT in the fall of this year; and it reported that it had sent notifications to the first “band” or group of candidates to be called off the eligible list, encouraging them to sign up for information and preparatory sessions for the CPAT, which will begin in the first week in August. The City reported that 48% of the first group contacted had “RSVP’d” and planned to participate in the CPAT training program – including 200 of the 338 black candidates and 291 of the 536 Hispanic candidates called.

Both before and after the release of the scores, the City continued to conduct follow-up communications with test-takers – encouraging pending applicants to complete applications, reminding potentially eligible candidates who had not yet claimed residency credits to do so, and communicating messages intended to maintain candidates’ interest in the FDNY. Using information provided by the City, the Vulcan Society and the United States have also supplemented the City’s efforts by reaching out to black and Hispanic candidates who have pending applications. With input from the Monitor and the other Parties, the City has also continued to develop and has begun to implement longer term plans to mitigate attrition over the four-year life of the eligible list – plans intended to sustain candidates and support their commitment to becoming firefighters throughout the duration of the list, and help them to be prepared when they are called to be screened for hiring.

1. Pending Applicants

According to the City’s report at the June 28 status conference, a total of 900 applications, including 406 black and 262 Hispanic candidates’ applications, remain pending

because the applicants have neither paid application fees nor obtained fee waivers.⁵ Both during and after the examination period, the City has communicated with pending applicants to encourage them to complete applications, and in recent weeks the Vulcan Society and the United States have supplemented the City's efforts with communications targeting black and Hispanic pending applicants.

With the agreement of all Parties, the City extended the July 6, 2018 deadline to complete pending applications to August 6, 2018.

2. Residency Credits

The City has also continued to communicate with candidates who may be eligible for, but have not yet claimed, credits for New York City residency, which would add points to their exam scores and improve their positions on the hiring list. As reported at the June 28 status conference, 3,799 of the 46,000 test-takers, including 1,166 black and 1,047 Hispanics test-takers, did not claim the residency credit despite having listed New York City addresses.⁶ Not every candidate with a current New York City address is necessarily entitled to the credit, which is based on proof of residency during a time frame prior to the Exam 7001 application period. But to the extent that candidates who may be entitled to the credit have neglected to claim it, the City is endeavoring to make them aware of their potential eligibility. The Vulcan Society and

⁵ For comparison, as of December 14, 2017, approximately six weeks after the end of the examination period, the City reported that there were 550 pending applications for black candidates and 337 for Hispanic candidates.

⁶ For comparison, the City reports that as of December 14, 2017, approximately six weeks after the end of the examination period, the City reported that 7,966 of the 46,000 test-takers, including 1,720 black and 1,744 Hispanic test takers did not claim the residency credit despite having listed New York City addresses.

the United States will supplement the City's efforts to contact this group and encourage those with valid claims to request the credit, using contact information provided by the City.⁷

3. Attrition Mitigation

As previously reported, on February 26, 2018, the City provided the Monitor and the other Parties with an outline of its long-term plans to maintain contact with test-takers, sustain their interest in becoming firefighters, and provide and publicize resources that will prepare them for further stages of the hiring process. *See* Monitor's Twenty-Third Periodic Report at 10.

The City's outline listed a number of initiatives:

- CPAT Preparation Program – a 10-12-week, “invitation only,” physical preparation program for candidates who have been called off the hiring list.
- Firefighter Candidate Mentoring Program – a voluntary program providing mentoring to candidates from the beginning of the hiring process through their first month in a firehouse.
- Fitness Awareness Program – a voluntary, “invitation only,” program intended to ensure that firefighter candidates maintain the level of physical fitness required for the Fire Academy.
- FDNY Social Media Communications – including coverage of FDNY events, and photo and video postings (planned postings include inspirational videos about firefighters).
- Coordination with affinity groups.

On May 7, 2018, the City met with the other Parties and the Monitor to provide additional details and updates on its attrition mitigation plans; and the Monitor and the other Parties also offered a number of comments and suggestion regarding the City's plans.

⁷ At the June 28 status conference, in response to allegations that some candidates had incorrectly claimed other credits – such as credits awarded to candidates with FDNY family members who died as a result of the September 11 attacks -- the City noted that all claims for exam bonus points will be verified as part of the candidate investigation process.

The City confirmed that its outreach efforts will include phone, text, and email communications, and that the content will include videos and other materials telling the stories of successful minority candidates and communicating the value and benefits of the job. Such stories will convey the message that diverse candidates can make it through the hiring process and that the job is worth the wait even for those who are not called up early in the life of an eligible list. Content will also include material designed to familiarize candidates with the FDNY and its hiring process, such as a “day-in-the-life” video to be posted on social media and emailed to test-takers; communications on how to prepare for the CPAT; communications on the mentorship program and support available from affinity groups; and information about being called off the list and the various subsequent hiring steps. Communications will also be conducted via social media and the JoinFDNY website. The FDNY will also run live events such as “mobile academies” as part of its effort to maintain candidates’ interest and inform them about the job and the hiring process.

The City confirmed that its ARCS system (the same data and communications management system used in the pre-exam phases of the recruitment campaign) would be used to manage communications and track candidates’ reception of and responses to communications. The data maintained in ARCS may provide useful insight about the types of messaging that are most effective in reaching candidates. The City also reported that it plans to tailor messaging to different segments of the eligible list – candidates who are likely to be called up soon; those who are likely to be called up, but later; and those who are not likely to be called up.

The City has also created an online candidate portal to provide candidates with information and assist them in tracking their progress once they begin processing. The portal will allow candidates to directly access FDNY hiring process information that is also accessible

on the internet, and to review their progress through the steps of the candidate screening process once they have been called up off the eligible list.

Plaintiffs-Intervenors have suggested that the portal be expanded for use even by candidates who have not yet been called off the eligible list. But the City has expressed the view that the portal was designed for candidates currently undergoing processing and that the JoinFDNY website is preferable as a resource for candidates who have not yet been called off the list. Likewise, in response to suggestions from Plaintiffs-Intervenors and the Monitor that it develop and distribute a smart phone app to allow candidates to engage with the FDNY, the City has stated that, to avoid compatibility issues with various device platforms, it prefers to rely on a combination of the JoinFDNY website and email and text communications. The Monitor will continue to review the effectiveness of the FDNY's approach as candidate processing proceeds.

At the May 7 meeting and at the June 28 status conference, the City also confirmed that additional outreach specific to particular demographic groups will be conducted by Recruitment Coordinators dedicated to specific groups.

The Monitor made a number of suggestions at the May 7 meeting, based on consultations with its experts, including a proposal that the City establish one or more closed Facebook groups for Exam 7001 candidates, which could be dedicated to candidates in different positions on the eligible list. The Monitor also proposed, based on expert input, that the FDNY have senior leadership send invitations to candidates, asking them to follow FDNY social media and visit the JoinFDNY website, and that the City find ways to expand its CPAT preparation and fitness awareness programs to include candidates who have not yet been called off the list. For example, while the Monitor recognizes that it would be neither desirable nor practicable to offer CPAT preparation simultaneously to all candidates likely to be called off the eligible list, the

City should consider whether it can offer at least some preparatory resources to candidates who have not yet been called, but who are in the group of candidates likely to be called next.

At the June 28 status conference, the City responded to a number of these suggestions. The City indicated that it does not intend to set up its own closed Facebook groups for candidates, but as an alternative, it proposed that the Vulcan Society set up such a group, devoted to black candidates on the eligible list. The Parties and the Monitor had discussed such a proposal at their May 7 meeting, and the Vulcan Society indicated it would consider the idea. The Monitor will continue to work with the Parties to confirm that such a closed Facebook group is viable and to determine the best ways to use it to maintain the interest of candidates over the four-year life of the eligible list.

Also at the June 28 conference, the City reported that it is developing a video based on its Fitness Awareness Program to inform candidates about the level of physical fitness required for the job and provide guidance on how to achieve and maintain it. It also reported that it had taken steps to explore an idea proposed by the Vulcan Society at the May 7 meeting – encouraging candidates (especially those who will not be called for processing in the near term) to volunteer for NYC CERT (Community Emergency Response Team) in order to foster their interest in public service.

In the May 7 meeting, the Monitor continued to voice concerns that the City's attrition mitigation programs, which primarily target candidates who have been called for further processing, may not do enough to sustain the interest of candidates who may not be invited to take the next steps in the process for years. Based on its reports at the May 7 meeting and the June 28 conference, the City has taken some steps to address those concerns – for example, its commitment to developing messaging specific to groups of candidates and different levels on the

eligible list, and its plan to develop a fitness awareness video that can be distributed beyond live participants in the “invitation only” Fitness Awareness Program. To the extent that the Vulcan Society and other affinity groups establish closed Facebook groups and other social media connections to keep in touch with and encourage candidates, those efforts also appear likely to help sustain candidates’ interest over the long term. The Monitor urges the City to continue and expand its efforts to provide information, engagement, and, especially, preparation resources to candidates before they are called off the list. If years pass without candidates’ receiving encouragement to develop or maintain their level of preparedness for the post-exam screening process, it seems probable that at least some candidates will be unable to make up lost ground when they are eventually called, or may simply lose interest. The Monitor will continue to review the effectiveness of the City’s efforts and the content of its communications as processing from the Exam 7001 list proceeds.

At the May 7 meeting and in other communications with the other Parties and the Monitor, Plaintiffs-Intervenors urged the City to formulate a set of benchmarks against which it could measure the success of its attrition mitigation efforts. Specifically, Plaintiffs-Intervenors have suggested that the City use the attrition figures for each stage of the hiring process for Exam 2000 as a starting point to compare levels of attrition at the same stages of the Exam 7001 hiring process. The City has expressed concerns that use of such benchmarks or targets may not account for differences in candidates and the hiring process between Exam 2000 and Exam 7001. While the Monitor recognizes that some degree of uncertainty is inherent in any effort to set targets for the City’s efforts, the Exam 2000 attrition figures appear to be a reasonable reference point, given that the recruitment campaigns have many features in common. Even if the City remains unwilling to use Exam 2000 data, the Monitor believes that the City should formulate

some benchmarks against which to measure its performance in reducing attrition. During the life of the Exam 7001 list, the City will have the opportunity to observe the attrition rates for multiple groups of candidates called for processing into multiple Academy classes. And it will have the opportunity to make adjustments in its programs and messaging based on its results over time. To identify areas in which adjustments may be warranted, it will be helpful for the City to measure its success in detail with respect to each step in the hiring process.

B. After-Action Analysis

In addition to its ongoing work on attrition mitigation and the hiring process, the City has also committed to conduct an “after-action” analysis to evaluate the success of the recent Exam 7001 recruitment campaign, including the content and targeting of recruitment messages, and the various channels and techniques that were employed to communicate those messages, cultivate applicants, and convert them into test-takers. *See* Monitor’s Twenty-Second Periodic Report (Dkt. # 1821) at 14. Now that scores from the exam have been released, the City can proceed with all essential components of that analysis – those that relate to its success in attracting raw numbers of test-takers from particular demographic groups, and those focusing on the City’s effectiveness in attracting and cultivating *successful* black and Hispanic test-takers. The analysis is intended to provide the City with the data and insights that will help it improve the content and targeting of future campaigns. The City has indicated that it plans to complete the analysis in August.

As the Monitor has previously made clear, the City’s analyses should include assessments of resources and budgeting, along with an evaluation of any survey data collected in

the course of the campaign and in connection with the exam.⁸ *Id.* The after-action analysis must ultimately generate viable, data-driven plans for future recruitment efforts to attract successful black and Hispanic candidates to the FDNY.

The Parties will also be reviewing whether the City fulfilled its obligation under the Disparate Treatment Settlement to “use its best efforts to recruit black test-takers for open-competitive firefighter entrance exams in proportions closely approximating the representation of age eligible blacks in the New York City labor market, plus an additional 3% to remedy a history of underrepresentation of blacks in the New York City firefighter ranks.” The City and Plaintiffs-Intervenors disagree regarding the level of black representation among test-takers that should serve as the goal for the City’s “best efforts” under the Disparate Treatment Settlement. *See* Monitor’s Twenty-Third Periodic Report at 13. Before the active phase of test-taker recruitment began, the Parties agreed that the target figure for the City’s “best efforts” in recruiting black test-takers should be 28% of all test-takers for the open competitive examination.⁹ But in October 2017 – during the examination period – the City advised the Monitor and the Parties that it believed (based on a further examination of demographic data) that the 28% figure was higher than required under the terms of the Disparate Treatment Settlement, and the City has since advised the Court of its position that the 28% was merely an “interim” goal. The Plaintiffs-Intervenors dispute the City’s position. The issue of compliance with the Disparate Treatment Settlement remains to be determined.

⁸ An optional survey was administered to Exam 7001 test-takers in connection with the exam. And the Monitor has also asked the City to conduct a recruitment-focused survey of all individuals who (a) were hired by the FDNY from the Exam 2000 list or (b) were called off the list for further processing but voluntarily dropped out at some point. The City has circulated a draft of the survey, which is under discussion among the Monitor and the Parties.

⁹ The representation of black test-takers among total test-takers for Exam 7001 was 24.6%.

C. Assignment Issue

As discussed in detail in the Monitor's previous periodic report, Plaintiffs-Intervenors have raised issues relating to the City's compliance with Paragraph 1(d) of the Disparate Treatment Settlement, which requires the City to give "New York City residents who graduate from the Fire Academy first priority for placement into a fire company within the Division in which they live, to the extent reasonable, practicable and consistent with operational needs." *See* Monitor's Twenty-Third Periodic Report at 14. Following an analysis of an initial set of data provided by the City, the Monitor requested additional data and explanations pertaining to instances where firefighters had requested, but had not received, assignments to their home divisions. The City provided additional information in response to the Monitor's request on January 19, 2018. Following an analysis of that information, the Monitor posed further follow-up questions on April 25, 2018, including questions regarding the City's purported operational justifications for some assignments. The City provided further explanations on a call with the Monitor's team on June 14. The Monitor is currently evaluating the City's most recent responses to its queries and to Plaintiffs-Intervenors' concerns.

Plaintiffs-Intervenors have also raised additional concerns relating to firefighter assignments, including assignments to engine and ladder companies, which Plaintiffs-Intervenors contend demonstrate potential unlawful discrimination or retaliation. The City has disputed the Monitor's jurisdiction to evaluate the Plaintiffs-Intervenors' concerns in this area. Following written submissions by the Parties, the Monitor advised the Parties of its conclusions regarding the jurisdictional issue on July 16, 2018. The Monitor agrees with the City that it is appropriate for the FDNY EEO Office to examine Plaintiffs-Intervenors' allegations in the first instance. However, the Monitor has jurisdiction to determine whether the FDNY EEO Office has properly

investigated the allegations. Accordingly, the Monitor has remanded the issues raised by Plaintiffs-Intervenors' allegations to the EEO Office, and will review and evaluate the Office's investigation in accordance with the Modified Remedial Order.

D. Working Group

Since the last periodic report, the City has continued to work on initiatives undertaken by the Working Group Committee, which was created pursuant to the Disparate Treatment Settlement for the purpose of "creat[ing] educational and other opportunities that will enhance the ability of New York City students to pursue careers as New York City firefighters." Monitor's Twelfth Periodic Report (Dkt. # 1603) at 7-8 (citing Proposed Stipulation and Order (Dkt. # 1291-1) ¶ 1(e)). These initiatives include the implementation of the Fire Cadet title and the continued operation and expansion of the FDNY's Explorer Program.

The Fire Cadet title is being developed and implemented in accordance with the program proposal approved by the New York State Civil Service Commission. *See* Monitor's Seventeenth Periodic Report (Dkt. # 1714) at 11-12. As previously reported, the current timeline projects that the first Fire Cadet class will begin in 2021, in order to allow the class to take the next scheduled promotional examination to entry-level firefighter in 2022, and to ensure that these cadets will be eligible for promotion to the firefighter title with a successful score on the examination. *See* Monitor's Twenty-Third Periodic Report at 15. The City's current timeline sets out milestones for additional staffing and training (in 2019), recruitment (April through May 2020), an application period (in July 2020), and selection and investigation of prospective Fire Cadets (October 2020 through May 2021). *Id.* The City reports that it has begun creating a web-based application and database that will allow applicants to complete and submit applications

online, and will track each individual from application through the hiring process. The City anticipates beginning posting for additional staff in late 2018.

The FDNY Explorers Program, operated by the Department's Youth Workforce and Pipeline Programs Unit, provides training and mentoring to encourage participants to join the EMS. The Explorers program is conducted at posts located in high schools in diverse neighborhoods, with the goal of promoting diversity within the FDNY by providing a pathway for participants to become firefighters through promotion from the EMS. *See* Monitor's Nineteenth Periodic Report (Dkt. # 1761) at 17-18. The City reports that there are currently 171 Explorers registered at eight posts operating throughout New York City. The program currently has 34 active post advisors (each a full time FDNY employee). The City reports that it is continuing efforts to expand the program by adding Explorers, and that it is currently in the process of selecting new advisors.

III. Data Collection and Analysis

In the course of the Monitorship, the City has worked to develop and implement three principal data management systems relating to the FDNY's hiring process – two permanent systems and one interim data management tool. These are (1) a recruitment database managing data from the Office of Recruitment and Retention's contacts with candidates, from the initial contact with a recruit through the examination, and now including post-exam communications; (2) an end-to-end database tracking candidates' progress through the entire recruitment and hiring processes (which will be the key database for tracking and analyzing candidates' progress through the hiring process for Exam 7001); and (3) a Candidate Tracking Spreadsheet ("CTS"), which is a compilation of available data from each step in the hiring process for candidates who

took Exams 2000, 2500, and 0001¹⁰ – created as an interim data collection mechanism pending completion of the other information management systems.

A. Recruitment Database

As described in detail in previous periodic reports, the City’s recruitment database, developed by its consultant Vanguard Communications, manages data relating to potential candidates, gathered by the Office of Recruitment and Retention, from the candidates’ first contact with the FDNY through the written examination. *See, e.g.*, Monitor’s Fifteenth Periodic Report (Dkt. # 1669) at 7-8. The database, known as “ARCS,” was used to gather data, provide reports, and manage communications with recruitment contacts before, during, and after the application period for the recent open competitive exam – maintaining data on recruitment contacts and coordinating communications with applicants regarding exam preparation and logistics. *See* Monitor’s Twentieth Periodic Report (Dkt. # 1784) at 21-23; *see also* Monitor’s Twenty-First Periodic Report at 20-21.

Now that testing has concluded and scores have been released for Exam 7001, the FDNY has continued to use ARCS to track and manage its communications with test-takers – keeping track of the texts, emails and phone contacts with which it communicates with candidates about the stages of the hiring process, providing available resources, and endeavoring to maintain candidate interest in the FDNY.

The ARCS system will also be one of the main sources of data for the City’s retrospective analysis of its recruitment activities in the recent campaign, which will assess the

¹⁰ The eligible list of Exam 2000, for open competitive candidates, expired June 26, 2017; the list for Exam 2500, for promotional candidates, expired on December 19, 2016; and the list for Exam 0001, for priority hire candidates, expired June 19, 2017.

effectiveness of the City's recruitment strategies with particular groups, in an effort to improve the reach and refine the targeting of future campaigns.

B. End-to-End Hiring Database

The City's end-to-end hiring database, known as the Consolidated Candidate Tracking System ("CCTS") is a central repository for data from several different department-specific FDNY databases, along with data from external sources, such as DCAS. *See* Monitor's Nineteenth Periodic Report at 21-24; *see also* Monitor's Sixteenth Periodic Report (Dkt. # 1694) at 13-14; Monitor's Twentieth Periodic Report at 23-24; Monitor's Twenty-First Periodic Report (Dkt. # 1803) at 21-22. Data from internal department-level databases automatically populates fields in the CCTS but remains stored in the department-level databases. Data from DCAS, such as candidates' application status and examination results, is imported into the CCTS at specified intervals.

The CCTS is expected to serve as an essential tool in the City's compliance with the Modified Remedial Order. For the City to show that the FDNY's hiring process has no unlawful disparate impact on black or Hispanic candidates, the FDNY must demonstrate its ability to perform effective analyses of all relevant components of that process to detect any disparate impact; and in order to conduct such analyses, it must have a data system that retains relevant categories of data in a suitable, searchable form.

As reported in the Monitor's Twenty-Second and Twenty-Third Periodic Reports, the City provided the other Parties and the Monitor with a live demonstration of the CCTS on December 19, 2017. The CCTS collates a wide range of data and enables users with appropriate access rights to conduct searches by "field" or similar top-level filters, including candidate status and results from different steps in the hiring process. The CCTS can also display a history of a

selected candidate's progress through the screening process. *See* Monitor's Twenty-Second Periodic Report at 19-22; Monitor's Twenty-Third Periodic Report at 18-19. However, also as previously reported, the search capabilities of the database do not extend to all levels of information that are captured in the database; queries on some categories of data can only be run if administrators set up the query on the "back-end" of the database. *See* Monitor's Twenty-Third Periodic Report at 18-19. This constraint limits the number of users who can quickly conduct analyses, as well as the ability of non-administrators to make adjustments in searches – *e.g.*, to frame a query examining the likely effect of a proposed change in procedure or to seek to examine the relative effects of different factors associated with a particular outcome – without lead time. The Monitor and Parties have agreed to discuss the creation of standing queries that will supplement the standing queries created by the FDNY and will inform analyses of the impact of the hiring process on different groups.¹¹ The City has already advised that it adopted some proposed changes made at the December 19 meeting.

For the Monitor and the other Parties to review the analytical capabilities of the CCTS in detail – and make informed suggestions regarding those capabilities – it is essential for them to have a complete and accurate understanding of the data fields and values that the database tracks. Accordingly, at the December 19 meeting, the Monitor requested that the City provide a comprehensive data dictionary for the CCTS, showing all data fields, the available values for each field in the database, and which fields can be viewed in the current user interfaces. The City has provided definitions of some components of the CCTS, including a data dictionary for

¹¹ The Monitor also plans to discuss the City's plans for enabling internally generated queries and updating queries to reflect changes in the process, database and/or legal requirements as needed over time.

the Electronic Medical Record database. But it has not yet provided a complete data dictionary for the CCTS.

The need for this data is becoming increasingly pressing given the work that must be done to confirm and refine the FDNY's data management capabilities before processing begins in earnest for candidates on the Exam 7001 eligible list. The City has attributed the delay to the fact that its information management personnel have been fully occupied with other high priority projects (including the FDNY's Attrition Metrics report and an analysis of the impact of the City's proposed 120-day limit on medical testing). The Monitor has urged the City to complete its production of the data dictionary, and the City now projects that it will do so by mid-August.

C. Candidate Tracking Spreadsheet and Attrition Metrics Report

The CTS is a compilation of data for candidates on the hiring lists produced by Exams 2000, and 2500, as well as Priority Hire candidates, which shows each candidate's status and results from each step in the hiring process.

The most recent versions of the CTS, produced on September 5, 2017, January 17, 2018, and March 2, 2018, were compiled following completion of the hiring process for the last class to enter the Fire Academy from the Exam 2000 and 2500 lists; and they include hiring-process data for all candidates on those lists through entry into the Academy. The January and March 2018 versions also include data from the Academy for candidates in the most recent class of open competitive candidates to go through the Academy.

Gaps and inconsistencies in previous versions of the CTS limited their usefulness for analyses of the hiring process. *See, e.g.*, Monitor's Twentieth Periodic Report at 24-25. But the most recent iteration, produced March 2, 2018, appears to have remedied those deficiencies to the extent possible, given the available data. *See* Monitor's Twenty-Third Periodic Report at 19.

After the March 2 CTS was produced, the Monitor and the other Parties identified and discussed further issues affecting the data it contains; but those issues appear to be limited and isolated. In some categories of data, for some subsets of candidates, data is simply unavailable. But it appears that the most recent version of the CTS provides the most nearly complete and accurate account possible of the hiring process for candidates on the Exam 2000 and 2500 eligible lists.¹²

On June 19, 2018, the City provided the Monitor and the other Parties with an updated report on candidate attrition for candidates on the recently expired eligible lists – entitled *Fire Department of New York City: Metrics to Assess Applicant Attrition From the Hiring Process For Exams 2000, 2500 and 0001*. The report shows the FDNY’s calculation of the numbers and percentages of candidates who were eliminated or dropped out at various stages of the FDNY screening process. The Monitor, the United States, and the Vulcan Society are in the process of reviewing the updated attrition metrics report.

IV. EEO

A. Overview

Since the last periodic report, the Monitor, in consultation with its experts, has continued to work with the City and confer with all Parties regarding several EEO issues and initiatives in areas including EEO messaging, compliance, accountability, and investigations. Detailed updates on developments in these areas are provided below.

¹² As noted in the Monitor’s previous two periodic reports, even if data for the Exam 2000 hiring list were complete and accurate, some changes in the hiring process are recent and have impacted only a small number of candidates – providing a small sample with insufficient statistical power to produce reliable conclusions; accordingly, it will likely be necessary to observe and analyze the effect of any reforms on the *next* group of open competitive candidates; and the Monitor understands the City intends to do so. See Monitor’s Twenty-Second Periodic Report at 25; Monitor’s Twenty-Third Periodic Report at 21.

The Monitor has continued to receive and review materials from the FDNY's investigations of potential EEO violations and has continued work pursuant to the Court's November 17, 2017 Order, which directed the Monitor to provide a report on the FDNY's EEO Office, its staffing and procedures for conducting investigations, and the duration of those investigations. In addition to the data discussed in the Monitor's Twenty-Third Periodic Report,¹³ the Monitor has received updates from the City on the status of new and ongoing investigations, and it has also received and analyzed data relating to treatment of EEO complainants and respondents during EEO investigations, which the Court directed the City to provide at the March 13, 2018 status conference (*i.e.*, data showing the rates at which complainants and respondents in EEO matters are reassigned to desk duty pending investigations).

The Monitor has also continued its analysis of issues raised by Plaintiffs-Intervenors regarding the City's compliance with the Statement of Principles¹⁴ with respect to the

¹³ See Monitor's Twenty-Third Periodic Report at 22.

¹⁴ The Statement of Principles was developed as part of the process overseen by the Monitor to implement a new FDNY EEO Policy and a new FDNY EEO Investigative Manual. It was circulated as Supp. No. 24 to Dept. Order No. 31 on April 6, 2017. See http://www.nyc.gov/html/fdny/insider/resources/do/2017/031_sup_24_2017.pdf.

It reads in relevant part:

There may be instances where a member who has made an EEO complaint requests and is granted a transfer or detail, or where operational needs of the Department dictate that the member must be detailed or transferred to another work location. In such cases, while the Department retains the ultimate authority to determine whether and where a member should be detailed or transferred, if operational needs permit, the Department will consult with the member to be detailed or transferred and consider their concerns and preferences along with the proposed work location's history of EEO and workplace violence complaints.

reassignment of complainants pending EEO investigations, and it has just communicated a series of recommendations to the Parties regarding those issues.

B. Staffing

On June 26, 2018, the City provided the Monitor and the other Parties with an updated summary of EEO staffing – including recently added positions. Once it is fully staffed, the EEO Office will include 16 attorneys (including the Assistant Commissioner, two Deputy Directors, Investigative Attorneys and contract attorneys) and six non-attorney staff. For comparison, as of the September 30, 2011 Findings of Fact, the Office consisted of four full time attorneys (including the Assistant Commissioner and a Deputy Director), one temporary attorney, and five additional non-attorney staff.¹⁵ The current positions include

- The Assistant Commissioner
- Two Deputy Directors
- Eight Investigations Attorneys
- Four intake/second seat contract attorneys
- One training attorney
- Two disability rights coordinators

The City is currently engaged in the hiring process for several newly created positions.

C. Policies and Messaging

The Monitor has continued to work with the City on its implementation of messaging plans shared with the Monitor and the other Parties before the last periodic report. *See* Monitor’s Twenty-Third Periodic Report at 23. The City’s plans, which addressed Monitor recommendations based on meetings with the Parties and on consultations with its experts, included plans for “voice alarm drills” at roll call (in which firefighters would be shown videos of senior leadership presenting EEO messages), the distribution of web-based and multi-media

¹⁵ The new staffing also represents a substantial increase even over more recent numbers. As of March of this year, the City reported that the EEO Office consisted of nine attorneys and six non-attorney staff.

messaging, online refresher EEO training, and additional messaging through conventional channels such as posters and newsletters.¹⁶ The City's plans also include an effort to provide opportunities for firefighters to discuss EEO issues in connection with EEO inspections. *Id.* The new messaging campaign is expected to be rolled out in August 2018 and updated periodically. The Monitor will continue to oversee the City's work in this area to ensure the City follows through on its initiatives.

In addition, although the City's planned initiatives address some of the Monitor's concerns regarding EEO messaging, the Monitor continues to believe that additional, active participation by senior management in EEO messaging would greatly enhance its effectiveness. Although the City's plan calls for some involvement of senior officers in messaging, for example as participants in videos or other remote training materials, the Monitor and its experts believe that live visits by senior management to firehouses is an important component of EEO messaging, and has recommended that the City add such a component to its plans. The Monitor has also urged the City to include in its online training features (such as online quizzes) that will allow it to confirm that messages have been effectively delivered. The City has previously indicated that it intends to verify attendance in its EEO messaging and training efforts. *See* Monitor's Twenty-Third Periodic Report at 24. But it has not yet provided details on the methods it plans to use to verify attendance and test knowledge of content. The Monitor will continue to follow up with the City to obtain further information.

The Monitor and the Parties have also discussed ways to improve the FDNY's messaging relating to incidents of alleged harassment, discrimination, and hazing. The City has expressed

¹⁶ The City has recently indicated that it may be making some changes in the voice alarm drill component of its plans. The Monitor will follow up with the City to obtain further information on any such changes.

concerns that issuing statements that address the substance of specific alleged misconduct could be interpreted as pre-judging the outcome of investigations. But the Monitor has advised the City that the FDNY can and should emphasize its general rejection of racism and harassment on these occasions. Such reinforcement of existing policy and values would not require the City to take a position on the facts of any particular case or to prejudge the likelihood that the alleged conduct actually occurred. The Monitor's expert has noted that incidents in which FDNY members are accused of discrimination or harassment provide opportunities for the Department to reaffirm its commitment to diversity and inclusion. Conversely, the failure of leadership to reaffirm that commitment can be interpreted as tacit approval of (or at least indifference to) misconduct.

Finally, since the last periodic report, the City has provided further updates on the rollout and expansion of its EEO counselor program. EEO Counselors act as liaisons between the firefighter force and the EEO Office – answering questions, providing advice regarding procedures, and (where appropriate and under supervision) assisting the EEO Office with the handling of complaints. The counselor program became operational with a January 16 Department Order, which listed 18 Counselors. The United States expressed concern that the lack of firefighter Counselors among the initial group (all 18 Counselors are officers) may decrease the likelihood that firefighters with EEO concerns will bring those concerns to the attention of Counselors, thereby undercutting the goal of the program. In a June 6, 2018 email, the City provided the Monitor and the other Parties with details of its plans to expand the program. The program will ultimately include 25-30 Counselors from fire operations; and the City reported that the new group of Counselors will include firefighters. Job postings are planned for late July or early August, with training to take place in September and October.

D. Compliance and Accountability

1. Chain of Command Reporting and Performance Reviews

a) *Chain of Command Reporting*

In a Department Order dated July 12, 2017, the City issued a Professional Workplace Policy, which requires officers to meet with their superiors to discuss conduct and issues affecting workplace professionalism – including but not limited to potential violations of EEO and anti-hazing policies. *See* Monitor’s Twenty-Second Periodic Report at 34; *see also* City Letter to Court dated January 19, 2018 (Dkt. # 1828) (listing “anti-hazing, bullying, and other important initiatives implicating workplace professionalism” as intended topics of discussion).

The Monitor has recommended that the City use a reporting form – which could be as simple as a one-page checklist – to ensure that essential topics are discussed at each meeting and that officers memorialize whether or not any problems exist with respect to each topic. Such a process would ensure that action is taken when needed and that a record of observations over time is preserved in case problems arise in the future. The Monitor has also recommended that officers receive detailed instructions specifying potential indicia of discrimination or harassment that may be worthy of being reported, even if they do not present a specific EEO claim. *See* Monitor’s Twenty-Third Periodic Report at 28. The City has advised the Monitor that it would provide officers with more guidance on the topics that should be addressed during chain of command reporting. *See id.* But thus far it has not adopted the Monitor’s recommendation to have each officer make brief substantive written reports of areas under his or her personal supervision (as opposed to the City’s approach, pursuant to which, “if there are conferences within a firehouse where workplace professionalism has fallen short, the Battalion Commander must submit a written report documenting all relevant information.” City Letter dated

September 29, 2017 (Dkt. #1805). The Monitor remains convinced that, in order to assess its officers' compliance with their obligations to prevent, report, and address EEO violations, the FDNY must require officers to document their observations about the EEO climate in the workplace, in addition to whatever efforts they make to address conduct or conditions that have an adverse effect on that climate. The purpose of such reporting is in part to help facilitate identification and resolution of burgeoning conflicts that may not rise to the level of a policy violation, as an adjunct to systems that are already in place for reporting possible violations of FDNY EEO or anti-hazing policies.

To inform discussions of the effectiveness of the reporting system and the difference in viewpoints described above, before the last periodic report, the Monitor asked the City to produce any documents generated by senior officers as a result of oral conferences, so that the Monitor could see what form such reports take, how effective they are likely to be as a means for raising workplace concerns, and how widely the reporting mechanism has been adopted. The City objected to the Monitor's request as beyond the scope of the Modified Remedial Order. Without conceding the City's jurisdictional point, in order to move the process forward, in an April 4, 2018 email message, the Monitor proposed that the City provide the Monitor with written reports that pertain only to oral reports made about EEO and hazing issues, and proposed a meeting or call with relevant personnel to obtain more detailed information about the practical operation of the reporting process. *See* Monitor's Twenty-Third Periodic Report at 27-29. The Monitor recently renewed that request (in a June 8 email), but to date the City has not provided the requested materials or offered dates for the requested meeting.

In correspondence to the Court dated January 18, 2018, the City cited the Workplace Professionalism conferences as evidence of the FDNY's "positive direction" and progress in the

area of EEO, for which the City asserted it was not being adequately credited. *See* City Letter to Court dated January 19, 2018 (Dkt. #1828) at 4. On July 14, 2018, however, following the Monitor's renewal of its request to review records of the conferences, the City advised the Monitor that it would "not be claiming chain of command reporting as part of MRO compliance."¹⁷ But the City's purported decision not to "claim" chain of command reporting as part of its effort to comply with the Modified Remedial Order does not change the fact that its reporting system should, and presumably does, generate information bearing on the EEO climate in its workplaces. Assuming it does, the Monitor will continue to work with City to obtain that information. At the June 28, 2018 status conference, the Court specifically emphasized the importance of regular chain of command reporting regarding EEO issues.

b) Performance Evaluations

Beginning with Lieutenants' evaluations in February of this year, the City began to implement EEO criteria in officer performance reviews; and it provided a blank copy of the relevant evaluation form to the Monitor and the other Parties on March 20, 2018. *See* Monitor's Twenty-Third Periodic Report at 29.¹⁸ The Monitor plans to obtain and review materials from the performance reviews to ensure that the reviews are effectively accounting for EEO issues and that the EEO Office is involved in the process. The Monitor and the Parties are currently engaged in discussions to determine the most appropriate and practical ways for the City to produce information regarding the EEO component of performance reviews.

¹⁷ On July 17, 2018, the City clarified that the change related to the Monitor's observation in the Twenty-Third Periodic Report, which was filed on April 9, 2019, in which the Monitor noted an inconsistency between the City's assertion that the Workplace Professionalism initiative is part of its MRO compliance and its position that the Workplace Professionalism reports are not within the Monitor's jurisdiction.

¹⁸ The EEO criteria are also a component of Captains' evaluations.

2. Climate Survey

The Monitor has continued to work with the City on plans for a workplace climate survey. The City has long recognized, and the Monitor has long emphasized, the importance of such a survey in evaluating the FDNY's EEO climate and identifying concerns that need to be addressed. *See, e.g.*, City of New York's EEO Report (Dkt. # 1167) at 61. As recounted in detail in the Monitor's previous periodic report, following prolonged discussions with the Monitor regarding the content and process for an effective survey, as well as the need to proceed with implementation, in February 2018 the City agreed to work with a vendor recommended by the Monitor to develop and administer a survey of all FDNY firefighters. Since that time, work on the survey has proceeded slowly, and the vendor has not yet been formally engaged by the City. However, on June 26, 2018, the City circulated a draft survey to the Monitor and the other Parties. The Monitor plans to convene a meeting July 19, 2018, at which the City can answer questions and consider comments from the Monitor and the other Parties.

The City plans to administer the survey in September of this year. But because of the long delay in development of the draft, the City and the vendor will have to work expeditiously to finalize the survey and make the necessary arrangements for distributing it to employees and collecting responses. The Monitor has encouraged the City to continue its efforts to keep to the September schedule for administering the survey; and it expects the other Parties to provide comments and input expeditiously to help the City achieve that goal. Based on information the Monitor previously obtained from the vendor regarding the projected length of surveys, administering the survey and analyzing results could be completed in approximately six to nine weeks after the survey is developed.

3. Disparate Impact Analyses

An essential function of the FDNY's EEO Office is the identification of disparate impact in its hiring practices and other employment actions. Accordingly, the Monitor has asked the City to provide an account of the data analyses it conducts or plans to conduct regularly to identify patterns that may indicate potential discrimination, both in the hiring process and with respect to other employment actions affecting the terms and conditions of employment for firefighters. On a conference call on July 5, 2018, the City projected that it would provide the requested information by mid-August.

E. Investigations

The Monitor continues to receive periodic updates and materials relating to ongoing EEO investigations, including intake documents, draft memoranda detailing investigators' findings and conclusions, and investigative files and interview memos for certain cases. The Monitor has continued to provide the FDNY with comments identifying areas where it observes deficiencies in the investigative process (including, but not limited to, deficiencies detailed in recommendations sent by the Monitor to the City on June 6, 2017). *See* Twenty-Second Periodic Report at 46-47. As previously noted, the Monitor's comments and suggestions are intended to ensure that the EEO Office adhere consistently to investigative best practices and to provide guidance on investigative methods; the Monitor does not dictate results in particular cases or require the City to obtain Monitor approval before issuing findings. *See* Monitor's Twenty-Third Periodic Report at 31.

Also in the area of investigations, the Monitor has continued work on a report, pursuant to the Court's November 17, 2017 Order, regarding the EEO Office, its staffing, its investigative procedures, and its performance in the completion of EEO investigations – with a particular

focus on the duration of investigations.¹⁹ Both the City's EEO guidelines and the FDNY's own EEO Policy establish a presumptive 90-day limit for investigations, absent exceptional circumstances. But FDNY EEO investigations frequently take more than 90 days, or even 180 days, to complete – imposing burdens on complainants (and in some cases on respondents), especially where they are removed from regular duties pending the investigation; and the delayed resolution of EEO matters risks deterring potential complainants from coming forward with reports of violations.

In the course of work on the EEO Report, the Monitor has requested and received relevant information and materials from the City, including investigative activity logs and updates on the status of open investigations. In addition, at the status conference on March 13, 2018, the Court directed the City to produce statistics showing the rate at which complainants and respondents in EEO investigations have been reassigned to desk duty, and the duration of those assignments. The City produced the requested information on April 18, 2018; and the Monitor will incorporate a discussion of the additional data in its EEO Report. Generally, the data provided by the City indicates that complainants and respondents are reassigned infrequently pending investigations. However, the cases in which reassignments occur are typically complex matters involving protracted investigations. In such cases, any details or reassignments, especially those that remove employees entirely from regular firefighting duties, impose substantial burdens on those removed from their regular workplaces. Consequently, in

¹⁹ In relevant part, the Court's Order stated as follows:

The court monitor is respectfully DIRECTED to provide the court with a report on the New York City Fire Department's Equal Employment Opportunity ("EEO") Office. This report should address, in particular, (1) how the EEO Office investigates and resolves complaints; (2) how the staffing of the office has changed over time; and (3) the speed with which the office investigates and resolves complaints.

accordance with its stated policies, the FDNY must avoid reassignments of complainants where possible. Where such reassignments cannot be avoided, the FDNY must ensure that complainants are returned to line duty as quickly as possible, and that reassignments take into account the complainants' concerns and preferences to the extent permitted by operational needs.

Relatedly, since the last periodic report, the Monitor has analyzed issues raised by Plaintiffs-Intervenors in a March 28, 2018 letter about the City's compliance with its Statement of Principles regarding the reassignment of complainants in EEO investigations; and the Monitor communicated a set of recommendations to the Parties on July 16, 2018 – proposing a set of procedures and record keeping practices intended to ensure that the FDNY consistently complies with the Statement of Principles.

In a development that may improve the handling of EEO investigations, as noted above, the FDNY has recently added attorney positions to its EEO Office staff; and, once all those positions are filled, the increased staffing should have a favorable effect on the duration of EEO investigations. The City has also advised the Monitor and the Parties that it plans to adjust the allocation of staff to improve efficiency and devote more resources to the most complex cases. The impact of these changes remains to be determined, and the Monitor plans to continue to track the effect of the staffing changes on the quality and duration of investigations.

In order to enhance the efficiency of the EEO Office, the Monitor has recommended that the City add features to its EEO case management database (which became operational in early 2016) and improve the ways in which it is used to manage investigations. The City gave a demonstration of the database to the Monitor and the other Parties on April 12, 2018, and provided a detailed explanation of its capabilities. The database records the steps taken in each EEO matter – including, for example, intake, interviews, correspondence with complainants, and

the issuance of findings. It allows investigators to record identifying information for complainants, respondents, and witnesses – and the nature and locations of alleged or potential violations. And it enables the Assistant Commissioner and other supervisory personnel to track the progress of investigations, identify patterns of violations and potential violations, and identify cases where investigations have exceeded the presumptive 90-day limit (or where intermediate steps in the investigation have been delayed). The database also includes an activity log where investigators record steps taken in an investigation (for example, correspondence with complainants, witness interviews, and the preparation of investigative findings). The Monitor has recommended that the FDNY enhance the functions of the activity log, integrate it more closely with the investigative plan required by the FDNY’s EEO Investigation Manual, and use the log as an active planning tool – establishing a presumptive timeline for each case based on the investigative plan and on deadlines established by the EEO Policy and applicable law. Supervisors could use such presumptive timelines as benchmarks in assessing the efficiency of investigations. The Monitor and the other Parties have also suggested that the City explore expanding the search capabilities of the database beyond the data fields and that are currently searchable.

As part of its continuing efforts to assess the effectiveness of the FDNY’s EEO investigations, the Monitor has also proceeded with plans to interview a selection of complainants to hear about their experiences with the EEO Office and their level of satisfaction with the handling of their complaints. The Monitor has identified an initial list of complainants that it wishes to interview; the City provided contact information for those complainants on July 11, 2018; and the Monitor will now move forward with plans to contact them.

V. Medical Exam-Related Issues

Pursuant to the Modified Remedial Order, the Monitor continues to address concerns raised by Plaintiffs-Intervenors and the United States that certain steps in the Medical Exam may have a disparate impact on black and Hispanic candidates. *See, e.g.*, Monitor’s Nineteenth Periodic Report at 29-37; Monitor’s Fifteenth Periodic Report at 17-23; Monitor’s Thirteenth Periodic Report at 11-17 (citing Modified Remedial Order ¶¶ 15, 19); *see generally* Monitor’s Eleventh Periodic Report (Dkt. # 1575) at 13-14.

A. Analyses of Exam 2000/2500 Medical Data

As described in previous periodic reports, the City’s prior record-keeping practices with respect to the Medical Exam have made it difficult for the Monitor and Parties to identify and analyze root causes of medical disqualification for black and Hispanic candidates compared to white candidates, and to analyze disparities in rates of disqualification among the groups. *See* Monitor’s Twentieth Periodic Report at 31-34; Monitor’s Nineteenth Periodic Report at 34-35; Monitor’s Fifteenth Periodic Report at 23; Monitor’s Thirteenth Periodic Report at 16-17; Monitor’s Twelfth Periodic Report at 17-18. Nevertheless, in an effort to work around these limitations and evaluate the impact of the Medical Exam and its components to the extent possible, the Monitor has proceeded with analyses of data from a number of different sources.

1. Disparate Impact in Medical Exam Pass Rates

On May 8, 2018, the Monitor sent the City the results of an analysis of the passing and failing rates for the Medical Exam, based on data provided by the City in the March 2018 Candidate Tracking Spreadsheet.²⁰ The Monitor’s experts, Manitou, Inc. (“Manitou”) performed

²⁰ The CTS contains complete and final Exam 2000/2500 medical exam pass rate data for all candidates for the entire life of the hiring lists produced by those exams.

analyses on four Exam 2000/2500 candidate groups: (1) all candidates from the combined Open Competitive, Promotional, and Priority Hire lists; (2) all candidates from the Open Competitive list only; (3) those candidates from the combined Open Competitive, Promotional, and Priority Hire lists who began the Medical Exam process after January 1, 2016, and thus had the advantage of improvements the City made to the Medical Exam; and (4) those candidates from the Open Competitive list who began the Medical Exam process after January 1, 2016.²¹ The purpose of breaking the information down in this way was (a) to attempt to isolate the effects on the analysis, if any, of including or excluding the Priority Hires, who were older on average than other candidates, and (b) to attempt to reflect the effect, if any, that changes made to the Medical Exam over time may have had on pass/fail outcomes.

Statistically significant disparities in Medical Exam passing rates within all four of the groups examined demonstrate that the Medical Exam had an adverse disparate impact on black and Hispanic candidates within each of the hiring list groups. Further, logistic regression analyses performed on the data indicate that identifying as black or Hispanic was a significant predictor of Medical Exam failure in all four groups, even when controlling for candidate age. That is, the effects observed cannot be explained by the relatively older age of the Priority Hires; and it cannot be assumed that these effects would not have occurred had Priority Hire candidates been subject to the same age limits as other candidates. Even after controlling for age and examining only the Open Competitive candidates who began the Medical Exam process after January 1, 2016, the Monitor's analysis found that the odds of a black candidate being disqualified by the Medical Exam was 2.62 times higher than the odds for a white candidate, and

²¹ Note that some portion of the candidates whose Medical Exam processing began before January 1, 2016 (*i.e.*, those in candidate groups 1 and 2) also benefited from improvements made prior to that date, including candidates who took advantage of medical retesting provided by the City.

the odds of a Hispanic candidate being disqualified by the Medical Exam was 1.92 times higher than the odds for a white candidate.²²

Manitou's analyses show that the Medical Exam, even with recent improvements, has a disparate impact on black and Hispanic open competitive candidates. The next step is to determine which testing component(s) are creating the disparate impact in Medical Exam pass rates, as part of an overall assessment that will also take into account issues of possible job relatedness and business necessity.

2. Adverse Impact Analyses by Individual Medical Exam Component

The Monitor plans to analyze a combination of data from several sources to assess the impact of specific components of the Medical Exam. The CTS does not identify the specific reason(s) each candidate was disqualified; accordingly, it does not support analyses of the impact of specific components or "stations" of the Medical Exam. Accordingly, the Monitor will seek to glean this information from a combination of other sources. The City previously produced Notices of Final Disqualification ("NOFDs") for candidates who were disqualified by the Medical Exam from the beginning of medical testing for Exam 2000/2500 in March 2013 through May 2015. The medical NOFDs are one-page notices sent to candidates, advising them which component(s) of the Medical Exam they failed. The spreadsheets generated by the City's Electronic Medical Record ("EMR") database and provided to the Monitor also contain the disqualification reason(s) for some of the candidates who failed the Medical Exam between November 2015 and the expiration of the lists in June 2017. In March, the Monitor requested NOFDs for candidates who were ultimately disqualified by the Medical Exam – as recorded in

²² The odds for black and Hispanic candidates in the other three groups were similar, with variations smaller than or equal to 0.23.

the final CTS – but for whom the Monitor did not yet have a disqualification reason, either in a paper NOFD or in data recorded in the EMR spreadsheets. In May, the City produced NOFDs for more than half of the candidates for whom disqualification reasons were missing and provided a spreadsheet explaining why the remaining candidates were not sent NOFDs.²³ The City noted that there were eight candidates for whom it was still gathering information. The Monitor and its experts are optimistic that, with this combination of data sets, it will be possible to undertake an adverse impact analysis of the pass rates for each Medical Exam component to pinpoint where disparate impact is occurring.

For future analyses, it is essential that the FDNY ensure that its electronic medical records system is capable of quickly and accurately performing the searches and calculations needed to measure the adverse impact of each component of the Medical Exam. These impact analyses should be made as nearly automatic as possible and should occur at regular intervals – for example, as each new class is admitted to the Academy. Any adverse impact observed should then be addressed as soon as possible.

B. Validation of the Stairmill Test

The Monitor, in consultation with its expert, has continued to work with the City and the other Parties and their experts to address longstanding concerns, expressed by Plaintiffs-Intervenors and the United States, that the stairmill portion of the Medical Exam has a disparate impact on black and Hispanic candidates. As previously reported, both the Monitor’s analyses of NOFDs produced by the City and the City’s BHS Attrition Metrics Report indicate that this concern is valid. *See* Monitor’s Twenty-Second Periodic Report at 42.

²³ The Monitor has questions about some of the explanations and will pursue these with the City soon.

As previously reported, the City has engaged PSI Services LLC (“PSI”) to conduct a validation study of the stairmill test. *See* Monitor’s Twenty-Third Periodic Report at 36. The City circulated a draft of PSI’s validation study proposal to the other Parties on March 9. (As noted in earlier periodic reports, Plaintiffs-Intervenors and the United States have reserved their right to raise objections to the validation study. *See, e.g.*, Monitor’s Twentieth Periodic Report at 33.) The City circulated PSI’s most recent validation study proposal on April 13. The proposal describes, in broad terms, a study that will seek to determine the aerobic demand of the stairmill test by measuring oxygen consumption and will compare that aerobic demand to the aerobic demand associated with the Fire Academy’s Functional Skills Test (“FST”), which incorporates an array of firefighting activities. PSI proposes to assess the aerobic demand of the FST to establish an appropriate cut-off value for the aerobic demand to be required by the stairmill.

In May, the City agreed to the United States’ request that PSI conduct conference calls with the United States’ expert, Dr. David Jones, and the Monitor’s expert, Dr. Denise Smith. The City also agreed to include Plaintiffs-Intervenors’ expert, Dr. Arthur Weltman, in these calls. In June, the City also agreed to include another expert for the United States, Dr. Deborah Gebhardt. The experts have been discussing fundamental questions, such as what the stairmill test is intended to measure (*e.g.*, aerobic capacity and/or ability to perform physical tasks required in the Academy), as well as the study design, methodology, and analytic plan needed to conduct a rigorous validation study. The Monitor believes that these calls have been valuable, although greater clarity is still needed with respect to the details of the FDNY’s planned approach and goals.

Based on assurances from the City, the Monitor had reported in numerous previous periodic reports that the City would complete the validation study by April 30, 2018. *See*

Monitor's Twentieth Periodic Report at 34; Monitor's Twenty-First Periodic Report at 36; Monitor's Twenty-Second Periodic Report at 9, 45. In the last periodic report, however, the Monitor reported that the City could no longer meet that deadline but would complete the study well before Exam 7001 candidates begin medical testing at BHS. The City has recently expressed doubts that it will be able to complete the study even on that further extended schedule, although at the June 28 status conference it indicated that it "should" be able to complete validation before the Exam 7001 candidates enter the Medical Exam phase of the hiring process. The prospect of a second examination list being processed without benefit of validation or data analysis is not acceptable. The City must make every possible effort to complete the validation as soon as possible, and in any event before Exam 7001 candidates go through the stairmill test. The Monitor will continue to make Dr. Smith available as regularly as possible, and the Parties must do the same with their experts.

C. City's Proposed 120-Day Limit on Medical Testing

For Exam 7501 promotional candidates, the City implemented a requirement that all medical testing be completed in 120 days, disqualifying any candidate who exceeded that time limit. The City originally proposed to apply this limit to Exam 7001 candidates. In response to the City's proposal, the Monitor asked the City to provide an assessment showing what the impact of such a limit could be expected to be on open competitive candidates and whether the limit would produce disparate impact by race or ethnicity if applied to the current open competitive candidate pool. On May 18, 2018, the City circulated an email in response to the Monitor's request – including an analysis based on data relating to Exam 2000 and Exam 7501 medical testing. The Plaintiffs-Intervenors and the United States submitted letters with lists of concerns and questions on June 4 and 7, 2018, respectively.

The United States has advised the Monitor (and the City has confirmed) that the City now intends to alter its proposal so that the 120-day deadline would be used to spur candidates to move quickly but would not be used as a basis for disqualifying candidates. The City has committed to providing the Parties and the Monitor with information, in writing, about its modified proposal, including the nature of the written notification that the candidates would receive when they reach the 120-day mark and when, if at all, a candidate would receive a notice of disqualification (proposed or final) based on the candidate's medical processing time. The Monitor will assess the City's modified proposal and any comments provided by the Parties' when it receives that information.

D. Mask Fit Test

On recent conference calls with the Monitor and the other Parties, Plaintiffs-Intervenors have raised concerns regarding the City's decision, reflected in a May 24, 2018 Department Order, to withdraw an accommodation previously extended to specific members who stated that, for religious or medical reasons, they could not comply with the requirement that members not have facial hair that comes between the face and the sealing surface of a respirator mask. The Department's decision could mean that some candidates who may have been able to take and pass the Mask Fit Test (a component of Medical Exam) may now be unable to do so.

Plaintiffs-Intervenors contend that the FDNY's decision constitutes a change in the hiring process for firefighter candidates (and therefore must be approved by the Monitor), and they object that the withdrawal of the accommodation will have a disparate impact on black firefighters and firefighter candidates. The City has explained that its decision is based on a review of relevant OSHA regulations and consultations with the manufacturer of its respirator systems, and on its conclusion that the accommodation presents unacceptable safety risks. The

Monitor is reviewing the Parties' positions and will communicate with them regarding next steps shortly.

VI. Character Screening by the CID and PRB

Since the last periodic report, the Parties and the Monitor, with the assistance of its expert consultants, Manitou, Inc., have continued to examine the character review phase of the FDNY hiring process, including policies and procedures, along with the effect of character review on different demographic groups in the hiring process.

A. Enhancements in the Character Review Process

As previously reported in detail, beginning in 2012, and in consultation with the Monitor and the other Parties, the City issued a series of guidelines for the CID and PRB; the most recent modifications to the guidelines were issued in the summer of 2016. *See* Monitor's Sixteenth Periodic Report at 29-31; Monitor's Seventeenth Periodic Report at 29-30.²⁴ The guidelines were instituted to enhance the consistency and predictability of outcomes in the character review process, to limit discretion, to reduce any unlawful disparate impact on black or Hispanic candidates, and to ensure that PRB decision making is not influenced by personal connections within the Department. *See* Monitor's Twenty-Third Periodic Report at 38.

The Monitor and the Parties have continued to consider further potential reforms in the standards and procedures employed by CID and PRB – although for a time progress in analyzing and discussing such reforms was limited while the City resolved issues affecting essential data from the character review process. At a meeting on July 27, 2017, the Monitor provided the City with a detailed set of recommendations for new reforms, developed in consultation with the

²⁴ As noted in prior periodic reports, the revisions were agreed upon by the Parties with the understanding that they may be subject to additional changes based on further analysis. *See* Monitor's Seventeenth Periodic Report at 30.

Monitor's expert, Alison Wilkey. *See* Monitor's Twenty-First Periodic Report at 10. The City responded to the Monitor's recommendations in writing on October 13, 2017, and the Monitor shared its recommendations and the City's responses with the United States and Plaintiffs-Intervenors on October 27, 2017. *See* Monitor's Twenty-Third Periodic Report at 39.²⁵

The City expressed several concerns regarding the Monitor's recommendations, contending (among other things) that some of its current procedures are required by generally applicable rules for City employment, and that the criteria governing referral to the PRB, and potential disqualification, are job-related. The Monitor intends to respond to the City's concerns in writing and then convene a meeting of the Parties to discuss the potential reforms.

The Monitor's response will be accompanied by a statistical analysis of results from the character review process for all Exam 2000 open competitive candidates, based on the CTS. As previously recounted in detail, the Monitor's analysis will encompass PRB referrals and outcomes (including disqualifications, appointments, and appointments with stipulations or extended probation), and it will consider the time consumed by the character review process and any potential effect of PRB referral on candidate attrition. *See* Monitor's Twenty-Third Periodic Report at 39-41.

Work on this component of the Monitor's response was largely suspended while the City worked to produce the final version of the CTS (covering results for all the Exam 2000 candidates to go through the process) and to resolve issues affecting CTS data on PRB referrals

²⁵ The Monitor's recommendations, described in detail in the Monitor's previous periodic reports, include revised procedures intended to relieve unnecessary burdens on candidates relating to the compilation and disclosure of criminal histories; revised standards for referral to the PRB intended to eliminate referral triggers that are not job-related; and changes in PRB decision-making and record keeping intended to promote consistency and facilitate analysis of PRB outcomes. *See* Monitor's Twenty-Second Periodic Report at 45-48.

and outcomes. The City produced its most recent version of the CTS on March 2, 2018 – which appeared to resolve the remaining issues sufficiently to allow the Monitor to continue its analyses of PRB referrals and outcomes. And since then, the Monitor has been working to complete its analysis.²⁶ In addition, in order to assess the implications of extended probation (one of the available outcomes in the PRB process) for firefighters appointed following PRB review, the Monitor recently asked the City to provide data showing the number of firefighters hired with extended probation who left the department (1) during the regular period of probation and (2) during the additional twelve months of extended probation, broken down by demographic group. The Monitor plans to take account of this data in its further analysis of the PRB process.

The Monitor's statistical analysis is complicated by the fact that the most recent changes in character review standards and procedures were implemented in 2016 – close to the end of the four-year life of the Exam 2000 eligible list. Consequently, the statistical sample of candidates who went through the process under the current standards and procedures is comparatively small, and may not have the statistical power needed to support definitive conclusions regarding disparate impact under the most recently updated rules.²⁷ For this reason, in order to establish

²⁶ A detailed history of the Monitor's work on statistical analyses, and the issues arising from the City's efforts to provide data for those analyses, appears in previous reports. *See e.g.*, Monitor's Twenty-Third Periodic Report at 43.

²⁷ In an effort to estimate the impact of character review under the new standards, the Monitor has also included in its analysis an assessment of outcomes for all open competitive candidates who went through any portion of the character review process throughout the life of the Exam 2000 list. This analysis includes all open competitive candidates in the March 2018 CTS regardless of time frames and character reconsideration status. Character reconsideration permitted previously disqualified candidates to be reconsidered under the 2016 revised criteria. Accordingly, this analysis, which is based on the "final" character review outcome for all candidates, considers the rates of disqualification under current standards for the entire group of open competitive candidates. However, it must be noted that this analysis does not necessarily show what the rate of disqualification would have been if the current standards had been in place for the duration of the list: some candidates who were disqualified under now obsolete standards

whether the character review process, as currently constituted, has a disparate impact adverse to black or Hispanic candidates, it will be necessary to gather and analyze data from the processing of candidates on the Exam 7001 eligible list.

If the Monitor's statistical analysis ultimately does reveal disparate impact, the City will be required to implement further changes, or to show how the criteria and procedures for character review are job-related and consistent with business necessity.

The United States had also indicated that it intended to complete its disparate impact analysis once the City provided the corrections to the CTS. The United States has advised the Monitor that it has now received all the information it needs, is proceeding with its analysis, and may offer further suggestions for reforms.

VII. Firefighter Exams

Pursuant to Paragraph 7 of the Modified Remedial Order, the Monitor is charged with overseeing the current computer-based test ("CBT") for the position of entry-level firefighter. Consistent with the provisions of the Modified Remedial Order, the City and its testing consultant PSI have continued to work in coordination with the Monitor and the other Parties on analyzing and reporting on the examination process. The Monitor continues to be assisted by its testing expert, Dr. Shane Pittman of The Pittman McLenagan Group, L.C.

A. December 2016 Promotional Exam

The City's promotional Exam 7501 was taken by 1,489 members of the EMS in December 2016. Almost all of them passed the exam and were placed on the Exam 7501 eligible

did not seek reconsideration, and it is also possible that PRB referrals under obsolete standards (which were not reconsidered for candidates who were not disqualified by the PRB) may have caused some candidates to drop out of the process who would have passed through it successfully if they had not been referred.

list. The first Academy class from this list of promotional candidates was announced on December 11, 2017. The final class drawn solely from the promotional list will enter the Academy in late 2018.²⁸

B. Open Competitive Exam

Exam 7001 was administered from September 5 through October 28, 2017; and scores from the examination were released June 13, 2018.

1. Analyses of Exam 7001 Results

Exam 7001 drew more – and a higher percentage of – black and Hispanic test-takers than Exam 2000. Black test-takers accounted for 25% of the total, and Hispanics 28% (compared to 20% and 24% respectively for Exam 2000).

a) *Projected Racial/Ethnic Mix of Exam 7001 Classes*

As with Exam 2000, PSI has projected the racial/ethnic mix of candidates who are likely to be called off the open competitive eligible list for further processing in each of the first three years the list will be in use.²⁹ Using assumptions based on Academy class size, the number of classes to be filled over the first three years of the life of the list, the rules governing candidate processing, and the historical ratio of candidates who enter the hiring process to candidates who complete it successfully and receive appointments, PSI projects that approximately 19.7% of

²⁸ Detailed statistical analyses of the promotional exam results appear in previous periodic reports. *See* Monitor's Twentieth Periodic Report at 43-45; Monitor's Twenty-Third Periodic Report at 42-43.

²⁹ Exam 2000 was projected, at the time PSI did its analyses, to be used for only three years because the City was still calling promotional candidates off the Exam 2500 list during the first year of the life of the Exam 2000 list. In this report, the Monitor is reporting statistics PSI has projected for only the first three years of the life of Exam 7001, so that comparisons may be made with the projections PSI made about the projected first three years of the Exam 2000 list. In all cases, the Monitor is reporting about the first three years of Exam 2000 and/or Exam 7001.

candidates likely to be called up are black, 27.7% are Hispanic, and 52.7% are white.³⁰ PSI's corresponding projections for Exam 2000 predicted that 20.8% of candidates called off the list would be black, 23.2% would be Hispanic, and 56% would be white. Thus, PSI's projections for the first three years of the Exam 7001 list predict a lower percentage of white candidates (approximately 3.3% lower), a slightly lower percentage of black candidates (approximately 0.9% lower), and a higher percentage of Hispanic candidates (approximately 4.1% higher), than it predicted for Exam 2000.

b) Adverse Impact Analyses of Projected Classes

Although the Exam 7001 classes are projected to have a higher percentage of black and Hispanic candidates than Exam 2000 classes, the adverse impact ratios are lower for Exam 7001 (showing greater disparities between groups) because the adverse impact ratios compare the percentage of all white test-takers who are projected to be called for processing into Academy classes against the percentage of all test-takers of each other race/ethnicity who are projected to be called: even if the number of test-takers likely to be called from a given demographic group remains the same from one exam to the next, an increase in the number of test-takers for that group diminishes the percentage of that group who are likely to be called.

Table 3 shows the percentage, by race/ethnicity, of test-takers projected by PSI to be called off the Exam 2000 and 7001 eligible lists in their respective first three years of use.

³⁰ The Exam 7001 data in this report is based on scores and demographic information provided by DCAS as of February 21, 2018. As with previous exams, a small number of scores will vary slightly as further bonus points are claimed, others are found to be inapplicable, pending applications are completed, etc.

Table 3. Percentage of Test-Takers by Race/Ethnicity Projected to Be Called off Exam Lists

	Black	Hispanic	White
Exam 2000	21%	20%	20%
Exam 7001	18.4%	23%	27%

Table 4 shows the adverse impact (“AI”) ratios and standard deviations PSI projected for black and Hispanic open competitive candidates in Academy classes in the first three years of the life of the Exam 2000 eligible list, compared to the AI ratios and standard deviations PSI projects for Academy classes in the first three years of the life of the Exam 7001 list.

Table 4. Projected AI Ratio and Standard Deviation Test Results for Open Competitive Candidates In the First Three Years of Use of Exam 2000 and Exam 7001 Lists

Open Competitive Candidates	2000/7001 B/W AI Ratio	2000/7001 B/W SD Test	2000/7001 H/W AI Ratio	2000/7001 H/W SD Test
First Year of List Use	.912/ .546	-1.64/ -12.72	.909/ .750	-1.80/ -6.98
Second Year of List Use	1.061/ .652	1.67/ -13.28	.982/ .863	-0.52/ -5.22
Third Year of List Use	1.037/ .694	1.44/ -16.05	.993/ .864	-0.27/ -7.21

In every case, PSI projects that there will be more adverse impact against Exam 7001 black and Hispanic candidates than there was for Exam 2000. It is important to bear in mind, however, that the percentage of black and Hispanic candidates combined in each Exam 7001 class is projected to be higher than it was for Exam 2000. And, while the representation of black candidates within the groups of candidates to be called off the Exam 7001 list in the first three years is projected to be down, it is projected to be down only by less than 1%.

The Monitor and the Parties plan to conduct further analyses in an effort to identify factors that produced the disparate impact. Analyses of test taker scores, especially the characteristics of high scoring test-takers, will also be part of the City's efforts to evaluate its efforts to recruit successful candidates.

2. Next Steps

The current milestone in the exam process (Step 203, "Committee on Manifest Errors") is for DCAS to ask PSI to manually rescore exams for test-takers who request confirmation that their computer-generated results are correct.

The next milestone (Step 204, "Technical Report") requires PSI to prepare a report documenting all the steps taken in the development, administration, scoring, and analysis of Exam 7001. The report will be reviewed by the City, the Monitor, and the United States at various points in the schedule and is anticipated to be completed on September 5, 2018.

The City currently expects to establish the Exam 7001 list in February 2019 and anticipates that the first class drawn from the list will enter the Academy in May 2019.

VIII. Additional Issues

On an ongoing basis, the Parties and the Monitor consider a range of issues and perform an array of additional tasks relating to enforcement of the Modified Remedial Order. During the period covered by this report, these activities have included the following:

- Discussions regarding individual candidates who are or claim to be entitled to relief under the Court's Orders, including their interactions with the FDNY, documents they have received, and their rights and remedies;
- Addressing questions and disagreements among the Parties regarding the status of specific candidates and other issues that are not addressed elsewhere in this report

and that fall within the Modified Remedial Order or Disparate Treatment Settlement;

- Frequent calls, meetings, and correspondence with the Parties regarding the full range of issues related to implementation of and compliance with the Modified Remedial Order; and
- Performing the remaining duties of the Special Master appointed by the Court in its Order filed May 22, 2012 (Dkt. # 883). The Court assigned these duties to the Monitor in an order dated August 17, 2016.

