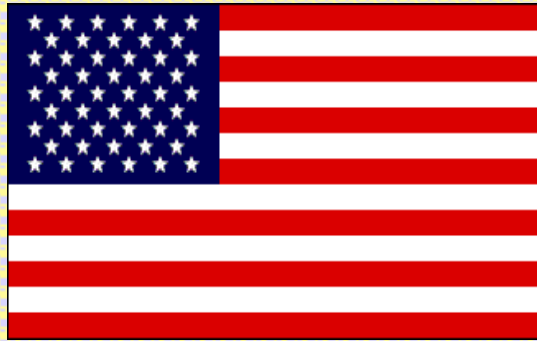


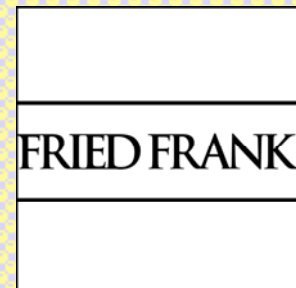


Twentieth Quarterly Report of the Independent Monitor for the Metropolitan Police Department

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Executive Summary

This report is the Twentieth Quarterly Report of the Office of the Independent Monitor (“OIM”), which covers the period January 1, 2007 through March 31, 2007. This quarter, the OIM completed its fifth year of monitoring compliance by the District of Columbia (“the City”) and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement (“MOA”) they jointly entered into with the Department of Justice (“DOJ”) on June 13, 2001. The OIM was established in March 2002 to monitor the City’s and MPD’s compliance with the MOA. Paragraph 179 of the MOA requires the OIM to “issue quarterly reports detailing the City’s and MPD’s compliance with and implementation of this Agreement” and to issue additional reports at its own discretion.

The Council of the District of Columbia unanimously confirmed Cathy L. Lanier as MPD’s Chief of Police on April 3, 2007. At Chief Lanier’s direction, MPD has continued to discuss strategies with the OIM and DOJ for accelerating the Department’s progress in achieving substantial compliance with the full range of requirements and reforms under the MOA. These discussions have been productive, and we anticipate that in the near future MPD will likely be able to demonstrate substantial compliance in several key areas of the MOA, including investigations of serious use of force incidents, chain of command and Internal Affairs Division (“IAD”) investigations of less serious uses of force and allegations of officer misconduct, and implementation of an enhanced field training officer (“FTO”) program.

This quarter, we found that MPD has implemented its revised general use of force policy by training more than 95% of its officers, sergeants, and detectives in accordance with its use of force-related policies and training curriculum. This is an important milestone for MPD that required substantial and sustained effort, including the development and revision of use of force-related policies, the development of a comprehensive use of force training curriculum, the creation of new systems for the tracking of officer attendance at use of force-related training, and the establishment of reliable procedures for the investigation and review of serious use of force incidents.

The substantive areas of the MOA on which our monitoring focused this quarter include: (1) review of audits performed by the

Quality Assurance Unit (“QAU”) and technical assistance regarding the QAU’s internal audit and monitoring program, (2) officer attendance at mandatory in-service training, (3) use of force investigations performed by the Force Investigation Team (“FIT”), (4) non-FIT use of force and misconduct investigations, and (5) promotion of MPD’s community outreach meetings.

QAU Audits of Use of Force Reporting

This quarter, we completed our review of the QAU’s audit of Use of Force Incident Reports (“UFIRs”) completed during the second quarter of 2006 -- April through June 2006. The QAU’s audit methodology involved the selection of a sample of Arrestee Injury/Illness Reports (PD-313s), which it reviewed to identify potential use of force incidents for which completion of a UFIR is required under the MOA and MPD policy. The QAU then compared the incidents underlying those PD-313s, which indicated an officer likely used force, with completed UFIRs. The QAU found that officers had complied with MPD’s use of force reporting policy in all (100%) of the likely use of force incidents that the QAU had identified through its sample of PD-313s.

We advised the QAU that, while PD-313s are a valuable data source, the QAU’s audit methodology failed to take advantage of other sources for information about potentially unreported use of force incidents -- such as Officer Injury or Illness Reports (PD-42s) -- and, therefore, may not provide a fully reliable basis for assessing MPD’s compliance with use of force reporting requirements. We independently reviewed PD-42s generated during the second quarter of 2006 in order to evaluate whether those reports identified additional likely use of force incidents not captured by PD-313s completed during the same period. We reviewed a total of 139 PD-42s and found that 53 of them contained information strongly indicating the occurrence of reportable use of force incidents. We then reviewed MPD’s monthly UFIR files, the involved officer’s main use of force file maintained by FIT, FIT’s UFIR logs, and the electronic Personnel Performance Management System (“PPMS”) to determine whether in fact a UFIR had been completed reporting each of these incidents. This review found that no UFIR had been completed with respect to 13 of these 53 incidents -- a UFIR completion rate of only

75% for these specific incidents.¹ We discussed the results of our review of PD-42s with QAU personnel, who concurred with our findings.

Attendance at Mandatory In-Service Training

We reviewed MPD's in-service training attendance for the 2006 training cycle. We found significant improvements in both the overall attendance rate for MPD's primary in-service training program and the Institute of Police Science's ("IPS's") system for tracking individual officer compliance with the Department's in-service training requirements. For the 2006 training cycle, MPD reported that only two officers ultimately failed to complete the general in-service training program or the in-service training program for detectives, which is a compliance rate well in excess of 95%. Although MPD's system for tracking in-service training attendance still is cumbersome and in need of further refinement, IPS's system for identifying individual officers who fail to attend in-service training in order to assign them to remedial training, or, if that fails, to refer them for corrective action, has improved dramatically. This accomplishment, in combination with the consistently high attendance rates for MPD's firearms training and re-certification, reflects that MPD has implemented an effective program for training its officers in the Department's revised use of force-related policies and curriculum.

FIT Investigations

This quarter, we finalized our review and analysis of all FIT investigations completed during 2006. We found that the quality of the FIT I investigations of the most serious uses of force, including weapons discharges, not only remains high but also has continued to improve. However, we found that there is still room for improvement in the FIT II investigations, which continue to suffer from certain deficiencies.

In 2006, FIT I completed 27 investigations into serious uses of force, including deadly force. We found that all (100%) of the FIT I investigations closed in 2006 were both sufficient and complete. FIT II

¹ This 75% UFIR completion rate relates only to the incidents underlying the 53 PD-42s that we reviewed from the period April through June 2006, nearly one year ago. Our review was designed to evaluate the QAU's audit methodology in this area, and it does not provide a comprehensive assessment of MPD's overall UFIR completion rate during that period. All of the unreported use of force incidents we identified through this review involved lower-level uses of force, such as hand controls, and none involved the use of weapons.

closed 39 investigations in 2006, which addressed a wide variety of use of force incidents, including the use of hand controls, chokeholds, canines, ASPs, kicks, and OC spray. The overall quality of FIT II investigations, while generally good, has not improved since our review of the cases closed in 2005. We found that 7 of the FIT II investigations closed in 2006 were incomplete and that 2 of these investigations also were insufficient. Therefore, we found that 82% of the investigations were complete while 95% of the cases were sufficient.

In sum, there was a total of 66 FIT investigations closed in 2006. Fifty-nine -- or approximately 90% -- of these investigations were complete and 64 -- 97% -- of these investigations were sufficient. These statistics reflect that FIT continues to perform very high quality investigations, but room for improvement remains, particularly with respect to the completeness of FIT II investigations.

Non-FIT Use of Force and Misconduct Investigations

In recent years, MPD has taken several steps to improve the quality and timeliness of its internal investigations, including revising and distributing investigation templates and issuing Department-wide guidance requiring documentation of special circumstances justifying delays in the completion of investigations. These changes resulted in steady improvement in the quality and timeliness of these investigations, which peaked with the results from the sixteenth quarter. However, our ratings of the timeliness, completeness, and sufficiency of these investigations have essentially reached a plateau -- at or just below the substantial compliance threshold -- for the past year. This quarter, we found that 85.1% of these investigations were complete, which is within a few percentage points of the completeness rates we have observed over the four most recent samples. We found that 87.2% of the investigations we reviewed this quarter were sufficient, which again is approximately the same sufficiency rate that we have observed over the past year.

This quarter, six of the cases we selected for review were still pending investigation. Excluding the six pending cases from this quarter's sample, we found that 94.6% of the finished cases we reviewed were complete and 97.4% were sufficient.

We are concerned, however, that these "pending" cases reflect a more troubling issue than merely a lack of timeliness. This quarter, we re-reviewed the seven cases that remained pending at the time of our review last quarter to determine whether the investigations had yet been completed. All of these cases should have been completed by June 30,

2006, absent documented special circumstances. Nevertheless, we found that none of these seven investigations had been completed almost nine months later. Because we find that from 7% to 10% of the cases we select each quarter remains pending at the time of our review, we are concerned that a significant percentage of MPD's internal investigations may remain uncompleted for extended periods of time after they should have been concluded. We have discussed these findings with MPD, and MPD is investigating the issue. We will continue monitoring both MPD's closed and pending chain of command and IAD investigations.

Promotion of Community Outreach Meetings

We monitored MPD's compliance with MOA paragraph 91.a's requirement that, at least one week in advance of a scheduled community outreach meeting, notice of the meeting be published "in public areas, including libraries, schools, grocery stores, [and] community centers." In December 2006, MPD issued a teletype designating January 2007 as an "outreach month" during which every patrol service area ("PSA") shall "devote time to inform the public of the contents of the MOA and the various methods of filing citizen complaints." MPD also directed lieutenants in each of the PSAs to prepare an "Annual Report of Standardized Posting Locations for PSA Meeting Announcements" identifying names, addresses, and contact information for each of the public locations to which promotional materials regarding community outreach meetings would be distributed at least one week in advance of the scheduled time for such meetings.

We toured seven PSAs in which community meetings were scheduled for either that week or the previous week to inspect whether promotional materials in fact had been distributed in accordance with the reports prepared by the PSA lieutenants. We visited a total of 32 locations identified in these reports as sites where promotional materials regarding community meetings would routinely be posted. We found current community meeting materials at only 2 of the 32 locations. Both of these locations were in PSA 606; one was the PSA sub-station, and the other was a retail store next door to the sub-station. MPD's consistent and prolonged failure to promote its community outreach efforts in accordance with the MOA is disappointing, particularly in light of the recent attention MPD has devoted to this area.

Conclusion

After five years of being subject to a monitoring program designed to evaluate MPD's and the City's progress in implementing the reforms

detailed in the MOA, it is clear that MPD and the City have made significant progress. MPD and the City have substantially complied with many of the central provisions of the MOA -- including implementation of a revised use of force policy, development of an excellent canine program grounded in the principles of the handler-controlled alert methodology, performance of high quality internal investigations of uses of deadly force, and development of a comprehensive curriculum for training officers in MPD's reformed use of force policies.

It is equally clear, however, that MPD and the City continue to fall short in certain important areas of MOA compliance. Although there appear to have been improvements in 2006, the reporting of use of force incidents involving MPD officers continues to be an area to which MPD must devote greater attention and achieve better results. Despite recent efforts, MPD continues to fail to notify the community of its outreach meetings, which undermines the goals and effectiveness of the Department's outreach program. Work remains on the development of PPMS, implementation of an enhanced FTO program, and introduction of revised policies related to the Department's Specialized Mission Units. We will continue to provide technical assistance to MPD and the City as they seek to satisfy the rigorous requirements and standards set forth under the MOA.

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Introduction

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The substantive areas of the MOA on which our monitoring focused this quarter include: (1) review of audits performed by the Quality Assurance Unit (“QAU”) and technical assistance regarding the QAU’s internal audit and monitoring program, (2) officer attendance at

mandatory in-service training, (3) use of force investigations performed by the Force Investigation Team (“FIT”), (4) non-FIT use of force and misconduct investigations, and (5) promotion of MPD’s community outreach meetings.

Compliance Assessment

Since our Tenth Quarterly Report, issued on November 12, 2004, in addition to reporting on our current monitoring activity, we have provided comprehensive assessments of MPD's and the City's progress in satisfying the objective substantial compliance standards agreed to by the parties. This report first provides a general overview of MPD's and the City's status in achieving substantial compliance with the substantive provisions of the MOA and discusses the activity of the Department's internal monitoring entity, the QAU. The remainder of the report adheres to the format we adopted over two years ago, when we first included substantial compliance assessments tied to the standards developed in consultation with DOJ, MPD, and the City. For ease of reference, we have attached a matrix containing the current objective substantial compliance standards at Appendix C to this report.

Generally, in each section of this report, we summarize the requirements imposed by each substantive paragraph of the MOA ("Requirements"). We then provide our assessment of MPD's or the City's progress toward compliance with those requirements as well as the current status of our monitoring activity in each of the substantive areas of the MOA ("Status and Assessment"). Next, we present our conclusions on whether MPD and the City, as of the close of this quarter, are in substantial compliance with the substantive provisions of the MOA, as defined by the objective standards agreed to by the parties ("Substantial Compliance Evaluation"). Finally, as in all of our quarterly reports, where appropriate, we include recommendations for MPD and the City based on our observations made during the quarter ("Recommendations").¹

I. Substantial Compliance and the Quality Assurance Unit

A. The Definition of Substantial Compliance

Paragraph 182 of the MOA provides that:

¹ Paragraph 166 of the MOA requires that the "Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement." The "Recommendations" sections of the OIM's quarterly reports are included in connection with fulfilling this responsibility. The recommendations do not impose additional obligations upon MPD or the City beyond those contained in the MOA.

[t]he Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years.

The MOA does not, however, define “substantial compliance.” Throughout 2004, the OIM facilitated and participated in discussions among DOJ, MPD, and the City regarding the development of specific standards for measuring “substantial compliance” with each of the substantive provisions of the MOA. The parties agreed that, while MPD’s and the City’s compliance with the substantive provisions of the MOA will be measured, where feasible, based on objective standards (generally requiring at least 95% compliance), the evaluation of MPD’s and the City’s achievement of substantial compliance also will include a subjective component involving assessments made by the OIM (or DOJ, where DOJ review and approval are required) and supported with appropriate analysis and explanation.

As detailed in the substantial compliance assessments of our quarterly reports, we have determined that MPD and the City have achieved and maintained substantial compliance for an extended period of time -- although, in most cases, not for the two years required under paragraph 182 of the MOA -- and that substantial compliance is likely to continue in the following areas:

- Implementation of a general use of force policy, including training officers in MPD’s use of force curriculum, as required under MOA paragraphs 37 through 40.
- Implementation of policies related to the use of firearms, including the training of officers in the use of firearms, as required under MOA paragraphs 41 through 43.
- All facets of the canine program, including training of handlers and canines, and implementation of policies based on the principles of the Handler-Controlled Alert Methodology, as required under MOA paragraphs 45 and 46.
- Implementation of policies related to the proper use of Oleoresin Capsicum (“OC”) spray, as required under MOA paragraphs 47 through 50.

- Obtaining DOJ approval of policies required under the MOA and revisions to those policies prior to their implementation, as required under MOA paragraphs 51 and 52.
- Assignment of investigations of incidents involving deadly force, serious uses of force, or any use of force involving potential criminal conduct by an officer to FIT, as required under MOA paragraphs 57 through 61.
- Review of use of force incidents by the UFRB, as required under MOA paragraph 67.
- Location of OPC facilities, the training of OPC investigators, and the development of an Investigations Manual for use by OPC investigators, as required under MOA paragraphs 95 through 97.
- Semi-annual reviews of use of force training to ensure the quality and consistency of use of force training and that MPD's training conforms to applicable law and MPD policy, as required under MOA paragraph 119.
- Development of a comprehensive use of force training curriculum that implements DOJ-approved use of force policies, as required under MOA paragraphs 121.b and 122.
- Implementation of an instructor training and certification program, as required under MOA paragraphs 136 and 137.
- Development and implementation of a canine training program, as required under MOA paragraphs 145 through 148.
- Cooperation with the OIM, establishment of a compliance coordinator to operate as a liaison with the OIM and DOJ, and preparation of quarterly status reports regarding MPD's efforts to comply with the MOA, as required under MOA paragraphs 167 and 173 through 175.

The OIM, DOJ, MPD, and the City continue to discuss strategies for permitting MPD and the City to concentrate their attention and resources on those areas of the MOA where significant progress still must be made in order to achieve substantial compliance. This quarter, the OIM met with representatives from DOJ and MPD to discuss alternatives intended to facilitate MPD's ability to demonstrate substantial compliance with certain central requirements of the MOA where the Department's performance still must improve significantly in

order to satisfy the objective standards for compliance agreed to by the parties. Initiatives and ideas the parties are considering include (1) MPD's advance preparation for the implementation of those revised policies that are still pending DOJ approval in order to facilitate the OIM's ability to make substantial compliance assessments regarding the implementation of such policies as soon as possible after DOJ approval; (2) targeted internal pre-assessments by MPD's QAU designed to identify deficiencies in MPD's compliance so that corrections and improvements can be made as quickly as possible; (3) improved coordination between MPD and the OIM regarding areas that MPD believes are ready for OIM assessment; and (4) reducing the time lag between MPD's implementation of reforms under the MOA and the quarterly substantial compliance assessments provided by the OIM. The OIM will continue to provide MPD and the City with feedback, both informally and through our quarterly reports, that identifies specific measures they should take in order to satisfy particular requirements of the MOA.

There are several areas in which MPD and the City have made significant progress toward achieving substantial compliance with the MOA's requirements, although work remains to be done in each of these areas. We continue to monitor each of these areas closely and to provide MPD and the City with recommendations regarding the steps that should be taken in order to achieve substantial compliance. The areas in which MPD is approaching substantial compliance include:

- Timely and high quality internal investigations of serious uses of force by FIT.
- Timely and high quality internal investigations of lower level uses of force and allegations of officer misconduct performed by the chain of command and the IAD.
- Public reporting of statistics reflecting uses of force by MPD officers.
- Providing OPC with adequate resources to perform timely and high quality investigations of complaints by members of the public alleging officer misconduct.
- Implementation of the enhanced Performance Evaluation System ("PES").

There are, however, a number of important areas in which MPD still must make significant additional progress in order to achieve

substantial compliance with the standards and requirements set forth under the MOA, including:

- Comprehensive reporting of use of force incidents, particularly lower-level uses of force involving hand controls.
- The process for receiving complaints about officer conduct from members of the public.
- Providing the public with proper notice of community outreach meetings in all of the City's patrol service areas ("PSAs").
- Establishing a centralized system for documenting and tracking all forms of disciplinary and corrective action.
- Developing and implementing the computerized Personnel Performance Management System ("PPMS").
- Implementing the enhanced FTO program.
- Implementing revised policies related to the operations of specialized mission units ("SMUs"), such as the Mobile Force Unit and Warrant Squad.
- Satisfying the requirements of the Memorandum of Understanding ("MOU") between MPD and OPC, including providing timely responses to document requests submitted by OPC and timely notification to OPC of certain types of citizen complaints lodged with MPD.

Each of the above areas requires significant attention and progress in order to satisfy the applicable requirements and standards of the MOA. We believe that MPD appreciates the work that remains to be done in these areas, and it has devoted significant attention and resources in recent quarters to improving Use of Force Incident Report ("UFIR") completion, establishing a program for advertising community meetings, developing all of the PPMS functionality required under the MOA, implementing a high quality and professional FTO program, and establishing a reliable system for responding to OPC requests for information. However, in all of these areas in which MPD and the City have not yet reached the substantial compliance threshold, the two-year period for which the Department and the City must maintain substantial compliance in order to satisfy paragraph 182 of the MOA has not yet begun to run.

B. The Quality Assurance Unit

At various points over the past five years, our monitoring has identified deficiencies in MPD's performance in meeting certain requirements of the MOA as well as complying with its own policies -- deficiencies of which MPD command staff appeared unaware. Examples include our past findings related to the underreporting of use of force incidents and the absence of a system for tracking the status of requests for documentation received from OPC.² As the parties neared the substantial compliance evaluation phase of our monitoring, we had several discussions with MPD and DOJ regarding the need for MPD to establish an internal audit and monitoring function to effectively detect failures to comply with the MOA and Department policy and to make permanent substantial compliance with the reforms MPD has implemented after expiration of the MOA.

In 2005, MPD established and staffed the QAU as a Department-wide internal inspections and audit function, the purpose of which is "to develop a structured, consistent process to regularly assess Department operations, as well as compliance with Department policy and procedures."³ The QAU began its MOA-related monitoring program in October 2005.⁴ Last year, the QAU prepared its Audit and Inspections Plan for MPD's 2007 fiscal year, which began on October 1, 2006.⁵

We have worked closely with the QAU to help it develop and formalize its internal audit and monitoring program. Last quarter, we provided MPD with a list of 25 audit focus areas, grouped in the following five categories: (1) use of force reporting and investigation, (2) training, (3) complaint investigation, (4) general administration, and (5) other MOA-relevant provisions such as compliance with the MOU between MPD and OPC. We also provided our suggestions as to the relative priority the QAU should assign to each of these audit focus areas and the

² See, e.g., OIM Thirteenth Quarterly Report at 8-11; OIM Fourteenth Quarterly Report at 65-66.

³ OIM Fifteenth Quarterly Report at 6.

⁴ OIM Sixteenth Quarterly Report at 7.

⁵ On March 31, 2006, MPD circulated the QAU's Audit and Inspections Plan for the remainder of fiscal year 2006, ending September 30, 2006. On August 17, 2006, DOJ provided MPD with comments, as a form of technical assistance, to that document. See Letter from Tammie Gregg to Inspector Matthew Klein (August 17, 2006).

frequency with which the QAU should audit or monitor each area.⁶ Finally, we have been assisting MPD in the development of audit standard operating procedures (“SOPs”) designed to ensure that the QAU’s audit program results in thorough, high quality reviews that will be consistent and reliable despite changes in audit personnel or leadership of the QAU.

Last quarter, we closely reviewed two audits the QAU performed of MPD officer compliance with the Department’s Limitations on Work Hours General Order.⁷ The Limitations on Work Hours General Order provides that officers are permitted to work no more than a total of 98 hours per seven-day calendar week, which includes time spent working the officer’s regular tour of duty, overtime for the Department, and any secondary employment outside of MPD.⁸ This General Order also limits officers to no more than 32 hours per calendar week in outside employment and prohibits officers from working secondary employment while on sick leave.⁹

The QAU’s audits covered secondary employment worked by MPD officers during the first six months of 2006. These audits involved reviews of the quarterly secondary employment self-reporting forms submitted by MPD officers (PD Form 180-A, “Quarterly Report of Outside Employment”) and information entered into the Department’s Time Attendance and Court Information System (“TACIS”), as well as site visits to outside employers and reviews of their payroll records. The audits identified six instances in which officers appeared to have violated the general order’s work hours limitations and three instances in which officers appear to have violated the policy by failing to perform one full tour of duty with MPD prior to working outside employment after taking sick leave.¹⁰ The QAU also made six recommendations for process changes intended to improve compliance and oversight related to MPD’s work hours limitations policy.

Although the QAU’s audits in this area were effective in identifying several potential violations of the Limitations on Work Hours General

⁶ OIM Nineteenth Quarterly Report at 10.

⁷ Last quarter, the OIM also reviewed and commented on the QAU’s audits of the FTO program and UFIR completion.

⁸ General Order 201.21, Part IV.

⁹ *Id.* at Part V.

¹⁰ The QAU referred all of these incidents to the IAD for investigation.

Order, we provided the unit's head with recommendations for further refinement of the QAU's audit methodology. First, we suggested that the QAU implement a system to regularly reconcile Requests to Engage in Outside Employment (PD Form 180) with Quarterly Reports of Outside Employment (PD Form 180-A) submitted by individual officers. Second, under the QAU's current audit methodology, the QAU only checked the employment records of officers who submitted a PD Form 180-A in which they self-reported having worked more than 24 hours of outside employment during a quarter. This methodology failed to capture officers who might have worked secondary employment but failed to submit a PD Form 180-A reporting the outside hours worked by the officer. Therefore, we recommended that the QAU develop a sampling methodology that selects individuals from the entire population of officers who have submitted a PD Form 180 Request to Engage in Outside Employment. The QAU then should obtain and review the outside employment records for selected officers, regardless of whether the officer self-reported having worked any outside employment during the relevant time period. MPD reports that, in response to our recommendations, the QAU has modified its methodology for auditing compliance with MPD's policies regarding outside employment.¹¹

This quarter, we completed our review of the QAU's audit of UFIR completion during the second quarter of 2006 -- April through June 2006. The QAU's audit methodology involved the selection of a sample of Arrestee Injury/Illness Reports (PD-313s), which it reviewed to identify potential use of force incidents for which completion of a UFIR is required under the MOA and MPD policy. The QAU then compared the incidents underlying those PD-313s, which indicated an officer likely used force, with completed UFIRs. The QAU found that officers had complied with MPD's use of force reporting policy in all (100%) of the likely use of force incidents that the QAU had identified through its sample of PD-313s.¹²

We advised the QAU that, while PD-313s are a valuable data source, the QAU's audit methodology failed to take advantage of other sources for information about potentially unreported use of force incidents -- such as Officer Injury or Illness Reports (PD-42s) -- and,

¹¹ Memorandum of Agreement Progress Report, dated April 16, 2007 ("MPD April 2007 Progress Report"), at 8. MPD also reports that the QAU recently began another audit of compliance with the Limitations on Work Hours General Order using the revised audit methodology. *Id.*

¹² MPD January 2007 Progress Report at 11.

therefore, may not provide a fully reliable basis for assessing MPD's compliance with use of force reporting requirements.¹³ We independently reviewed PD-42s generated during the second quarter of 2006 in order to evaluate whether those reports identified additional likely use of force incidents not captured by PD-313s completed during the same period. We reviewed a total of 139 PD-42s¹⁴ and found that 53 of them contained information strongly indicating the occurrence of reportable use of force incidents. We then reviewed MPD's monthly UFIR files, the involved officer's main use of force file maintained by FIT, FIT's UFIR logs, and PPMS to determine whether in fact a UFIR had been completed reporting each of these incidents. This review found that no UFIRs had been completed with respect to 13 of these 53 incidents -- a UFIR completion rate of only 75% with respect to this set of incidents.¹⁵

We discussed the results of our review of PD-42s with QAU personnel, who concurred with our findings. As a form of technical assistance, we provided the QAU with comments to its draft use of force reporting audit SOP regarding sources to be reviewed to identify potential use of force incidents for comparison with completed UFIRs. In addition to Arrest/Prosecution Reports (PD-163s) and Arrestee Injury/Illness Reports (PD-313s), we recommended that QAU auditors regularly review Officer Injury or Illness Reports (PD-42s), Incident-Based Event Reports (PD-251s), and Supplemental Reports (PD-252s).

We continue to find that the QAU is staffed and led by committed professionals who are devoted to establishing an effective internal monitoring and quality control function within MPD. This function will be critical to MPD's ability to sustain the reforms the Department has implemented pursuant to the MOA, even after MPD is no longer subject

¹³ We also suggested that the QAU conduct additional investigation in cases where it could not be determined whether a use of force by an officer was involved in a prisoner's injury because the PD-313 lacked sufficient explanation of the cause of the prisoner's injury.

¹⁴ MPD records reflect that approximately 33 additional PD-42s were completed during the second quarter of 2006, but MPD could not locate these reports at the time of our review.

¹⁵ This 75% UFIR completion rate relates only to the incidents underlying the 53 PD-42s that we reviewed from the period April through June 2006, nearly one year ago. Our review was designed to evaluate the QAU's audit methodology in this area, and it does not provide a comprehensive assessment of MPD's overall UFIR completion rate during that period. All of the unreported use of force incidents we identified through this review involved lower-level uses of force, such as hand controls, and none involved the use of weapons.

to independent monitoring. Therefore, the OIM will continue to devote significant time to providing MPD with technical assistance in further developing the QAU's internal audit and monitoring program.

MPD reports that the QAU monitored the following areas during this quarter:

- Citizen complaint process,
- FTO program review (ongoing),
- Chain of command use of force investigations, and
- Work hour limitation audit (ongoing).¹⁶

We look forward to reviewing the QAU's work in these and other areas during the coming quarters.

II. General Use of Force Policy Requirements (MOA ¶¶ 36-52)

A. General Use of Force Policy (MOA ¶¶ 36-40)

1. Requirements

MPD is required to complete the development of an overall Use of Force Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the Use of Force Policy must include provisions that:

- Define and describe the different types of force and the circumstances under which the use of each type of force is appropriate;
- Encourage officers to use advisements, warnings, and verbal persuasion when appropriate and in general seek the goal of de-escalation;
- Prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may develop such that the use of deadly force would be authorized;

¹⁶ MPD April 2007 Progress Report at 7.

- Establish that officers must, wherever feasible, identify themselves as police officers and issue a warning before discharging a firearm;
- Require that, immediately following the use of force, officers must examine persons who have been subjected to the use of force and obtain medical care for them, if necessary; and
- Provide specific advice to officers that the use of excessive force will subject them to MPD disciplinary action and potential civil liability and criminal prosecution.

2. Status and Assessment

a. Policy Development

On September 17, 2002, DOJ approved MPD's revised Use of Force General Order, which is a keystone of the MOA. MPD had originally committed to begin implementing the revised Use of Force General Order during the week of October 6, 2002, with intensive training to follow immediately thereafter. We found that MPD's initial effort to roll out the Use of Force General Order was not as effective as it could have been due to poor coordination in the training of officers in MPD's new use of force policy.¹⁷ MPD, however, acted quickly to remedy the deficiencies in its initial training efforts related to implementation of the Use of Force General Order, including, in particular, creating and conducting a special "sergeants and above" training program for supervisors. We found that the "sergeants and above" training program played a significant role in remedying some of MPD's prior implementation failures.¹⁸

On May 16, 2005, consistent with the requirements of paragraph 52 of the MOA,¹⁹ MPD requested DOJ approval of a revision to the Use of Force General Order relating to shooting at or from moving vehicles. On August 11, 2005, DOJ responded to MPD's request by suggesting alternative language for the proposed revision; and, on

¹⁷ OIM Third Quarterly Report at 4.

¹⁸ OIM Fourth Quarterly Report at 5.

¹⁹ Paragraph 52 of the MOA requires that, "[i]n the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form."

October 27, 2005, MPD submitted a revised version of the general order that incorporated DOJ's suggestions. DOJ provided its final approval of the revised Use of Force General Order on November 1, 2005, and MPD published the revised order on November 10, 2005.²⁰ On March 30, 2007, MPD submitted to DOJ a change to the Use of Force Investigations General Order that is intended to resolve an inconsistency that was identified by an outside reviewer between that general order and the Use of Force Review Board General Order.

b. In-Service Use of Force Training

Although the attendance rate for MPD's semi-annual firearms re-certification program, which includes training regarding the Department's use of force policies and the use of force continuum, was very high -- over 99% -- in 2004, MPD's use of force training curriculum is broader than just the firearms re-certification program. As discussed in Section VII.B.2 below, MPD's use of force curriculum includes lesson plans and in-service training in areas such as close quarter combat, ground fighting, handcuffing, krav/maga,²¹ and officer street survival. In our Thirteenth Quarterly Report, we reported that MPD's attendance rate for all three of its general in-service training programs was only approximately 75% for the 2004 in-service training cycle.²²

Accordingly, although in 2004 over 99% of MPD officers attended the firearms re-certification and training program -- which is MPD's primary training program regarding use of force policy and the use of force continuum -- we found that attendance rates for the general in-service training program lagged behind the levels necessary for substantial compliance.²³

²⁰ OIM Fifteenth Quarterly Report at 8.

²¹ Krav/maga involves training in hand-to-hand self-defense techniques.

²² OIM Thirteenth Quarterly Report at 7.

²³ Although the lecture component of MPD's in-service firearms training -- which covers topics including the use of force continuum and reporting of use of force incidents -- is MPD's primary vehicle for implementation of the Department's general use of force policy, we have advised MPD that we believe full implementation of the DOJ-approved Use of Force General Order under paragraphs 37 through 40 of the MOA also requires very high attendance rates for the general in-service training program covering the other aspects of MPD's use of force training curriculum.

Even more troubling was our finding that MPD lacked a system for tracking in-service training attendance and ensuring that individual officers who initially fail to attend training are identified.²⁴ Last year, MPD was unable to provide us with statistics regarding in-service training attendance for the 2004 training cycle and to readily identify individual officers who have failed to fulfill their continuing training obligations. We reported that only by having systems in place that will enable MPD to track the rate at which officers are attending in-service training and to identify those officers who fail to attend training will MPD likely be able to improve its current in-service training attendance rate. Last year, the Commander of the Institute of Police Science (“IPS”) advised us that IPS intends to adopt the same systems used to track officers’ firearms re-certification -- which we have found to be complete and very precise -- to track attendance at in-service training.

During the seventeenth quarter, we reviewed MPD’s progress in improving its in-service training attendance rates during the 2005 training cycles as well as its systems for tracking in-service training attendance. We found that the attendance rate for MPD’s primary in-service training program -- which includes all officers, master patrol officers (“MPOs”), senior police officers, desk sergeants, and sergeants other than those assigned to detective or vice units -- was 91% in 2005.²⁵ Although the in-service training attendance rate for 2005 is below the 95% threshold necessary for substantial compliance, it reflects a significant improvement over the attendance rate we observed for the 2004 training cycle.²⁶

We found, however, that MPD’s system for tracking in-service training attendance and identifying officers who failed to complete mandatory in-service training remained deficient.²⁷ Despite the findings and recommendations contained in our Thirteenth Quarterly Report, as of the end of the seventeenth quarter, MPD still did not have an automated system for tracking the in-service training attendance of

²⁴ OIM Thirteenth Quarterly Report at 7-8.

²⁵ MPD has separate in-service training programs for officers of the ranks of lieutenant and above and for detectives and sergeants assigned to detective and vice units. We focused our review this quarter on MPD’s primary in-service training because it includes most sworn MPD personnel and the officers most likely to be involved in use of force incidents.

²⁶ OIM Seventeenth Quarterly Report at 12.

²⁷ *Id.*

individual officers. In order to assess the rate at which MPD officers attended mandatory in-service training in 2005, we had no alternative to undertaking a laborious manual process: comparing names on a roster of attendees, compiled on the basis of sign-in sheets completed during daily training sessions, with the sworn personnel roster for the entire Department, which we manually adjusted to exclude categories of officers not required to attend the primary in-service training program.

On September 29, 2006, MPD reported that IPS and the Department's Office of the Chief Information Officer have been working to develop an automated reporting system with the capability of generating reports identifying officers who have, as well as those who have not, attended in-service training.²⁸ Last quarter, IPS personnel advised us that MPD had developed and was testing a training attendance tracking system that piggybacks on the Department's pre-existing TACIS system. The new system requires IPS personnel to enter training attendance data for individual officers into the TACIS system on a weekly basis.²⁹

This quarter, we reviewed MPD's in-service training attendance for the 2006 training cycle. We found significant improvements in both the overall attendance rate for MPD's primary in-service training program and IPS's system for tracking individual officer compliance with the Department's in-service training requirements. In response to our request, MPD was able to provide us with a report that identified (1) the number of officers required to attend MPD's general in-service training; (2) the number of officers who were legitimately excused from in-service training due to, for example, extended medical leave or military service; (3) the number of officers who fulfilled the 40-hour general in-service training requirement, and (4) the number of officers who were delinquent in meeting the in-service training requirement.

For the 2006 training cycle, MPD reported that only two officers ultimately failed to complete the general in-service training program or the in-service training program for detectives, which is a compliance rate well in excess of 95%. The cases of the two delinquent officers were referred to IAD for investigation and possible disciplinary action. Although MPD's system for tracking in-service training attendance still is cumbersome and in need of further refinement, IPS's system for identifying individual officers who fail to attend in-service training in

²⁸ E-mail from Maureen O'Connell to DOJ and OIM personnel (September 29, 2006).

²⁹ OIM Nineteenth Quarterly Report at 14-15.

order to assign them to remedial training, or, if that fails, to refer them for corrective action, has improved dramatically.³⁰ This accomplishment, in combination with the consistently high attendance rates for MPD's firearms training and re-certification, reflects that MPD has implemented an effective program for training its officers in the Department's revised use of force-related policies and curriculum.

c. Use of Force Reporting

Section VI.1 of MPD's Use of Force General Order, GO-RAR-901.07, requires that a UFIR (PD Form 901-e) be completed "in all of the following situations:"

- a. all Use of Force incidents (except Cooperative or Contact Controls, e.g., mere presence, verbal commands, submissive handcuffing, unless there has been a resulting injury or the subject complains of pain following the use of Cooperative or Contact Controls);
- b. any time an officer is in receipt of an allegation of excessive force; or
- c. whenever a member draws and points a firearm at or in the direction of another person.

As we reported in our Thirteenth Quarterly Report, our careful analysis of underlying incident reports -- i.e., Incident-Based Event Reports (PD Form 251), Arrest/Prosecution Reports (PD Form 163), and Arrestee Injury/Illness Reports (PD Form 313) -- and comparison of those reports to completed UFIRs found that, during the period October 2004 through December 2004, MPD officers complied with the Department's use of force incident reporting requirements in only 16% of

³⁰ Officials at the rank of lieutenant and above are required to complete a 32-hour in-service training program that is separate from the general in-service training program for officers, sergeants, and detectives. According to an IPS report dated March 27, 2006, approximately 72% of lieutenants and above satisfied their in-service training requirement. Although this is below the exceptional attendance rate MPD has achieved for its general in-service training program, we note that the lieutenant and above training tends to focus on issues other than use of force and that these officials are required to complete semi-annual firearms training and re-certification, which covers the use of force policies and the use of force continuum.

the incidents requiring completion of a UFIR.³¹ The vast majority of cases in which officers used force, but failed to complete a UFIR as required, appears to have involved hands-on physical force by an officer to subdue and handcuff a suspect. Although such uses of force often are relatively minor, MPD policy and the MOA are clear that they must be reported as use of force incidents and that a UFIR must be completed to document the incident.³²

MPD acknowledged that the underreporting of use of force incidents reflected by our findings is unacceptable. On December 28, 2005, MPD distributed a teletype within the Department clarifying the policy regarding reporting uses of force and emphasizing, in particular, the reporting requirements related to the use of hand controls in effecting the arrest of a suspect who resists handcuffing.³³

On March 8, 2006, the QAU completed an “Audit of the P.D. 313 (2005) to Determine Use of Force Incident Underreporting.” Using a methodology similar to the one developed and used by the OIM to measure use of force incident reporting during the last quarter of 2004, the QAU reviewed prisoner injury reports (PD-313s) prepared citywide during calendar year 2005 to identify incidents in which a use of force by an officer was likely. The QAU then compared the results of the review of PD-313s with completed UFIRs to determine the rate at which UFIRs were completed under circumstances in which there likely was a use of force involved. Similar to the findings reflected in our Thirteenth Quarterly Report, the QAU found that “only 24% of the PD 313’s indicating that a use of force may have occurred had a UFIR associated with them.”³⁴

During the seventeenth quarter, the QAU completed another analysis of PD-313s to evaluate the rate at which MPD officers completed

³¹ OIM Thirteenth Quarterly Report at 9.

³² The completion of high quality UFIRs under all circumstances required by MPD policy and the MOA also is relevant to MPD’s development of PPMS. Paragraph 55 of the MOA requires that “[d]ata captured on [UFIRs] shall be entered into MPD’s Personnel Performance Management System (PPMS).” The usefulness and effectiveness of PPMS will be directly related to the quality and reliability of the information inputted into the system, including information from UFIRs.

³³ OIM Fifteenth Quarterly Report at 12.

³⁴ Audit of the P.D. 313 (2005) to Determine Use of Force Incident Underreporting (March 8, 2006) at 1.

UFIRs for incidents likely involving a reportable use of force during the first quarter of 2006. Using the same methodology it applied to its analysis of UFIR completion in calendar year 2005, the QAU found that only approximately 36% of PD-313s reflecting that a reportable use of force incident likely occurred could be associated with a completed UFIR on file with FIT.³⁵

The QAU's review during the seventeenth quarter also found that, of the 56 PD-313s completed during that period that indicated a possible use of force incident, only 25 (45%) had been signed by the supervising watch commander. Moreover, of the 20 UFIRs related to these incidents that had been completed, only 9 (45%) had been signed by a supervisor.³⁶ These findings indicate that MPD supervisors were devoting inadequate attention to the use of force reporting process and failing to provide the oversight necessary to ensure that MPD officers properly report all use of force incidents in accordance with MPD policies and the MOA.

Last year, the Office of Professional Responsibility ("OPR") developed an SOP for UFIR/RIF Quality Control and Case Tracking, which, although not required under the MOA, is intended to address some of the deficiencies in UFIR completion identified by the OIM and QAU.³⁷ MPD reports that the "purpose of the SOP is to standardize the UFIR review process, to ensure quality and completeness of all reports prepared by MPD members, and to proactively monitor Department organizational elements to ensure compliance with use of force reporting requirements."³⁸ MPD provided DOJ and the OIM with a copy of this SOP on September 29, 2006. On December 28, 2006, DOJ returned comments on the SOP, which MPD currently is reviewing.³⁹

As discussed above, the QAU recently compared a sample of PD-313s as well as assault on police officer ("APO") reports from the second quarter of 2006 with completed UFIRs. MPD reported that "[t]his audit found 100% compliance with the reporting of uses of force as

³⁵ Audit of the P.D. 313 for the First Quarter (2006) to Determine Use of Force Incident Underreporting (undated) at 1.

³⁶ *Id.* at 2.

³⁷ MPD April 2007 Progress Report at 17.

³⁸ *Id.*

³⁹ *Id.*

required.”⁴⁰ However, our review this quarter found that the QAU’s audit failed to draw sufficiently from available source data to identify potential unreported use of force incidents, including Officer Injury or Illness Reports (PD-42s). Our review of PD-42s completed during the second quarter of 2006 identified 53 incidents in which there are strong indications that an officer used force, but no UFIR was completed in 13 of these incidents -- which is a compliance rate of only approximately 75% with respect to this set of incidents.⁴¹

Nevertheless, it appears that MPD’s emphasis on use of force reporting as well as the QAU’s auditing in this area has had a discernible impact. Although MPD has not yet achieved substantial compliance with the MOA’s use of force reporting requirements, UFIR completion rates improved significantly in 2006. We also found that officers are including greater detail in Arrestee Injury/Illness Reports (PD-313s) about the nature of a suspect’s injuries and whether such injuries pre-existed the individual’s arrest.

3. Substantial Compliance Evaluation

MPD has developed, and obtained DOJ approval for, a revised Use of Force General Order that includes the provisions required by the MOA.⁴² The substantial compliance standards under MOA paragraphs 37 through 40 also require that at least 95% of officers receive training in MPD’s use of force policies. This quarter, MPD was able to demonstrate that, during the 2006 training cycle, more than 95% of officers satisfied the Department’s 40-hour in-service training requirement for officers, sergeants, and detectives. Coupled with MPD’s consistently high attendance rates for firearms re-qualification, which includes training regarding MPD’s use of force policies and the use of force continuum, we find that MPD has implemented a reliable program

⁴⁰ MPD January 2007 Progress Report at 11.

⁴¹ As discussed above, this 75% UFIR completion rate relates only to the incidents underlying the 53 PD-42s that we reviewed from the period April through June 2006, nearly one year ago. Our review was designed to evaluate the QAU’s audit methodology in this area, and it does not provide a comprehensive assessment of MPD’s overall UFIR completion rate during that period. All of the unreported use of force incidents we identified through this review involved lower-level uses of force, such as hand controls, and none involved the use of weapons.

⁴² DOJ approved MPD’s requested revision to the Use of Force General Order relating to shooting at or from moving vehicles. OIM Fifteenth Quarterly Report at 8.

for training officers in the Department's revised use of force policy and use of force curriculum. Accordingly, MPD is in substantial compliance with the requirements of paragraphs 37 through 40 of the MOA.

In our Thirteenth Quarterly Report, we reported that MPD officers severely underreported use of force incidents during the last quarter of 2004, particularly in cases in which officers use hands-on force to subdue and handcuff a suspect. Audits performed by MPD's QAU produced similar findings related to use of force reporting during calendar year 2005 and the first quarter of 2006. MPD has taken significant steps to remedy this problem, including issuing a teletype last quarter to clarify the circumstances under which officers must report use of force incidents and developing the UFIR/RIF Quality Control and Case Tracking SOP. The QAU also is monitoring the performance of supervisors in reviewing incident reports for potential uses of force and in overseeing the UFIR completion process. While there appear to have been improvements in UFIR completion rates, we will continue monitoring MPD's progress in the area of use of force reporting.

4. Recommendations

MOA paragraphs 37 through 40, regarding MPD's general use of force policy, are in many respects the core provisions of the MOA. This quarter we found, for the first time, that MPD has implemented an effective system for ensuring that officers are trained in its use of force policy. We continue to recommend, however, that MPD continue to devote significant attention to refining its auditing and tracking systems to ensure that officers have a current and accurate understanding of the Department's use of force-related policies.

B. Use of Firearms Policy (MOA ¶¶ 41-43)

1. Requirements

MPD is required to complete its development of a Use of Firearms Policy. The policy must comply with applicable law and be consistent with current standards in the law enforcement field. In particular, the Use of Firearms Policy must:

- Prohibit officers from possessing or using unauthorized ammunition and require officers to obtain service ammunition through official MPD channels;
- Specify the number of rounds that officers are authorized to carry;

- Establish a single, uniform reporting system for all firearms discharges;
- Require that, when a weapon is reported to have malfunctioned during an officer's attempt to fire, it promptly be taken out of service and an MPD armorer evaluate the functioning of the weapon;
- Require that MPD document in writing the cause of a weapon's malfunction -- i.e., whether it was an inherent malfunction, a malfunction due to poor maintenance, or a malfunction caused by the officer's use of the weapon; and
- Provide that the possession or use of unauthorized firearms or ammunition may subject officers to disciplinary action.

In addition to these specific requirements relating to the Use of Firearms Policy, the MOA requires the Mayor to submit to the Council of the District of Columbia a request to permit MPD's Chief of Police to determine the policy for MPD officers to carry firearms when they are off duty while in the District of Columbia, including any appropriate restrictions applicable to situations in which an officer's performance may be impaired.

2. Status and Assessment

a. Handling of Service Weapons General Order and Firearms Re-qualification

On August 19, 2002, DOJ approved MPD's Handling of Service Weapons General Order, which MPD distributed in early October 2002. Consistent with paragraph 52 of the MOA, on August 17, 2005, MPD submitted a request to DOJ to revise the Handling of Service Weapons General Order to clarify the types of firearms that are authorized to be carried by off-duty officers and to clarify the requirements for weapons qualification for officers on limited duty or sick leave. DOJ approved MPD's request on August 31, 2005, and the revised order was published on September 15, 2005.

We have consistently found MPD's in-service firearms training and pistol re-certification programs to be consistent with the MOA and conducted by knowledgeable and professional instructors.⁴³ Our recent

⁴³ OIM Fourteenth Quarterly Report at 9.

monitoring has found that MPD's in-service firearms training program continues to fairly, accurately, and properly summarize the principles of the Handling of Service Weapons General Order. MPD's firearms instructors continue to display exceptional command of the subject matter, and they exhibit a commitment to training MPD officers to use force properly and effectively.⁴⁴

During the thirteenth quarter, we found that MPD officers attended both firearms re-qualification phases in 2004 at a very high rate -- over 99%.⁴⁵ This quarter, we reviewed MPD officer attendance at firearms re-qualification during the 2006 cycle. Our review of MPD's records found that, in 2006, 11 MPD officers failed to appear for mandatory pistol re-certification. MPD relieved all 11 of these officers of their weapons, brought them in for remedial training and qualification, and referred each of them for corrective action. Our review this quarter reinforces our previous finding that MPD has effectively implemented the Handling of Service Weapons General Order.

**b. Carrying Service Firearms While
Off-Duty in the District of Columbia
Special Order**

On June 4, 2002, the Council of the District of Columbia approved an amendment, entitled the "Off-Duty Service Pistol Authorization Amendment Act of 2002," that permits MPD's Chief of Police to designate his own policy as to when off-duty officers are required to carry their service pistols in the City. This measure was signed into law and became effective on October 1, 2002.

On April 1, 2004, MPD issued a special order entitled Carrying Service Firearms While Off-Duty in the District of Columbia. MPD circulated this special order to DOJ and the OIM on April 5, 2004. On June 10, 2004, DOJ provided MPD with several recommendations concerning the special order as a form of technical assistance. The MOA does not require that the Carrying Service Firearms While Off-Duty in the District of Columbia Special Order be approved by DOJ. As discussed above, in September 2005 DOJ approved MPD's requested revisions to the Handling of Service Weapons General Order related to the types of firearms that off-duty officers are authorized to carry.

⁴⁴ OIM Eighteenth Quarterly Report at 28-29.

⁴⁵ OIM Thirteenth Quarterly Report at 14.

3. Substantial Compliance Evaluation

MPD and the City are in substantial compliance with the requirements of MOA paragraphs 41 through 43 relating to the use of firearms policy. MPD has developed and obtained DOJ approval of a Handling of Service Weapons General Order that includes the provisions required by the MOA and has issued a special order governing Carrying Service Firearms While Off-Duty in the District of Columbia. MPD's firearms training and re-qualification attendance rates were above 95% in 2004; accordingly, we find that MPD has effectively implemented the Handling of Service Weapons General Order.⁴⁶ We also find that MPD has effectively distributed the Handling of Service Weapons General Order and that MPD's in-service training program properly and effectively implements the use of firearms policy.

Finally, we are aware of no incidents in which a failure to fire or a weapon discharge is alleged to be the result of a weapon malfunction.⁴⁷ Accordingly, we find that MPD currently is in substantial compliance with MOA paragraph 43's requirements regarding the treatment of weapons that are reported to have malfunctioned.

C. Canine Policies and Procedures (MOA ¶¶ 44-46)

1. Requirements

The MOA requires MPD to develop a Canine Teams Policy that:

- Limits the high-risk deployment of canines -- off-leash deployments, use during searches, and other situations where there is a significant risk of a canine biting a suspect -- to cases where the suspect is either wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed;

⁴⁶ Although, as discussed above, MPD's attendance rate in 2005 for the general in-service training program was below 95%, the use of force-related issues covered by certain lesson plans in the general in-service training program are not related to the use of firearms.

⁴⁷ OIM Eleventh Quarterly Report at 11.

- Requires supervisory approval for all canine deployments -- either a Canine Unit supervisor or a field supervisor;⁴⁸
- Ensures that suspects are advised through a loud and clear announcement that a canine will be deployed, that the suspect should surrender, and that the suspect should remain still when approached by a canine; and
- Ensures that, in all circumstances where a canine is permitted to bite or apprehend a suspect,
 - The handler calls the canine off as soon as the canine can be safely released, and
 - MPD ensures that any individual bitten by a canine receives immediate and appropriate medical treatment.

2. Status and Assessment

a. Canine Policy and Manual

MPD first received DOJ approval of the Canine Teams General Order on September 17, 2002, and MPD issued the general order on October 7, 2002. In response to deficiencies identified internally and by the OIM, MPD submitted a revised Canine Teams General Order to DOJ on June 4, 2003.⁴⁹ On November 22, 2004, DOJ approved MPD's revised Canine Teams General Order. However, while it was preparing to distribute the approved general order, MPD determined that the order's definition of "tactical use of a canine" should be clarified to encompass instances of on-lead tracking of suspects. On December 6, 2004, MPD submitted a revised draft Canine Teams General Order to DOJ that included revised definitions of the terms "tactical use of canine" and "non-tactical use of canine."⁵⁰

On February 17, 2005, DOJ provided MPD with its final approval of the Canine Teams General Order. MPD published the revised Canine Teams General Order on February 18, 2005. MPD had delayed making revisions to its Canine Operations Manual pending the completion and

⁴⁸ The MOA makes clear that the approving supervisor cannot serve as the canine handler in the deployment. MOA ¶ 45.

⁴⁹ OIM Fifth Quarterly Report at 10-11.

⁵⁰ OIM Twelfth Quarterly Report at 12.

approval of the Canine Teams General Order in order to ensure that the manual and the general order were consistent. With the approval during the first quarter of 2005 of the Canine Teams General Order, MPD finalized revisions to the manual and submitted it to DOJ on June 30, 2005. On September 27, 2005, DOJ approved the Canine Operations Manual.⁵¹

b. Canine “Bite” Incidents

In our Fourth Quarterly Report, we observed that 17 of the 110 apprehensions involving a canine unit from the third quarter of 2001 through the end of the first quarter of 2003 included a bite or other significant contact with a canine. We reported that this 15.5% bite-to-apprehension ratio was consistent with the ratios experienced in other major city police departments.⁵² Police practices experts have over time taken the position that a bite-to-apprehension ratio of less than 30% is generally acceptable.⁵³ DOJ has pointed out that many effectively run canine programs have a bite-to-apprehension ratio of no more than 10%.⁵⁴ DOJ, however, shares the view of our police practices experts that a bite-to-apprehension ratio of up to 20% is acceptable for MPD.

In 2003, there were 88 apprehensions recorded involving a canine unit, 16 of which involved a bite to the suspect or other significant contact with a canine. We found that this bite-to-apprehension ratio of 18% in calendar year 2003 was within the range that our police practices experts believe to be acceptable.⁵⁵ Although our review of the 13 completed FIT investigations related to these bite incidents found that the uses of force were generally consistent with the requirements of the MOA and with MPD policy, we identified several points of concern that we recommended MPD address through the training of canines and handlers. Specifically, we recommended that MPD’s canine in-service

⁵¹ OIM Fourteenth Quarterly Report at 16.

⁵² OIM Fourth Quarterly Report at 14-16. As discussed in our Fourth Quarterly Report, since canine programs and the environments in which those programs are run vary from city to city, we do not mean to suggest that there is a single “appropriate” national bite-to-apprehension ratio.

⁵³ See, e.g., *Kerr v. City of West Palm Beach*, 875 F.2d 1546 (11th Cir. 1989) (“These experts indicated that less than thirty percent of apprehensions should, on average, result in a bite.”).

⁵⁴ Letter from William R. Yeomans to Charles H. Ramsey (June 13, 2001).

⁵⁵ OIM Eighth Quarterly Report at 12.

training program emphasize (1) the importance of accurate and complete canine deployment reports; (2) close handler control over canines during confrontations with suspects; and (3) reasonable efforts to obtain a suspect's compliance -- including consideration that a suspect may not understand English -- prior to the release of a canine.⁵⁶

During the tenth quarter, we again reviewed canine-involved apprehensions.⁵⁷ We found that, from January 1, 2004 through August 31, 2004, MPD's canine units were involved in 37 apprehensions, 7 of which included a bite to the suspect or other significant contact with a canine. This 19% bite-to-apprehension ratio is within the range our police practices experts consider acceptable, although it is at the high end of the range. Four of these bites occurred during on-lead tracks, while 3 occurred when the canine had been released and was off-lead.

During the twelfth quarter, we closely reviewed all FIT investigations of uses of force by canine units completed during calendar years 2003 and 2004. FIT completed 16 investigations into uses of force involving canines in 2003 and 11 such investigations in 2004. We reviewed these investigations to determine, among other things: the reported offense that served as the basis for the deployment of a canine unit, the source of approval for the canine deployment, the type of deployment, whether the canine was on- or off-lead at the time of the force incident, the subject's age, the FIT investigator's or the UFRB's determination as to whether the force applied was justified, and the nature and circumstances of the injury to the suspect.

Our overall conclusion during the twelfth quarter based upon the detailed review of the 27 canine cases from 2003 and 2004 was that MPD canine handlers do not appear to be using canines inappropriately or abusively. We reported that we have seen no evidence that MPD handlers permitted canines to "chew" on suspects or otherwise used canines to punish suspects.⁵⁸ On the contrary, virtually all of the bite incidents we reviewed during the twelfth quarter indicated that the canine, whether on-lead or off-lead, and the handler performed in a

⁵⁶ *Id.* at 12-13.

⁵⁷ OIM Tenth Quarterly Report at 15.

⁵⁸ OIM Twelfth Quarterly Report at 14-15.

manner consistent with their training and with the principles of the Handler-Controlled Alert Methodology.⁵⁹

During the fifteenth quarter, we again reviewed apprehensions in which an MPD canine unit was involved. In 2005, MPD canine units were reported as being involved in a total of 56 apprehensions, 8 of which resulted in “bites” or contact between the canine and the suspect, which is a bite-to-apprehension ratio of 14.3%.⁶⁰ The bite-to-apprehension ratio for 2005 was quite acceptable for a police agency the size of MPD and was the lowest we have observed during our reviews of MPD’s canine program. As reflected in our use of force survey discussed above, MPD’s Canine Unit has made tremendous strides since execution of the MOA, and these bite-to-apprehension figures reflect the effectiveness of MPD’s implementation of policies and training based on the Handler-Controlled Alert Methodology.

We also reviewed incident reports related to each of the 56 apprehensions in 2005 reported as involving a canine in order to determine whether a canine unit was truly involved in each of these apprehensions, as opposed to merely being present at the scene but not actually involved with the apprehension. We found only one case in which it was questionable whether the canine actually was involved in the arrest. Accordingly, we found that MPD’s bite-to-apprehension ratio in 2005 had not been distorted by the overreporting of canine involvement in apprehensions.⁶¹

Last quarter, MPD reported that there were 60 apprehensions in 2006 involving a canine unit, 7 of which resulted in a “bite.” Accordingly, MPD reported that the Canine Unit’s bite-to-apprehension ratio for 2006 was approximately 11.7%.⁶² In the coming quarter, we will

⁵⁹ The sole exception was a 2003 bite incident in which the suspect sustained a bite wound on his chest. In that case, the canine was deployed off-lead during an open seek. The canine alerted on the suspect, who attempted to comply with the handler’s command that he raise his hands. The canine, which remained off-lead, appeared to have interpreted the suspect’s hand movements as a threatening gesture and reacted by biting the suspect on the chest. Although the UFRB found the force in this case to be justified, it did not appear that the handler maintained adequate control over the canine throughout the incident by, for example, placing the canine on-lead before ordering the suspect to show his hands.

⁶⁰ OIM Fifteenth Quarterly Report at 20.

⁶¹ *Id.*

⁶² OIM Nineteenth Quarterly Report at 27.

perform our own review to confirm the 2006 apprehension and bite data for MPD's Canine Unit.

c. Supervisor Authorization for Canine Deployments

In our Eighth Quarterly Report, we reported that approximately 98% of a statistical sample of MPD canine deployments in 2003 were made either with appropriate supervisor approval or under “exigent circumstances” justifying deployment of a canine unit without prior supervisor authorization.⁶³ During the tenth quarter, we found that 99.8% of the canine deployments between January 1, 2004 and August 31, 2004 either were authorized by a supervisor or made under demonstrated exigent circumstances justifying the absence of supervisor approval.⁶⁴ Accordingly, we found that MPD was in substantial compliance with the MOA's provisions relating to supervisor authorization for canine deployments.⁶⁵

We also observed, however, that, during the months January 2004 through August 2004, nearly half of all canine deployments were authorized by non-Canine Unit supervisors.⁶⁶ Paragraph 45 of the MOA and the Canine Teams General Order require that canine handlers seek deployment authorization from non-Canine Unit supervisors only if the handler first is unable to contact a Canine Unit supervisor.⁶⁷ During the eleventh quarter, MPD's Canine Unit reported to the OIM that the issue of supervisor authorization had been addressed and that canine deployments were being approved by Canine Unit supervisors at a much higher rate in connection with recent deployments.⁶⁸

Our review during the thirteenth quarter of Canine Tactical Field Reports demonstrated that, in fact, there was a significant reduction in the percentage of tactical canine deployments authorized by non-Canine Unit supervisors in the months between August 2004 and March 2005.⁶⁹

⁶³ OIM Eighth Quarterly Report at 10-11.

⁶⁴ OIM Tenth Quarterly Report at 13.

⁶⁵ *Id.* at 15-16.

⁶⁶ *Id.* at 13.

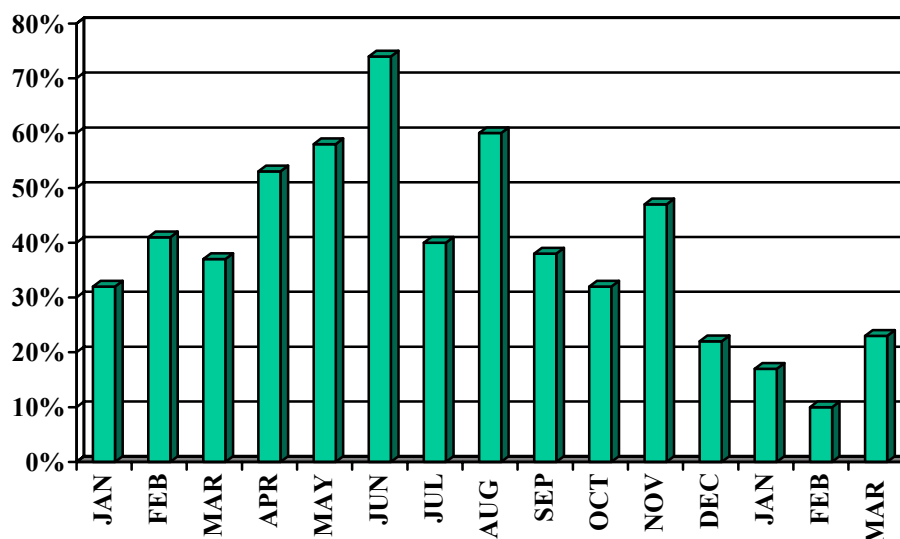
⁶⁷ MOA ¶ 45; GO-RAR-606.1, § V.B.1.

⁶⁸ OIM Eleventh Quarterly Report at 15.

⁶⁹ OIM Thirteenth Quarterly Report at 20.

This trend toward a higher percentage of deployment authorizations by Canine Unit supervisors is reflected in the chart below, which tracks the percentage of canine deployments authorized by non-Canine Unit supervisors during the months January 2004 through March 2005.

**Canine Unit Deployment Authorizations by Non-Canine Supervisors
January 2004 - March 2005**



During the fifteenth quarter, we again reviewed Canine Tactical Field Reports to assess the extent to which deployments of canine units were being authorized by non-Canine Unit supervisors. We found that during July 2005 through September 2005, nearly half of canine deployments were authorized by non-Canine Unit supervisors. However, our review of the canine unit deployments during April 2005 through September 2005 found no evidence that canine handlers were shopping for sympathetic non-Canine Unit supervisors to authorize deployments. We found that the sole cause for the increase in canine deployments authorized by non-Canine Unit supervisors was the then-existing shortage of supervisors in the Canine Unit.⁷⁰

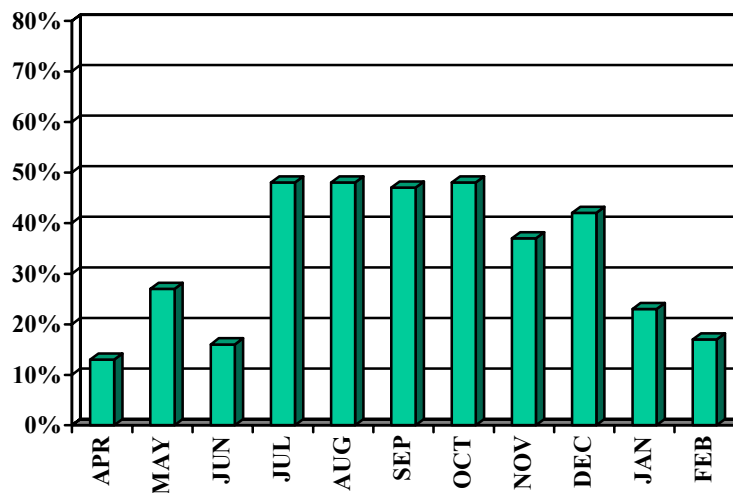
During the seventeenth quarter, we again reviewed supervisor authorizations of canine unit deployments.⁷¹ MPD reported that a Canine Unit supervisor who had been absent due to illness returned in

⁷⁰ OIM Fifteenth Quarterly Report at 22-23.

⁷¹ OIM Seventeenth Quarterly Report at 26-27.

November 2005. As reflected in the chart below, the availability of another Canine Unit supervisor appears to have had an effect on decreasing the rate at which non-Canine Unit supervisors have been responsible for authorizing the deployment of canine units. In January and February 2006, only 23% and 17%, respectively, of canine deployments were authorized by non-Canine Unit supervisors. Moreover, we found, that during the months of November 2005 through February 2006, 97% of the canine unit deployments authorized by non-Canine Unit supervisors occurred when no Canine Unit supervisor was on duty.

**Canine Unit Deployment Authorizations by Non-Canine Supervisors
April 2005 - February 2006**



In light of our findings during the seventeenth quarter, we affirmed our assessment that that MPD is in substantial compliance with the MOA requirements related to the authorization of canine deployments.

3. Substantial Compliance Evaluation

MPD is in compliance with MOA paragraphs 45 and 46 relating to canine policies and procedures. MPD obtained DOJ approval for the Canine Operations Manual during the fourteenth quarter, which was the last element of MPD's canine program to be finalized.

MPD is in substantial compliance with the MOA's provisions relating to supervisor authorization for canine deployments. We have found that, to a very high degree, canine deployments are supported by either prior supervisor approval or documented exigent circumstances. Although we observed that, during July 2005 through September 2005, nearly half of all canine deployments were authorized by non-Canine

Unit supervisors, it appears that this was attributable to a temporary shortage in the number of Canine Unit supervisors. In November 2005, a Canine Unit supervisor returned to duty following an illness, and we observed a corresponding decrease in the percentage of Canine Unit deployments authorized by non-Canine Unit supervisors in the months after the additional supervisor returned.

MPD is in substantial compliance with the MOA's requirement that canine bite incidents be consistent with the principles of the Handler-Controlled Alert Methodology upon which MPD's canine policy is premised. MPD's bite-to-apprehension ratio has remained consistently below 20% and in 2005 was 14.3%. Moreover, our detailed review during the twelfth quarter of all FIT investigations of canine bite incidents from 2003 and 2004 found that, with the possible exception of 1 of these 27 cases, the canine (whether on-lead or off-lead) and the handler performed in a manner consistent with their training and with the principles of the Handler-Controlled Alert Methodology -- a compliance rate of 96.3%.

Finally, training is a critical component in the assessment of MPD's compliance with the MOA provisions related to the canine program. As discussed in previous quarterly reports, the Canine Unit training sessions we observed in the past indicated that MPD's training in this area fairly, accurately, and properly conveys the principles and requirements of the MOA and of MPD policy.⁷² In 2005, we monitored the final evaluation of a class of new canines purchased by MPD, and we were impressed with the performance of the handlers and the new canines during the final certification session.⁷³

D. Oleoresin Capsicum Spray Policy (MOA ¶¶ 47-50)

1. Requirements

The MOA requires MPD to develop an Oleoresin Capsicum ("OC") Spray Policy. The policy must comply with applicable law and be consistent with current standards in the policing profession. In particular, the OC Spray Policy must:

- Prohibit officers from using OC spray unless the officer has legal cause to detain the suspect, take the suspect into custody,

⁷² See, e.g., OIM Eleventh Quarterly Report at 89-90.

⁷³ OIM Thirteenth Quarterly Report at 88.

or maintain the suspect in custody and unless the suspect is actively resisting the officer;

- Prohibit officers from using OC spray to disperse crowds or smaller groups of people, including its use to prevent property damage, unless the acts being committed endanger public safety and security;
- Prohibit the use of OC spray on children and the elderly, except in exceptional circumstances;
- Require that officers provide a verbal warning prior to the use of OC spray, unless such warning would endanger the officer or others, stating that its use is imminent unless the resistance ends; and, whenever feasible, permit a reasonable period for the warning to be heeded;
- Limit the use of OC spray to a person's head and torso; prohibit spraying from less than three feet away (except in exceptional circumstances); and limit the spray to two, one-second bursts; and
- Decontaminate persons sprayed with OC spray within twenty minutes after spraying, and transport them to a hospital for treatment if they complain of continuing adverse effects or state that they have a pre-existing medical condition that may be aggravated by the spray.

2. Status and Assessment

MPD obtained DOJ approval for its Oleoresin Capsicum Spray General Order in September 2002. MPD began distribution of the Oleoresin Capsicum Spray General Order, along with other use of force-related policies, during the week of October 6, 2002.

In our Eleventh Quarterly Report, we found that MPD is in substantial compliance with MOA paragraphs 47 through 50 relating to OC Spray Policy.⁷⁴ During the fifteenth quarter, we reviewed 49 MPD internal investigations regarding incidents involving the use of OC spray between January and November 2005. In none of the cases was OC

⁷⁴ OIM Eleventh Quarterly Report at 22.

spray used on an elderly person or on a child.⁷⁵ We found that officers issued appropriate warnings in 30 of these cases; and, in 14 of these cases in which it was clear that warnings were not issued, there were exigent circumstances justifying the failure to provide the suspect a warning that OC spray would be used.⁷⁶ Thus, in approximately 90% of the cases we reviewed, we were able to determine that either appropriate warnings were given or exigent circumstances justified the absence of such warnings. In the remaining 5 cases, we could not determine from the documentation in the investigation files whether or not warnings had been issued. We found no cases in which we could determine that a warning should have been issued and was not.⁷⁷

In the 36 cases in which we were able to determine the number of OC spray bursts used by the officer, 26 involved one burst, 15 involved two bursts, 3 involved three bursts, and 2 involved four bursts.⁷⁸ In one of the cases involving four bursts, a suspect wielding a knife was confronted by three officers, was appropriately warned by the officers, and was transported to the hospital after the incident. In the other case of four bursts, the first two bursts had no effect on the suspect. In sum, none of the OC spray cases we reviewed during the fifteenth quarter involved deployment of the agent that was unjustified or excessive under the circumstances.⁷⁹

In our Sixth Quarterly Report, we recommended that MPD's in-service training program provide focused attention on the use of OC spray and, in particular, on decontamination procedures following the deployment of the agent.⁸⁰ In 36 of the cases we reviewed during the fifteenth quarter, appropriate decontamination procedures were used following the use of OC spray. In 28 cases, the decontamination was performed by medics or firemen from the District of Columbia Fire Department. In 25 cases, the affected person received treatment at a hospital, and in 2 cases the suspect was flushed at the scene by MPD.

⁷⁵ MOA ¶ 48.

⁷⁶ *Id.* ¶ 49.

⁷⁷ OIM Fifteenth Quarterly Report at 25.

⁷⁸ The MOA requires that MPD policy permit officers to "utilize only two, one second bursts and to do so from at least 3 feet away, unless exceptional circumstances require otherwise." MOA ¶ 50.

⁷⁹ OIM Fifteenth Quarterly Report at 26.

⁸⁰ OIM Sixth Quarterly Report at 13.

In 11 of the cases, decontamination either was not necessary because the suspect did not come into contact with the agent or de-contamination was not reported in the investigation file. In 2 cases, the suspect escaped. We found only 1 case in which decontamination likely was necessary, but there was no evidence that it was performed.⁸¹

3. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraphs 47 through 50, which relate to OC Spray Policy. In several cases that we reviewed, we were not able to determine based on the investigation reports whether the officer using OC spray complied with all of the requirements of the MOA and MPD policy. However, we did not identify any cases in which the use of OC spray was unjustified or excessive under the circumstances. MPD officers avoided using the spray on children and elderly persons and, to a high degree where possible, issued appropriate warnings that OC spray would be used. Also, based on these reports, it appears that MPD complied with the MOA's requirements related to decontamination in all but one of the cases we reviewed, which is a 96% compliance rate.

4. Recommendations

At this time, we have no recommendations regarding MPD's policies related to OC spray.

E. Implementation Schedule (MOA ¶¶ 51-52)

As discussed above, MPD has obtained DOJ approval for its Use of Force General Order, Handling of Service Weapons General Order, Oleoresin Capsicum Spray General Order, and Canine Teams General Order. MPD also has issued a special order relating to Carrying Service Firearms While Off-Duty in the District of Columbia in accordance with paragraph 42 of the MOA, although DOJ approval of that special order is not required under the MOA. MPD has obtained DOJ approval prior to implementing any revisions or changes to these central use of force-related policies, as required by paragraph 52 of the MOA. On August 17, 2005, consistent with the requirements of paragraph 52, MPD submitted a proposed revision to the Handling of Service Weapons General Order to DOJ for review and approval. DOJ approved the requested revisions, which related to shooting at or from moving vehicles,

⁸¹ OIM Fifteenth Quarterly Report at 26.

on August 31, 2005. Accordingly, MPD is in substantial compliance with MOA paragraphs 51 and 52 related to the implementation of use of force policies and procedures.

III. Incident Documentation, Investigation, and Review (MOA ¶¶ 53-84)

A. Use of Force Reporting Policy and Use of Force Incident Report (MOA ¶¶ 53-55)

1. Requirements

The MOA requires MPD to develop a Use of Force Reporting Policy and a UFIR. The MOA mandates that the reporting policy require:

- Notification of an officer's supervisor immediately following any use of force or after the lodging of any allegation of excessive use of force;
- An officer to fill out a UFIR immediately after he or she uses force, including the drawing *and* pointing of a firearm at another person or in such a person's direction;
- An officer's supervisor to respond to the scene upon receiving notification that force has been used or that an allegation of excessive force has been received;
- Immediate notification to FIT in every instance involving deadly force,⁸² the serious use of force,⁸³ or any use of force potentially reflecting criminal conduct by an officer;⁸⁴

⁸² "Deadly force" is defined in paragraph 15 of the MOA as "any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object."

⁸³ "Serious use of force" is defined in paragraph 33 of the MOA as "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

- Immediate notification to the United States Attorney for the District of Columbia in all such instances; and
- Recording the data captured on UFIRs into MPD's PPMS.

The precise language of the UFIR was the subject of substantial discussion and negotiation between MPD and DOJ subsequent to the execution of the MOA. As a result of this dialogue, the parties agreed upon the following language for inclusion in relevant force-related general orders:

In all uses of force requiring a Use of Force Incident Report, the member shall immediately notify his/her supervisor of the use of force, intentional or unintentional, exercised by the member, any accusation of excessive force made against the member, or immediately following the drawing of and pointing a firearm at or in the direction of another person, and shall promptly complete the Use of Force Incident Report.⁸⁵

The parties also agreed upon certain language regarding the process of compelling an officer to complete a UFIR following a declination by the United States Attorney's Office ("USAO") and/or issuance of an authorized Reverse-Garrity warning. A "Reverse-Garrity" warning is a statement given to an officer, typically following a declination to prosecute issued by the USAO, requiring the officer to answer questions relating to his or her official duties but precluding the use of statements made by the officer against him in any criminal prosecution.

Footnote continued from previous page

⁸⁴ "Use of force indicating potential criminal conduct by an officer" is defined in paragraph 35 of the MOA to include "strikes, blows, kicks or other similar uses of force against a handcuffed subject."

⁸⁵ MPD January 2003 Progress Report at 9.

2. Status and Assessment

a. Use of Force Incident Report

(1) UFIR Completion

DOJ provided final approval of the UFIR on September 17, 2002, and MPD's UFIR completion requirements went into effect in early October 2002. MPD then proposed a revised and simplified UFIR and submitted the proposed revisions to DOJ on November 20, 2002. On March 19, 2003, DOJ gave MPD detailed written comments regarding the proposed UFIR. MPD incorporated DOJ's comments and returned the revised UFIR to DOJ on December 10, 2003. On February 27, 2004, DOJ forwarded additional comments regarding the revised UFIR, to which MPD submitted a written response on April 9, 2004.⁸⁶

On September 24, 2004, DOJ provided MPD with its initial written response to MPD's April 9, 2004 submission regarding the revised and updated UFIR. DOJ agreed to MPD's proposal that officers will not be required to complete a UFIR based on receipt of a complaint of excessive force where the involved officer maintains that no force was used. Such incidents will be processed as citizen complaints rather than treated as reportable uses of force.⁸⁷ On December 1, 2004, MPD submitted for DOJ approval the final version of the revised UFIR as well as a special order outlining the procedures for completing a UFIR.⁸⁸ This submission included a draft special order outlining the procedures for completing a UFIR.

DOJ provided recommendations regarding revisions to the special order on January 26, 2005. MPD submitted a final revised UFIR package to DOJ on June 30, 2005. On November 2, 2005, DOJ approved the revised UFIR form and stated that the UFIR Special Order may be approved with the addition of language clarifying that officers must immediately report all use of force incidents to a supervisor. MPD reports that it added the language DOJ suggested, as well as clarified

⁸⁶ OIM Seventeenth Quarterly Report at 34.

⁸⁷ *Id.* DOJ, however, has made clear its "expectation that should an officer fail to complete a UFIR, and later be found to have used force as a result of an investigation initiated by a citizen complaint, appropriate action will be taken regarding the officer's failure to follow MPD policy." Letter from Tammie M. Gregg to Captain Matthew Klein (September 24, 2004).

⁸⁸ OIM Seventeenth Quarterly Report at 34.

that civilian employees and reserve officers also are subject to UFIR completion requirements, and submitted the revised UFIR Special Order for DOJ approval on December 29, 2005.⁸⁹

Although DOJ approved the UFIR Special Order on March 2, 2006, it also returned several additional comments including a request that MPD incorporate into the special order language from MPD's December 28, 2005 teletype clarifying the circumstances under which a UFIR must be completed.⁹⁰ MPD incorporated the requested language and submitted a revised version of the UFIR Special Order to DOJ on March 31, 2006. MPD also notified DOJ that it would publish the current version of the special order and work with DOJ to make any necessary revisions through the general order changes process. On May 25, 2006, DOJ reiterated its final approval of the UFIR Special Order.⁹¹ MPD reports that the revised UFIR is available to all MPD officers and can be completed by using PPMS.⁹²

Even prior to our analysis of underlying incident reports, discussed in Section II.A.2.c above, we had consistently observed that low UFIR completion rates were a continuing problem for MPD.⁹³ As we reported in our Thirteenth Quarterly Report, however, our review of underlying incident reports -- including PD Form 251 (Incident-Based Event Reports), PD Form 163 (Arrest/Prosecution Reports), and PD Form 313 (Arrestee Injury/Illness Reports) -- showed that during the months of October through December 2004, months in which MPD reported very high UFIR completion rates, MPD officers actually completed UFIRs in only approximately 16% of the cases in which a UFIR was required under the MOA and MPD's Use of Force General Order.⁹⁴ As discussed above, comparisons of PD-313s and UFIRs performed by MPD's QAU in 2006

⁸⁹ *Id.*

⁹⁰ As discussed in Section II.A.2.c above, the December 28, 2005 teletype was issued in response to the OIM's findings related to the underreporting of uses of force and emphasized, in particular, MPD's reporting requirements related to the use of hand controls in effecting the arrest of a suspect who resists handcuffing.

⁹¹ E-mail from Elizabeth Welsh to Matthew Klein and Linda Nischan (May 25, 2006).

⁹² MPD January 2007 Progress Report at 22.

⁹³ See, e.g., OIM Eleventh Quarterly Report at 25-26.

⁹⁴ OIM Thirteenth Quarterly Report at 9.

found similarly low UFIR completion rates during calendar year 2005 and the first quarter of 2006.

Most of the incidents we discovered in which a UFIR should have been completed, but was not, involved a hands-on use of force by an officer to subdue and handcuff a suspect, which are in most cases relatively minor uses of force. The historical failure of officers to complete UFIRs in cases involving such incidents appeared to be the result of a widespread misunderstanding among MPD officers that the use of contact controls to subdue or handcuff a subject who is offering more than passive resistance does not trigger the requirement under MPD's Use of Force General Order that a UFIR be completed unless the subject complains of pain or injury.⁹⁵ MPD's policy and the MOA are clear, however, that such incidents qualify as uses of force and must be documented through the completion of a UFIR whether or not the subject complains. As discussed above, we observed during the eighteenth quarter that MPD has improved its training related to use of force reporting to place increased emphasis on UFIR completion and to convey accurate information about the use of force reporting requirements under MPD's policy.

Beginning in the fifteenth quarter, MPD has reported a dramatic increase in the number of hand control-related use of force incidents, which likely is in response to the clarifications MPD has issued regarding the circumstances under which the use of hand controls gives rise to the requirement to complete a UFIR. MPD reported 21 hand control use of force incidents in September 2005, 29 such incidents in October 2005, and 29 such incidents in November 2005. MPD reported that UFIRs were completed in 18 of the hand control cases in September 2005 (85.7%), in 23 of the October 2005 cases (79.3%), and in 19 of the November 2005 cases (65.5%).⁹⁶

⁹⁵ Hand or contact controls are pain compliance techniques, such as arm bar holds and techniques aimed at the subject's joints that do not involve the use of a weapon.

⁹⁶ OIM Fifteenth Quarterly Report at 31. These UFIR completion statistics were reported by FIT, which, at the time these statistics were reported, relied on the various district and unit commands to report use of force incidents in accordance with MPD policy without performing its own assessment of whether a UFIR had been completed in all cases where required. Under the UFIR/RIF Quality Control and Case Tracking SOP issued by MPD this quarter, FIT is required to review daily Synchronized Operations Command Center ("SOCC")

This trend in increased reporting of use of force incidents involving hand controls continued during the first five months of 2006.⁹⁷ For the months March, April, and May 2006, MPD reported 70, 58, and 97 use of force incidents involving hand controls, respectively.⁹⁸ With one exception, MPD also reported that UFIRs had been completed for all of these hand control-related use of force incidents. Although these statistics appear to reflect a significant improvement in the reporting of use of force incidents in accordance with MPD policy and the MOA, as discussed above, the QAU's review of PD-313s suggests that use of force incidents were being significantly underreported during the first quarter of 2006 and that inadequate supervisory oversight remained with respect to the reporting of use of force incidents. Our review this quarter of Officer Injury or Illness Reports (PD-42s) from the second quarter of 2006 identified 13 incidents in which there is a strong likelihood that a use of force occurred, and yet no UFIRs were completed.

The UFIR is a central requirement of the MOA intended to enable MPD to gather and track accurate information about the frequency and level of force employed by its officers. Without such accurate information, MPD command staff will be unable to identify and address problems involving uses of force and to identify the serious potential consequences should such uses of force go unrecognized and unaddressed by the Department. We will continue monitoring MPD's efforts to implement an accurate and reliable use of force reporting program, which is one of the major areas in which MPD has not yet achieved substantial compliance with the requirements of the MOA.

(2) **Pointing a Weapon at or in the Direction of a Person**

On December 10, 2003, MPD proposed to DOJ a modification to the MOA's requirement that officers complete a UFIR "immediately following the drawing and pointing of a firearm at, or in the direction of,

Footnote continued from previous page

reports as well as information in PPMS to identify possible use of force and pointing incidents that were not reported to FIT.

⁹⁷ OIM Seventeenth Quarterly Report at 36.

⁹⁸ By comparison, during the months of March, April, and May 2005, MPD reported only 6, 15, and 9 hand control-related use of force incidents, respectively.

another person”⁹⁹ MPD believes that, because the MOA does not include the pointing of a weapon within its definition of “use of force,” reporting such incidents through the UFIR is not appropriate and has caused substantial concern within the ranks of MPD officers. DOJ maintains that, under certain circumstances, the pointing of a weapon may in fact constitute a use of force and should be reported as such. Accordingly, MPD has developed a Reportable Incident Form (“RIF”) that is intended to replace the UFIR as the mechanism for tracking “pointing” incidents.¹⁰⁰

DOJ responded to MPD’s proposal on February 27, 2004 and raised several procedural concerns, including the need to ensure adequate supervisory review of completed RIFs. MPD responded by preparing for DOJ’s review a draft teletype directive intended to ensure that such supervisory review is comparable to the review required to be performed for completed UFIRs. On September 24, 2004, DOJ commented on MPD’s submission. On December 1, 2004, MPD responded to DOJ’s comments and replaced its draft teletype directive with a draft special order. DOJ provided comments regarding the RIF to MPD on January 26, 2005, and MPD provided DOJ with the revised RIF and RIF Special Order on June 30, 2005.¹⁰¹

On November 2, 2005, DOJ approved the revised RIF and RIF Special Order. MPD, however, revised the RIF Special Order further to clarify that armed reserve officers are subject to the RIF completion requirements. Accordingly, on December 29, 2005, MPD returned the revised RIF Special Order for review and approval. On March 2, 2006, DOJ provided its final approval of the RIF Special Order. Prior to its publication, MPD made some minor typographical and copy edits to the special order. MPD forwarded the final version of the RIF Special Order to DOJ on March 31, 2006. MPD also notified DOJ that it would publish the current version of the RIF Special Order and work with DOJ to make any additional revisions through the general order changes process. On May 25, 2006, DOJ reiterated its approval of the RIF Special Order, and the RIF is available to and can be completed by all MPD members on PPMS.¹⁰² MPD also reported that its UFIR/RIF Quality Control and Case

⁹⁹ MOA ¶ 53.

¹⁰⁰ MPD April 2007 Progress Report at 18.

¹⁰¹ OIM Seventeenth Quarterly Report at 37-38.

¹⁰² MPD April 2007 Progress Report at 18.

Tracking SOP also establishes procedures for tracking RIFs and ensuring their completeness.¹⁰³

(3) UFIR Quality

For several quarters through the eleventh quarter, the OIM reviewed all UFIRs in MPD's central UFIR files, which are maintained at FIT's offices. In our reports, we included a chart identifying on a monthly basis the various common deficiencies we found with respect to the quality and completeness of the UFIRs returned by officers.¹⁰⁴

During the twelfth quarter, we performed a detailed review of 50 UFIRs filed with FIT during the period October 1, 2004 through January 31, 2005. We found that the high UFIR completion rates reported by MPD in those months were misleading because virtually all of the UFIRs returned by officers during this period contained relevant data fields that were incomplete or contained no entries at all. For example, more than half of the UFIRs filed between October 1, 2004 and January 31, 2005 were missing a supervisor's signature, a requirement to ensure that the UFIR is reviewed and approved.¹⁰⁵ Our review of UFIRs during the twelfth quarter bolstered our consistent findings over the previous several quarters that the overall quality of the UFIRs returned by MPD officers, and counted by FIT as having been completed, were quite poor. The QAU's review of UFIRs on file with FIT from the first quarter of 2006 found that only 45% had been signed by the responsible watch commander.

MPD anticipates that the revised UFIR, which has been approved by DOJ and that the UFIR/RIF Quality Control and Case Tracking SOP not only will contribute to the improvement of the rate at which officers complete the form but also will improve the quality of information reported relating to use of force incidents. As discussed above, the UFIR is a central component of the MOA and a critical reporting instrument intended to permit MPD to accurately track and monitor individual use of force incidents and trends in uses of force within the Department. In order to fulfill the intended purpose of the UFIR, officers must complete UFIRs fully, accurately, and on a timely basis. We will continue to review

¹⁰³ *Id.*

¹⁰⁴ See, e.g., OIM Eleventh Quarterly Report at 29.

¹⁰⁵ OIM Twelfth Quarterly Report at 24.

officers' use of the UFIR as well as the quality of the information recorded on the form.

(4) Specialized Mission Unit After-Action Report

On March 5, 2003, MPD sent a letter to DOJ proposing an amendment to the UFIR reporting requirement as it relates to certain major operations involving MPD's specialized mission units during which multiple officers point their service weapons. MPD believes that the UFIR requirement as it relates to such incidents may give rise to delays that adversely affect operational efficiency because it requires multiple officers taking time to complete separate UFIRs. As an alternative to the requirement that each officer prepare a UFIR documenting the pointing of a weapon, MPD proposed that the unit manager complete a single "After-Action Documentation Report." DOJ responded to MPD's proposal on August 25, 2003 by suggesting certain revisions to the draft After-Action Report. On December 31, 2003, MPD submitted to DOJ a revised draft "Specialized Mission Unit After-Action Report" ("SMUAAR") incorporating DOJ's comments and a revised Specialized Mission Unit General Order including policies and procedures related to the SMUAAR.

MPD reports that it has developed the following specific criteria as to when a pointing incident may be recorded on a SMUAAR:

- The SMU is a permanent, established unit meeting the requirements established in the Specialized Mission Units General Order.
- The SMU is operating as a team at the time of the pointing incident.
- The SMU is led by a clearly identifiable police manager, at the rank of lieutenant or above, at the time of the pointing incident.
- The SMU is on a pre-planned operation with a clear mission, such as, for example, the execution of a high risk arrest warrant.
- The SMU members are working in unison.¹⁰⁶

On March 30, 2004, DOJ provided final approval of MPD's Specialized Mission Unit General Order and outlined its remaining

¹⁰⁶ MPD April 2007 Progress Report at 19.

concerns with respect to the SMUAAR.¹⁰⁷ MPD requested a delay in the requirement that the Specialized Mission Unit General Order be implemented within 14 business days after DOJ's approval of the order. This request arose from MPD's concern that implementation of the Specialized Mission Unit General Order prior to the resolution of outstanding issues related to the SMUAAR might lead to confusion among officers in the field. Accordingly, MPD requested that implementation of both the Specialized Mission Unit General Order and the SMUAAR be required to take place within 14 business days after DOJ's approval of the SMUAAR.¹⁰⁸ DOJ granted MPD's request, and, on April 9, 2004, MPD responded to DOJ's concerns regarding the SMUAAR.

On September 24, 2004, DOJ provided MPD with its final comments regarding the SMUAAR, and MPD responded on December 1, 2004. On January 26, 2005, DOJ approved MPD's request that the SMUAAR be used to document incidents involving the execution of a high-risk warrant under certain criteria outlined in the Specialized Mission Unit General Order. On June 30, 2006, MPD submitted the revised SMUAAR to DOJ for approval.¹⁰⁹ On December 1, 2006, DOJ granted approval of the revised SMUAAR and returned additional comments regarding the Specialized Mission Unit General Order.¹¹⁰ On March 30, 2007, MPD submitted a revised Specialized Mission Unit General Order to DOJ.¹¹¹ The process of obtaining DOJ approval of the Specialized Mission Unit General Order has dragged on and needs to be resolved promptly.

b. United States Attorney Notification Log

The United States Attorney Notification Log is maintained at FIT's offices and consists of a handwritten series of entries recording the date and time of each notification made by MPD to the USAO regarding a use of force incident involving an MPD officer. During the seventeenth quarter, in addition to our regular review of the United States Attorney Notification Log, we interviewed the Chief of the Major Crimes Section of the USAO about MPD's performance in promptly notifying his office of

¹⁰⁷ Letter from Tammie M. Gregg to Captain Matthew Klein (March 30, 2004).

¹⁰⁸ E-mail from Maureen O'Connell to Tammie Gregg, Lisa Graybill, and Sarah Gerhart (March 31, 2004).

¹⁰⁹ MPD January 2007 Progress Report at 25.

¹¹⁰ Letter from Tammie M. Gregg to Inspector Matthew Klein (December 1, 2006).

¹¹¹ MPD April 2007 Progress Report at 20.

deadly or serious use of force incidents. The Chief of the Major Crimes Section surveyed the prosecutors in his section and found a very high level of satisfaction -- between 90% and 100% -- with the timeliness of notice the USAO receives from MPD regarding such incidents.¹¹² Our reviews have found that MPD consistently makes timely notifications to the USAO within 24 hours of a deadly or serious use of force incident.¹¹³

3. Substantial Compliance Evaluation

MPD is not currently in substantial compliance with MOA paragraph 53 related to use of force reporting and the UFIR. DOJ has approved the revised UFIR and the revised UFIR Special Order, and MPD recently developed a UFIR/RIF Quality Control and Case Tracking SOP. MPD hopes that the use of the simplified form and the new SOP will improve UFIR completion rates and improve the quality of the information included in UFIRs returned by MPD officers. MPD must continue to devote significant attention to improving both the rate at which UFIRs are completed and the quality of information contained in the UFIRs to substantially comply with the MOA. DOJ has approved the RIF Special Order related to tracking firearms pointing incidents as well as the revised SMUAAR.

MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force.

MPD is not in substantial compliance with paragraph 55 of the MOA, which requires that all data captured in the UFIRs be entered into MPD's PPMS. As discussed in detail in Section VI.B of this report, although MPD now has deployed PPMS Department-wide, it has not completed the process of entering all historical UFIR information into the system. MPD does appear, however, to be currently satisfying paragraph 55's requirement that all hard copies of completed UFIRs be centrally maintained.¹¹⁴

¹¹² OIM Seventeenth Quarterly Report at 41.

¹¹³ MOA ¶ 54.

¹¹⁴ Paragraph 55 of the MOA states that hard copies of the UFIRs shall be maintained centrally by OPR. OPR maintains the UFIRs at FIT's offices, which is satisfactory under the MOA.

4. Recommendations

Now that DOJ has approved the revised UFIR and the UFIR Special Order, we encourage MPD to continue to devote significant attention to training and supervising officers in the proper completion of UFIRs. Only through such enhanced efforts will MPD achieve reliable and complete use of force reporting.

B. Investigating Use of Force and Misconduct Allegations (MOA ¶¶ 56-84)

1. Use of Force Investigations (MOA ¶¶ 56-67)

a. Requirements

(1) FIT Use of Force Investigations

The provisions of the MOA that address use of force investigations take as their point of departure the January 1999 creation of FIT as the entity within MPD charged with investigating all firearms discharges by MPD. The MOA creates a protocol for handling the investigation of use of force by MPD and the manner in which such investigations are to be coordinated. At the core of the protocol is the requirement to transfer responsibility for MPD criminal investigations involving officer use of force from MPD district violent crime units or other MPD district supervisors to FIT.¹¹⁵

MPD is required to notify and consult with the USAO -- and vice versa -- in each instance in which there is an incident involving deadly force, a serious use of force, or any other use of force suggesting potential criminal misconduct by an officer. All such investigations are handled by FIT rather than by any other unit of MPD. Even while the criminal investigation is pending, the MOA requires FIT's investigation of the officer's use of force to proceed in all such cases, although the compelled interview of the subject officers may be delayed in cases where the USAO has not declined prosecution.¹¹⁶

¹¹⁵ Consistent with this approach, the MOA requires that MPD train and assign a sufficient number of personnel to FIT to fulfill the duties and responsibilities assigned to it by the MOA. MOA ¶ 63.

¹¹⁶ This deferral of the interview of subject officers is designed to avoid the risk that such compelled interviews might taint the criminal investigation. *See Garrity v. State of New Jersey*, 385 U.S. 493, 87 S. Ct. 616 (1967).

FIT is required to respond to the scene of every such incident described above and to conduct all such investigations, whether the investigation results in criminal charges, administrative sanctions, or both. No officers from any unit other than FIT are permitted to participate in the investigation. The MOA requires FIT's administrative (non-criminal) use of force investigations to be completed within ninety days of a decision by the USAO not to prosecute, unless special circumstances prevent their timely completion.¹¹⁷

The MOA contains various requirements governing FIT's investigation process and the preparation of an investigation report by FIT. For example, the report prepared by FIT must include:

- A description of the use of force incident and other uses of force identified during the investigation;
- A summary and analysis of all relevant evidence; and
- Proposed findings, which include:
 - A determination of whether the use of force under investigation was consistent with MPD policy and training;
 - A determination of whether proper tactics were used; and
 - A determination of whether alternatives requiring lesser uses of force were reasonably available.

(2) Other Use of Force Investigations

All use of force investigations, other than those specifically assigned to FIT, may be investigated by chain of command supervisors in MPD districts. In the alternative, the Chief of Police or his designee may assign investigations to chain of command supervisors from another district. In the absence of special circumstances, these use of force investigations, like FIT's investigations, must be completed within ninety days and must contain all of the elements prescribed above for FIT investigation reports. Once such investigations are complete, the investigation report must be submitted to the unit commander, who must review it to ensure completeness and to ensure that its findings are supported by the evidence. The unit commander has the power to order

¹¹⁷ In such cases, the reasons for failing to observe the ninety-day requirement must be documented.

additional investigation if necessary. Once the investigation is complete, the investigation file is forwarded to the UFRB.¹¹⁸

(3) Use of Force Review Board

Subject to approval by DOJ, MPD is required by the MOA to develop and implement a policy to enhance the UFRB as the review body for use of force investigations. The policy developed by MPD must:

- Ensure that the UFRB conducts prompt reviews of all use of force investigations;¹¹⁹
- Establish the membership of the UFRB;
- Establish timeliness rules for the review of investigations;
- Authorize the UFRB to recommend discipline for violations of MPD policies, to recommend further training where appropriate, and to direct MPD district supervisors to take non-disciplinary action to encourage officers to modify their behavior;
- Require the UFRB to assign to FIT or return to the original investigating unit any incomplete or improperly conducted use of force investigations; and
- Empower the UFRB to recommend to the Chief of Police investigative standards and protocols for all use of force investigations.

In addition to these requirements, the UFRB must conduct annual reviews of all use of force investigations to identify patterns and problems in such investigations. The UFRB must issue a report summarizing the findings of its review to the Chief of Police.

¹¹⁸ In the event there is evidence of criminal misconduct, the Unit Commander must suspend the use of force investigation and notify FIT and the USAO.

¹¹⁹ Recognizing that the UFRB might be overwhelmed by reviewing all use of force investigations, DOJ and MPD agreed to modify the MOA to require the UFRB to conduct timely reviews only of use of force investigations investigated by FIT units. Additionally, according to DOJ, it agreed to allow non-FIT force reviews, with some exceptions, to be conducted by chain of command officers (and conclude at the Assistant Chief level) so long as FIT continues to review all non-FIT use of force incidents in an effort to identify incidents that should be referred to the UFRB.

b. Status and Assessment

(1) FIT Manual

DOJ approved MPD's revised Force Investigation Team Organizational Plan and Operations Manual on December 31, 2003.

(2) FIT Use of Force Investigations

The OIM reviews all preliminary and final use of force investigation reports prepared by FIT. During the eleventh quarter, we performed a statistical analysis with respect to the 42 FIT I investigations completed between January 1, 2004 and December 31, 2004.¹²⁰ The results of this analysis confirmed our consistent findings that FIT has generally performed thorough and high quality investigations.¹²¹ We found that 97.4% of the FIT I investigations finished in 2004 were "complete"¹²² and that 100% of these investigations were "sufficient."¹²³

We identified two significant areas, however, where the FIT investigations did not meet the 95% or better objective standard for substantial compliance.¹²⁴ First, although FIT investigations were generally completed on a timely basis in a much higher percentage of cases than the chain of command and IAD investigations we have reviewed in past quarters, there was still room for improvement. We found that 79.0% of the 2004 FIT I investigations were either completed within 90 days or contained documented special circumstances justifying a delay in completion of the investigations.¹²⁵ Second, we found that

¹²⁰ FIT I investigations are investigations of uses of "deadly force," including but not limited to the use of a firearm or strike to the head with a hard object. See MOA ¶ 15. FIT II investigations are of other serious uses of force, including for example uses of force resulting in hospitalization and canine bites.

¹²¹ OIM Eleventh Quarterly Report at 35-37.

¹²² Our police practices experts rated an investigation "complete" if it reflected the performance of all of the substantive investigative steps and contained all of the documentation required by both the MOA and by generally accepted police practices.

¹²³ Our police practices experts rated an investigation "sufficient" if the evidence and analysis reflected in the investigation file were adequate to support a reasonable and defensible conclusion, even in cases where certain investigative procedures or analysis had not been completed.

¹²⁴ OIM Eleventh Quarterly Report at 37.

¹²⁵ MOA ¶ 62.

witness canvasses were conducted in only 90.3% of the cases in which, based on our reviews, it appeared that a canvass should have been performed.¹²⁶

During the seventeenth quarter, we finalized our review of all FIT I and FIT II investigations completed during 2005.¹²⁷ Although we found that the quality of the 2005 FIT investigations was generally quite good, we also found that there was room for improvement, particularly in the thoroughness of FIT II investigations. The most common deficiency we found in FIT II investigations was the failure to address all apparent misconduct, including the failure of subject officers to report use of force incidents in violation of Department policy and pursue a citizen's allegation of officer misconduct.¹²⁸

In 2005, FIT I completed 40 investigations, involving 46 subject officers, into serious uses of force, including incidents involving the use of deadly force such as a firearm discharge. In 9 cases, FIT determined that the force used in the incident was not justified. In one additional case, although FIT found that the force used was justified, the investigation included a recommendation that the involved officer receive remedial tactical training.

We found that all (100%) of the FIT I investigations closed in 2005 were sufficient and that all but one (97.5%) were complete. In the single FIT investigation that we rated as incomplete, the FIT investigator failed to (1) interview Prince George's County police officers who had spoken with the injured suspect while he was in the hospital and (2) determine the pistol certification status of the involved officer. Although both of these investigative failures were significant, neither likely affected the outcome of the investigation into the appropriateness of the force used by the involved officer.

In 2005, FIT II, which covers serious uses of force such as canine bites, but not deadly force, closed 49 investigations involving 55 subject officers. FIT determined that the force used was not justified in 2 cases. In 2 additional cases, although FIT found that the force used was

¹²⁶ *Id.* ¶ 81.f.

¹²⁷ OIM Seventeenth Quarterly Report at 47-48.

¹²⁸ We discuss the specific deficiencies identified in several of these FIT II cases in the OIM's Sixteenth Quarterly Report at pages 44-45.

justified, it recommended that the involved officers receive remedial tactical training.

The overall quality of FIT II investigations, although generally quite good, was not as high as that of the FIT I investigations. We found that 6 FIT II investigations closed in 2005 were incomplete and that 4 of these investigations also were insufficient. Thus, the completeness and sufficiency ratings for 2005 FIT II investigations are 87.8% and 91.8%, respectively. Five of 6 incomplete FIT II investigations involved a failure by the investigator to address all apparent misconduct, including 4 cases in which the subject officer failed to properly report the use of force incident in violation of MPD policy. Even before our review was complete, MPD took steps to remedy the deficiencies we identified in 2 of the cases that we identified as incomplete.

In sum, of the 89 FIT I and FIT II investigations closed in 2005, 82 (92.1%) were complete and 85 (95.5%) were sufficient. The statistics for the 2005 FIT investigations reflect that MPD has been very close to achieving substantial compliance with respect to the quality of its investigations of serious use of force incidents but that it remained just below the substantial compliance threshold.

This quarter, we finalized our review and analysis of all FIT investigations completed during 2006. We found that the quality of the FIT I investigations of the most serious uses of force, including weapons discharges, not only remains high but also has continued to improve. However, we found that there is still room for improvement in the FIT II investigations, which continue to suffer from certain deficiencies.

In 2006, FIT I completed 27 investigations into serious uses of force, including deadly force. The incidents investigated by FIT I included 3 officer suicides, 2 vehicular pursuits, and 20 firearm discharges. The remaining 2 investigations were of in-custody deaths that did not involve any identified use of force. While we identified minor deficiencies in 9 of these investigations -- such as the failure to report the absence of a properly completed UFIR and the failure to perform a witness canvass -- we did not find that any of the deficiencies were significant enough to cause the investigation to be rated incomplete or insufficient. Therefore, we found that all (100%) of the FIT I investigations closed in 2006 were both sufficient and complete.

FIT II closed 39 investigations in 2006. The 2006 FIT II cases addressed a wide variety of use of force incidents, including the use of hand controls, chokeholds, canines, ASPs, kicks, and OC spray. These

39 investigations involved 45 known subject officers as well as 2 cases in which involved officers were unidentified. FIT determined that the force used was not justified in 6 cases. In one additional case, although FIT found that the force used was justified, it recommended remedial tactical training. In one other case, FIT found a policy violation but found the force justified.

The overall quality of FIT II investigations, while generally good, has not improved since our review of the cases closed in 2005. We found that 7 of the FIT II investigations closed in 2006 were incomplete and that 2 of these investigations also were insufficient. Therefore, we found that 82% of the investigations were complete while 95% of the cases were sufficient. The common deficiencies in these cases were failure to conduct witness canvasses and, in 3 instances, failure to interview all appropriate persons.

One significant area in which FIT II investigations have improved is timeliness. While 24 of the 39 investigations completed in 2006 took longer than the required 90 days to complete, all but one of these investigations included documented special circumstances justifying the delay. We also found that all of the FIT II investigations that were initiated since early April 2006 were completed within the 90-day timeline.

In sum, there was a total of 66 FIT investigations closed in 2006. Fifty-nine -- or approximately 90% -- of these investigations were complete and 64 -- 97% -- of these investigations were sufficient. These statistics reflect that FIT continues to perform very high quality investigations, but room for improvement remains, particularly with respect to the completeness of FIT II investigations.

So far, we have reviewed 12 investigations completed by FIT in 2007, and we found all 12 of the investigations to be both sufficient and complete. We will continue to review all of the investigations performed by FIT and to evaluate MPD's progress toward substantial compliance in this area on a quarterly basis.

Finally, our review of FIT investigations found that, although FIT generally performs well in investigating all apparent misconduct, as required under the MOA, FIT investigators routinely are not preparing findings with respect to potential misconduct not related to a use of force. MPD relied on the UFRB to identify these non-use of force issues in the FIT investigations and to issue findings with respect to them. We advised MPD that this system of relying on the UFRB to issue findings -- as opposed to reviewing recommended findings developed by FIT

investigators -- with respect to potential misconduct unrelated to the use of force created the potential that the UFRB inadvertently would overlook a non-use of force issue and fail to issue a finding. MPD agreed with this observation, and FIT investigators now are instructed not only to investigate all potential misconduct but also to issue recommended findings. These findings, along with the FIT investigators findings with respect to use of force-related issues, are reviewed by the UFRB.

(3) Other Use of Force Investigations

Beginning with our Sixth Quarterly Report, we have reported on statistical samples of chain of command and IAD use of force and misconduct investigations. This quarter, we reviewed a fifteenth sample of such investigations opened between July 1, 2006 and September 30, 2006. The results generated by our reviews of these investigations are summarized in Section III.B.2.b(1) below and in Appendix B.

(4) Use of Force Review Board

On January 31, 2003, DOJ approved MPD's Use of Force Review Board General Order. The UFRB is charged with reviewing use of force cases to determine whether the force used was justified and to identify training needs, equipment upgrades, or policy modifications that may be necessary. Until mid-2005, the UFRB typically met once a month and was comprised of five members of MPD's command staff -- three permanent members and two seats that rotate among commanders from the districts, with a designated chairperson. The UFRB had been supported by a staff person who was an active FIT investigator.

In our Tenth Quarterly Report, we concluded that the UFRB's meetings were not being conducted in a manner commensurate with the importance of the UFRB's function.¹²⁹ In our Eleventh Quarterly Report, we reported several specific deficiencies in the UFRB's performance, including:

- Inadequate time being reserved in the UFRB members' schedules for the monthly use of force review meetings.
- Inadequate focus by the UFRB members during the deliberations due to distractions such as cell phones and portable e-mail devices.

¹²⁹ OIM Tenth Quarterly Report at 33-34.

- Lack of an organized review of the cases structured to address each of the critical decision points confronting each officer as events developed that led to the use of force. While the UFRB's deliberations in certain cases touched upon many of the critical decision points at issue, the UFRB did so in a haphazard and random manner that failed to ensure that it thoroughly considered each of the tactical and force decisions made by each involved officer.
- Inadequate time devoted to deliberations with respect to each case. We observed that many of the UFRB's reviews lasted little more than a minute or two and constituted nothing more than a poll of the UFRB members to determine whether there was unanimous agreement with the FIT investigator's conclusion as to whether the use of force was justified.
- Lack of an organized and methodical effort by the UFRB to identify patterns and problems in uses of force, identify training issues, and prescribe recommendations to address such issues.¹³⁰

During the twelfth quarter, the OIM participated in two meetings with MPD command staff to discuss our recommendations for improving the UFRB's operations and deliberative processes. The first of these meetings included former Chief Ramsey, who was receptive to our suggestions. The second meeting was with members of the CMT and the Assistant Chief heading OPR and was a more detailed discussion of specific alternatives for reforming the structure and operations of the UFRB.¹³¹

During the thirteenth quarter, in response to the OIM's findings and technical assistance, MPD implemented a plan to restructure both the composition of the UFRB and its operations. The significant reforms MPD has implemented with respect to the UFRB include:

- Reorganization of the UFRB's membership. MPD has reorganized the UFRB to provide for more direct involvement by command staff at the Assistant Chief level. The chairperson of the UFRB will be one of the three Regional Operations Command ("ROC") Assistant Chiefs, and each of the three ROC chiefs will serve rotating

¹³⁰ OIM Eleventh Quarterly Report at 38-39.

¹³¹ OIM Twelfth Quarterly Report at 33.

one-year terms as UFRB chairperson. The permanent members of the UFRB will be the Commanding Officer of the Special Operations Division, the Commanding Officer of the Office of the Superintendent of Detectives, and the Commanding Officer of IPS. The two rotating members of the Board will be Commanders from one of the seven MPD districts, who will rotate after serving one-year terms.

- Established schedule for UFRB meetings. MPD established a monthly schedule for UFRB meetings. In order to provide more time for deliberations regarding use of force cases before the UFRB, the schedule provides for two meetings per month, rather than one. MPD's plan also establishes strict attendance requirements, and a member may be excused from a UFRB meeting only by the chairperson.
- Decision point analysis. We strongly recommended that MPD employ a focused "decision point" approach in analyzing each use of force case. This approach provides a framework for considering each point when an officer made a decision that may have affected subsequent events, as opposed to focusing solely on the final decision to use force. This decision point process allows the UFRB to conduct more intensive and comprehensive reviews of use of force incidents and to identify any flawed tactical decisions and training opportunities that arise out of the investigations.
- Administrative support for the UFRB. The OIM also recommended that MPD assign a staff member to perform significant preparation to assist the UFRB in performing decision point analyses. MPD has assigned a full-time UFRB Administrator whose duties include, among other things, preparing agendas for review by the UFRB chairperson; preparing "Decision Point Matrix Analysis" summaries for each case; ensuring that relevant MPD policies, directives, and lesson plans are available to the Board members during their deliberations; preparing summaries of each Board meeting that include the Board's findings and recommendations; and notifying subject officers of the Board's decisions.¹³²

¹³² Letter from Maureen O'Connell to Tammie Gregg regarding MOA Paragraph 67: Use of Force Review Board (dated June 30, 2005).

During the fourteenth quarter, we monitored three meetings of the UFRB. We reported that the performance of the UFRB had improved remarkably as a result of the implementation of the above reforms.¹³³

In particular, we observed that the UFRB was making very effective use of the Decision Point Matrix Analysis prepared by the staff member devoted to the UFRB. As a result, the UFRB's deliberations with respect to each of the cases under review had become much more comprehensive and methodical than those in previous UFRB sessions. The organization and focus imposed by implementation of the decision point analysis process resulted in more careful and focused discussions of each case as well as providing the UFRB with a framework to facilitate discussion about Department-wide policy and training issues. We found that the chairperson of the UFRB was extremely effective in ensuring the participation of each of the members of the Board. The administrative support officer assigned to the UFRB was doing an excellent job in preparing the Board members for each meeting by creating matrices breaking down each case and by tracking the decisions and follow-up points generated during the Board's deliberations.

During the fifteenth quarter, we reviewed documentation maintained by the UFRB Administrator reflecting communications between the Board and MPD's district commands, Disciplinary Review Division ("DRD"), and IPS in cases in which the Board found that there was an unjustified use of force, a policy violation, or a training opportunity. We found that the UFRB Administrator is maintaining very thorough records of the Board's determinations and doing an effective job of following up with the district commands and other units to ensure that the Board's findings and recommendations are addressed and that actions taken in response to those findings and recommendations are documented. We concluded that MPD is in substantial compliance with the MOA's provisions related to the UFRB.¹³⁴

We monitored two meetings of the UFRB during the sixteenth quarter and one meeting during the eighteenth quarter.¹³⁵ We found

¹³³ OIM Fourteenth Quarterly Report at 39.

¹³⁴ OIM Fifteenth Quarterly Report at 44.

¹³⁵ Although we continue to find that the UFRB's current process for reviewing deadly and serious use of force incidents represents a major improvement over the Board's performance in years past, during the eighteenth quarter we were troubled by the Board's split decision in a weapons discharge case to overturn the recommendation of FIT and find that, under the particular circumstances of

that the Board is continuing to perform well and is fulfilling its central role in reviewing uses of force by MPD officers and recommending discipline or remedial action where appropriate. In particular, the Assistant Chief, who functions as the UFRB's chairperson, has been effective in obtaining the viewpoints of all of the members of the UFRB and in guiding the Board's consideration of the cases under review without appearing to unduly influence the other members by virtue of his rank.¹³⁶ Last year, we commented that an anticipated challenge for MPD will be to maintain the high quality of the UFRB's deliberations after the chairmanship of the Board rotates to a new member of the command staff.¹³⁷ During our monthly meeting with the parties on July 10, 2006, former Chief Ramsey advised us that the current chairperson of the UFRB likely would remain in that role for another year.¹³⁸

In an effort to formalize the changes MPD has made to the UFRB and its operations, on March 6, 2007, MPD submitted to DOJ a revised Use of Force Review Board General Order incorporating recent reforms of the Board's composition and operations.¹³⁹

c. Recommendation

For several years, we have consistently found that FIT performs thorough and complete investigations. In 2005, however, we identified several FIT II investigations that were not as complete as they should have been. Those findings were bolstered during the seventeenth quarter with the completion of our review of all FIT I and FIT II investigations closed in 2005. This quarter, we completed our review of all FIT cases closed in 2006, and again we found that, while FIT I investigations are of consistently high quality, deficiencies remain with respect to FIT II

Footnote continued from previous page

that case, a shot fired by an MPD officer at a moving vehicle was justified. Although it is beyond our role as Monitor to substitute our judgment for that of the Board, in this case we concurred with the UFRB chairperson, who was the lone dissenter on the Board, that FIT's conclusion that the shot was not justified was more consistent with the applicable MPD policy.

¹³⁶ OIM Eighteenth Quarterly Report at 63.

¹³⁷ OIM Sixteenth Quarterly Report at 49.

¹³⁸ Last quarter, MPD reported that the UFRB plans to issue an annual report for 2006. MPD January 2007 Progress Report at 34. We look forward to reviewing the UFRB's report when it is issued.

¹³⁹ MPD April 2007 Progress Report at 28.

investigations. We recommend that MPD devote focused attention to addressing the deficiencies we have identified in a significant number of FIT II investigations so that they can be brought up to meet the same high standards of timeliness, completeness, and sufficiency as the FIT I investigations.

d. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 57 relating to the development and implementation of a plan for allocation of responsibility for MPD investigations of uses of force. On December 31, 2003, DOJ approved the Force Investigation Team Organizational Plan and Operations Manual, which we find that MPD has effectively implemented.

Paragraphs 58 and 60 of the MOA relate to MPD consultations with the USAO regarding investigations of deadly and serious uses of force and uses of force indicating potential criminal misconduct by an MPD officer. As discussed in Section III.A.3 above, MPD is in substantial compliance with the MOA's requirements, found in paragraph 54, regarding the timely notification of the USAO of deadly and serious uses of force. MPD also in substantial compliance with MOA paragraphs 58 and 60 requiring that MPD's use of force investigators avoid taking compelled statements from subject officers until after a letter of declination is issued by the USAO.¹⁴⁰

We have found that MPD is in substantial compliance with the provisions of MOA paragraph 61 relating to FIT responses to serious and deadly uses of force and uses of force indicating potential criminal misconduct by an officer and requiring the exclusion of investigators from involved officers' districts from such investigations. We also have found that MPD is in substantial compliance with MOA paragraph 61's requirement that FIT forward policy and training recommendations to the proper authority.

Although we have found that FIT generally performs high quality investigations of serious use of force incidents, our review of FIT investigations closed in 2005 and 2006 indicates that MPD has not yet achieved substantial compliance with MOA paragraphs 62 and 63, establishing requirements related to the timeliness and quality of FIT

¹⁴⁰ Paragraph 59 of the MOA does not impose any substantive requirements on MPD or the City.

investigations. We will continue to review all FIT investigations, and we will report quarterly on our findings with respect to FIT investigations closed in 2007.

MPD is in substantial compliance with MOA paragraph 64's requirement that the chain of command be excluded from investigating serious or deadly uses of force or uses of force indicating potential criminal misconduct by an MPD officer.

MPD is in substantial compliance with MOA paragraph 64's requirement that investigations directed by MPD's Chief of Police or his designee to be removed from a particular district's chain of command are reassigned either to FIT or another district.¹⁴¹ During the seventeenth quarter, we identified 6 cases involving a relatively minor use of force or alleged misconduct that were assigned to FIT for investigation, even though the incidents ordinarily would be appropriate for investigation by the chain of command. We found that the circumstances in each of these cases indicated that removal of the investigation from the chain of command and reassignment to FIT was appropriate and that the FIT investigation in each of these 6 cases was complete and sufficient.¹⁴²

The OIM's substantial compliance evaluations with respect to MOA paragraphs 65 and 66, which relate to chain of command investigations of uses of force, are provided below in Section III.B.2.c.

MPD is in substantial compliance with MOA paragraph 67, which relates to the UFRB's review of use of force investigations. MPD obtained DOJ approval of its Use of Force Review Board General Order and has effectively implemented broad reforms to the structure and operations of the UFRB that have resulted in significant improvements in the Board's performance.¹⁴³

¹⁴¹ OIM Seventeenth Quarterly Report at 54.

¹⁴² We have identified no cases that were removed from the ordinary chain of command investigative process and reassigned to another district's chain of command for investigation. Such cases appear to be assigned exclusively to FIT for investigation.

¹⁴³ As discussed above, on March 6, 2007, MPD submitted a revised Use of Force Review Board General Order to DOJ for approval.

2. Investigations of Misconduct Allegations (MOA ¶¶ 68-84, 98-104)

a. Requirements

The MOA establishes a set of procedures for handling the following types of allegations of misconduct against MPD officers:

- Allegations for which an officer has been arrested or charged criminally;
- Allegations where an officer has been named as a party in a civil lawsuit
 - relating to the officer's conduct while on duty or otherwise acting in an official capacity; or
 - relating to the officer's conduct while off duty, and otherwise not acting in an official capacity, where allegations against the officer involve physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
- Allegations of unlawful discrimination;
- Allegations of unlawful searches and stops;
- Allegations of unlawful seizures;
- Allegations of retaliation or retribution against officers or other persons; and
- Allegations of all uses of physical violence -- including but not limited to strikes, blows, and kicks -- that are engaged in for a punitive purpose or that are directed against a subject who is not offering resistance.¹⁴⁴

With respect to allegations in the above categories that are criminal, MPD's OPR is required to conduct the investigation rather than chain of command supervisors in MPD's districts. In these categories of cases, MPD is required to notify the USAO within twenty-four hours of

¹⁴⁴ The same procedures apply whatever the source of the information to MPD -- whether by self-referral from the officer, reporting by other MPD personnel, or complaint from a source outside MPD.

the receipt of such allegations, and MPD and the USAO are required, in the absence of extraordinary circumstances, to consult with each other following such notification.¹⁴⁵ In addition to criminal allegations, the MOA requires that MPD assign for investigation outside the chain of command allegations involving:

1. Incidents where charges made by an officer for disorderly conduct, resisting arrest, or assault on a police officer are found by a prosecutor or a judge to be without merit; and
2. Incidents where evidence has been suppressed because of a constitutional violation involving potential misconduct by an MPD officer or where a judicial officer either has made a finding of misconduct against an officer or has requested MPD to conduct an investigation into such an allegation.

In addition to establishing protocols for the assignment of such investigations, the MOA establishes procedures that must be followed in the conduct of such investigations. These procedures for MPD internal investigations require that:

- Interviews of complainants, involved officers, and material witnesses be tape-recorded or videotaped whenever the investigation involves the serious use of force or a serious physical injury;
- Complainants and other witnesses be interviewed individually rather than in groups, and at locations and times convenient for them;
- All appropriate MPD officers and supervisors be interviewed;
- All necessary evidence be collected, analyzed, and preserved; and
- Inconsistencies in statements gathered from officers and other witnesses during the investigation be identified and reported.

¹⁴⁵ The MOA makes clear that a key reason for this consultation requirement is to avoid potential complications for a criminal investigation and potential prosecution posed by administratively-compelled interviews of officers. MOA ¶ 71.

Furthermore, the MOA sets forth a series of milestones for the implementation of this overhauled system for conducting misconduct investigations. These include the following:

- MPD must develop a plan (subject to approval by DOJ) under which OPR would become responsible for the *criminal misconduct* allegations described in the bulleted points listed at the beginning of this section, which would include provision for sufficient personnel and adequate procedures to implement this objective;
- MPD must develop a plan (subject to approval by DOJ) to reallocate responsibility for MPD *administrative complaint investigations* from chain of command supervisors to MPD's OPR;¹⁴⁶
- The District of Columbia is required to provide the funds necessary to provide for the full implementation of these plans and sufficient resources for administrative complaint investigations to be completed within ninety days of the receipt of a complaint by MPD;¹⁴⁷
- MPD must develop a plan (subject to DOJ approval) to ensure that all MPD officers responsible for conducting investigations receive adequate training in a wide range of subjects;
- Within 180 days of approval of the above plan, the training of MPD officers responsible for conducting investigations must take place; and
- MPD must develop a manual (subject to DOJ approval) for conducting all MPD misconduct investigations.

The foregoing plans must be implemented fully, with all necessary positions filled, by the various deadlines set forth in Joint Modification No. 1 to the MOA, dated September 30, 2002.

¹⁴⁶ See paragraph 72 of the MOA for a list of the misconduct allegations covered by this provision.

¹⁴⁷ In cases where the allegations are referred to the USAO, the ninety days is measured from the date of the declination.

In addition, the MOA sets forth a series of requirements for evaluating and resolving allegations of misconduct against MPD officers. These include establishing that a preponderance of the evidence standard should be applied in such investigations; that all relevant evidence should be considered and weighed, including the credibility of all witnesses;¹⁴⁸ and that the cases be resolved in one of several prescribed ways. Based on the investigation, the possible dispositions are “unfounded,” “sustained,” “insufficient facts,” or “exonerated.”¹⁴⁹ Misconduct investigations require the preparation of a written report, which should include a description of the alleged misconduct, summary and analysis of all relevant evidence, and proposed findings and analysis. Except in cases of unusual complexity, such investigations must be completed within ninety days after the allegations have been received. Each investigation should be reviewed by a unit commander to determine the existence of any underlying problems and training needs, and the unit commander shall implement any appropriate non-disciplinary actions.

b. Status and Assessment

(1) Investigation Reviews

Over three years ago, we began reviewing statistical samples of use of force and misconduct investigations performed by MPD’s IAD and the district chains of command, and the results of our reviews were first presented in the OIM’s Sixth Quarterly Report.¹⁵⁰ The statistical sampling methodology we use in selecting the investigation files to be reviewed each quarter was developed by the OIM, in consultation with MPD and DOJ. The OIM, working closely with our statistical analysis experts at PricewaterhouseCoopers LLP, has developed standardized review procedures that allow us to efficiently review MPD investigation files and to report their findings in a consistent manner.

¹⁴⁸ The MOA makes clear that there should be no presumption that an officer’s statement is entitled to greater weight than the statement of a civilian. MOA ¶ 99.

¹⁴⁹ Although the meanings of “sustained” and “insufficient facts” are self-evident, the other dispositions may not be. “Unfounded” refers to cases in which the investigation found no facts to support the allegation; “exonerated” refers to cases where the conduct alleged in fact took place but did not violate MPD policies, procedures, or training.

¹⁵⁰ OIM Sixth Quarterly Report at 25-30.

This quarter, the OIM completed its fifteenth statistical sample of 81 non-FIT use of force and misconduct investigations, which was drawn from investigations opened between July 1, 2006 and September 30, 2006. To date, we have reviewed a total of 1,356 of these investigations opened between the effective date of the MOA, June 13, 2001, and September 30, 2006.¹⁵¹ Each of our samples has been drawn proportionately from all of MPD's districts, and each sample is comprised of investigations opened at least 90 days prior to the beginning of the reporting period to ensure that MPD has had the maximum time authorized under the MOA, absent special circumstances, to complete the investigation.

Beginning last year, we have drawn our investigations sample based on case tracking information maintained in PPMS. One effect of MPD's conversion to PPMS as the single central tracking system for all of MPD's internal misconduct cases was that the total number of cases from which we select our investigations samples more than tripled. This dramatic increase is attributable to MPD's use of PPMS to track cases in which officers allegedly have failed to appear for court dates, which prior to implementation of PPMS was tracked, for the most part, separately by MPD's Court Liaison Division. With the inclusion in PPMS of all court no-show cases, the proportion of such cases to the total population of misconduct and non-FIT use of force cases increased from approximately 30% to nearly 70%.

Generally, court no-show cases are not as useful for evaluating the quality and thoroughness of MPD's internal investigations as cases involving other forms of alleged misconduct. This is because court no-show cases typically are extremely simple and do not involve witness interviews and evidence that exists in other types of misconduct cases. Also, investigations of court no-show cases by the Court Liaison Division often do not follow the standard format used by IAD and the district chains of command. For example, court no-show investigations frequently do not result in one of the four findings categories required under the MOA.¹⁵² As a result of the dramatic increase in the number of

¹⁵¹ Our first sample, which covered investigations opened from June 13, 2001 through March 31, 2003, included 244 investigations. Our quarterly samples typically include between 78 and 80 investigations, with at least 10 drawn from each district. These population sizes are calibrated to generate statistically reliable data with respect to these types of MPD investigations as a whole.

¹⁵² Paragraph 100 of the MOA requires misconduct investigations to result in a finding of either unfounded, sustained, insufficient facts, or exonerated.

court no-show cases included in PPMS, our sample during the eighteenth quarter was heavily weighted toward these cases -- 58 of the 80 investigations included in that quarter's sample were court no-show cases. Therefore, in certain areas the results reflected by our sample during the eighteenth quarter varied significantly from our observations in other recent quarters prior to the eighteenth quarter.

For these reasons, we excluded court no-show cases from both last quarter's and this quarter's samples of misconduct and non-FIT use of force investigations and will continue to do so in future quarters. However, last quarter we reviewed a separate sample of 30 court no-show cases. We found that all (100%) of these cases were both complete and sufficient, which is unsurprising given the uncomplicated and straightforward nature of these investigations. Nearly half of these cases (46.4%) did not result in one of the four findings required under paragraph 100 of the MOA and a similar percentage (46.7%) of these investigations did not include a summary of all relevant evidence. Again, these findings are not surprising in light of the simplicity of court no-show investigations. During our January 12, 2007 monthly meeting with representatives from DOJ, MPD, and OPC, we suggested that the parties consider whether it would be appropriate to exempt court no-show cases from certain of the MOA's requirements generally applicable to MPD's internal investigations of misconduct allegations.

Summary of Results of OIM's Reviews of the Investigations Samples

For reporting purposes, we have divided the results of the OIM's reviews of MPD's non-FIT use of force and misconduct investigations into the following four categories: (1) administration and management of the investigations, (2) conduct of the investigations, (3) unit commander review of the investigations, and (4) the overall ratings regarding the completeness and sufficiency of the investigations.¹⁵³ The OIM's specific findings with respect to each of these areas are discussed below.¹⁵⁴

¹⁵³ The definitions of "complete" and "sufficient" are provided at notes 151 and 152 above.

¹⁵⁴ We have included at Appendix B to this report a detailed summary of the results generated by our investigations reviews for the last seven statistical samples analyzed through this quarter.

1. Administration and Management of the Investigations

Again this quarter, we found that over 95% of the chain of command investigations were free of the types of conflicts of interest that would cast doubt on the integrity of the investigations.¹⁵⁵ We also found that 100% of the cases we reviewed this quarter were investigated by the proper MPD entity.¹⁵⁶ The consistency with which MPD observes these requirements reflects favorably on the institutional integrity of MPD's system of internal investigations.

In prior quarters, with some exceptions, we found that over 95% of MPD's investigative reports for completed investigations include the MOA-mandated elements, including (1) a description of the use of force incident or misconduct alleged, (2) a summary of relevant evidence gathered, and (3) proposed findings and supporting analysis.¹⁵⁷ During the seventeenth quarter, however, we again found that a significant number of cases did not contain basic elements of a sound investigation, including a summary of all relevant evidence (only 88.1%) and proposed findings supporting the analysis (only 78.9%). Similarly, during the eighteenth quarter we found that only 72.1% of the investigations we reviewed included a summary of all relevant evidence and only 76.2% contained proposed findings and supporting analysis.¹⁵⁸ Last quarter, MPD returned to a very high level of compliance with the fundamental requirements -- 100% of the completed investigations we reviewed contained both a summary of relevant evidence and proposed findings with supporting analysis.¹⁵⁹ This quarter MPD's investigative reports for completed investigations included (1) a description of the use of force incident or misconduct alleged in 98.1% of the reports, (2) a summary of relevant evidence gathered in 97.0% of the reports, and (3) proposed findings and supporting analysis in 94.7% of the reports.

This quarter, we found that 83.8% of the cases we reviewed were completed within the 90-day window required by the MOA, which is the lowest timely completion rate we have seen since the fourteenth quarter.

¹⁵⁵ MOA ¶ 80.

¹⁵⁶ *Id.* ¶¶ 57, 61, 64, 68, 72, 79, 80.

¹⁵⁷ *Id.* ¶ 65.

¹⁵⁸ OIM Eighteenth Quarterly Report at 71. As discussed above, the results we reported during the eighteenth quarter in these areas were affected by the prevalence of court no-show cases in that quarter's sample.

¹⁵⁹ OIM Nineteenth Quarterly Report at 64.

The MOA specifically provides that chain of command investigations may be completed outside of the 90-day window only where there exist documented “special circumstances” justifying the delay.¹⁶⁰ This quarter, 86.6% of the investigations we reviewed either were completed within 90 days or contained documented special circumstances justifying the delay -- which is slightly lower than the 87.1% and 91.1% compliance rates we observed during the eighteenth and nineteenth quarters, respectively.

2. Conduct of the Investigations

Once again this quarter, we found that MPD investigators generally conduct sound internal investigations. For example, this quarter we found that investigators employed appropriate investigative techniques, such as avoiding group interviews (100%)¹⁶¹ and interviewing all appropriate MPD personnel (95.7%).¹⁶² In nearly all (99.3%) of the completed cases we reviewed this quarter, we found that investigators properly documented and addressed inconsistencies among officers and witnesses.¹⁶³ Moreover, MPD investigators appeared to address all apparent misconduct in all (100%) of the cases we reviewed this quarter.¹⁶⁴ We found that MPD investigators avoided giving automatic preference to an officer’s statement over a citizen’s statement in 100% of the cases we reviewed, which is consistent with the high compliance rates we have observed in this area over the past two years.¹⁶⁵

3. Unit Commander Review of the Investigations

Our past reviews have consistently shown that MPD unit commanders review chain of command investigations to ensure both their completeness and that their findings are supported by the evidence in approximately 95% or better of the cases.¹⁶⁶ Last quarter, we found that all (100%) of the finished cases we reviewed had been reviewed by a

¹⁶⁰ *Id.* ¶¶ 65, 74.

¹⁶¹ *Id.* ¶ 81.c.

¹⁶² *Id.* ¶ 81.e.

¹⁶³ *Id.* ¶ 81.g.

¹⁶⁴ *Id.* ¶ 82.

¹⁶⁵ *Id.* ¶ 99.

¹⁶⁶ *Id.* ¶ 66.

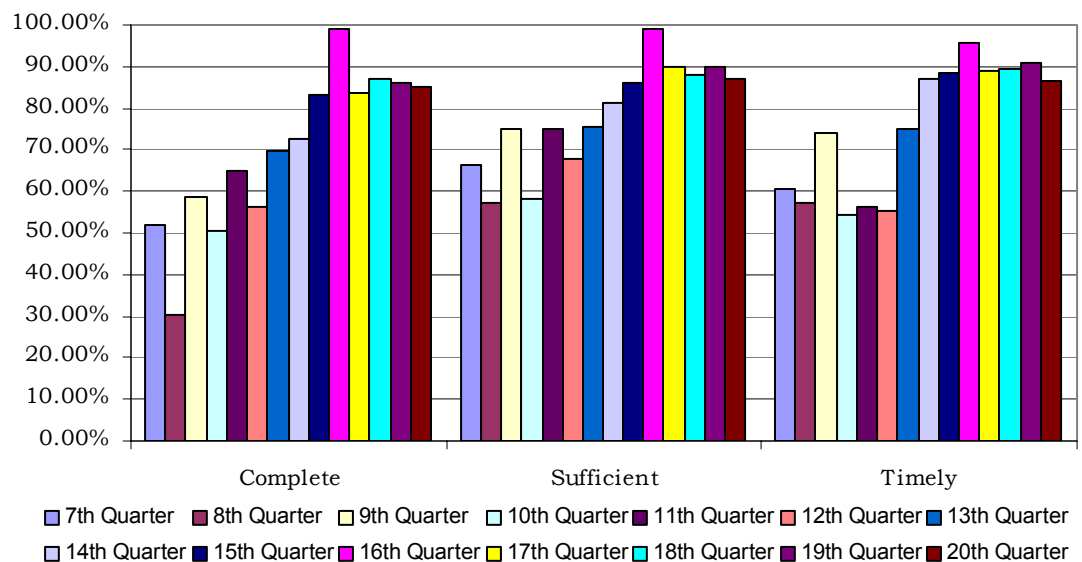
unit commander. This quarter, the compliance rate in this area remained high -- 96.6%.

4. OIM Reviewers' Overall Ratings Regarding the Completeness and Sufficiency of the Investigations

In recent years, MPD has taken several steps to improve the quality and timeliness of its internal investigations, including revising and distributing investigation templates and issuing Department-wide guidance requiring documentation of special circumstances justifying delays in the completion of investigations. These changes resulted in steady improvement in the quality and timeliness of these investigations, which peaked with the results from the sixteenth quarter. As reflected in the below chart, however, our ratings of the timeliness, completeness, and sufficiency of these investigations have essentially reached a plateau -- at or just below the substantial compliance threshold -- for the past year.

This quarter, we found that 85.1% of these investigations were complete, which is within a few percentage points of the completeness rates we have observed over the four most recent samples. We found that 87.2% of the investigations we reviewed this quarter were sufficient, which again is approximately the same sufficiency rate that we have observed over the past year.

Comparison of Quarterly Results



As discussed in our earlier reports, the most significant barrier to MPD achieving the 95% substantial compliance threshold with respect to the sufficiency and completeness of its IAD and chain of command investigations has been timeliness. Almost by definition, investigations that are unfinished by the time of our review will not be complete or sufficient. Last quarter, 7 of the 79 cases we selected were still pending investigation at the time of our review. Excluding those 7 pending cases, we found that 94.3% of the cases we reviewed last quarter were complete and 98.9% were sufficient. This quarter, 6 of the cases we selected were still pending investigation. Excluding the 6 pending cases from this quarter's sample, we found that 94.6% of the finished cases we reviewed were complete and 97.4% were sufficient.

We are concerned, however, that these "pending" cases reflect a more troubling issue than merely a lack of timeliness. This quarter, we re-reviewed the 7 cases that remained pending at the time of our review last quarter to determine whether the investigations had yet been completed. All of these cases should have been completed by June 30, 2006, absent documented special circumstances. Nevertheless, we found that none of these 7 investigations had been completed almost nine months later. Because we find that from 7% to 10% of the cases we select each quarter remains pending at the time of our review, we are concerned that a significant percentage of MPD's internal investigations may remain uncompleted for extended periods of time after they should have been concluded. We have discussed these findings with MPD, and MPD is investigating the issue. We will continue monitoring both MPD's closed and pending chain of command and IAD investigations.

(2) IAD Investigations

In the eleventh quarter, the OIM performed a statistical analysis designed to specifically assess the timeliness and quality of internal investigations performed by IAD, broken out from the larger category of non-FIT use of force and misconduct investigations, which includes both IAD and chain of command investigations. We developed these statistics by combining the results of our reviews of IAD investigations conducted during the ninth and tenth quarters in order to obtain a population size sufficient to support statistical analysis.

The results of our analysis of IAD cases in the eleventh quarter -- which involved investigations conducted by IAD between October 1, 2003 and March 31, 2004 -- reflected that the quality and timeliness of IAD's investigations performed during that period, considered in isolation from the chain of command investigations, were poor. We found that only

26.1% of IAD's investigations were completed within 90 days and only 40.2% were either completed within 90 days or contained documented special circumstances justifying in excess of 90 days for completion. We also found that only 32.7% of the IAD investigations we reviewed over those two quarters were complete and only 34.3% were sufficient.¹⁶⁷

During the fifteenth quarter, we performed a similar analysis aggregating the results we observed with respect to the IAD cases we reviewed during the thirteenth, fourteenth, and fifteenth quarters. These investigations were conducted by MPD during the period October 2004 through June 2005. We found that, while the timeliness and quality of IAD investigation had improved quite significantly, IAD investigations lagged behind the improvements we had observed in the chain of command investigations performed during those same months. During this period, 68.6% of IAD cases were timely (i.e., either completed within 90 days or containing documented special circumstances justifying a delay in completion of the investigation), 62.4% were complete, and 66.0% were sufficient. Excluding those investigations that remained pending at the time of our review, we found that 90.5% of IAD investigations during this period were complete and that 94.6% were sufficient.¹⁶⁸

We performed a similar analysis focusing on IAD investigations again during the seventeenth quarter by combining IAD investigations drawn from our samples of MPD investigations drawn from the period April 1, 2005 through December 31, 2005. We found that IAD investigations, considered in isolation, have shown significant improvement in both timeliness and quality. The IAD cases from this period were completed within 90 days at a rate of 84.0%. All (100%) of the IAD investigations from this period were completed within 90 days or contained documented special circumstances. Finally, we found that 93.7% of these IAD cases were both complete and sufficient.¹⁶⁹

(3) Serious Misconduct Investigations General Order

MPD submitted its Serious Misconduct Investigations General Order to DOJ on July 23, 2002. DOJ replied with detailed comments on

¹⁶⁷ OIM Eleventh Quarterly Report at 49-50.

¹⁶⁸ OIM Fifteenth Quarterly Report at 55.

¹⁶⁹ OIM Seventeenth Quarterly Report at 64.

September 13, 2002, to which MPD responded on November 22, 2002. On January 31, 2003, DOJ responded with a small number of additional comments and commended MPD “for its efforts to revise this MPD [general order] consistent with the MOA and other applicable standards.”¹⁷⁰ MPD submitted a revised draft to DOJ on March 7, 2003. DOJ responded to the revised draft order on August 25, 2003. MPD responded to DOJ’s comments and submitted a further revised order on September 30, 2003. DOJ approved the Serious Misconduct General Order on December 31, 2003.

On May 9, 2006, MPD provided DOJ with a copy of a Serious Misconduct Investigations General Order Change, which MPD had inadvertently published on April 27, 2006 prior to obtaining DOJ approval of the change.¹⁷¹ DOJ approved the Serious Misconduct Investigations General Order Change on July 17, 2006.¹⁷²

(4) Chain of Command Investigations Manual

Pursuant to paragraph 83 of the MOA, MPD submitted a draft Chain of Command Investigations Manual to DOJ on October 25, 2002. DOJ provided comments on the manual on March 26, 2003. Paragraph 83 requires that, among other things, the manual “provide investigative templates to assist investigators.” Because MPD wanted to include these investigative templates in the PPMS, final templates had to be submitted to PPMS development vendors by January 12, 2004. In order to facilitate the templates’ inclusion in the PPMS development process, DOJ agreed to provide an expedited review of the draft administrative investigative templates that MPD submitted on December 30, 2003. On January 7, 2004, DOJ provided its preliminary approval of the templates subject to MPD’s acceptance of certain suggested changes to the templates. On January 12, 2004, MPD provided the final revised templates to DOJ and the PPMS development contractor, IBM/Motorola. MPD submitted a revised draft of the Chain of Command Investigations Manual to DOJ for approval on February 26, 2004. DOJ returned comments on the Chain of Command Investigations

¹⁷⁰ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

¹⁷¹ E-mail from Linda Nischan to Tammie Gregg, Elizabeth Welsh, and Beth Hansher (May 9, 2006).

¹⁷² E-mail from Elizabeth Welsh to Linda Nischan, Tammie Gregg, and Beth Hansher (July 17, 2006).

General Order and Chain of Command Investigations Manual on June 29, 2004.¹⁷³

In response to the recommendations contained in the OIM's April 9, 2004 memorandum entitled "Technical Assistance Related to MPD's Chain of Command Investigations," MPD revised its misconduct investigative template and created a "preliminary" misconduct investigative template. These templates were submitted for DOJ's review on June 7, 2004, and DOJ returned comments on September 24, 2004.¹⁷⁴

After reviewing DOJ's comments and revising the Chain of Command Misconduct Investigations Manual and the investigative templates for well over a year, MPD submitted a revised draft of the manual to DOJ on June 30, 2006. DOJ provided further comments to the manual on November 2, 2006, and MPD currently is revising the manual to incorporate this latest round of comments.¹⁷⁵

(5) Chain of Command Misconduct Investigations General Order

Pursuant to paragraph 83 of the MOA, MPD submitted its draft Chain of Command Misconduct Investigations General Order to DOJ on November 1, 2002. DOJ responded with a number of substantive comments on January 31, 2003. MPD provided an updated draft of this general order to DOJ on December 31, 2003. MPD then submitted a revised version of the Chain of Command Misconduct Investigations General Order to DOJ on February 26, 2004. DOJ provided comments on the draft order on June 29, 2004. After substantial delay, MPD submitted the revised general order to DOJ for approval on June 30, 2006. DOJ returned its latest round of comments on the general order on November 2, 2006. MPD currently is revising the order to incorporate the comments received from DOJ.¹⁷⁶

¹⁷³ MPD April 2007 Progress Report at 15.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

(6) Corporation Counsel Notification to OPR of Civil Claims

Paragraph 75 of the MOA requires that "[t]he Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD."¹⁷⁷ After substantial delay in implementing this required notification procedure, on September 7, 2004 MPD's General Counsel sent a letter to the City's Deputy Attorney General and the Claims Manager of the City's Office of Risk Management ("DCORM") requesting their assistance in providing MPD with notice once a month of any claims or lawsuits filed that allege misconduct by an officer or employee of MPD.¹⁷⁸

During the twelfth quarter, we monitored communications between MPD's Office of General Counsel ("OGC") and OPR regarding civil complaints alleging misconduct on the part of MPD officers and employees. On a monthly basis, MPD's OGC forwards a report to OPR containing the following information referenced in the September 7, 2004 protocol: the claim or civil action number, the name of the claimant or plaintiff, the date of the incident giving rise to the allegation, a brief summary of the allegation, and the name of the MPD employee whose alleged actions gave rise to the complaint. We reported that missing from the report forwarded by MPD's OGC was relevant and useful information, such as the date the claim or civil action was filed and the name and contact information for the City's Office of the Attorney General ("OAG") or DCORM staff member assigned to the case.¹⁷⁹ MPD's OGC told us that this information is not included because (1) the date of the filing of a claim or civil action is not necessary to enable MPD to open a tracking file and (2) the contact point for OPR should be the OGC, not personnel in the OAG or DCORM.¹⁸⁰

Upon receipt of the report, an OPR sergeant reviews the information related to each case identified in the report to determine whether an OPR case tracking number has been assigned. If not, the

¹⁷⁷ On May 26, 2004, Mayor Anthony Williams signed an order renaming the "Office of Corporation Counsel for the District of Columbia" the "Office of the Attorney General for the District of Columbia."

¹⁷⁸ OIM Eighteenth Quarterly Report at 78.

¹⁷⁹ OIM Twelfth Quarterly Report at 45.

¹⁸⁰ OIM Fourteenth Quarterly Report at 53.

case is given an OPR case number, and the matter is assigned to an OPR investigator for monitoring.¹⁸¹

In the fourteenth quarter, we began reviewing communications from the City's OAG and DCORM to MPD's OGC in order to evaluate the completeness of the information provided by the City to MPD pursuant to the September 7, 2004 protocol. MPD's OGC reported at the time that it is not confident that all claim information received by DCORM is being forwarded to MPD because DCORM has not been issuing monthly reports to the OGC.¹⁸²

We have continued our monitoring in this area by interviewing officials in OAG, OGC, DCORM, and OPR and by reviewing the DCORM's systems for tracking claims or civil actions against MPD officers and notifying OGC of such claims or actions. We also have reviewed OPR's systems for monitoring the status of civil claims against MPD officers. Last quarter, we observed that OGC has continued to receive monthly reports from OAG and DCORM regarding civil actions alleging misconduct by an MPD officer or employee. Although it appears that OGC had forwarded these reports to OPR, we found that there was confusion among personnel in OPR over ensuring that this information was delivered to the appropriate person for processing and tracking.¹⁸³ MPD and the City still are not in substantial compliance with MOA paragraph 75, and we will continue our monitoring in this area.

(7) Officer Reporting of Arrests and Misconduct

Paragraph 76 of the MOA requires MPD officers to promptly notify MPD if (1) the officer is arrested or criminally charged for any conduct; (2) the officer is named as a party in any civil action involving his or her conduct while on duty; and (3) the officer is named as a party in any civil suit regarding off-duty conduct that alleges physical violence, racial bias, dishonesty, or fraud by the officer.

During the twelfth quarter, we reviewed the "Arrest of Sworn Members" log maintained by OPR, which reflects that 29 MPD officers were arrested in 2004, one of whom was arrested twice. The log did not

¹⁸¹ OIM Twelfth Quarterly Report at 45-46.

¹⁸² OIM Fourteenth Quarterly Report at 54.

¹⁸³ OIM Nineteenth Quarterly Report at 72.

indicate whether the involved officers self-reported their arrests, as required by paragraph 76 of the MOA. OPR officials have told us that officer arrests come to their attention through (1) officer self-reporting; (2) notification of officer arrests by supervisors or district commanders from the district in which the arrest occurred, if in the City; and (3) notifications from outside jurisdictions of arrests occurring in those jurisdictions. OPR also reported that the FBI also periodically (every 3 to 4 years) conducts criminal history checks on all MPD officers.¹⁸⁴

During the fourteenth quarter, we found that OPR was not performing audits to evaluate compliance with the officer self-reporting requirements.¹⁸⁵ Moreover, the IPS personnel we interviewed last year indicated that they were not aware of any in-service training that addresses the self-reporting requirement of paragraph 76 of the MOA.¹⁸⁶

OPR reported that historically it has received notice of civil actions related to on-duty conduct by an officer when the involved officer submits a request for legal representation. The OPR official we interviewed during the twelfth quarter could not recall OPR ever receiving a notification of a civil action against an officer concerning off-duty conduct.¹⁸⁷

Our monitoring with respect to officer self-reporting of civil actions under paragraph 76 of the MOA will continue in the coming quarters. We also will discuss with the QAU the development of an audit program to monitor MPD's compliance with the requirements of MOA paragraph 76 on a continuing and regular basis.

(8) Use of Force and Misconduct Investigator Training

As discussed in Section VII.B.2 below regarding MPD's training curricula and lesson plans, MPD's lesson plan entitled "Administrative Misconduct Investigation Policy and Procedures Using the Preponderance of the Evidence Standard" is pending final DOJ approval of the Chain of Command Misconduct Investigations General Order and Chain of

¹⁸⁴ OIM Twelfth Quarterly Report at 46.

¹⁸⁵ OIM Fourteenth Quarterly Report at 54-55.

¹⁸⁶ OIM Fifteenth Quarterly Report at 60.

¹⁸⁷ OIM Twelfth Quarterly Report at 46.

Command Investigations Manual, both of which MPD is revising based on DOJ's November 2, 2006 comments.¹⁸⁸

c. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraphs 68 and 78, which require that OPR be responsible for investigations of allegations of criminal misconduct and that MPD develop a DOJ-approved plan that allocates sufficient personnel and establishes procedures for the performance of timely misconduct investigations. DOJ approved the Serious Misconduct General Order on December 31, 2003. Although we have consistently found that, in over 95% of the misconduct cases we have reviewed, the correct MPD entity conducted the investigation, we have found that the timeliness and quality of IAD's internal investigations are below the levels necessary to achieve substantial compliance. Although the results of our recent reviews of MPD's internal investigations are positive, it is necessary to review additional IAD and chain of command investigative files to determine whether MPD can achieve a consistent level of high quality with these investigations.

We find that MPD currently is not in substantial compliance with the provisions of MOA paragraphs 66 and 69 related to the prompt notification of the USAO when chain of command investigations reveal evidence of criminal misconduct on the part of an officer. Such cases are relatively rare, however. In the coming quarters, we will continue our review of MPD's processes for notifying the USAO of potentially criminal misconduct on the part of officers.

We find that MPD currently is in substantial compliance with the requirements in MOA paragraphs 72, 73, and 79 that OPR conduct investigations of certain categories of alleged officer misconduct and that allegations of excessive force involving the use of deadly force be assigned to FIT for investigation.¹⁸⁹ MPD has obtained DOJ approval for both the

¹⁸⁸ MPD April 2007 Progress Report at 15.

¹⁸⁹ Paragraph 73 of the MOA also requires that OPR be assigned to investigate all incidents in which MPD receives written notice from a prosecuting agency in a criminal case where (i) a court has suppressed evidence because of a constitutional violation involving potential officer misconduct or (ii) there has been any other judicial finding of officer misconduct or judicial request for investigation into potential officer misconduct. In the coming quarter, we will continue our review of the status of such communications between MPD and the USAO.

Serious Misconduct Investigations General Order and the Office of Internal Affairs Operations Manual (on March 26, 2003). Our reviews of FIT investigations and fifteen samples of non-FIT MPD investigations have consistently found that, in greater than 95% of cases, the appropriate MPD investigative unit conducted the investigation.

MPD is not currently in substantial compliance with MOA paragraphs 65, 74, and 103, which require that all administrative investigations of officer misconduct be completed within 90 days, absent special circumstances, and that each investigation of officer misconduct contain a final report that includes certain fundamental elements such as a description of the alleged incident, a summary and analysis of the evidence, and proposed findings. During the sixteenth quarter, MPD exceeded the 90% timeliness threshold for non-FIT use of force and misconduct investigations for the first time. Since then, MPD's compliance rate with respect to timeliness has plateaued very near the 90% substantial compliance standard. MPD is in substantial compliance with the MOA's requirement that chain of command and IAD investigations include a final report prepared by the investigator. MPD has achieved compliance rates of greater than 95% in this area. Moreover, the final investigators' reports that we reviewed have consistently included the required elements described above at a rate exceeding 95%.¹⁹⁰

We reserve judgment with respect to whether the City is in substantial compliance with MOA paragraph 75, which requires the City's Office of Corporation Counsel (now the Office of the Attorney General) to notify OPR of civil claims against the City alleging misconduct by an MPD officer or employee. MPD's OGC appears to be effectively relaying the information it receives from the City to OPR. However, last quarter we found that there was confusion within OPR about delivering this information to appropriate personnel for processing and tracking.

We also reserve judgment with respect to MPD's compliance with MOA paragraphs 76 and 77. These provisions require MPD officers to report both when (1) an officer is arrested or accused in a civil suit of misconduct and (2) an officer observes potential misconduct by other

¹⁹⁰ Although MPD's compliance in this area historically has been good, in the seventeenth and eighteenth quarters MPD's compliance rates were below 80%. Over the two most recent quarters, however, more than 95% of the completed cases we reviewed included these fundamental elements of internal investigative reports.

officers. As discussed above, we are continuing to review MPD's effectiveness in implementing the self-reporting requirements related to officer arrests and civil suits, and we will work with the QAU to develop audit methodologies in this area.

MPD is in substantial compliance with MOA paragraph 80, which requires that MPD prohibit any officer who has a potential conflict of interest from participating in the conduct or review of that investigation. We have consistently found that greater than 95% of the MPD investigations we have reviewed have been free of apparent or potential conflicts of interest.

Paragraphs 81.a through 81.g of the MOA establish substantive requirements for MPD internal investigations. We find that MPD's misconduct investigations substantially comply with the requirements of paragraph 81 of the MOA. For example, MPD investigators have consistently avoided group interviews in nearly 100% of the completed cases we have reviewed in the past two years. We have found that MPD investigators have consistently interviewed all appropriate MPD officers, including supervisors, in either nearly or more than 95% of the completed cases. We found that MPD investigators almost always (100% in each of the most recent two quarters) interview complainants and witnesses at convenient times and sites, where practicable and appropriate. MPD investigators also have consistently addressed and documented inconsistencies among officers and other witnesses -- including 99.3% of the cases we reviewed this quarter.

MPD's completed investigations also substantially comply with MOA paragraph 82's requirements that investigators adequately address the conduct of each officer involved in the incident and adequately address all apparent misconduct. Since the thirteenth quarter, MPD's investigations have exceeded a compliance rate of 95% in these areas, including a 100% compliance rate both this quarter and last quarter.

MPD is not in substantial compliance with MOA paragraph 83, which requires the development of a DOJ-approved manual for conducting all MPD misconduct investigations. MPD has not yet obtained DOJ's final approval for its Chain of Command Misconduct Investigations Manual or revised Chain of Command Investigation Templates.

MPD is not in substantial compliance with MOA paragraph 84, which establishes training requirements for MPD use of force and misconduct investigators. MPD has not obtained DOJ approval for all of the lesson plans referred to in paragraph 84, and currently there is no

plan in place to ensure that all of MPD's use of force and misconduct investigators are adequately trained.

MPD has substantially complied with MOA paragraph 98's requirement that misconduct investigation findings be based upon a preponderance of the evidence standard. We have found that virtually all of MPD's completed internal investigations reviewed over the past two years have applied the preponderance of the evidence standard.

MPD is in compliance with MOA paragraph 99's requirement that misconduct investigators avoid giving automatic preference to an officer's statement over that of another witness. MPD's compliance has been good in this area -- consistently better than 96% for the past two years.

We find that MPD is not currently in substantial compliance with the requirements of MOA paragraphs 100 and 101 that all investigations of allegations of misconduct result in a disposition of either "unfounded," "sustained," "insufficient facts," or "exonerated." Our reviews going back more than two years have found 87.7%, 93.0%, 91.5%, 84.4%, 90.7%, 56.9%, 97.5%, and 76.6% of investigations contain one of the required findings.¹⁹¹ During the eighteenth quarter, MPD's compliance rate in this area was only 44.4%, although this extremely low rate was attributable to the prevalence of court no-show cases in that quarter's sample.¹⁹² Last quarter, 95.5% of the completed cases we reviewed -- excluding court no-show cases -- resulted in one of the four required findings. This quarter, the compliance rate was 93.1%. This would seem to be an area in which MPD could achieve consistently high compliance rates through use of the investigative templates MPD has developed. Although MPD is not yet in substantial compliance with the requirement that each misconduct investigation result in one of the above four dispositions, we have found that, in over 95% of MPD's completed misconduct investigations, the basis for closing the case was for reasons other than the withdrawal of the complaint or the unavailability of the complainant, as required by paragraph 101.

¹⁹¹ During the fifteenth quarter, we provided MPD with a description of each case from last quarter's sample that we found not to have resulted in one of the four required findings.

¹⁹² As discussed above, MPD's Court Liaison Division typically is responsible for investigating allegations related to the failure of an officer to appear for a court date. Historically, these cases frequently do not result in one of the four MOA-required findings.

MPD is currently in substantial compliance with MOA paragraph 102's requirement that each misconduct investigation include a final report containing a description of the alleged misconduct, a summary of the relevant evidence gathered during the investigation, and proposed findings and analysis supporting the findings. Over the past two years, we have found that MPD's completed investigations contain a final report prepared by the investigator at a rate exceeding 95%, including a compliance rate of 100% last quarter and 97.1% this quarter. We also have found that the final reports, when present in the investigative files, consistently contain each of the required elements at a rate above 95%.¹⁹³

MPD is in substantial compliance with the MOA's requirements related to unit commander review of chain of command investigations, found at paragraphs 66 and 104. We have consistently found that unit commanders review chain of command investigations at a rate greater than 95% across our samples. Moreover, our analysis of the non-pending cases this quarter and over the past seven quarters shows that over 95% of the finished cases approved by unit commanders have been rated sufficient.

Our overall evaluation is that MPD's non-FIT use of force and misconduct evaluations do not yet substantially comply with the MOA requirements in this area, although there has been consistently good performance (exceeding 80% completeness and sufficiency ratings) in each of the six most recent quarters, and MPD exceeded the numerical substantial compliance threshold with respect to timeliness, completeness, and sufficiency for the first time during the sixteenth quarter. We will continue to review samples of MPD's internal investigations to evaluate whether MPD has maintained the high quality and timeliness of these investigations that we observed this quarter.

¹⁹³ As reflected in Appendix B, our case reviews performed during the fifteenth, seventeenth, and eighteenth quarters indicated a compliance rate of only 73.5%, 78.9%, and 76.2%, respectively, with the requirement that investigative reports contain proposed findings and analysis supported by evidence. In light of the higher compliance rates in these areas that we observed in other quarters, including the sixteenth quarter and the two most recent quarters, we continue to find that MPD is in substantial compliance with the requirements of MOA paragraph 102.

d. Recommendations

We reiterate and emphasize our recommendation that MPD continue working with DOJ to obtain approval for its Chain of Command Misconduct Investigations Manual and revised Chain of Command Investigations Templates. We also recommend that MPD continue to work to improve the timeliness and quality of its chain of command investigations. In particular, MPD must address the status of the significant number of chain of command and IAD investigations that remain “pending” for months after such investigations should have been completed.

IV. Receipt, Investigation, and Review of Misconduct Allegations (MOA ¶¶ 85-97)

A. Requirements

This section of the MOA addresses the procedures designed to help members of the public aggrieved by the actions of MPD officers lodge complaints concerning officer conduct. It relates to MPD’s role in facilitating the filing of such complaints and also to MPD’s responsibility to coordinate with OPC to ensure that the respective roles and responsibilities of MPD and OPC are clearly defined and that the agencies are working properly together.

More specifically, the MOA requires the following:

- The development of a plan, in consultation with DOJ, that defines the roles and responsibilities of -- and the relationship between -- MPD and OPC with regard to
 - Receiving, recording, investigating, and tracking complaints;
 - Conducting community outreach and education regarding making complaints against officers;
 - Exchanging information between MPD and OPC; and
 - Defining the responsibilities of the MPD official who serves on the Police Complaints Board (“PCB”).

- The provision of sufficient qualified staff, funds and resources for OPC to carry out its responsibilities as defined both by the MOA and the law creating OPC;¹⁹⁴
- The development of a plan to ensure that the investigative staff of OPC is adequately trained, including training in a wide range of MPD policies and procedures;
- The development of a manual, in consultation with DOJ, for conducting OPC complaint investigations, which should include timelines and investigative templates;
- The development and implementation of an effective program to inform citizens of their right to lodge complaints against MPD officers, which must include, among other things, the distribution of complaint forms, fact sheets, informational posters, and public service announcements, in English, Spanish, and any other languages appropriate for particular areas, which describe MPD and OPC complaint processes;
- The broad availability of complaint forms and informational materials at OPC, MPD headquarters, and various other MPD locations; through the Internet; and to community groups and community centers; and
- Throughout the term of the MOA, the implementation of an extensive Community Outreach and Public Information campaign.¹⁹⁵

¹⁹⁴ District of Columbia Law 12-208.

¹⁹⁵ The program must include at least the following elements: one open meeting per quarter in each of the PSAs for the first year of the MOA and one meeting in each PSA semi-annually in subsequent years. The purpose of these meetings is to inform the public about the provisions of the MOA and the various methods of filing a complaint against an officer. At least one week before such meetings, the City shall publish notice of the meeting as follows: (i) in public areas, including libraries, schools, grocery stores, and community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD Web sites; and (iv) in the primary languages spoken by the communities located in such areas. In order to enhance interaction between officers and community members in daily policing activities, the open public meetings must include presentations and information on MPD and its operations.

The MOA also sets forth various methods designed to facilitate the filing of complaints against officers. These methods include:

- Requiring officers to provide their names and identification numbers to any person who requests them;
- Requiring that MPD provide the means for citizens to file complaints by all available methods, including in person, in writing, or by telephone, facsimile, or electronic mail;
- Requiring the establishment of a hotline, operated by OPC, that will be appropriately publicized by the City and MPD and that will be audited to ensure its proper operation; and
- Ensuring that responsibility for receiving all complaints filed directly with MPD belongs to MPD's OPR, which must establish filing and tracking systems and coordinate with OPC.

B. Status and Assessment

1. Coordination and Cooperation Between MPD and OPC Generally (MOA ¶ 85)

MPD and OPC originally signed a MOU between the two agencies on September 28, 2002. In April 2003, MPD advised the OIM that it would issue a revised MOU by June 30, 2003. MPD and OPC did not meet this deadline. On October 7, 2003, MPD and OPC submitted a revised draft MOU to DOJ. This draft did not resolve a then-outstanding issue between MPD and OPC related to the duties of the MPD member of the PCB. On December 3, 2003, DOJ advised MPD and OPC of its concern regarding the delay in finalizing the MOU. On December 31, 2003, MPD requested that DOJ proceed with its review of the draft MOU prior to the resolution of this outstanding issue. On May 3, 2004, MPD and OPC notified DOJ that the parties had agreed to the revised "MPD member recusal" section of the MOU, which was the remaining outstanding issue. On May 25, 2004, DOJ provided the parties with comments on the draft MOU.

During the third quarter of 2004, DOJ also suggested that OPC request MPD's assistance with the timely scheduling of all officer interviews, including both initial interviews and any rescheduled interviews. MPD and OPC agreed to modify the MOU further to provide for MPD taking a more active role in assisting OPC with the rescheduling of MPD officers who fail to appear for OPC interviews or other proceedings. MPD agreed to include additional language in the MOU on

this point and submitted a revised draft of the MOU to DOJ on September 24, 2004.

On December 22, 2004, DOJ provided its final approval for the revised MOU; and, on January 28, 2005, MPD and OPC signed the new MOU.¹⁹⁶

a. Complaints Filed with MPD on MPD Forms Involving OPC Subject Matter

In prior quarters, we found that MPD's OPR had failed to notify OPC of formal complaints lodged with MPD that involve allegations that could have been filed (at the complainant's election) with OPC.¹⁹⁷ Paragraph 94 of the MOA and Section III.B.7 of the revised MOU require that OPR notify OPC within 24 hours or the next business day of any complaints filed with MPD that allege harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.¹⁹⁸ The revised MOU also requires that MPD provide OPC with quarterly reports that include, among other things, (1) a statistical summary of complaints filed with MPD that include at least one allegation that falls within OPC jurisdiction and (2) a description of the final disposition of complaints received by MPD that could have been filed with OPC.¹⁹⁹

During the seventeenth quarter, we reported on MPD's compliance with the requirements of MOA paragraph 94 and MOU Section III.B.7. We found that MPD did not routinely notify OPC on a daily basis of complaints falling within the categories described under Section III.B.7, which are complaints over which MPD and OPC share jurisdiction. Moreover, MPD did not have an adequate system in place even to identify cases about which OPC should be notified.²⁰⁰

¹⁹⁶ MPD April 2007 Progress Report at 23.

¹⁹⁷ OIM Fifth Quarterly Report at 31.

¹⁹⁸ MOA ¶ 94; MOU at Section III.B.7. The MOU requires OPR to notify OPC of complaints within the categories identified in paragraph 94 of the MOA as well as the additional category of complaints alleging "retaliation." The MOA and revised MOU require OPR to provide notice to OPC "[w]ithin 24 hours, or the next business day."

¹⁹⁹ MOU at Section III.B.9.

²⁰⁰ OIM Seventeenth Quarterly Report at 78.

We also reviewed MPD's quarterly reports to OPC, which are required under Section III.B.9 of the MOU. We found MPD's draft quarterly reports required significant improvement in order to meet the requirements of the MOU.²⁰¹ Last quarter, MPD assigned a new officer to head the Department's OPC Liaison Unit ("OPCLU").²⁰² In the coming quarter, we will continue our monitoring of MPD's progress in satisfying the requirements of the MOU and to provide our technical assistance as appropriate.

b. MPD Documents Requested by OPC

Under the MOU, absent "good cause" MPD must respond to an OPC document request within ten business days from the date of receipt of OPC's written request.²⁰³ During the seventeenth quarter, OPC reported that 9 of the 64 document request responses it received from MPD were timely, which is a compliance rate of approximately 14%.²⁰⁴ That rate was similar to the low rates we have reported in past quarters.²⁰⁵ Moreover, as discussed below, it took until last quarter for MPD and OPC to resolve the substantial backlog of OPC document requests for which MPD had yet to provide any response.

During the fourteenth quarter, we monitored MPD's systems for tracking and responding to requests for information submitted by OPC. During an interview with MPD's designated OPC liaison, we learned that at that time MPD did not maintain a tracking log of requests made by OPC or the status of those requests. The liaison told us then that she simply received requests from OPC and forwarded them to the appropriate unit. We reported that MPD did not have a centralized system for logging and tracking OPC document requests or any means by which to identify the number of requests that are outstanding. We also found that, although MPD often receives duplicative requests from OPC, the Department had no database containing information previously provided to OPC. The MPD liaison also indicated that she did not feel

²⁰¹ *Id.*

²⁰² MPD January 2007 Progress Report at 27.

²⁰³ MOU at Section III.D.3.

²⁰⁴ OIM Seventeenth Quarterly Report at 78-79.

²⁰⁵ *See, e.g.*, OIM Fourteenth Quarterly Report at 65-66.

she was adequately staffed to process and track all of the requests for documents MPD receives from OPC investigators.²⁰⁶

During the fifteenth quarter, MPD reported that, in response to these concerns, it had begun to track OPC requests using an automated Intranet Quorum (“IQ”) system, which is a system already used by MPD to track a variety of Department correspondence.²⁰⁷

Last year, we met with OPC to discuss MPD’s failure to produce documents in response to the agency’s requests in a timely manner. OPC’s internal tracking log of document requests to MPD indicated a substantial backlog of unfilled requests stretching back many months. We met with the then OPC liaison, who had been in the position since January 2006. We learned that the OPC liaison had discontinued use of the IQ system to track OPC document requests and had returned to a paper-based system that did not include a procedure for tracking the status of each request.²⁰⁸ The OPC liaison also told us that her efforts to obtain information responsive to OPC requests are hampered by several factors, including her inability to access certain internal information systems, the lack of a designated point person in each of the districts responsible for gathering documents to be produced to the OPC, and insufficient sharing of information between MPD and OPC regarding pending requests.

We recommended that OPC and MPD take the following steps to improve the timeliness of MPD’s responses to OPC document requests:

- OPC should perform quality control reviews of its document requests to ensure that as much information as possible about the involved officers and the time and location of the underlying incident is provided to MPD.
- OPC should periodically provide the OPC liaison with updated tracking lists of pending document requests.

²⁰⁶ *Id.* at 66.

²⁰⁷ OIM Fifteenth Quarterly Report at 70.

²⁰⁸ MPD reported that it learned, as a result of a QAU audit in March 2006, that the OPC liaison had stopped using the IQ system. MPD also reported that the OPC liaison was not authorized to discontinue use of the IQ system and that she had been instructed to immediately resume using the IQ system to track OPC requests. OIM Sixteenth Quarterly Report at 75.

- MPD should periodically provide OPC with a current roster of MPD personnel, in an electronic format, that includes information such as officers' names, badge numbers, and unit assignments.
- The OPC liaison should be granted access to all necessary MPD information systems, including TACIS, CJIS, and WALES.
- The OPC liaison should make use of automated systems, including the IQ system, to track the status of OPC document requests.
- Every MPD unit commander should designate a specific staff member to serve as a point of contact for the OPC liaison. These contact persons should receive training regarding the requirements of the MOU and the D.C. Code relating to the provision of information to facilitate OPC's investigations of misconduct allegations against members of MPD.

Last quarter, MPD appointed a new head of the OPCLU, who was successful in working with units in MPD's districts and with OPC to eliminate the substantial backlog of outstanding OPC document requests that had grown over time.²⁰⁹ MPD reports that the OPCLU has streamlined the process of responding to OPC document requests by implementing an automated system by which OPC requests now are made electronically via an e-mail account devoted specifically to receive such requests. The OPCLU reviews each request received from OPC and then forwards the request via e-mail to the appropriate point of contact in each of the Department's districts or units. This new system has eliminated the cumbersome paper-based process that existed previously and that had resulted in a substantial backlog of unfulfilled requests.²¹⁰

Over the past year, MPD has devoted significant attention to this area. Last quarter, MPD appointed a new OPCLU, eliminated the backlog of OPC document requests, and implemented a new electronic system for receiving and responding to OPC's document requests. This quarter, we reviewed the OPCLU's electronic document request tracking system, which appears to be both efficient and effective. The new system is designed to enable the OPCLU to gather information in response to OPC document requests within the timetable provided under the MOU; it is a

²⁰⁹ MPD January 2007 Progress Report at 27.

²¹⁰ *Id.*

substantial improvement over MPD's historical paper-based system for receiving, tracking, and responding to OPC requests.

**c. Cooperation with OPC Officer
Appearance Requests and Mediation**

The MOU requires MPD to facilitate the process of ensuring that officers appear as requested for OPC proceedings, such as interviews, mediation sessions, complaint examination conferences, and hearings.²¹¹ The MOU also provides that the rescheduling of officers appearances for OPC proceedings will be allowed under defined limited circumstances.²¹² When an officer fails to appear for an OPC proceeding, OPC may provide notice of the failure to appear to MPD and, “[u]pon receipt of such notice, MPD will cause appropriate disciplinary action to be instituted against the officer, and will notify OPC of the action or discipline undertaken”²¹³

During the eighteenth quarter we reported that, in 2005, OPC issued 19 memoranda, entitled “Notification of Officer Failure to Cooperate,” to MPD requesting that MPD initiate disciplinary action against officers for failing to cooperate with OPC investigations or mediations of citizen complaints. We requested information from MPD regarding all 19 of these notifications to determine what, if any, actions were taken in response. MPD was unable to locate any records related to 2 of the 19 notifications. MPD performed its own misconduct investigations with respect to the remaining 17 notifications. The outcomes of those 17 investigations were as follows: 7 sustained, 7 exonerated, 2 insufficient facts, and 1 unfounded. MPD took disciplinary action in only 5 of the 7 cases in which it determined that an officer failed to cooperate with an OPC proceeding. In other words, we found that an OPC Notification of Officer Failure to Cooperate resulted in disciplinary action against the subject officer in 26% of the cases referred to MPD in 2005.²¹⁴

²¹¹ MOU ¶¶ III.I.3.

²¹² *Id.* ¶ III.J.1-2.

²¹³ *Id.* ¶ III.J.5. Also, the District of Columbia Code provides that, if an officer fails to cooperate in good faith with an OPC mediation, “[t]he Police Chief shall cause appropriate disciplinary action to be instituted against the police officer for such a violation and shall notify the Executive Director [of OPC] of the outcome of such action.” D.C. Code § 5-1110(k).

²¹⁴ OIM Eighteenth Quarterly Report at 93.

MPD and OPC disagree about the proper interpretation of the MOU's requirement that MPD "cause appropriate disciplinary action to be instituted" upon receipt of a Notification of Officer Failure to Cooperate from OPC. OPC maintains that the MOU, as well as the D.C. Code, require MPD to impose some form of discipline upon the subject officer automatically upon receipt of such notice. MPD's position is that it is entitled to perform its own investigation of the circumstances underlying the failure to cooperate referral received from OPC and that, in cases where MPD's investigation results in a finding of "exonerated," "insufficient facts," or "unfounded," the "appropriate disciplinary action" required under the MOU is no discipline of the subject officer. Accordingly, MPD maintains that it took appropriate disciplinary action in response to 15 of the 19 (79%) of the OPC failure to cooperate referrals made in 2005.

On December 19, 2006, OPC sent former Chief Ramsey a letter expressing "concern that the Metropolitan Police Department (MPD) has failed or refused to take disciplinary action against officers in an alarmingly high proportion -- 92% -- of cases where the Office of Police Complaints (OPC) found that officers had not cooperated with OPC's investigation or mediation of police misconduct complaints."²¹⁵ OPC requested that MPD take corrective action, including disciplinary action against officers that OPC has determined failed to cooperate fully with OPC's investigation, adjudication, or mediation of a complaint.²¹⁶

The issue of officer cooperation with OPC investigations was discussed during the OIM's March 5, 2007 monthly meeting with the parties to the MOA. It appeared that the primary objection that certain officers had raised with respect to the OPC investigative process concerned the OPC-prepared narrative written statements that are to be signed by officers. These officers were concerned that the written statement prepared by OPC investigators for their signature did not constitute a verbatim record of the officer's statement, even though OPC's procedure is to permit the officer to review and revise the statement prior to signing it. We encouraged the parties to work toward a resolution of this issue that affords due respect for OPC's prerogative as an independent agency to establish its own investigative procedures. OPC's ability to investigate and resolve citizen complaints alleging officer

²¹⁵ Letter from Philip K. Eure to Charles H. Ramsey, entitled "Failure to Cooperate by MPD Officers" (December 19, 2006). OPC's 92% figure is based on MPD's response to 38 failure to cooperate notices issued by OPC to MPD during 2006.

²¹⁶ *Id.*

misconduct is largely dependent on the cooperation of MPD and its officers with OPC proceedings, and there must be meaningful consequences when officers fail to provide such cooperation.²¹⁷

2. Public Information and Outreach (MOA ¶¶ 87-91, 94)

a. Citizen Complainants

On January 31, 2003, DOJ approved the communications plan developed by MPD's Office of Corporate Communications. In our Third Quarterly Report, we reported that MPD had finalized and begun distributing community outreach materials, including flyers and posters explaining the citizen complaint process.²¹⁸ On September 8, 2004, MPD advised DOJ and the OIM that it had changed the e-mail address for citizen complaints and that MPD intended to update its citizen complaint promotional materials to reflect this change. MPD's Web site contains information concerning the citizen complaint process, including instructions on how to file a complaint with both OPR and OPC, as well as downloadable complaint forms.²¹⁹

On February 10, 2005, DOJ approved the Processing Citizen Complaints General Order. The following day, however, MPD advised DOJ of several "procedural issues" related to the general order, which MPD reported it was working to resolve. MPD reported that these procedural issues were addressed and that it is now working to ensure that the internal procedures provided in the general order are consistent with OPC's governing legislation. MPD submitted the revised Processing Citizen Complaints General Order to DOJ for approval on May 16, 2006, and DOJ approved the general order on August 29, 2006.²²⁰ However, prior to issuing the approved general order, MPD found that changes to the general order that had been requested by OPC were not incorporated into the version of the general order approved by DOJ. MPD reports that

²¹⁷ During the OIM's April 12, 2007 monthly meeting, MPD and OPC reported that they had resolved their differences on this issue. We will discuss this resolution in our next quarterly report.

²¹⁸ OIM Third Quarterly Report at 43.

²¹⁹ http://mpdc.dc.gov/serv/citizencomplaints/file_complaint.shtm.

²²⁰ OIM Eighteenth Quarterly Report at 94.

it will work with OPC to revise the Processing Citizen Complaints General Order, as appropriate, and submit any changes to DOJ for approval.²²¹

Beginning in the thirteenth quarter, the OIM and representatives from OPR discussed strategies for monitoring MPD's compliance with the MOA's requirements related to the receipt and processing of citizen complaints against officers. The OIM and OPR collaborated in the development of a citizen complaint audit program to evaluate MPD's citizen complaints process across the districts. During the thirteenth quarter, the OIM prepared three scenarios to be used by persons posing as citizens with complaints regarding police misconduct. MPD reviewed these scenarios and discussed them with its OGC.²²²

The scenarios were designed to test specific requirements of the MOA, including the requirement that officers provide their names and identification numbers upon request,²²³ the availability of materials describing the MPD and OPC complaints processes,²²⁴ the requirement that officers carry complaint forms and information in their vehicles at all times while on duty,²²⁵ the requirement that officers advise persons of their right to make a complaint regarding officer conduct,²²⁶ and the prohibition on discouraging complaints.²²⁷

During the fifteenth quarter, MPD's QAU and the OIM completed a comprehensive audit of MPD's compliance with the MOA's requirements related to the receipt of complaints against officers from the public.²²⁸ The audit involved using volunteers, primarily drawn from MPD recruits, to pose as civilian members of the public seeking to lodge a complaint alleging police misconduct based on the three scenarios prepared by the OIM. The audit was performed in three phases: (1) walk-in testing was conducted at all seven MPD district headquarters, three MPD district substations, and the Special Operations Division ("SOD") headquarters

²²¹ MPD April 2007 Progress Report at 11.

²²² OIM Fourteenth Quarterly Report at 67.

²²³ MOA ¶ 87.

²²⁴ MOA ¶ 88.

²²⁵ MOA ¶ 90

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ OIM Fifteenth Quarterly Report at 72-74.

for all three daily tours of duty; (2) on-street testing, involving requests that an MPD patrol officer respond to a scene under surveillance, was conducted in all seven districts for the day and evening tours of duty; and (3) telephone calls reporting incidents were placed to all seven district headquarters, three substations, and SOD headquarters for all three shifts.

The QAU took the lead in aggregating and analyzing the data collected during the audit. The results of the walk-in and on-street phases of the audit, reflected in the charts below, showed that MPD is not in substantial compliance with any of the provisions in paragraphs 87 through 90 and 92 of the MOA related to the receipt of citizen complaints regarding officer conduct. In certain areas, such as the requirement that officers provide their names and badge numbers upon request, MPD officers performed well, in the range of 90% compliance. In other areas, MPD officers performed quite poorly, including with respect to the requirement that officers keep complaint forms and information in their patrol cars. The on-street phase of the audit revealed 0% compliance with this requirement.

Phase I: Walk-In Scenario
11 Units Tested, All Shifts
Fifteenth Quarter

	Day Shift Units in Compliance	Evening Shift Units in Compliance	Night Shift Units in Compliance	Total Percentage of Units in Compliance
Officer explained the complaint process [MOA ¶ 90]	1	5	4	30.3%
Officer provided written info re complaint process [MOA ¶¶ 88-89]	4	4	5	48.5%
Officer provided name when asked [MOA ¶ 87]	11	10	10	93.9%
Officer provided ID number when asked [MOA ¶ 87]	11	10	9	90.1%
Officer did not discourage complaint [MOA ¶ 90]	7	8	7	66.7%
Officer did not require complainant's identity [MOA ¶ 92]	9	11	11	93.9%

Phase II: On-Street Scenario
10 Units Tested, Two Shifts
Fifteenth Quarter

	Day Shift Units in Compliance	Evening Shift Units in Compliance	Total Percentage of Units in Compliance
Officer explained the complaint process [MOA ¶ 90]	5	3	40.0%
Officer provided written info re complaint process [MOA ¶¶ 88-89]	3	10	65.0%
Officer provided name and ID number when asked [MOA ¶ 87]	9	9	90.0%
Complaint info in patrol car [MOA ¶ 90]	0	0	0.0%
Officer did not discourage complaint [MOA ¶ 90]	10	8	90.0%
Officer did not require complainant's identity [MOA ¶ 92]	7	9	80.0%

During the walk-in audits that we monitored, a common reaction officers had to the testers seeking to lodge a complaint was to attempt to refer the complainant to an “official,” meaning an officer of the rank of sergeant or higher, to discuss the complaint. Although such referrals were consistent with MPD’s former policy, they are not consistent with the requirements of the MOA and they could, under certain circumstances, be construed as an attempt to discourage the citizen from making a complaint.²²⁹

On May 17, 2006, MPD published revised community outreach materials describing the avenues available for lodging complaints regarding police conduct with MPD and OPC.²³⁰ MPD updated these materials to, among other things, include current information about the location of OPC’s offices and to clarify that MPD accepts and investigates

²²⁹ The QAU has recently completed another series of audits focusing on the citizen complaint process, including availability of complaint forms and informational materials at MPD facilities. MPD April 2007 Progress Report at 9. We will review the results of the QAU’s recent audits in this area during the coming quarter.

²³⁰ During the seventeenth quarter, DOJ provided MPD with suggested revisions to the draft community outreach materials MPD had prepared. On April 13, 2006, MPD submitted revised community outreach materials to DOJ, which DOJ approved on April 18, 2006.

anonymous complaints.²³¹ MPD made these improvements in response to deficiencies we identified during the fifteenth quarter in the community outreach flyers distributed by MPD.²³²

During the eighteenth quarter, we monitored compliance with MOA paragraph 89, which requires that “the City shall make complaint forms, and informational materials available at [OPC], MPD headquarters, all MPD District stations and substations, libraries, the internet, an, upon request, to community groups and community centers.” We visited ten MPD stations and sub-stations located in each of the districts as well as six libraries, each located in a different district. We found that all ten of the MPD stations and sub-stations had a prominently displayed placard describing complaint procedures as well as available copies of MPD’s community outreach materials, in accordance with MOA paragraph 89. However, none of the libraries we visited in the districts had any materials available concerning the citizen complaint process. All of the library personnel we interviewed expressed their willingness to display and make available citizen complaint materials if such materials were provided by MPD.²³³

MPD reports that over the last several quarters it has worked to distribute citizen complaint outreach materials to the City’s Public Library branches.²³⁴ Additionally, MPD reports that during this quarter every MPD public facility was provided with posters explaining the citizen complaint process and display cases to hold citizen complaint outreach materials.²³⁵ MPD reports that its QAU completed an audit of citizen complaint procedures, which found 100% compliance with the following components: (1) outreach materials located within MPD facilities, (2) wall posters located within MPD facilities, and (3) outreach materials located in the City’s Public Library branches.²³⁶ However, MPD’s QAU found a much lower compliance rate with other requirements related to the community outreach program, including a 77% compliance rate with the requirement that MPD members provided outreach materials when

²³¹ MOA ¶ 92.

²³² OIM Fifteenth Quarterly Report at 75.

²³³ OIM Eighteenth Quarterly Report at 98.

²³⁴ MPD April 2007 Progress Report at 9 & 21.

²³⁵ *Id.* at 9 & 22.

²³⁶ *Id.* at 8-9.

incidents were reported at an MPD element front desk.²³⁷ We look forward to reviewing the results of this audit with the QAU in the coming quarter.

b. Community Meetings

The MOA requires that, after the first year of the MOA, MPD hold at least one community outreach and public information meeting semi-annually in each of the PSAs in the City.²³⁸ The MOA also requires that, at least one week before such meetings, the City publish notice of the meeting in public areas, including “libraries, schools, grocery stores, [and] community centers,”²³⁹ and on the Internet. Notices related to community outreach and public information meetings must be in the primary languages spoken in the communities located in the particular PSAs.²⁴⁰

We have monitored community meetings held in PSAs in MPD districts throughout the City each quarter for more than two years. We have observed a range in the quality of these community meetings -- from lively sessions with broad participation by MPD officers and members of the community, to meetings that failed to take place at the times and locations advertised on MPD’s community calendar Web site.²⁴¹

Last quarter, we attended two community outreach meetings -- in PSAs 307 and 502 -- with a representative from the QAU to monitor MPD’s presentations concerning the citizen complaint process. The MPD officer who led the PSA 307 meeting provided a clear and accurate discussion of the complaints process and distributed citizen complaint materials to the attendees. However, the discussion at the PSA 502 community outreach meeting regarding the citizen complaint process was unsatisfactory.²⁴² Although the officer who led the PSA 502 meeting distributed materials describing the OPC process, he failed to address

²³⁷ *Id.* at 9.

²³⁸ MOA ¶ 91.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *See, e.g.*, OIM Thirteenth Quarterly Report at 67-69.

²⁴² MPD January 2007 Progress Report at 11.

MPD's own procedures for receiving and addressing complaints from the public regarding officer conduct.

We also monitored MPD's compliance with MOA paragraph 91.a's requirement that, at least one week in advance of a scheduled community outreach meeting, notice of the meeting be published "in public areas, including libraries, schools, grocery stores, [and] community centers." We visited public areas -- including schools, libraries, and community centers -- in PSAs 105, 404, 405, and 605 during a week in which community outreach meetings were scheduled in those PSAs. We found that MPD had not distributed promotional materials notifying the public of the upcoming community meeting to any of the public areas we checked in any of these PSAs. The school, library, and community center administrators with whom we spoke in these locations told us that they would welcome receiving such materials from MPD and would display the notices prominently in their facilities.

In December 2006, MPD issued a teletype designating January 2007 as an "outreach month" during which every PSA shall "devote time to inform the public of the contents of the MOA and the various methods of filing citizen complaints."²⁴³ The teletype also directed the PSAs to publish the time and location of these community outreach meetings at least one week in advance in the public areas described in the MOA. MPD reported that the QAU would monitor a sample of the community outreach meetings.²⁴⁴

This quarter, MPD also directed lieutenants in each of the PSAs to prepare an "Annual Report of Standardized Posting Locations for PSA Meeting Announcements" identifying names, addresses, and contact information for each of the public locations to which promotional materials regarding community outreach meetings would be distributed at least one week in advance of the scheduled time for such meetings. MPD provided the completed reports to the OIM.

We toured seven PSAs in which community meetings were scheduled for either that week or the previous week to inspect whether promotional materials in fact had been distributed in accordance with the reports prepared by the PSA lieutenants. We visited a total of 32 locations identified in these reports as sites where promotional materials regarding community meetings would routinely be posted. We found

²⁴³ MPD Teletype TT 12-013-06.

²⁴⁴ MPD January 2007 Progress Report at 11.

current community meeting materials at only 2 of the 32 locations. Both of these locations were in PSA 606; one was the PSA sub-station, and the other was a retail store next door to the sub-station. When possible, we spoke to the contact persons listed in the reports or other staff members at the locations. The citizens with whom we spoke consistently expressed a willingness to cooperate with MPD's promotion of community outreach meetings if provided the materials.

MPD's consistent and prolonged failure to promote its community outreach efforts in accordance with the MOA is disappointing, particularly in light of the recent attention MPD has devoted to this area. We have provided MPD with detailed information about our survey of locations identified in the "Annual Reports of Standardized Posting Locations for PSA Meeting Announcements" so that command staff may take remedial measures. Our monitoring in this area will continue in the coming quarter.

3. Receipt of Complaints by OPC (MOA ¶¶ 92-95)

As noted in our Third and Fourth Quarterly Reports, on or about December 11, 2002, the OPC hotline required by paragraph 93 of the MOA became operational. We reported in our Fourth Quarterly Report that, while OPC recorded calls as required by the MOA, it had not yet developed the necessary auditing procedures to ensure "that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained, although OPC does check this last requirement through its general auditing of all complaints it receives."²⁴⁵

In July 2003, OPC proposed a modification to the requirement under paragraph 93 of the MOA that OPC tape record all conversations on the hotline and develop an auditing procedure that includes monthly reviews of a random sample of tape recordings.²⁴⁶ In light of the infrequency with which the OPC hotline is used and the availability of viable quality control alternatives, on March 31, 2004, the OIM recommended that DOJ and the City agree to amend paragraph 93 of the

²⁴⁵ Letter from Tammie M. Gregg to Inspector Joshua A. Ederheimer (January 31, 2003).

²⁴⁶ Letter from Tammie M. Gregg to Deputy Director Thomas Sharp (August 25, 2003).

MOA to replace that provision's hotline-specific tape recording and auditing requirements with a citizen complainant survey procedure.²⁴⁷ In addition, we suggested that DOJ and the City consider making survey-based audit procedures applicable to all complaints received by OPC from the general public, regardless of the medium through which the complaints are made.

In the fourth quarter of 2004, OPC stated that it had reconsidered its proposal to replace paragraph 93's recording requirement with a survey-based audit procedure. OPC resumed the recording of hotline calls on January 1, 2005, stating that it had developed an auditing procedure to meet the requirements of paragraph 93 of the MOA.²⁴⁸

During the fourteenth quarter, we monitored OPC's progress in implementing the recording-based audit procedure for its hotline. Early in that quarter, OPC reported that, although it had installed software intended to enable the agency to record all calls placed to the hotline, OPC was experiencing technical problems that prevented the proper recording of hotline calls. By the end of the fourteenth quarter, OPC reported that the technical problems with its hotline recording system had been resolved.²⁴⁹ During the seventeenth quarter, we reviewed OPC's system for auditing calls placed to the hotline and find that OPC is in substantial compliance with MOA paragraph 93. OPC currently records and audits each hotline call. OPC records reflect that it has provided remedial training to investigators who made errors in handling calls placed to the hotline.²⁵⁰

OPC's offices currently are located at 1400 I Street, N.W., Suite 700, Washington, DC 20005. We visited OPC's offices and found that the agency's space is well suited to the agency's mission.²⁵¹ OPC appears to have ample appropriate space in which to receive and conduct interviews of complainants, hold mediation sessions between officers and complainants, and work on investigations of complaints lodged with the

²⁴⁷ Memorandum from Michael R. Bromwich to Philip K. Eure, Thomas Sharp, and Tammie M. Gregg regarding Office of Citizen Complaint Review's proposed Modification of MOA ¶ 93 (March 31, 2004).

²⁴⁸ Letter from Thomas E. Sharp to Tammie M. Gregg (December 30, 2004).

²⁴⁹ OIM Fourteenth Quarterly Report at 70-71.

²⁵⁰ OIM Seventeenth Quarterly Report at 87.

²⁵¹ See MOA ¶¶ 86, 95.

agency. Moreover, OPC's current offices are accessible by Metro and much easier to locate than its previous offices.²⁵²

4. OPC Investigation of Complaints (MOA ¶¶ 86, 96-97)

In our Eighth and Eleventh Quarterly Reports, we reported our findings with respect to the review of two statistical samples of investigations performed by OPC of citizen complaints alleging misconduct on the part of MPD officers. The review we completed in the eleventh quarter found that OPC investigations were of a very high quality: 100% of the OPC investigations we reviewed that quarter were both complete and sufficient.²⁵³

During the thirteenth quarter, we reviewed a third sample of 30 OPC investigations that was drawn from investigations completed between September 24, 2004 and May 3, 2005 and found the quality of OPC's investigations to be very good. We rated 95.7% of the OPC investigations we reviewed last quarter as "complete" and 100% of them as "sufficient."²⁵⁴

We also performed another review of the timeliness of OPC's investigations and found that OPC was making progress in clearing its investigations backlog. This review of the 92 investigations OPC closed between September 24, 2004 and May 3, 2005 found that OPC investigators took, on average, approximately 420 days to complete the investigations, which was a significant improvement over the timeliness results we reported in our Eleventh Quarterly Report.²⁵⁵ We also found that the improvement in the timeliness of OPC's investigations was reinforced by the fact that the average time it took OPC to complete the 69 investigations it had closed by that point in calendar year 2005 was approximately 385 days, and that the average time it took OPC to close

²⁵² OIM Sixteenth Quarterly Report at 83.

²⁵³ OIM Eleventh Quarterly Report at 71.

²⁵⁴ OIM Thirteenth Quarterly Report at 71.

²⁵⁵ Unless documented "special circumstances" exist to justify a delay, OPC investigations must be completed within 135 days to be timely under paragraph 86 of the MOA. See Appendix C at ¶ 86.

the 8 completed investigations that had been assigned in 2005 was approximately 38 days.²⁵⁶

During the fifteenth quarter, we reviewed a fourth sample of 30 OPC cases, all of which were all closed in the months of May 2005 through November 2005, and found that only 90.0% of these cases were complete, which is lower than the rate of completeness we have observed in previous samples of OPC cases. However, 96.7% of these OPC investigations were sufficient.²⁵⁷

OPC closed 160 cases during the months of May 2005 through November 2005. The average time it took OPC to complete these cases was 426.3 days, which reflected that OPC was still working to clear its backlog of cases. However, with respect to the 63 cases that were assigned to OPC investigators in 2005 and closed during these months, OPC completed those cases on average in 96.4 days, which is well within the 135-day window agreed upon by DOJ and MPD for purposes of defining timeliness of OPC investigations under paragraph 86 of the MOA.²⁵⁸

During the eighteenth quarter, we reviewed a fifth sample of 30 OPC cases completed during the months of November 2005 through August 2006. These case reviews confirmed that OPC continues to perform thorough, high quality investigations of allegations of police misconduct. All but 2 (93.3%) of the investigations we reviewed this quarter were complete, and all (100%) were sufficient.²⁵⁹

We also found that the timeliness of OPC's investigations continues to improve. Between November 2005 and August 2006, OPC closed 177 investigations. These cases took an average of 397.9 days to complete, which is a significant improvement over the prior period and reflects that OPC is making progress in clearing its investigations backlog. Of these 177 cases, 52 were assigned in 2006. These more recent investigations took OPC an average of 44.5 days to complete, which is well within the MOA's 135-day requirement.²⁶⁰

²⁵⁶ OIM Thirteenth Quarterly Report at 72.

²⁵⁷ OIM Fifteenth Quarterly Report at 78.

²⁵⁸ *Id.*

²⁵⁹ OIM Eighteenth Quarterly Report at 102-03.

²⁶⁰ *Id.*

We plan to review a sixth sample of OPC investigations during the upcoming quarter as well as the status of OPC's investigations backlog.

C. Substantial Compliance Evaluation

We find that the City and MPD are not yet in substantial compliance with MOA paragraph 85, which requires the development of a plan delineating the roles and responsibilities of OPC and MPD. MPD and OPC made significant progress in this area by finalizing and signing the DOJ-approved revised MOU. Neither MPD nor OPC has yet achieved a consistent compliance rate of 95% or better with the current provisions of the MOU regarding referral of complaints filed with OPC that fall outside OPC's jurisdiction, weekly notice to MPD of formal OPC complaints, the scheduling and attendance of MPD officers at OPC interviews, and MPD's responses to OPC document requests. We will continue monitoring MPD's and OPC's progress in implementing the revised MOU.

The OIM finds that the City does not currently appear to be in substantial compliance with MOA paragraph 86, which requires the City to provide OPC with sufficient qualified staff, funds, and resources to perform its functions under the MOA and District of Columbia law. OPC continues to have a significant backlog of investigations that it is working to resolve. Our review of the timeliness of OPC investigations, however, showed that OPC has been making significant strides in clearing its backlog of cases and in completing new investigations within the 135-day window agreed to by OPC and DOJ. The completeness and sufficiency of the investigations finished by OPC remains quite high.

During the fifteenth quarter, the OIM and MPD collaborated to perform a comprehensive audit of MPD's compliance with the MOA's requirements related to the receipt of citizen complaints, including MOA paragraph 87's requirement that MPD officers to provide their names and identification numbers to any person requesting that information. Although officers provide such information at a relatively high rate, MPD has not achieved substantial compliance in this area.

Also during the fifteenth quarter, the OIM and MPD collaborated to perform a comprehensive audit of MPD's compliance with MOA paragraphs 88 through 90 and 92, which relate to MPD's program for providing the public with information on the process for filing complaints regarding the performance of MPD officers. As reflected by the data reported above, MPD is not in substantial compliance with any of these provisions.

We find that MPD currently is not in substantial compliance with MOA paragraph 91, which requires that each of MPD's PSAs hold public meetings on at least a semi-annual basis and that such meetings be advertised adequately at least a week in advance. Although many of the PSA community outreach meetings we have monitored have been excellent examples of cooperation between a law enforcement agency and the citizenry consistent with the principles of community policing, the frequency and advertisement of these meetings varies greatly by district and currently is inadequate when considered on a citywide basis.

The City is in substantial compliance with MOA paragraph 93, which requires the establishment of a citizen complaint hotline operated by OPC and audited through a tape recording procedure.

Although MPD obtained DOJ approval for its revised Processing Citizen Complaints General Order last quarter, MPD is not yet in substantial compliance with MOA paragraph 94's requirements related to referral of complaints to OPC.

The City is in substantial compliance with MOA paragraph 95, which requires that OPC's offices be located separate from any building occupied by MPD personnel.

The City is in substantial compliance with MOA paragraph 96, which relates to the training of OPC investigators.

The City is in substantial compliance with MOA paragraph 97, which requires OPC to develop and obtain DOJ approval of an investigations manual. DOJ has found that OPC's revised Investigations Manual satisfies MOA paragraph 97.²⁶¹

D. Recommendations

In recent quarters, MPD has devoted significant attention to improving its compliance with the MOU between MPD and OPC and with the MOA's requirements related to community outreach and the citizen complaints process. We recommend that MPD sustain its effort in these areas, and we will continue working with the QAU to monitor the Department's progress.

²⁶¹ Letter from Tammie M. Gregg to Philip K. Eure and Thomas E. Sharp (January 26, 2005).

V. Discipline and Non-Disciplinary Action (MOA ¶ 105)

A. Requirements

The MOA, as modified by Joint Modification No. 1, requires that, by the week of November 17, 2002, subject to approval by DOJ, MPD must revise and update its policy governing officer discipline.²⁶² Specifically, the policy must:

- Prescribe when non-disciplinary action is appropriate;
- Prescribe when district-level discipline or corrective action is appropriate;
- Establish a formal and centralized system for documenting and tracking discipline and corrective action; and
- Develop a procedure for providing written notice to complainants regarding the most significant aspects of the handling of their complaints, including but not limited to disposition.

B. Status and Assessment

1. Disciplinary Policy

On May 19, 2003, MPD submitted its draft Disciplinary Policy to DOJ. The submission of this policy followed a lengthy delay on the part of MPD. As originally negotiated by MPD and DOJ, MPD's Disciplinary General Order was due to be completed by October 11, 2001. On September 30, 2002, as part of a major renegotiation of MOA deadlines, MPD and DOJ revised the due date of this general order to November 22, 2002. On November 22, 2002, MPD notified DOJ that it would not be able to meet the revised deadline and committed to submit the general order by December 31, 2002 -- the end of that quarter. On December 31, 2002, however, MPD notified DOJ that it would not meet that deadline either. MPD stated that the reason for this missed deadline was its desire to engage the Fraternal Order of Police ("FOP") in a dialogue regarding the draft order before it is submitted to DOJ.

²⁶² MPD's disciplinary policy is General Order 1202.1 (Disciplinary Procedures and Processes).

On August 25, 2003, DOJ provided MPD with comments on the draft Disciplinary General Order. DOJ noted that, “[a]lthough the [general order] was not timely submitted pursuant to the renegotiated deadline contained in the parties’ September 30, 2002 Joint Modification to the MOA, we appreciate and commend the efforts of MPD and the local FOP in working collaboratively to resolve their differences and to identify issues for collective bargaining.”²⁶³ In its August 25, 2003 letter to MPD, DOJ also noted that the draft Disciplinary General Order “does not specifically ‘establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action’ as required by MOA paragraph 105.”²⁶⁴ On July 29, 2004, MPD responded to DOJ by explaining that the Disciplinary Process General Order cannot be finalized by MPD until its negotiations with the FOP over disciplinary procedures are complete.²⁶⁵ On November 5, 2004, MPD advised DOJ that negotiations with the FOP were at an impasse and that the parties were involved in a mediation process with no definitive timeline that would permit MPD to estimate when it might be able to finalize the Disciplinary Process General Order.

The FOP ratified a new collective bargaining agreement with MPD on February 24, 2005.²⁶⁶ MPD submitted the draft Disciplinary Process General Order to DOJ on December 29, 2005.²⁶⁷ DOJ provided MPD with comments to the draft general order on March 1, 2006, and MPD returned a revised draft general order to DOJ on March 23, 2006. During the seventeenth quarter, MPD reported that it advised DOJ that it would publish the current version of the Disciplinary Process General Order and work with DOJ to make any necessary revisions to the order through the general order revisions process.²⁶⁸ On October 17, 2006, DOJ provided its latest round of comments on the Disciplinary Process General Order.

²⁶³ Letter from Tammie Gregg to Captain Matthew Klein regarding “Disciplinary General Order” (August 25, 2003).

²⁶⁴ *Id.*

²⁶⁵ Letter from Maureen O’Connell to Tammie Gregg regarding “MOA Paragraph 105, Disciplinary Process” (July 29, 2004).

²⁶⁶ MPD April 2007 Progress Report at 13.

²⁶⁷ *Id.* at 14.

²⁶⁸ *Id.*

On March 30, 2007, MPD submitted to DOJ a revised Disciplinary Process General Order as well as a draft OPR Tracking of Disciplinary Action SOP intended to provide greater detail regarding MPD's process for establishing a centralized system for documenting and tracking discipline in accordance with paragraph 105 of the MOA.²⁶⁹ In the coming quarter, we will review this draft SOP.

2. Disciplinary Systems and Procedures

During the ninth quarter, the OIM conducted a substantial review of MPD's systems and procedures related to the administration and tracking of disciplinary and training recommendations flowing from the UFRB's review of use of force cases.²⁷⁰ The purpose of this review was to test the extent to which MPD is effective in disciplining officers found responsible for unjustified uses of force and in training officers found to be in need of remedial training to correct identified failures to properly implement MPD policy or employ sound police practices. Where officers are found to have acted outside of MPD policy, to have used unjustified levels of force, or to be in need of remedial training, it is critical that MPD's disciplinary and training systems effectively and efficiently address these issues to conform officer conduct to the requirements of MPD policy and the MOA.

Although MPD established the UFRB as a body for the review of investigations involving uses of force, prior to the fourteenth quarter we identified significant deficiencies on the part of the UFRB in fulfilling its role as a "quality control mechanism" by conducting comprehensive reviews of each use of force incident and by identifying "patterns/problems" suggesting the need for improved training or policy modifications.²⁷¹ Our review during the ninth quarter found that, where the UFRB recommended discipline or remedial training, MPD had inadequate internal control mechanisms in place to ensure that the recommended discipline was imposed or corrective action was administered. Finally, we also found MPD lacked a centralized and formal system for tracking discipline and remedial training.²⁷²

²⁶⁹ *Id.*

²⁷⁰ OIM Ninth Quarterly Report at 50-55.

²⁷¹ MOA ¶ 67.

²⁷² *Id.* ¶ 105.

During the thirteenth quarter, we performed another comprehensive review of MPD's disciplinary system. Specifically, we reviewed MPD's disciplinary action taken in response to the 10 officers the UFRB found in 2004 to have been involved in unjustified use of force incidents and referred to the DRD for disciplinary action. We also tracked the 6 cases from 2004 in which the UFRB identified a tactical improvement opportunity and referred the subject officer to IPS for remedial training.²⁷³

In sum, we found that MPD's disciplinary and remedial training tracking systems have improved significantly; however, deficiencies remain. In order to obtain a complete set of documentation related to the disciplinary and remedial training actions we reviewed, we had to access information maintained by five different entities within MPD -- FIT, DRD, IPS, Human Resources (for TACIS records), and the officer's unit of assignment, where personnel files are maintained. Accordingly, we concluded that MPD still has not established a centralized system for documenting and tracking all forms of disciplinary and corrective action, as required under paragraph 105 of the MOA.²⁷⁴

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraph 105 regarding disciplinary and non-disciplinary actions. MPD has not obtained final DOJ approval for the Disciplinary Process General Order. Also, although MPD's systems for tracking recommendations for discipline and remedial training appear to have improved, the Department still lacks a centralized repository for all corrective actions administered with respect to its officers, as required under paragraph 105 of the MOA.

D. Recommendations

We encourage MPD to take all possible measures to work with DOJ to gain approval of the Disciplinary Process General Order and to implement the order as soon as possible. We also recommend that MPD continue to work to establish a centralized system for documenting and tracking all forms of disciplinary and corrective action. We will monitor MPD's progress in this area in the coming quarters.

²⁷³ OIM Thirteenth Quarterly Report at 76-78.

²⁷⁴ *Id.* at 78.

VI. Personnel Performance Management System (MOA ¶¶ 106-117)

A. Requirements

Under the MOA, MPD is committed to developing and implementing a computer database that will facilitate the management and supervision of MPD personnel. The computer database, referred to in the MOA as the Personnel Performance Management System, or PPMS, is intended to:

- Promote civil rights integrity and best professional police practices;
- Manage the risks of police misconduct;
- Evaluate and audit the performance of MPD officers, units, and groups;
- Promote accountability and proactive management; and
- Identify, manage, and control at-risk officers, conduct, and situations.

In addition to describing the objectives PPMS shall achieve, the MOA specifies the information that must be captured to ensure that PPMS achieves these objectives. This information includes the following:

- All uses of force that must be reported on MPD's UFIR forms or that are the subject of an MPD criminal or administrative investigation;
- All police canine deployments;
- All officer-involved shootings and firearms discharges, whether on or off duty, and all other lethal uses of force;
- All reviews of use of force, including all decisions on whether the use of force was within MPD policy;
- All vehicle pursuits and traffic collisions;
- All complaints regarding MPD officers, whether made to MPD or OPC;

- Chronologies and results of investigations, adjudications, and discipline relating to any of these matters;
- All commendations received by MPD about an officer's performance;
- All criminal, civil, and administrative proceedings initiated on the basis of MPD operations and the actions of MPD personnel; and
- With respect to each MPD officer, that officer's:
 - Educational history,
 - Military service and discharge status,
 - Assignment and rank history,
 - Training history,
 - All management and supervisory actions taken pursuant to review of PPMS information, and
 - All instances in which a prosecution declination or a motion to suppress was based upon concerns about the officer's credibility or on evidence of a Constitutional violation by the officer.

The MOA also requires MPD to develop, subject to DOJ approval, a "Data Input Plan" to facilitate the entry of historical data into PPMS, as well as detailed requirements for how the information -- historical and contemporary -- must be put into the system and the ways in which it must be retrievable. Furthermore, the MOA requires MPD to develop a detailed protocol for the use of the computerized management system.

While PPMS is under development, MPD is required to utilize existing information and databases to achieve the purposes established for PPMS. In addition, OPR is charged with the responsibility of operating PPMS, as well as for developing and overseeing MPD-wide risk assessments.

Related to, but separate from, the development of PPMS, MPD is required to enhance its new Performance Evaluation System ("PES"). This enhancement must ensure that each sworn MPD employee's performance be evaluated, at a minimum, according to certain specified criteria. These criteria include civil rights integrity and community

policing; adherence to law, including civil rights laws and laws designed to protect the rights of suspects; and the performance of supervisors in identifying at-risk behavior among their subordinates.

B. Status and Assessment

1. PPMS

Under the MOA, a Request for Proposal (“RFP”) related to PPMS originally was scheduled to be issued by August 13, 2001, with a contractor to be selected by March 13, 2002, and a beta version of the system to be ready for testing by March 13, 2003. It became clear relatively early on that MPD would not be able to meet those deadlines. On September 30, 2003, DOJ and MPD agreed to Joint Modification No. 2 to the MOA, which established a revised timetable for PPMS development that provided for a beta version of PPMS to be available by June 25, 2004 and full implementation of PPMS to be complete by February 25, 2005.²⁷⁵

In 2004, MPD suffered a significant setback with respect to the development of PPMS.²⁷⁶ By teleconference on March 8, 2004, MPD notified DOJ that a loan for PPMS development that MPD expected to receive from the City’s Office of the Chief Technology Officer would not be forthcoming until MPD could establish that it would receive a sufficient budgetary allocation in fiscal year 2005 to re-pay the loan.²⁷⁷ Because the City’s budget for fiscal year 2005 had not yet been approved and funding allocations with respect to PPMS had not yet been made, MPD was forced to suspend the PPMS development project when existing funds were exhausted as of the end of March 2004.²⁷⁸

On March 1, 2005, DOJ, MPD, and the City executed Joint Modification No. 3 to the MOA, which establishes a new timeline for PPMS development and relieved MPD from breach status in this area of

²⁷⁵ Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement (September 30, 2003).

²⁷⁶ OIM Eighth Quarterly Report at 54-55.

²⁷⁷ Letter from Captain Matthew Klein to Chief Shanetta Cutlar (March 15, 2004).

²⁷⁸ On two previous occasions, DOJ expressed in writing its concerns relating to the possibility that MPD would experience a funding shortfall that would impact the development of PPMS. Letter from Shanetta Y. Brown Cutlar to Chief Charles Ramsey (March 26, 2003); Letter from Tammie M. Gregg to Captain Matthew Klein (August 21, 2003).

the MOA. The Third Modification was the product of substantial effort by MPD, including by former Chief Ramsey personally, the City, DOJ, and the PPMS vendor, IBM/Motorola.

Early last year, the OIM and DOJ monitored MPD's ongoing Beta testing of PPMS. Representatives from the OIM and DOJ attended a two-day Beta testing session in January 2006 and provided feedback to MPD based on the PPMS testing scripts used during the session. A significant issue raised by both the OIM and DOJ related to the ability to conduct searches within PPMS and the capacity to generate customized reports tailored to a user's inquiries.²⁷⁹

Last year, MPD also completed its Department-wide rollout of PPMS. Modification No. 3 to the MOA established August 31, 2006 as the deadline for the complete rollout of PPMS. MPD, however, obtained a 30-day extension to that deadline by invoking paragraph 10 of Modification No. 3 regarding vendor failure. MPD went "live" Department-wide with Phase I of PPMS on September 12, 2006.²⁸⁰ MPD reports that, this quarter, it has installed PPMS on mobile laptop computers deployed to 132 officers in the field.²⁸¹

Due to deficiencies detected during the initial PPMS Beta test run in January 2006, DOJ required that it have the opportunity to perform additional Beta testing of PPMS prior to the Department-wide rollout of the Phase I system.²⁸² Although DOJ did not have the opportunity to perform additional Beta testing prior to the completion of the Phase I PPMS rollout last year, DOJ and the OIM expect to do so in the coming quarters.

MPD provided the OIM with a full demonstration of PPMS's functionality during the eighteenth quarter. PPMS appears to be a well-designed and relatively user-friendly application with enormous potential. We found that there is not sufficient historical data currently

²⁷⁹ OIM Sixteenth Quarterly Report at 95.

²⁸⁰ OIM Eighteenth Quarterly Report at 112. "Phase I" refers to the deployment of a version of PPMS that is designed to contain all of the functionality required under the MOA. During the second phase of PPMS development and deployment, MPD intends to introduce additional functionality to PPMS that addresses requirements developed internally by MPD that are not related to the MOA.

²⁸¹ MPD April 2007 Progress Report at 40.

²⁸² OIM Seventeenth Quarterly Report at 100-01

entered in PPMS to permit the system to be used as an “early warning” management tool capable of identifying officers who are “at risk” due to their individual use of force records. We also found that PPMS was unable to perform the range of searches and associations required under the MOA. We reported that MPD is working with the PPMS development vendor to create “standard” reports tied to information relevant under the MOA. We also identified a non-technical issue that might have an impact on the effectiveness of PPMS. We found that MPD had not assigned a single supervisor to be responsible for monitoring the information contained in and notices generated by PPMS concerning each MPD officer. Instead, PPMS forwarded information about an individual officer to all supervisors in the officer’s unit. Unless a specific supervisor is assigned responsibility for each officer, there is a risk that reports and notices generated by PPMS will be overlooked or disregarded without necessary action being taken.²⁸³

This quarter, MPD procured reporting software, known as Intelligov, that it expects will be a user-friendly reporting tool allowing MPD to generate standard reports as well as to perform *ad hoc* queries in the PPMS database.²⁸⁴

MPD reported that all available MPD members -- sworn and civilian -- have been trained in PPMS and that all available supervisors have received training in the Supervisory Support Program (“SSP”) in accordance with paragraph 112.o of the MOA. PPMS training remains ongoing for members who were not available for the initial training sessions and that PPMS training is included in the training curriculum for new recruits.²⁸⁵

Finally, MPD submitted a draft of its PPMS General Order to DOJ on June 30, 2006. MPD found that additional changes to the general order were necessary to ensure that it is consistent with the PPMS SOP document and, therefore, submitted revised versions of the PPMS General Order and SOP to DOJ for approval on November 14, 2006.²⁸⁶ On March 30, 2007, MPD notified DOJ that MPD planned to publish the general order and SOP prior to receiving DOJ’s approval in order to provide its members with guidance regarding PPMS procedures and the

²⁸³ OIM Eighteenth Quarterly Report at 113.

²⁸⁴ MPD April 2007 Progress Report at 40.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 16.

SSP requirements. However, MPD also notified DOJ that it remains committed to obtaining DOJ approval for both documents and will issue revisions as necessary.²⁸⁷

2. Performance Evaluation System (MOA ¶ 118)

On May 2, 2003, DOJ provided comments on MPD's Enhanced Performance Evaluation System Protocol. On September 30, 2003, MPD provided DOJ with a "status report" concerning DOJ's comments, to which DOJ responded on October 6, 2003. On March 5, 2004, MPD provided DOJ with another update regarding its efforts to revise the PES.²⁸⁸

On July 1, 2004, MPD submitted revised materials related to the PES for DOJ's review. On September 10, 2004, MPD requested that DOJ expedite its review of these materials in order to have the revised standards available for officer and sergeant performance evaluations during that cycle. DOJ attempted to accommodate MPD's request and, on September 24, 2004, sought additional information from MPD regarding its Performance Management Program to facilitate DOJ's review. MPD responded to DOJ's request for information on September 29, 2004. On November 29, 2004, however, MPD advised DOJ that it was necessary to issue the special order governing FY 2005 performance evaluations along with instructional materials and standards prior to receiving DOJ's comments or approval.²⁸⁹

On December 15, 2004, DOJ returned comments to MPD's July 1, 2004 submission. On June 30, 2005, MPD submitted a revised PES package to DOJ. On September 20, 2005, DOJ returned comments and approved the Performance Management System for Sworn Members General Order. On December 30, 2005, MPD submitted a response to DOJ addressing remaining comments related to the PES, which included several revisions to the Performance Management System for Sworn Members General Order. DOJ provided additional comments on March 2, 2006. MPD's March 31, 2006 response included all revised materials related to the PES except for the revised general order, which MPD submitted to DOJ on April 3, 2006.

²⁸⁷ *Id.*

²⁸⁸ OIM Nineteenth Quarterly Report at 108.

²⁸⁹ *Id.*

On August 17, 2006, DOJ approved MPD's Performance Management System Sergeant Performance Standards and Performance Standards Conversion Table as well as the revised Performance Management System for Sworn Members General Order. DOJ also offered approval of MPD's Job Performance Form pending the inclusion of one additional comment.²⁹⁰

On September 29, 2006, MPD submitted revisions to the Performance Management Program ("PMP"), the evaluation system used for sworn members the rank of lieutenant and above, and to Form 62-E which is used for performance evaluations of sworn officers and to describe job-related behavior. MPD also provided DOJ with a copy of a letter from former Chief Ramsey to the Director of the District of Columbia Office of Personnel ("DCOP") requesting that the DCOP adopt DOJ's requested revisions to the PMP.²⁹¹ MPD reported that, because it intends to adopt all of DOJ's recommendations, it will be using the enhanced PES for evaluation of sworn members during fiscal year 2007, which began on October 1, 2006.²⁹² DOJ returned comments regarding the PMP and the revised Form 62-E on November 14, 2006.²⁹³

C. Substantial Compliance Evaluation

With the exception of MOA paragraphs 114.a and 114.b, which relate to the issuance of an RFP for PPMS development and the selection of a contractor for the project, MPD and the City are not in substantial compliance with the PPMS development and implementation requirements of paragraphs 107 through 117 of the MOA.²⁹⁴ Although MPD completed the rollout of Phase I of PPMS to the entire Department last year, DOJ and the OIM intend to perform testing of PPMS in the near future to evaluate whether it is a functioning system with the full range of capabilities required under the MOA.

MPD is not in substantial compliance with MOA paragraph 118 concerning its PES. DOJ approved MPD's Performance Management System for Sworn Members General Order during the fourteenth quarter

²⁹⁰ Letter from Tammie M. Gregg to Inspector Matthew Klein (August 17, 2006).

²⁹¹ Letter from Charles H. Ramsey, Chief of Police, to Lisa R. Martin, Director of D.C. Office of Personnel (September 26, 2006).

²⁹² MPD January 2007 Progress Report at 15.

²⁹³ Letter from Tammie M. Gregg to Inspector Matthew Klein (November 14, 2006).

²⁹⁴ Paragraph 106 of the MOA contains no substantive provisions.

and granted conditional approval of MPD's PMP. Although MPD's revisions to various elements of the PES have not yet received final DOJ approval, MPD reported that it adopted all of DOJ's recommendations regarding the PES and that it is using the program for the 2007 evaluation cycle.

D. Recommendations

We look forward to performing Beta testing, in conjunction with DOJ, on PPMS in the near future. We reiterate our recommendation that MPD continue working with DOJ to obtain final approval of the materials related to its PES as soon as possible.

VII. Training (MOA ¶¶ 119-148)

A. Requirements

The training provisions in the MOA specifically address management oversight, curriculum development, instructor training, firearms training, and canine training.

1. Management Oversight

Regarding management oversight of training, MPD is required to centrally coordinate the review of all use of force training to ensure quality assurance, consistency, and compliance with applicable law.²⁹⁵ MPD's Director of Training is responsible for overseeing the full scope of MPD's training program as it relates to the terms of the MOA, including:

- Ensuring the quality of all use of force training across MPD;
- Developing and implementing appropriate use of force training curricula;
- Selecting and training MPD trainers;
- Developing and implementing all in-service training and roll call curricula;
- Developing tools to evaluate all training;

²⁹⁵ To ensure compliance with applicable law, training materials are to be reviewed by MPD's General Counsel or some other appropriate legal advisor. MOA ¶ 120.

- Developing a protocol, subject to DOJ approval, to enhance its existing Field Training program;²⁹⁶ and
- Conducting needs assessments to ensure that use of force training is tailored to the needs of the officers being trained.

In addition, MPD's Curriculum Development Specialist ("CDS") is required to review, revise, and implement, subject to DOJ approval, all use of force-related training material to ensure that the materials are consistent (as to content and format), properly to incorporate applicable law and policy into such training materials, to incorporate specific training objectives and suggestions on how most effectively to present use of force training materials, and to determine whether training aids are being used appropriately. The CDS's responsibilities also extend to reviewing, at least on a quarterly basis, all force-related training for quality assurance and consistency. More generally, MPD is required to keep its updated training materials in a central, commonly accessible file and to maintain updated and complete training records as to every MPD officer.

2. Curriculum

The MOA prescribes various features of MPD's training programs that address the content of MPD training. First, all force-related training must incorporate critical thinking and decision-making skills and must include training in cultural diversity and community policing. More specifically with respect to use of force training, MPD's use of force training must include the following elements:

- MPD's use of force continuum;
- MPD's use of force reporting requirements;
- The Fourth Amendment and other constitutional requirements applicable to police officers; and
- Examples of use of force and ethical dilemmas, with a preference for interactive exercises for resolving them.

²⁹⁶ The protocol is required to address specific aspects of the Field Training program, which are set forth in paragraph 121 of the MOA.

Training on these topics should involve concrete use of force experiences and examples, and dialogue on these issues with trainees is to be encouraged.

Supervisory and leadership training must focus not only on these elements, but also on command accountability and responsibility, interpersonal skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity. Priority in supervisory and leadership training must be accorded to MPD's new policies on use of force, use of canines, the UFRB, and the revised policies and practices relating to administrative misconduct investigations. Supervisory and leadership training on these issues is required, with re-training to take place on an annual basis.

The training provisions of the MOA specifically address two aspects of existing MPD training -- Role Play and Range 2000 training. Training materials relating to these aspects of MPD must be reviewed to ensure their consistency with law and MPD policy. In addition to other specific requirements, the MOA requires that a standardized curriculum, lesson plans, and instructional guidelines for these aspects of MPD training be developed. MPD is required to videotape student officers during Role Play training exercises to better focus discussions during the critique portion of the course.

Finally, the MOA sets forth specific requirements regarding training with respect to aspects of the MOA itself. MPD is required to distribute copies of the MOA to all officers and employees and explain its terms. Further, as MPD adopts new policies and procedures mandated by the MOA, it must incorporate them into in-service and new recruit training.

3. Instructors

The MOA establishes various requirements relating to the training and competence of instructors. First, MPD was required to conduct an assessment to determine the sufficiency, competence, and standards for evaluating training personnel and, on the basis of that assessment, to develop a plan for addressing training instructor needs to DOJ for its approval.

Second, subject to DOJ's approval, MPD was required to develop and implement eligibility and selection criteria for all training positions, including Academy, Field Training, and formal training. These criteria are equally applicable to existing personnel in training positions and to candidates for training positions. MPD also was required to develop an

instructor certification program relating to the competency of its instructors. Further, MPD was required to create and implement a formal instructor training course and to provide regular retraining on subjects including adult learning skills, leadership, and teaching and evaluation, among others. Consistent with its focus, the MOA specifically requires MPD to ensure adequate management supervision of use of force training instructors to ensure the training they provide is consistent with MPD policy, law, and proper police practices.

4. Firearms Training

The MOA requires mandatory semi-annual firearms training and re-qualification, including the successful completion of the Range 2000 and Role Play courses. MPD must revoke the police powers of all officers who do not properly re-qualify. MPD was required to create and implement, subject to DOJ approval, a checklist containing prescribed elements that must be completed for each student officer by a firearms instructor. In addition, firearms training materials must be reviewed and integrated into an overall training curriculum. Finally, MPD must, at least every three months, consult with Glock, the manufacturer of MPD officer service weapons, to obtain the most current information on cleaning, maintenance, and other factors that may affect the proper use of the weapon.

5. Canine Training

The MOA requires MPD to develop and implement a comprehensive canine training curriculum, which includes the identification of the mission, goals, and objectives of the Canine Unit. MPD was required to have all its canines certified in the “new handler-controlled alert methodology” and to ensure that the canines are re-certified on an annual basis and receive refresher training. MPD must monitor and oversee its canine handlers to ensure they are capable of implementing the canine policies that have been adopted by MPD.

B. Status and Assessment

1. Canine Training

During the thirteenth quarter, the OIM and representatives from DOJ observed the final evaluation session for what was at that time MPD’s most recent Basic Patrol Dog Class. The performance of the handlers and canines was judged by outside experts, and the new instructor was rated based on the success of the new canine teams in achieving certification. We were impressed by the performance of the

handlers and the new canines in all areas evaluated during this final certification session.

Subsequent to the Basic Patrol Dog certification, we monitored a Canine Unit training session that covered MPD's Canine Teams General Order and the principles of the Handler-Controlled Alert Methodology. We found that the training was well presented and made effective use of examples drawn from actual experiences of MPD canine units. The training covered in detail the key areas of MPD's canine policy including deployment authorization, Canine Unit reporting requirements, and requirements related to announcements of the presence of a canine, such as the stages at which announcements must be made and the documentation of announcements.²⁹⁷

In the fall of 2005, in addition to approving MPD's Canine Operations Manual as discussed above, DOJ approved the Canine Lesson Plan and Training Curriculum.²⁹⁸ MPD has obtained DOJ approval for all policies and training materials related to the Department's canine program.

2. Curriculum and Lesson Plans

The MOA provides for DOJ review and approval of all force-related training material, including curriculum and lesson plans.²⁹⁹ MPD originally submitted eleven lesson plans comprising its use of force curriculum to DOJ on July 24, 2002. DOJ provided MPD with comments on certain of these lesson plans on November 25, 2002, and MPD submitted revised lesson plans to DOJ on March 9, 2003. DOJ provided additional comments on MPD's use of force lesson plans on May 16, 2003, and MPD returned revised drafts of certain of the use of force-related lesson plans to DOJ on February 23, 2004.

Since the original submission of the lesson plans in 2002, MPD has divided the Pistol Qualification lesson plan into three separate lesson plans -- In-Service Pistol Re-Certification, Simmunitions Training, and Range 2000 -- bringing the total number of lesson plans in MPD's use of force curriculum to 13. On August 1, 2006, MPD received approval of its Simmunitions Training Lesson Plan, which was the last of these 13

²⁹⁷ OIM Thirteenth Quarterly Report at 88.

²⁹⁸ Letter from Tammie M. Gregg to Inspector Matthew Klein (September 27, 2005).

²⁹⁹ MOA ¶ 122.

lesson plans to receive DOJ approval. We recently monitored simmunitions training and found that MPD has properly implemented the lesson plan.³⁰⁰

Last quarter, we monitored MPD's in-service training regarding use of the expandable ASP police baton. The class was very large -- approximately 120 officers attended -- and included lecture, demonstration, and testing components. The instructor was effective and used a number of real-life examples to demonstrate points from the lesson. Despite the size of the class, participation by the officers in attendance was quite good. During the lecture component of the training, the instructor emphasized where use of the ASP baton falls on MPD's use of force continuum and the proper execution of permissible baton strikes. Included in the instructor's slide presentation was reference to a "reaction strike," which the instructor advised students to ignore because MPD policy no longer permits officers to use that strike. We recommended to MPD that, in order to avoid any potential confusion over whether use of the "reaction strike" is permissible, MPD should either remove any reference to the "reaction strike" from the in-service ASP training or provide more explanation as to the reasons why the strike no longer is sanctioned by the Department. During our December 4, 2006 monthly meeting with the parties to the MOA, MPD reported that the "reaction strike" slide had been removed the ASP training presentation.

As reflected in the chart below, MPD's entire use of force curriculum now has been approved by DOJ.

³⁰⁰ OIM Eighteenth Quarterly Report at 120.

Status of MPD Use of Force Lesson Plans

ASP Tactical Baton Training Program	Approved by DOJ 09-30-03
Close Quarter Combat	Approved by DOJ 09-30-03
Controlled F.O.R.C.E.	Approved by DOJ 09-30-03
Ground Fighting	Approved by DOJ 09-30-03
Handcuffing	Approved by DOJ 09-30-03
Krav/Maga	Approved by DOJ 09-30-03
OC Spray	Approved by DOJ 09-30-04
Officer Street Survival	Approved by DOJ 03-24-05
Pistol Qualification	
In-Service Pistol Re-Certification	Approved by DOJ 09-27-05
Simmunitions Training	Approved by DOJ 08-01-06
Range 2000	Approved by DOJ 08-26-05
Use of Force Continuum (with Manual)	Approved by DOJ 03-24-05
Verbal Judo	Approved by DOJ 09-24-04

MPD's IPS also has developed 16 lesson plans to address the requirements of MOA paragraphs 84, 98, and 129. Paragraphs 84 and 98 establish requirements relating to the training of MPD investigators in connection with the performance of MPD's internal use of force and misconduct investigations, and paragraph 129 establishes training requirements for all MPD supervisors -- officers with the rank of sergeant and above. On October 17, 2006, DOJ approved MPD's Use of Force Incident Report Form lesson plan.³⁰¹ MPD now has obtained DOJ approval of 15 of the 16 lesson plans drafted to comply with MOA paragraphs 84, 98, and 129, the status of which are summarized in the chart below.

³⁰¹ MPD April 2007 Progress Report at 37.

Status of MPD In-Service Supervisor and Investigator Lesson Plans

Administrative Misconduct Investigation Policy and Procedures Using the Preponderance of Evidence Standard	Pending DOJ approval of the Chain of Command Misconduct Investigations General Order and Chain of Command Investigations Manual
Arrest, Custody, and Restraint Procedures	Approved by DOJ 09-30-04
Bias-Related Hate Crimes	Approved by DOJ 05-16-03
Canine Policies and Procedures	Approved by DOJ 09-27-05
Command Accountability	Approved by DOJ 11-25-02
Communication and Interpersonal Relationship Skills	Approved by DOJ 11-25-02
Crime Scene Preservation	Approved by DOJ 05-16-03
Cultural Diversity and Sensitivity Awareness	Approved by DOJ 02-10-05
Defensive Tactics	Approved by DOJ 05-16-03
Ethics, Integrity, and Professionalism	Approved by DOJ 11-25-02
Interview and Interrogation	Approved by DOJ 03-24-05
Theories of Motivation and Leadership	Approved by DOJ 11-25-02
Use of Force and Use of Force Continuum (with Manual)	Approved by DOJ 03-24-05
Use of Force Incident Report Form	Approved by DOJ 10-17-06
Use of Force Review Board	Approved by DOJ 09-30-04
Verbal Judo Re-certification	Approved by DOJ 11-25-02

On December 29, 2006, MPD issued its most recent Semi-Annual Use of Force Curriculum Review prepared by IPS's CDS. We will review this document in the coming quarter.

Finally, in our Eleventh Quarterly Report, we found that MPD was not in substantial compliance with MOA paragraph 120's requirement that MPD's OGC review all training materials and lesson plans.³⁰² During the fourteenth quarter, MPD reported that, in order to address this issue, it conducted an audit to identify which of the Department's 28 MOA-related lesson plans have not been reviewed by OGC. MPD reported that it identified 9 lesson plans that required OGC review and that OGC completed its review of these lesson plans on September 30, 2005.³⁰³

³⁰² OIM Eleventh Quarterly Report at 93-94.

³⁰³ OIM Fourteenth Quarterly Report at 91-92.

During the eighteenth quarter, we again reviewed this area and found that communications between OGC and IPS have improved significantly.³⁰⁴ Our review continued last quarter. While it appeared that OGC in fact was receiving and reviewing substantive changes to MPD's lesson plans in order to ensure that such changes were consistent with MPD policy and the law, MPD's recordkeeping related to OGC's reviews was diffuse and disorganized.³⁰⁵ During the OIM's January 12, 2007 monthly meeting with the parties, we advised MPD that, in order to ensure that OGC receives and reviews all substantive changes to lesson plans, IPS should establish a centralized system that tracks the dates on which changes are made to each lesson plan and on which OGC receives and approves such changes. Without such a system, MPD runs a significant risk that the absence of better recordkeeping will cause it to fail to obtain the required legal review for changes due to an oversight.

The primary issue remaining in this area is MPD's lack of a centralized tracking system that records revisions to each lesson plan as well as whether OGC review was necessary and, if so, when the review was performed. This quarter, as a form of technical assistance, we provided MPD with a spreadsheet containing the information we have been able to develop regarding OGC's reviews of the use of force-related lesson plans as well as identifying fields in which information appears to be missing. We will continue our monitoring in this area in upcoming quarters.

3. Instructors

MPD submitted a draft of its Enhanced Field Training Officer Program Protocol to DOJ on December 6, 2002.³⁰⁶ Although DOJ provided comments to the draft Protocol on September 30, 2003, MPD has experienced significant delays revising the Protocol in response to DOJ's comments. MPD submitted its revised Enhanced Field Training Officer Program Protocol to DOJ on September 27, 2004. On

³⁰⁴ OIM Eighteenth Quarterly Report at 122.

³⁰⁵ MPD's General Counsel advised us that, if a curriculum change involved only the insertion of a verbatim quote from a new law or revised general order which OGC already has reviewed, then it is not necessary for his office to review the modification prior to delivery of the revised curriculum. In the coming quarter, as we review IPS's records related to curriculum changes, we will assess the reasonableness of this protocol.

³⁰⁶ MOA ¶ 121.f.

December 9, 2004, DOJ approved the Enhanced Field Training Officer Program Protocol.³⁰⁷

During the seventh quarter, the OIM performed a detailed review of MPD's FTO program. We found that significant improvement in the FTO program was necessary, including completion of the Enhanced Field Training Officer Program Protocol and establishment and application of formal selection criteria for FTOs.³⁰⁸ In particular, we found that the existing protocol being used by FTOs in the field training program to train probationary patrol officers ("PPOs") was disjointed and out of date.

At that time, we also found that MPD did not appear to have established selection criteria for FTOs as required by paragraphs 121.f and 135 of the MOA and that MPOs designated to serve as FTOs generally are selected based on interviews conducted and controlled at the district level. Accordingly, we concluded that, without formal criteria governing the selection of FTOs, the qualifications of personnel selected to be FTOs risked significant variation by district and would be inconsistent with the substantive requirements of paragraph 135 of the MOA.³⁰⁹ In the ninth quarter, we reported that MPD had not made any significant progress with respect to its FTO program and strongly encouraged MPD to finalize the Enhanced Field Training Officer Program Protocol and to develop and apply formal criteria for the selection of FTOs as required by paragraphs 121.f and 135 of the MOA.³¹⁰

During the tenth quarter, we met with MPD's Assistant Chief of Human Services and with representatives from IPS to discuss various specific deficiencies in MPD's FTO program and to recommend remedies. In response to the issues discussed during the meeting, the Director of IPS identified several steps intended to improve coordination between IPS and MPD officers who currently serve as MPOs primarily responsible for

³⁰⁷ OIM Fourteenth Quarterly Report at 92.

³⁰⁸ OIM Seventh Quarterly Report at 50-51.

³⁰⁹ Paragraph 135 of the MOA requires that the FTO selection criteria "address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity."

³¹⁰ OIM Ninth Quarterly Report at 64.

the field training and supervision of PPOs pending DOJ's approval of the Enhanced Field Training Officer Program Protocol.

During the twelfth quarter, we monitored the status of MPD's implementation of the DOJ-approved Enhanced Field Training Officer Program Protocol. We found that MPD still had not implemented a comprehensive plan for the selection of FTOs.³¹¹ MPD reported that IPS created a one-day orientation program for adjunct FTO instructors regarding the FTO curriculum for Field Training Sergeants and Field Training Supervisors, which was held at IPS on June 28, 2005.³¹²

We again reviewed the status of MPD's implementation of its revised FTO program during the fourteenth quarter. We found that MPD had made progress in improving the evaluation process for new recruits, including implementation of daily evaluation forms that must be completed by the probationary officer's FTO or FTO supervisor and maintained in a binder that is the responsibility of the probationary officer. We found, however, that MPD still had not developed formal criteria for the selection of FTOs as required by paragraphs 121.f and 135 of the MOA and still had not yet implemented a comprehensive, specialized training program for FTOs.³¹³

Our review of the FTO program earlier last year found that (1) MPD had made no progress in developing and applying formal criteria for the selection of FTOs, (2) officers who had not received the required FTO training nevertheless were training PPOs, and (3) PPOs generally were not being paired with FTOs who maintained the same schedules as the PPOs. As a result, PPOs were not being trained and monitored by the same qualified FTOs on a daily basis.³¹⁴

Also, the QAU performed a spot check of the FTO program and issued a report, dated March 8, 2006, that contained findings similar to ours.³¹⁵ MPD responded to the QAU's report by issuing a teletype on March 10, 2006 which directed, among other things, that recruit officers will have the same days off as their training officers and that recruit officers shall be partnered with FTOs or MPOs. During our April 3, 2006

³¹¹ OIM Twelfth Quarterly Report at 82.

³¹² MPD July 2005 Progress Report at 35.

³¹³ OIM Fourteenth Quarterly Report at 93-94.

³¹⁴ OIM Fifteenth Quarterly Report at 108.

³¹⁵ QAU Spot Check of Field Training Officer (FTO) Program (March 8, 2006).

monthly meeting with DOJ, MPD, and the City, former Chief Ramsey indicated that MPD would focus attention on remedying the deficiencies in the FTO program and that the Department was considering consolidating MPO and FTO functions to ensure that qualified personnel are responsible for the training of PPOs.³¹⁶

During the seventeenth quarter, we (1) monitored an FTO orientation and training session, (2) interviewed four MPD captains assigned to be district FTO coordinators, and (3) interviewed the MPD sergeant responsible for overseeing the PPO review board charged with assessing the effectiveness of the FTO program and its impact on PPO training and retention decisions.

We found that the training and orientation for FTOs is comprehensive and that the instructor's delivery of the training program was quite effective. The instructor displayed a thorough understanding of MPD's revised FTO program, and the FTOs in training demonstrated the importance of field training in the development of new recruits.

Based on our discussions with the captains responsible for coordinating the FTO program in their respective districts, however, it was clear that MPD had not implemented the FTO program as prescribed in the Enhanced Field Training Officer Program Protocol. None of the districts we reviewed had a formal FTO selection process, and the process that was in place varied among districts. None of the districts had developed a standardized set of criteria or performance measures to consider in evaluating the qualifications of FTO candidates. Finally, none of the districts we reviewed had established a recordkeeping system consistent with the requirements of the Enhanced Field Training Officer Program Protocol for each of the PPOs enrolled in the FTO program.³¹⁷

Former Chief Ramsey directed that FTOs be selected primarily from MPD's ranks of MPOs, who are experienced officers with at least three years of service with MPD and have no serious disciplinary history.³¹⁸ Last year, MPD began working on the draft FTO General Order, which was submitted for DOJ approval on November 7, 2006.³¹⁹ DOJ provided comments to the draft general order on November 15,

³¹⁶ OIM Fifteenth Quarterly Report at 108.

³¹⁷ OIM Seventeenth Quarterly Report at 93-94.

³¹⁸ OIM Eighteenth Quarterly Report at 126.

³¹⁹ MPD April 2007 Progress Report at 38.

2006. MPD submitted a revised FTO General Order on March 6, 2007.³²⁰ In addition, on March 6, 2007, MPD submitted a response to DOJ's November 2006 comments regarding the FTO program.

MPD has made some progress in implementing its FTO program over recent quarters. We have interviewed several of the FTO coordinators assigned in the districts, all of whom had an accurate understanding of their responsibilities as FTO coordinators and were able to identify by name the FTO assigned to each of the PPOs in their districts. We also found that the current version of the draft FTO General Order reflects significant improvements over prior drafts of the general order. This quarter we submitted questions to MPD regarding the FTO program, and in the upcoming quarter we will review MPD's answers and continue our review in this area.

Finally, on January 23, 2007, MPD submitted to DOJ a draft IPS Division Order regarding selection criteria for IPS instructors, in accordance with paragraph 135 of the MOA.³²¹

C. Substantial Compliance Evaluation

MPD is in substantial compliance with MOA paragraph 119, which requires MPD to perform semi-annual reviews of all use of force training components to ensure quality assurance, consistency, and compliance with applicable law and MPD policy.

We reserve judgment as to whether MPD is in substantial compliance with MOA paragraph 120, which requires MPD's OGC to review all MPD training materials. While it appears that OGC is performing reviews of substantive changes to MPD's lesson plans, MPD's recordkeeping related to such reviews must be improved.

We reserve judgment as to whether MPD is in substantial compliance with MOA paragraphs 121.a, 121.e, 121.g, and 123, which relate to Director of Training and CDS oversight of the quality of all use of force training, establishment of procedures for evaluating all training, and the performance of regular needs assessments related to use of force training. MPD has made significant progress in this area, and in the

³²⁰ *Id.*

³²¹ E-mail from Maureen O'Connell to DOJ and OIM personnel regarding MOA 135: IPS Instructor Selection Criteria (dated January 23, 2007).

coming quarter we will evaluate whether MPD has implemented each of these elements of its use of force training program.

MPD is in substantial compliance with MOA paragraphs 121.b and 122, which relate to the development and implementation of a use of force training curriculum. As of this quarter, MPD has obtained DOJ approval of all of its 13 use of force-related lesson plans.

MPD is not in substantial compliance with MOA paragraphs 121.c and 121.f, which establish standards related to MPD's FTO program. DOJ has approved the Enhanced Field Training Officer Program Protocol, but it has not yet been fully and properly implemented.

MPD is not in substantial compliance with MOA paragraphs 84, 98, 121.d, and 129 concerning the development and implementation of all in-service training and roll call curricula, including training programs for MPD supervisors and investigators. MPD has not obtained DOJ approval for 1 of its 16 in-service training lesson plans, not including use of force-related lesson plans.

MPD is not in substantial compliance with the requirements of MOA paragraphs 124 and 125, which relate to the maintenance of MPD's lessons plans, training records, and other training materials. Although, we found in the thirteenth quarter that MPD has enhanced its systems for tracking and administering remedial training, room for improvement remains in this area. We will continue to monitor this area in the coming quarters.

MPD is in substantial compliance with MOA paragraphs 126 and 127, which relate to MPD's use of force training curriculum. MPD has obtained DOJ approval for all elements of its use of force training curriculum.

MPD is in substantial compliance with MOA paragraph 128 concerning the training of MPD recruits, officers, supervisors, and managers in cultural diversity and community policing by obtaining DOJ approval of its Cultural Diversity and Sensitivity Awareness Lesson Plan. We will continue to monitor MPD's cultural diversity and sensitivity in-service training to evaluate MPD's implementation of this lesson plan.

MPD is in substantial compliance with MOA paragraphs 130 and 131, which require that MPD training instructors engage students in meaningful dialogue, use "real life" experiences in use of force training, and conduct use of force training in an efficient and productive manner. For nearly two years, following a brief false start at the beginning of its

revised use of force training, we have consistently found MPD's use of force instructors to be knowledgeable, professional, and engaging and to make effective use of pedagogical techniques such as using "real life" situations to illustrate principles related to the use of force.

MPD is in substantial compliance with the requirements related to role play and the Range 2000 course contained in MOA paragraphs 132.a through 132.c. In our Ninth Quarterly Report, we noted that, at the time of our monitoring during that quarter, MPD did not have the capacity to videotape the role play component of firearms and use of force in-service training, and we stated that we would revisit this area.³²² We have since confirmed that MPD is now videotaping role play sessions in connection with its in-service use of force training at the Federal Law Enforcement Training Center.³²³

MPD is in substantial compliance with MOA paragraph 133, which requires distribution and explanation of the terms of the MOA to all MPD officers and employees and timely updates to in-service training. As discussed in Section II.A.2.b above, MPD achieved an attendance rate for in-service training in 2006 that exceeded the 95% threshold.

MPD is not in substantial compliance with MOA paragraphs 134 and 135, which require the development of a DOJ-approved plan for addressing the needs of training instructors and the development and implementation of eligibility and selection criteria for all academy, field training, and formal training (other than roll call) positions. MPD has not obtained DOJ approval for or implemented these required items.

MPD is in substantial compliance with MOA paragraphs 136 and 137, which relate to the establishment of an instructor training and certification program. MPD has selected the Maryland Police and Corrections Training Commission ("MPCTC") to train MPD's police instructors. We have found the MPCTC program to be comprehensive and to satisfy the requirements of MOA paragraphs 136 and 137.

MPD is in substantial compliance with MOA paragraphs 138 and 139, which require MPD to exercise adequate management supervision over its training instructors to ensure that MPD's training is consistent with MPD policy, the law, and proper police practices and that the training is conducted in accordance with approved lesson plans.

³²² OIM Ninth Quarterly Report at 63.

³²³ OIM Twelfth Quarterly Report at 84.

MPD is in substantial compliance with MOA paragraphs 140 and 142, which relate to officer completion of firearms training and re-certification. MPD has obtained DOJ approval of all lesson plans related to the pistol qualification program and, as discussed in Section II.B.2.a above, MPD's firearms re-qualification attendance rate is well above the 95% threshold.

MPD is in substantial compliance with MOA paragraphs 141 and 143 regarding firearms instructors and the presentation of firearms instruction. We have consistently found MPD's firearms instructors to be highly competent and professional.

MPD is in substantial compliance with MOA paragraph 144 regarding regular consultations with Glock representatives.

MPD is in substantial compliance with MOA paragraphs 145 and 148, which require the development and implementation of a comprehensive canine training curriculum and lesson plans, assurance that MPD handlers are capable of implementing MPD's canine policy, and certification of MPD's canine instructors. DOJ has approved the Canine Operations Manual, and MPD is in substantial compliance with MOA paragraph 147.

MPD is in substantial compliance with MOA paragraph 146's requirement that 100% of its canines be "professionally bred" and certified in the Handler-Controlled Alert Methodology. Moreover, we have found that MPD's canine training is consistently of a very high quality.

D. Recommendations

We reiterate the critical need for MPD to implement all of the elements of the Enhanced Field Training Officer Program Protocol as soon as possible and begin applying consistent, formal criteria for the selection of FTOs.

VIII. Specialized Mission Units (MOA ¶¶ 149-159)

A. Requirements

The MOA recognizes that, from time to time, MPD may use both temporary and permanent specialized mission units ("SMUs") to achieve various legitimate law enforcement objectives. As to such SMUs, the MOA establishes the following requirements:

- Pre-screening procedures must be employed to ensure that only officers suited to participate in such SMUs are permitted to participate. Participating officers must
 - o be current on firearms certification and training, and
 - o have a satisfactory record relating to the use of force, be adequately trained, be generally fit for service in a patrol unit, and match the needs of the SMU.
- MPD must disqualify from participation in such SMUs (i) officers against whom there have been filed numerous credible complaints for excessive use of force and (ii) officers who are otherwise known to have used questionable force frequently in the past;
- Advance notice of which officers will be participating in such SMUs must be provided to unit supervisors to permit enhanced supervision or tailoring of activities;
- MPD must establish adequate supervision and clear lines of supervision and accountability for such SMUs and must ensure that supervisory officers who volunteer for such units maintain their other supervisory responsibilities;
- Adequate specialized training (including training in relevant legal issues) must be provided to officers serving in such units; and
- All SMU participants must be closely and continually monitored. Such monitoring must encompass a review of any complaints filed against officers participating in SMU activities.

Further, the MOA requires that MPD develop a plan, subject to approval of DOJ, to limit the total number of hours that may be worked by a participating officer during any twenty-four-hour period and during any seven-day period. These limitations are designed to prevent officer fatigue.

B. Status and Assessment

1. SMU Special Requirements

On March 30, 2004, DOJ approved MPD's revised Specialized Mission Unit General Order. MPD, however, requested and received

leave to delay implementation of the approved policy to allow time for outstanding issues related to the Specialized Mission Unit After-Action Report to be resolved. MPD revised the Specialized Mission Unit General Order in order to ensure consistency with other MPD directives and to clarify certain definitions. MPD submitted the revised Specialized Mission Unit General Order to DOJ for approval on June 30, 2006. DOJ provided comments to the revised general order on December 1, 2006. MPD submitted a revised SMU General Order to DOJ on March 30, 2007.³²⁴

During the twelfth quarter, even though the Specialized Mission Unit General Order had not been implemented, we met with supervisors from several SMUs and reviewed SMU SOPs to assess MPD's current status with respect to the MOA's requirements regarding pre-screening mechanisms for SMU participants;³²⁵ development of a pool of seasoned and competent officers with exemplary records and up-to-date training who are interested in participating in an SMU;³²⁶ implementation of specific tracking of enforcement actions, complaints, and misconduct investigations involving SMU members;³²⁷ and provisions for specialized training.³²⁸ In addition, we interviewed supervisors from the following citywide SMUs: Major Narcotics Strike Force, Emergency Response Team ("ERT"), and the Warrant Squad. We also interviewed the supervisor for the Fifth District's Focused Mission Unit.³²⁹

We found that only the ERT's SOPs contained a written description of the candidate criteria and selection process to be used in screening MPD officers for assignment to the SMU. Neither the Warrant Squad nor the Major Narcotics Strike Force has written selection criteria for members. Commanders of both units reported that candidates for assignment to the units are subjected to a screening process involving a review of past performance, including disciplinary history, and an interview. The District Commander is responsible for the selection of personnel assigned to the Fifth District's Focused Missions Unit.

³²⁴ MPD April 2007 Progress Report at 12.

³²⁵ MOA ¶ 150.

³²⁶ *Id.* ¶ 152.

³²⁷ *Id.* ¶ 158.

³²⁸ *Id.* ¶ 156.

³²⁹ OIM Twelfth Quarterly Report at 87-89.

None of the SMUs we reviewed maintained a special file of performance records or disciplinary actions for each member. Records of adverse disciplinary actions with respect to members of SMUs are maintained at the DRD, which is the central repository for records of adverse disciplinary actions taken against any MPD officer. None of the SMUs employed special tracking of misconduct allegations directed at members of the units.

Only the ERT reported requiring members to participate in extensive special training beyond the Department-wide requirement of 40 hours of annual in-service training and annual pistol re-certification. ERT members train two days each week and a full week every six months. The Warrant Squad commander reported that officers in that unit have received training in entry and special investigative techniques from the United States Marshals Service. The Major Narcotics Strike Force has, from time to time, received special training regarding drug law enforcement operations from the Drug Enforcement Agency and the Federal Bureau of Investigation.

Last quarter, we monitored the status of MPD's compliance with the MOA provisions related to SMUs. Because the Specialized Mission Unit General Order has not yet been approved by DOJ, MPD has not issued the draft general order or begun training officers on its MOA-related requirements.³³⁰ Therefore, our substantive monitoring with respect to SMUs will continue once implementation of the Specialized Mission Unit General Order has begun. The OIM has a pending request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.³³¹ This list will be useful in facilitating our further review of MPD's compliance with MOA paragraphs 149 through 158.

2. Limitation on Work Hours

On February 23, 2004, MPD submitted to DOJ a draft general order entitled Limitation on Work Hours, which is intended to address the requirement under MOA paragraph 159 that MPD limit the total number of hours an officer may work in order to prevent officer fatigue. On June 10, 2004, DOJ provided MPD with comments to this draft general order, and MPD responded later that month. DOJ returned comments to the draft general order on October 29, 2004. Despite

³³⁰ OIM Nineteenth Quarterly Report at 128.

³³¹ OIM Fourth Quarterly Report at 75.

MPD's decision not to adopt certain of DOJ's recommendations, DOJ advised MPD that the draft Limitations on Work Hours General Order satisfies the requirements of paragraph 159 of the MOA. MPD published this general order on January 6, 2005.

On May 10, 2005, MPD notified DOJ of a requested change to the Limitations on Work Hours General Order related to monitoring by the Court Liaison Division of members' hours unrelated to court time. On May 18, 2005, DOJ approved MPD's requested change, and the revised order was issued to the Department on June 9, 2005.³³²

During the fifteenth quarter, we met with a representative from OPR to discuss MPD's systems for tracking individual officers' compliance with the limitations on the hours they are permitted to work. MPD does not currently have a centralized system for monitoring whether officers are working more than the 32 off-duty hours per week permitted under the policy. Also, although secondary employers generally are provided a PD 180, entitled "Employer's Agreement to Conditions of Employment," that describes the limitations on the number of off-duty hours an officer is permitted to work, until recently MPD has not had a system in place to monitor compliance with these limitations.³³³

During the eighteenth quarter, the QAU completed audits of compliance with the Limitations on Work Hours General Order.³³⁴ As discussed in Section I.B above, the QAU's audits were effective in identifying several instances of potential non-compliance with the work hours limitation policy, which were referred to IAD for investigation. We provided the QAU with recommendations for expanding the scope of its audit program in this area to provide MPD and us with additional data about officers' compliance with the policy's restrictions regarding secondary employment and work hours. These QAU audits are critical in measuring MPD's effectiveness in implementing the Limitations on Work Hours General Order. However, it is necessary for us to review additional data in order to assess whether the rate at which MPD officers are complying with the work hours limitations demonstrates that MPD has properly implemented the policy.

³³² OIM Fourteenth Quarterly Report at 100.

³³³ OIM Fifteenth Quarterly Report at 107.

³³⁴ E-mail from Maureen O'Connell to DOJ and OIM personnel (September 29, 2006).

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraphs 149-158, which relate to SMUs. Although MPD obtained DOJ approval for its Specialized Mission Unit General Order, the order has not yet been implemented. Since receiving DOJ approval, MPD has made additional changes to the general order and resubmitted it to DOJ for approval on March 30, 2007.

We reserve judgment as to whether MPD currently is in substantial compliance with MOA paragraph 159 regarding limitations on the total number of hours officers may work in a 24-hour period and in a 7-day week. MPD published the Limitations on Work Hours General Order during the thirteenth quarter, and it was revised during the fifteenth quarter. Until recently, MPD has not had a system for tracking or auditing officers' compliance with the general order's limitations on the number of off-duty hours that members are permitted to work. During the eighteenth quarter, the QAU performed audits of compliance with the Limitations on Work Hours General Order, which we reviewed and commented on. We look forward to continuing to work with the QAU in evaluating MPD's implementation of the general order's requirements and restrictions.

D. Recommendations

We strongly encourage MPD to implement the Specialized Mission Unit General Order as soon as possible so that the OIM can begin its monitoring in this area. We also remind MPD that the OIM has a pending request to MPD that we receive a list of all officers assigned to all SMUs within one week of DOJ's final approval of the Specialized Mission Unit General Order.

IX. Public Information (MOA ¶ 160)

A. Requirements

The MOA requires MPD to prepare quarterly reports, to be issued publicly, that include statistics relating to the use of force by MPD officers. The aggregate statistics must be broken down:

- By geographic areas of the City;
- By race-ethnicity of the subject of the use of force;
- By weapon used; and

- By enforcement action taken in conjunction with the use of force.

In addition, these public reports must include information about use of force investigations that have been conducted and information regarding the disposition of excessive use of force allegations.

B. Status and Assessment

In our Fourth Quarterly Report, we found that MPD had made significant improvements with respect to the public reporting of use of force data and that the 2002 FIT Annual Report, published in April 2003, “meets almost all of the MOA’s requirements.” We suggested, however, that, in future reports, MPD should clarify the different types of non-lethal force discussed to make the statistics more understandable to the public.³³⁵

During the eleventh quarter, which covered the last three months of 2004, we reviewed MPD’s Web site for updated reports containing use of force statistics. We were able to find only the following outdated reports: (1) MPD Firearm Discharge Statistics 2003, Statistics as of February 2004; (2) MPD Less Lethal Use of Force Statistics 2003, Statistics as of March 31, 2003; (3) MPD Firearm Discharge Statistics 2003, Statistics as of March 31, 2003; (4) MPD Less Lethal Use of Force Statistics 2003, Statistics as of September 30, 2003; (5) MPD Firearm Discharge Statistics 2003, Statistics as of September 30, 2003; and (6) MPD Less Lethal Use of Force Statistics 2003, Statistics as of February 2003.³³⁶

During the twelfth quarter, MPD provided us with Use of Force Quarterly Statistics Reports for each of the quarters of 2004, which we reviewed for compliance with the requirements of paragraph 160 of the MOA. We also met with the FIT personnel responsible for compiling these statistics to discuss the reports. During our review of the reports, we identified several discrepancies in the statistics, which we shared with FIT. For example, some of the information contained in the summary sections of the reports did not correspond with data contained in the body of the reports. We also discussed with FIT our concern that the

³³⁵ OIM Fourth Quarterly Report at 76-77.

³³⁶ OIM Eleventh Quarterly Report at 104.

presentation of some of the information contained in the reports was difficult to follow.³³⁷

On June 29, 2005, MPD circulated use of force statistics for the first quarter of 2005.³³⁸ We reviewed this report and found that it is a significant improvement over the reports posted reflecting 2004 statistics. However, we found minor statistical errors in the latest report, and MPD still is not including a breakdown indicating the race or ethnicity of the subject of uses of force by MPD district as required by paragraph 160 of the MOA.³³⁹

MPD has expanded the duties of the UFRB Administrator to include tracking the Department's use of force statistics and preparing quarterly use of force reports. During the fifteenth quarter, the UFRB Administrator performed an audit of the 2005 use of force statistics reported by MPD, which identified some discrepancies in information reported by the Department.³⁴⁰ As a result, MPD removed its two 2005 reports from its Web site.

We have met with MPD several times over the past year to discuss improvements in the reporting of use of force statistics. MPD was very responsive to our recommendations regarding revisions to the content and presentation of its use of force statistics. During the seventeenth quarter, MPD finalized its report regarding use of force statistics for 2005, and the report was posted on MPD's Web site on June 27, 2006. Although MPD's revised report containing use of force statistics for 2005 satisfied the requirements of MOA paragraph 160, we advised MPD that we had additional suggestions for improving the presentation and user-friendliness of future quarterly reports of its use of force statistics.

On December 20, 2006, MPD published a quarterly report on the Department's use of force statistics.³⁴¹ While in the past we found that MPD had made significant progress with its quarterly reporting of use of force statistics, we found these reports were missing information required under the MOA. For example, MPD's reports did not include the

³³⁷ OIM Twelfth Quarterly Report at 91.

³³⁸ E-mail from Maureen O'Connell re "MOA 160: Quarterly Use of Force Statistics, Q1 2005" (dated June 29, 2005).

³³⁹ OIM Fourteenth Quarterly Report at 102.

³⁴⁰ OIM Fifteenth Quarterly Report at 110.

³⁴¹ OIM Nineteenth Quarterly Report at 132.

UFRB determinations for two quarters of 2006 nor did they include the total number of excessive force complaints for each quarter of 2006. We discussed these deficiencies with the UFRB Administrator, who is the point person for preparing MPD's quarterly use of force reports, and MPD is working to correct the deficiencies. On March 29, 2007, MPD published its most recent quarterly report on use of force statistics, which includes use of force data for calendar year 2006.³⁴² We will review this report in the coming quarter.

C. Substantial Compliance Evaluation

MPD is not in substantial compliance with MOA paragraph 160 regarding public reporting of use of force information.

X. Monitoring, Reporting, and Implementation (MOA ¶¶ 161-193)

A. Requirements

The MOA requires MPD to designate an MPD Compliance Coordinator whose responsibility is to serve as the liaison among MPD, the Independent Monitor, and DOJ. The Compliance Coordinator's responsibilities include:

- Coordinating MPD compliance and implementation activities relating to the MOA;
- Facilitating the provision of data, documents and access to other MPD personnel for both the Independent Monitor and DOJ;
- Ensuring the proper maintenance of relevant documents and records relating to the MOA; and
- Working with the leadership of MPD to delegate compliance tasks to appropriate MPD personnel.

In addition to fulfilling these functions, the City and MPD are required to file with DOJ and the Independent Monitor a status report describing all steps taken during the reporting period designed to comply with each provision of the MOA.

³⁴² MPD April 2007 Progress Report at 21.

B. Status and Assessment

1. Compliance Monitoring Team

Throughout the monitorship, we have been consistently impressed by -- and are grateful for -- the professionalism, efficiency, and responsiveness of MPD's CMT.

2. Full and Unrestricted Access to Staff, Facilities, and Documents

As we have reported previously, MPD continues to provide us with full and unrestricted access to MPD staff, facilities, and documents. Among other groups, MPD's CMT, IAD, FIT, IPS, and OPR deserve particular recognition. We have never had a problem with MPD or any of its personnel in this regard.

3. MPD Quarterly MOA Progress Reports

MPD published its quarterly MOA Progress Report on April 16, 2007. The OIM found the report to be well written, well organized, and generally informative. Once again, we found MPD's Progress Report to be extremely useful in preparing this quarterly report.

C. Substantial Compliance Evaluation

MPD and the City are in substantial compliance with MOA paragraph 167, which requires that the OIM be afforded full and unrestricted access to all MPD and City staff, facilities, and documents. We have never experienced anything less than full and complete cooperation from MPD and the City.

MPD is in substantial compliance with MOA paragraph 173, which requires the assignment of a compliance coordinator. MPD's CMT has been highly effective in coordinating MPD compliance activities in connection with the MOA; facilitating access to MPD employees and the provision to the OIM of data and documents; ensuring that documents and records related to the MOA are maintained; and assisting MPD personnel in their compliance tasks.

MPD and the City are in substantial compliance with MOA paragraph 175, which requires the submission of quarterly progress reports to the OIM. The parties' quarterly reports are almost always timely and are very useful in the preparation of the OIM's reports.

The City and MPD also are in substantial compliance with the provision of MOA paragraph 176 requiring maintenance of all records documenting compliance with the terms of the MOA and all documents required by or developed pursuant to the MOA. MPD and the City both have been willing and generally able to produce for the OIM all material we have requested in connection with our monitoring activity. We have not evaluated the second provision of the paragraph 176 requiring the maintenance of officer training records during an officer's employment and for three years thereafter. This is an area we will evaluate in the future.

Conclusion

After five years of being subject to a monitoring program designed to evaluate MPD's and the City's progress in implementing the reforms detailed in the MOA, it is clear that MPD and the City have made significant progress. MPD and the City have substantially complied with many of the central provisions of the MOA -- including implementation of a revised use of force policy, development of an excellent canine program grounded in the principles of the handler-controlled alert methodology, performance of high quality internal investigations of uses of deadly force, and development of a comprehensive curriculum for training officers in MPD's reformed use of force policies.

It is equally clear, however, that MPD and the City continue to fall short in certain important areas of MOA compliance. Although there appear to have been improvements in 2006, the reporting of use of force incidents involving MPD officers continues to be an area to which MPD must devote greater attention and achieve better results. Despite recent efforts, MPD continues to fail to notify the community of its outreach meetings, which undermines the goals and effectiveness of the Department's outreach program. Work remains on the development of PPMS, implementation of an enhanced FTO program, and introduction of revised policies related to the Department's Specialized Mission Units. We will continue to provide technical assistance to MPD and the City as they seek to satisfy the rigorous requirements and standards set forth under the MOA.



Michael R. Bromwich
Independent Monitor

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Principal Contributors

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Appendix A

(Acronyms)

APO	assault on police officer
CCRB	Citizen Complaint Review Board (<i>see</i> PCB below)
CDS	Curriculum Development Specialist
CMT	Compliance Monitoring Team
DCOP	District of Columbia Office of Personnel
DCORM	District of Columbia Office of Risk Management
DOJ	Department of Justice
DRD	Disciplinary Review Division
ERT	Emergency Response Team
FIT	Force Investigation Team
FOP	Fraternal Order of Police
FTO	field training officer
IAD	Internal Affairs Division, Police Misconduct Section (formerly the Office of Internal Affairs, or OIA)
IPS	Institute of Police Science
IQ	Intranet Quorum
MOA	Memorandum of Agreement among the District of Columbia, MPD, and DOJ
MOU	Memorandum of Understanding between MPD and OPC
MPD	Metropolitan Police Department
MPO	master patrol officer
MPCTC	Maryland Police and Corrections Training Commission
OAG	Office of the Attorney General
OC	oleoresin capsicum
OCCR	Office of Citizen Complaint Review (<i>see</i> OPC below)
OGC	Office of General Counsel
OIA	Office of Internal Affairs (<i>see</i> IAD above)

OIM	Office of the Independent Monitor
OPC	Office of Police Complaints (formerly the Office of Citizen Complaint Review, or OCCR)
OPCLU	OPC Liaison Unit
OPR	Office of Professional Responsibility
PCB	Police Complaints Board (formerly the Citizen Complaint Review Board, or CCRB)
PES	Performance Evaluation System
PMP	Performance Management Program
PPMS	Personnel Performance Management System
PPO	probationary patrol officer
PSA	patrol service area
QAU	Quality Assurance Unit
RFP	Request for Proposal
RIF	Reportable Incident Form
ROC	Regional Operations Command
SMU	specialized mission unit
SMUAAR	Specialized Mission Unit After-Action Report
SOCC	Synchronized Operations Command Center
SOD	Special Operations Division
SOP	standard operating procedure
SSP	Supervisory Support Program
TACIS	Time and Attendance Court Information System
UFIR	Use of Force Incident Report
UFRB	Use of Force Review Board
USAO	United States Attorney's Office

Appendix B

Summary of Results of the OIM's Review of the Investigations Samples

1. Specific questions and results related to the administration and oversight of MPD investigations are summarized below.

- *Did the proper authority investigate the allegation? [MOA ¶¶ 57, 61, 64, 68, 72, 79, 80]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
NO:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

- *Was the supervisor/ official responsible for the investigation involved in the incident? [MOA ¶ 80]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	0.0%	1.2%	3.8%	0.0%	0.00%	2.4%	0.0%
NO:	100.0%	98.8%	96.2%	100.0%	100.0%	97.6%	100.0%

- *Did the supervisor/ official responsible for the investigation have an apparent or potential conflict of interest related to the misconduct investigation? [MOA ¶ 80]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	1.5%	1.2%	3.8%	0.0%	0.0%	2.4%	0.0%
NO:	98.5%	98.8%	96.2%	100%	100.0%	97.6%	100.0%

- *Does the file include a report prepared by the investigator? [MOA ¶¶ 62, 65, 74, 102]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	97.5%	97.2%	96.2%	99.0%	98.8%	100.0%	97.1%
NO:	2.5%	2.8%	3.8%	1.0%	1.2%	0.0%	2.9%

- Does the investigator's report include [MOA ¶¶ 62, 65, 74, 102]:
- A description of the use of force incident or alleged misconduct?

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	98.7%	100.0%	100.0%	98.8%	100.0%	98.1%
NO:	0.0%	1.3%	0.0%	0.0%	1.2%	0.0%	1.9%

- A summary of relevant evidence gathered?

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	93.0%	100.0%	88.1%	72.1%	100.0%	97.0%
NO:	0.0%	7.0%	0.0%	11.9%	27.9%	0.0%	3.0%

- Proposed findings and analysis supporting the findings?

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	73.5%	100.0%	78.9%	76.2%	100.0%	94.7%
NO:	0.0%	26.5%	0.0%	21.1%	23.8%	0.0%	5.3%

- If the complaint was made at a location other than OPR, was it received by OPR within 24 hours or the next business day?
[MOA ¶ 94]¹

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	--	28.8%	--	27.6%	--	--	63.6%
NO:	--	71.2%	--	72.4%	--	--	36.4%

¹

In recent quarters, there has not been an insufficient number of cases involving circumstances relevant to this issue to provide a basis for the development of reportable statistics.

- *Was the investigation completed within 90 days? [MOA ¶¶ 62, 65, 74, 103]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	83.3%	85.7%	93.2%	89.1%	85.7%	85.2%	83.8%
NO:	16.7%	14.3%	6.8%	10.9%	14.3%	14.8%	16.2%

2. Specific questions and results related to the conduct of MPD investigations are summarized below.

- *Were group interviews avoided? [MOA ¶ 81.c]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
NO:	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

- *Were all appropriate MPD officers, including supervisors, interviewed? [MOA ¶ 81.e]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	96.1%	98.7%	98.7%	99.0%	98.4%	100.0%	95.7%
NO:	3.9%	1.3%	1.3%	1.0%	1.6%	0.0%	4.3%

- *If practicable and appropriate, were interviews of complainants and witnesses conducted at sites and times convenient to them? [MOA ¶ 81.b]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
NO:	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%

- *Were inconsistencies among officers and/or witnesses documented and addressed? [MOA ¶ 81.g]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	83.2%	100.0%	100.0%	100.0%	100.0%	99.3%
NO:	0.0%	16.8%	0.0%	0.0%	0.0%	0.0%	0.7%

- *Was the conduct of each officer involved in the event adequately addressed for its propriety? [MOA ¶ 82]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	98.5%	100.0%	100.0%	100.0%	98.4%	100.0%	100.0%
NO:	1.5%	0.0%	0.0%	0.0%	1.6%	0.0%	0.0%

- *Was all apparent misconduct adequately addressed? [MOA ¶ 82]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	98.5%	100.0%	99.2%	100.0%	100.0%	98.9%	100.0%
NO:	1.5%	0.0%	0.8%	0.0%	0.0%	1.1%	0.0%

- *Did the investigator avoid giving automatic preference to an officer's statement over a citizen's statement? [MOA ¶ 99]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	99.3%	100.0%	100.0%	100.0%	100.0%	99.3%
NO:	0.0%	0.7%	0.0%	0.0%	0.0%	0.0%	0.7%

- *Was the basis for closing the investigation without further investigation something other than the withdrawal of the complaint or the unavailability of the complainant? [MOA ¶ 101]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	--	100.0%	95.4%	100.0%	100.0%	100.0%	100.0%
NO:	--	0.0%	4.6%	0.0%	0.0%	0.0%	0.0%

- *Were the findings based upon a preponderance of the documented evidence? [MOA ¶ 98]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	98.5%	100.0%	100.0%	100.0%	100.0%	100.0%
NO:	0.0%	1.5%	0.0%	0.0%	0.0%	0.0%	0.0%

- *Did all allegations of misconduct addressed by the investigation result in a finding of either unfounded, sustained, insufficient facts, or exonerated? [MOA ¶ 100]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	90.7%	56.9%	97.5%	76.6%	44.4%	95.5%	93.1%
NO:	9.3%	43.1%	2.5%	23.4%	55.6%	4.5%	6.9%

3. Specific questions and results related the unit commanders' review of MPD investigations are summarized below.

- *Did the unit commander review the investigation to ensure its completeness and that the findings are supported by the evidence? [MOA ¶ 66]*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	100.0%	99.2%	100.0%	100.0%	98.8%	100.0%	96.6%
NO:	0.0%	0.8%	0.0%	0.0%	1.2%%	0.0%	3.4%

4. Below is a summary of the OIM reviewers' overall findings with respect to the completeness and sufficiency of MPD investigations.

- *Was the investigation complete?*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	72.7%	83.3%	99.2%	83.7%	87.8%	86.0%	85.1%
NO:	27.3%	16.7%	0.8%	16.3%	12.2%	14.0%	14.9%

- *Was the investigation sufficient?*

	Quarter						
	14th	15th	16th	17th	18th	19th	20th
YES:	81.2%	86.2%	99.2%	89.7%	89.3%	90.1%	87.2%
NO:	18.8%	13.8%	0.8%	10.3%	10.7%	9.9%	12.8%

MOA SUBSTANTIAL COMPLIANCE MATRIX

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	I. INTRODUCTION				
1	In January 1999, District of Columbia Mayor Anthony A. Williams and Chief Charles H. Ramsey requested the Department of Justice to review all aspects of the Washington Metropolitan Police Department's use of force. This unprecedented request indicated the City and the Chief's commitment to minimizing the risk of excessive use of force in the Washington Metropolitan Police Department (MPD) and to promoting police integrity. Because of the unusual genesis of the investigation—at the request of the agency to be investigated—the Department of Justice agreed that, parallel with its pattern or practice investigation, it would provide MPD with technical assistance to correct identified deficiencies during the course of the investigation. The Department of Justice conducted the investigation requested by the City, and analyzed every reported use of force and citizen complaint alleging excessive use of force during the period from 1994 to through early 1999. The Department of Justice also examined MPD's policies, practices, and procedures related to use of force.	NA	NA	NA	NA
2	In addition to conducting an investigation, the Department of Justice has provided MPD with on-going technical assistance recommendations regarding its use of force policies and procedures, training, investigations, complaint handling, canine program, an early warning system. Based upon these recommendations, MPD has begun to implement necessary reforms in the manner in which it investigates, monitors, and manages use of force issues.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
3	The Department of Justice, the District of Columbia, and the District of Columbia Metropolitan Police Department, share a mutual interest in promoting effective and respectful policing. They join together in entering this agreement in order to minimize the risk of excessive use of force, to promote the use of the best available practices and procedures for police management, and to build upon recent improvements MPD has initiated to manage use of force issues. The parties acknowledge that additional reforms may be appropriate in order to identify and to prevent discriminatory law enforcement. The parties are currently reviewing officer communications on Mobile Data Terminals to identify unlawful or otherwise inappropriate conduct. Based upon the outcome of this review, MPD agrees to implement appropriate reforms.		1. Implementation of systems to monitor Mobile Data Terminal communications. 2. Preparation of regular assessments related to the monitoring of MDT communications. 3. Implementation of appropriate reforms to address unlawful or inappropriate conduct identified by monitoring MDT communications.	1. Review MPD program for monitoring MDT communications. 2. Review MPD assessments related to the monitoring of MPD. 3. Review diversity and profiling training materials. 4. Review training records. 5. Review MPD policies and reforms implemented in response to unlawful or inappropriate conduct identified by the monitoring of MDT communications.	
4	This agreement is effectuated pursuant to the authority granted DOJ under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14141) to seek declaratory or equitable relief to remedy a pattern or practice of conduct by law enforcement officers that deprive individuals of rights, privileges or immunities secured by federal law.	NA	NA	NA	NA
5	Nothing in this Agreement is intended to alter the lawful authority of MPD police officers to use reasonable and necessary force, effect arrests and file charges, conduct searches or make seizures, or otherwise fulfill their law enforcement obligations to the people of the District of Columbia in a manner consistent with the requirements of the Constitution and laws of the United States and the District of Columbia.	NA	NA	NA	NA
6	Nothing in this Agreement is intended to: (a) alter the existing collective bargaining agreements between the City and MPD employee bargaining units; or (b) impair the collective bargaining rights of employees in those units under law.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
7	This Agreement constitutes the entire integrated agreement of the parties. With the exception of the latest working drafts and correspondence resulting from the technical assistance described in paragraph 2, no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.	NA	NA	NA	NA
8	This Agreement is binding upon the parties hereto, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the District Columbia for its conduct or the conduct of MPD officers. This Agreement does not constitute an admission, adjudication, or finding on the merits in any action or proceeding. This Agreement does not authorize, nor shall it be construed to authorize, access to any City or MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, and the Independent Monitor.	NA	NA	NA	NA
9	The term “actively resisting” means the subject is making physically evasive movements to defeat the officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention not to be taken into or retained in custody, provided that the intent to resist has been clearly manifested.	NA	NA	NA	NA
10	The term “CCRB” means the Citizen Complaint Review Board.	NA	NA	NA	NA
11	The term “City” means the City of the District of Columbia.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
12	The term “complaint” means any complaint by a member of the public regarding MPD services, policy or procedure, claims for damages (which allege officer misconduct) or officer misconduct; and any allegation of possible misconduct made by an MPD officer. All complaints shall be recorded on the complaint form described in paragraph 88. A complaint may be initiated by any of the methods set forth in paragraph 92. For purposes of this Agreement, the term “complaint” does not include any allegation of employment discrimination.	NA	NA	NA	NA
13	The term “complainant” means any person who files a complaint against an officer or MPD.	NA	NA	NA	NA
14	The term “consult” means an exchange of information in a timely manner between the parties intended to consider the parties’ respective positions. This exchange of information shall include, but not be limited to, preliminary investigative files, reports, statements, photographs, and radio runs, as such items become available.	NA	NA	NA	NA
15	The term “deadly force” means any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.	NA	NA	NA	NA
16	The term “Department” means the Washington Metropolitan Police Department.	NA	NA	NA	NA
17	The terms “document” and “record” include all “writings and recordings” as defined by Federal Rules of Evidence Rule 1001(1).	NA	NA	NA	NA
18	The term “DOJ” means the United States Department of Justice and its agents and employees.	NA	NA	NA	NA
19	The term “effective date” means the day this Agreement is signed by all the parties.	NA	NA	NA	NA
20	The term “FIT” means the Force Investigation Team.	NA	NA	NA	NA
21	The term “including” means “including, but not limited to.”	NA	NA	NA	NA
22	The term “Independent Monitor” or “Monitor” as used in this document means the Monitor established by Section X of this Agreement, and all persons or entities associated by the Monitor to assist in performing the monitoring tasks.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
23	The term “MPD” means the Chief of Police of the Department and all employees under his or her command.	NA	NA	NA	NA
24	The term “MPD employee” means any employee under the command of the Chief of Police, including civilian employees.	NA	NA	NA	NA
25	The term “MPD unit” means any officially designated organization of officers within MPD, including Regional Operation Centers, Districts, Divisions, Groups, Patrol Service Areas, Teams, and specialized units.	NA	NA	NA	NA
26	The term “manager” means an MPD supervisor at the rank of lieutenant or above.	NA	NA	NA	NA
27	The term “non-deadly force” means any use of force that is neither likely nor intended to cause death or serious physical injury.	NA	NA	NA	NA
28	The term “non-disciplinary action” refers to action other than discipline taken by an MPD supervisor to enable or encourage an officer to modify his or her performance. It may include: oral or written counseling; training; increased field supervision for a specified time period; referral to Police/Fire Clinic; referral to the Employee Assistance Program; a change of an officer’s partner; or a reassignment or transfer.	NA	NA	NA	NA
29	The term “OCCR” refers to the Office of Citizen Complaint Review.	NA	NA	NA	NA
30	The term “OPR” refers to the Office of Professional Responsibility.	NA	NA	NA	NA
31	The term “police officer” or “officer” means any law enforcement officer employed by MPD, including supervisors and managers.	NA	NA	NA	NA
32	The term “PPMS” means Personnel Performance Management System.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
33	The term “serious use of force” means lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine.	NA	NA	NA	NA
34	The term “supervisor” means sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for other officers and managers.	NA	NA	NA	NA
35	The term “use of force” means any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include unresisted handcuffing. The term “use of force indicating potential criminal conduct by an officer” shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject.	NA	NA	NA	NA
	II. GENERAL USE OF FORCE POLICY REQUIREMENTS				
	A. General Use of Force Policy				
36	DOJ acknowledges that MPD has initiated a number of important use of force policy reforms. The provisions in this section build upon MPD’s ongoing initiatives.	NA	NA	NA	NA

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
37	MPD shall complete development of a Use of Force Policy that complies with applicable law and current professional standards. The policy shall emphasize the goal of de-escalation and shall encourage officers to use advisements, warnings, and verbal persuasion when appropriate. The policy shall advise that the use of excessive force shall subject officers to discipline and possible criminal prosecution and/or civil liability.	1. Development and distribution of appropriate use of force policy. 2. Proper training on use of force policy. 3. Proper implementation of use of force policy.	1. Development and DOJ approval of use of force policy. 2. Distribution of approved use of force policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of force policy. 4. ≥95% of MPD officers trained in approved use of force policy. 5. Use of force by MPD officers is consistent with principles and standards contained in the use of force policy in ≥95% of cases reviewed	1. DOJ approved use of force policy. 2. Monitor in-service and new recruit training. 3. Review all FIT I and FIT II investigations. 4. Review sample of chain of command and OPR use of force investigations. 5. Review UFIRs.	Not in compliance
38	The policy shall define and describe the types of force and the circumstances under which use of such force is appropriate. The policy shall prohibit officers from unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may escalate to the point where deadly force would be authorized.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.
39	The policy shall require officers, when feasible, to identify themselves as police officers and to issue a warning before discharging a firearm.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.
40	The policy shall require officers, immediately following a use of force, to inspect subjects for injury resulting from the use of force, and to obtain any necessary medical care.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.	Same as ¶ 37 above.

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	B. Use of Firearms Policy				
41	MPD shall complete development of a Use of Firearms policy that complies with applicable law and current professional standards. The policy shall prohibit officers from possessing or using unauthorized firearms or ammunition and shall inform officers that any such use may subject them to disciplinary action. The policy shall establish a single, uniform reporting system for all firearms discharges. The policy shall prohibit officers from obtaining service ammunition from any source except through official MPD channels, and shall specify the number of rounds MPD authorizes its officers to carry.	1. Development and distribution of appropriate use of firearms policy. 2. Proper training on use of firearms policy. 3. Proper implementation of use of firearms policy.	1. Development and DOJ approval of use of firearms policy. 2. Distribution of approved use of firearms policy to MPD officers. 3. Training fairly, accurately, and properly summarizes principles of use of firearms policy. 4. ≥95% of MPD officers trained in approved use of firearms policy. 5. Use of firearms by MPD officers is consistent with principles and standards contained in the Handling of Service Weapons General Order in ≥95% of cases reviewed.	1. Review FIT investigations involving use of firearms. 2. Review chain of command investigations related to dog shootings. 3. Monitor in-service and new recruit training. 4. Monitor firearms qualification and requalification records. 5. Monitor armorer's records for cases where officer claims weapon malfunction. 6. Monitor misconduct cases related to failures to qualify and requalify. 7. Monitor disciplinary actions for failures to follow requirements of Handling of Service Weapons General Order. 8. Review UFIRs.	In compliance since

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
42	Within 30 days from the effective date of this agreement, the Mayor of the District of Columbia shall submit a request to the City Council for the District of Columbia for an amendment to Section 206.1 of Title 6A of the District of Columbia Municipal Regulations. The requested amendment shall permit the Chief of Police to determine the policy concerning the off-duty carrying of firearms by MPD officers while in the District of Columbia, including, but not limited to appropriate prohibitions regarding the carrying and or use of firearms in situations where an officer's performance may be impaired.	1. Submission of request for amendment permitting Chief of Police to set policy for off-duty carrying of firearms. 2. Chief of Police establishes off-duty carrying of firearms while in DC, including limitations.	1. Submission of amendment request by the Mayor. 2. Development and implementation of off-duty carrying of firearms policy. 3. Training fairly, accurately, and properly summarizes principles of off-duty carrying of firearms policy. 4. Carrying and use of off-duty firearms by MPD officers is consistent with principles and standards contained in off-duty carrying of firearms policy in ≥95% of cases reviewed.	1. Review training in off-duty carrying policy. 2. Review allegations of violation of off-duty carrying policy. 3. Review of disciplinary actions related to violation of off-duty carrying policy. 4. Review FIT investigations to determine whether discharges and shootings involved authorized weapons.	In compliance since
43	The policy shall require that when a weapon reportedly incurably malfunctions during an officer's attempt to fire, the weapon shall be taken out of service and an MPD armorer shall evaluate the functioning of the weapon as soon as possible. The policy shall require that, following the evaluation by the armorer, MPD shall document in writing whether the weapon had an inherent malfunction and was removed from service, malfunctioned because it was poorly maintained, or if the malfunction was officer-induced and a determination of the causes.	1. Weapons that incurably malfunction promptly taken out of service. 2. MPD armorer promptly evaluates weapon and documents findings. 3. MPD properly documents weapon malfunctions and removal of weapons from service.	1. Armorer completes analysis within 30 days, absent document special circumstances, in ≥95% of cases involving alleged malfunction of weapon. 2. MPD properly and completely documents weapon malfunctions and reasons for malfunction in ≥95% of cases. 3. Weapons taken out of service are properly disposed of in ≥95% of cases of incurable malfunctions. 4. If the malfunction was officer-induced, proper remedial or disciplinary action was taken in ≥95% of cases. 5. Weapon taken out of service and armorer notified in ≥95% of cases where FIT investigations finds malfunction to be the cause of a weapon discharge.	1. Review armory records. 2. Interview Glock representatives. 3. Review FIT investigations. 4. Review misconduct investigations and disciplinary records relating to officer-induced firearms malfunctions. 5. Review UFRB cases. 6. Monitor new recruit and in-service firearms training.	In compliance since

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	C. Canine Policies and Procedures				
44	DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.	NA	NA	NA	
45	The policy shall limit off-leash canine deployments, searches and other instances where there is otherwise a significant risk of a canine bite to a suspect, to instances in which the suspect is wanted for a serious felony or is wanted for a misdemeanor and is reasonably suspected to be armed. MPD shall continue to require canine officers to have approval from an immediate supervisor (sergeant or higher) before the canine can be deployed. If the handler is unable to contact a canine unit supervisor, approval must be sought from a field supervisor before the canine can be deployed. The approving supervisor shall not serve as a canine handler in the deployment. MPD shall continue to issue a loud and clear announcement that a canine will be deployed and advise the suspect to surrender and remain still if approached by a canine.	1. Development and distribution of appropriate canine policy. 2. Proper training on canine policy. 3. Proper implementation of canine policy.	1. Development and DOJ approval of canine policies. 2. Distribution of canine policy to appropriate units. 3. Training fairly, accurately, and properly summarizes principles of Canine Policy. 4. ≥95% of canine unit deployments and bite incidents are consistent with principles and standards contained in the canine policy.	1. Canine policies and general orders. 2. Monitor in-service, new recruit, and canine training. 3. Review FIT I and FIT II investigations. 4. Review canine deployment reports in canine database. 5. Interview canine unit officers.	
46	The policy shall also require that in all circumstances where a canine is permitted to bite or apprehend a suspect by biting, the handler shall call off the dog at the first possible moment the canine can be safely released. Whenever a canine-related injury occurs, immediate medical treatment must be sought either by rescue ambulance, transportation to an emergency room, or admission to a hospital.	Same as ¶ 45.	Same as ¶ 45.	Same as ¶ 45.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	D. Oleoresin Capsicum Spray Policy				
47	MPD shall complete development of an Oleoresin Capsicum Spray (OC Spray) policy that complies with applicable law and current professional standards. The policy shall prohibit officers from using OC Spray unless The officer has legal cause to detain, take into legal custody or to maintain in custody a subject who is, at a minimum, actively resisting The officer. The policy shall prohibit officers from using OC Spray to disperse crowds or others unless those crowds or others are committing acts of public disobedience endangering public safety and security.	1. Development and distribution of appropriate OC spray policy. 2. Proper training on OC spray policy. 3. Proper implementation of OC spray policy.	1. Development and DOJ approval of OC spray policy. 2. Distribution of OC spray policy. 3. Training fairly, accurately, and appropriately summarizes principles of OC spray policy. 4. ≥95% of uses of OC spray by MPD officers are consistent with principles and standards contained in the OC spray policy.	1. Review OC spray policies and general orders. 2. Monitor in-service and new recruit training. 3. Review all FIT investigations. 4. Review samples of chain of command and OPR investigations.	
48	The policy shall provide that, absent exceptional circumstances, officers shall not use OC spray on children and elderly persons. The policy shall prohibit officers from using OC spray to prevent property damage except when its use meets the standard defined in paragraph 47 above.	Same as ¶ 47.	Same as ¶ 47.	Same as ¶ 47.	
49	The policy shall require officers to issue a verbal warning to the subject unless a warning would endanger the officer or others. The warning shall advise the subject that OC spray shall be used unless resistance ends. The policy shall require that prior to discharging the OC spray, officers permit a reasonable period of time to allow compliance with the warning, when feasible.	Same as ¶47.	Same as ¶ 47.	Same as ¶ 47.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
50	The policy shall require officers to aim OC spray only at a person's face and upper torso. The policy shall require officers to utilize only two, one second bursts and to do so from at least 3 feet away from the subject, unless exceptional circumstances require otherwise. The policy shall require that, absent exceptional circumstances, officers shall decontaminate every sprayed subject with cool water or a decontamination solution within 20 minutes after the application of the spray. Officers shall transport sprayed subjects to the hospital for treatment when they complain of continued effects after having been contaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by OC Spray. The policy shall prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia.	Same as ¶ 47.	Same as ¶ 47.	Same as ¶ 47.	
	E. Implementation Schedule				
51	MPD shall complete development of the policies and procedures referenced in this section within 30 days from the effective date of the agreement. In developing the final policies and procedures, MPD shall build upon the latest working drafts and correspondence exchanged between DOJ and MPD during the course of the investigation.	1. Development and distribution of required policies and procedures.	1. Development and DOJ approval of all required policies. 2. Distribution of all required policies.	1. MPD policies and general orders.	
52	Prior to implementation of the policies and procedures referenced in this section, MPD shall submit them to DOJ for approval. In the event MPD revises any of the policies, procedures, or forms referenced in this section during the term of this agreement, it shall obtain approval from DOJ prior to implementation of the revised policy or form.	1. Ensure future revisions of policies, procedures, forms are approved by DOJ.	1. MPD obtains DOJ approval of all required policies, procedures or forms.	1. Communications between DOJ and MPD.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	III. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW				
	A. Use of Force Reporting Policy and Use of Force Incident Report				
53	MPD shall complete development of a Use of Force Reporting policy and Use of Force Incident Report. The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person. The policy shall require supervisors, upon notification of a use of force or allegation of excessive force, to respond to the scene. In every incident involving deadly force, as defined by paragraph 15, a serious use of force, as defined by paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined by paragraph 35, the supervisor shall ensure that the Force Investigation Team (FIT) is immediately notified.	1. Development and distribution of use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy and appropriate completion of UFIR. 4. Notification of supervisors by officers 5. Supervisors report to incident scene. 6. Appropriate and timely notification of FIT. 7. Officers fill out UFIR as required by policy.	1. Development and distribution of DOJ-approved use of force reporting policy. 2. Development of UFIR. 3. Training on use of force reporting policy fairly, accurately, and appropriately summarizes principles of policy and properly instructs on completion of UFIR. 4. ≥95% of officers have received training on new use of force policy. 5. Proper and timely notification of supervisors occurs in ≥95% of cases where there is use of force or allegation of use of force. 6. Supervisors as soon as possible report to incident scene in ≥95% of cases in which they are notified of use of force. 7. FIT notified within one hour in ≥95% of cases involving use of deadly or serious force or allegation of use of such force. 8. UFIRs completed for ≥95% of use of force incidents. 9. ≥95% of UFIRs contain all required information	1. Review use of force policies and general orders. 2. Review UFIRs. 3. Monitor in-service and new recruit training. 4. Monitor supervisor training. 5. Review all FIT I and FIT II investigations. 6. Review samples of chain of command and OPR investigations. 7. Review all UFIRs. 8. Officer interviews regarding UFIRs completion. 9. Monitor FIT rollouts.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
54	MPD shall notify the Office of the United States Attorney for the District of Columbia (USAO) immediately, in no case later than the next business day, following a deadly use of force or a serious use of force by an MPD officer or following any use of force indicating potential criminal conduct by an officer.	1. Prompt notification of USAO by MPD in specified categories of cases.	1. Prompt notification (no later than next business day) in ≥95% of cases involving deadly use of force, serious use of force, or use of force indicating potential criminal misconduct by officer.	1. Review AUSA Notification Log. 2. Review all FIT I and FIT II investigative reports.	
55	Data captured on the reports described above in paragraph 53 shall be entered into MPD's Personnel Performance Management System (PPMS). Hard copies of these reports shall be maintained centrally by the Office of Professional Responsibility.	1. Entry of required information into PPMS. 2. Maintenance of hard copies of UFIRs at OPR.	1. Information from UFIRs accurately entered into PPMS with ≥95% level of accuracy and completeness. 2. Hard copies of ≥95% of all completed UFIR reports maintained in hard copy form at OPR.	1. Review PPMS data. 2. Review UFIRs. 3. Review FIT investigations.	
	B. Investigating Uses of Force and Misconduct Allegations				
	1. Use of Force Investigation				
56	MPD created the Force Investigation Team (FIT) to conduct fair, impartial and professional reviews of firearm discharges. The provisions in this section build upon the investigative techniques employed by FIT and expand FIT's role within MPD.	NA	NA	NA	
57	Within 60 days from the effective date of this Agreement, MPD shall fully implement its plan, subject to approval of DOJ, to reallocate responsibility for MPD criminal investigations of officer use of force from District Violent Crime Unit supervisors or other District supervisors to the Force Investigation Team (FIT). The plan shall include procedures to address the rights and responsibilities of officers and supervisors in carrying out their duties, including the preparation of both preliminary investigative files and complete investigative files.	1. Reallocation of criminal use of force investigations from Violent Crime Unit supervisors to FIT. 2. Development of procedures to address rights and responsibilities in carrying out use of force investigative responsibilities.	1. 100% transfer of criminal investigations of MPD officers in use of force cases to FIT. 2. Development and implementation of procedures that adequately address use of force investigative responsibilities of officers and supervisors, including preparation of investigative files. 3. DOJ approval of FIT policies, procedures, and manuals.	1. Review FIT investigations. 2. Review samples of chain of command and OPR use of force and misconduct investigations. 3. Review FIT manuals and other MPD policies and general orders relating to the investigation of uses of force. 4. Review FIT training materials.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
58	MPD shall consult with the USAO regarding the investigation of an incident involving deadly force, a serious use of force, or any other force indicating potential criminal misconduct by an officer. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 60. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.	1. Development and distribution of policies requiring consultation with the USAO in all investigations involving • use of deadly force • use of serious force • any other use of force reflecting potential criminal misconduct of an officer. 2. Development and distribution of policies regarding delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation.	1. Development and DOJ approval of policies requiring • consultation with USAO • delay of compelled interviews • continuation of investigations while case pending at USAO. 2. Prescribed consultation with USAO takes place in $\geq 95\%$ of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Aspects of investigations not related to appropriately delayed compelled statements proceed in $\geq 95\%$ of cases.	1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs. 5. Review disciplinary records.	
59	In every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.	NA	NA	NA	
60	MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents subject to the notice and consultation provisions described in paragraphs 58 and 59.	1. Development and distribution of policies regarding investigations involving potential criminal misconduct of an officer, including provisions regarding the notification of and consultation with USAO and delay of compelled statements by officers potentially subject to prosecution. 2. Development and distribution of policies barring compelled officer statements in such criminal investigations without USAO declination.	1. See ¶ 58 above.	1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review FIT investigations. 4. Interview AUSAs.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
61	FIT shall respond to the scene of every incident involving deadly force, a serious use of force, or any use of force indicating potential criminal misconduct by an officer. In each of these incidents, FIT shall conduct the investigation of the use of force. That investigation may result in criminal charges, administrative action or both. Investigators from the involved officers' District shall not conduct the investigation. Based upon its review of use of force incidents from throughout MPD, FIT shall forward policy and training recommendations to the Chief of Police or his designee.	1. FIT response to the scene of every incident involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. FIT investigation of all such incidents. 3. Investigators from involved officers' district barred from investigation. 4. FIT forwards policy and training recommendations to MPD.	1. ≥95% FIT response and investigation of incidents involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. Investigators from involved districts properly excluded from ≥95% of FIT investigations. 3. Periodic policy and training recommendations from FIT, at least annually. 4. MPD implementation of appropriate FIT policy and training recommendations.	1. Review FIT investigations. 2. Review FIT training materials re conduct of investigations involving deadly force, serious use of force, or use of force indicating potential criminal misconduct by an officer. 3. Review FIT policy and training recommendations. 4. Review MPD and IPS consideration and implementation of FIT policy and training recommendations.	
62	FIT shall complete its administrative use of force investigations within 90 days from the criminal declination described in paragraph 60, absent special circumstances which must be documented, and shall continue to conduct investigations in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent [with] MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.	1. FIT investigations complete within 90 days of declination, absent documented special circumstances. 2. FIT reports containing required documentation and information, including • Description of all uses of force identified during investigation • Summary and analysis of all relevant evidence • Proposed findings ○ Whether use of force consistent with MPD policy ○ Whether proper tactics employed; ○ Whether lesser force alternatives available.	1. ≥95% of FIT investigations completed within 90 days of declination, absent documented special circumstances. 2. ≥95% of FIT reports contain required documentation and information, as specifically set forth in this paragraph.	1. Review FIT investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
63	Within 120 days from the effective date of this Agreement, MPD shall train and assign a sufficient number of personnel to FIT to fulfill the requirements of this Agreement.	1. Sufficient training and staffing to accomplish FIT's responsibilities under the MOA.	1. ≥95% FIT response and investigation of incidents involving deadly force, a serious use of force, or use of force indicating potential criminal misconduct by an officer. 2. ≥95% of FIT investigations complete within 90 days of declination, absent documented special circumstances. 3. ≥95% of FIT reports containing required documentation and statement of proposed findings.	1. Review FIT investigations. 2. Review FIT training materials and sessions. 3. Review FIT policies and manuals. 4. Review personnel needs assessment.	
64	Chain of command district supervisors may investigate all use of force incidents except for those incidents involving a serious use of force, serious physical injury, or any use of force indicating potential criminal conduct by an officer. At the discretion of the Chief of Police or designee, any incident that may be investigated by chain of command district supervisors may be assigned for investigation to FIT or to chain of command supervisors from a district other than the district in which the incident occurred. No supervisor who was involved in the incident shall be responsible for the investigation of the incident.	1. Incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer shall not be investigated by chain of command. 2. Involved supervisors shall not be responsible for investigation of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer. 3. Chief of Police or designee shall have the discretion to assign any investigation to FIT or to the chain of command of a district other than the district in which the incident occurred.	1. ≤5% of investigations involving serious uses of force, serious physical injury, or potential criminal conduct by an officer conducted by chain of command. 2. ≤5% of investigations of incidents involving serious uses of force, serious physical injury, or potential criminal conduct by an officer participated in by supervisor involved in incident. 3. 100% of investigations directed by the Chief or designee to be removed from a district's chain of command are reassigned to FIT or another district.	1. Review samples of chain of command investigations. 2. Review all FIT investigations. 3. Review MPD investigations policies and general orders.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
65	Chain of command use of force investigations shall be completed within 90 days following the use of force incident, absent special circumstances which must be documented, and shall be conducted in accordance with paragraphs 81 and 82, below. At the conclusion of each use of force investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the use of force incident and any other uses of force identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the proposed findings. The proposed findings shall include the following: 1) a determination of whether the use of force is consistent and MPD policy and training; 2) a determination of whether proper tactics were employed; and 3) a determination whether lesser force alternatives were reasonably available.	- Chain of command investigations completed within 90 days, absent documented special circumstances. - Chain of Command investigation reports contain required documentation and information, including - Description of all uses of force identified during investigation - Summary and analysis of all relevant evidence - Proposed findings - Whether use of force consistent with MPD policy; - Whether proper tactics employed; - Whether lesser force alternatives available.	≥90% of chain of command investigations completed within 90 days of use of force or contain documented special circumstances justifying the delay. ≥95% of chain of command investigation reports contain required documentation and statement of proposed findings, as specifically set forth in this paragraph.	Review samples of chain of command investigations.	
66	Upon completion of a chain of command use of force investigation, the investigator shall forward the investigation to the Unit Commander, who shall review the investigation to ensure that it is complete and that the findings are supported by the evidence. The Unit Commander shall order additional investigation when necessary. When the Unit Commander determines the investigation is complete and the findings are supported by the evidence, the investigation file shall be forwarded to the Use of Force Review Board (UFRB). Whenever there is evidence of criminal wrongdoing, the Unit Commander shall suspend the investigation immediately and notify FIT and the USAO.	- Completed chain of command investigations forwarded to Unit Commanders. - Unit Commanders review chain of command investigations for completeness and adequacy of the evidence. - Unit Commanders order additional investigation where necessary. - Unit Commanders forward completed investigations to FIT. - Unit Commanders suspend investigations indicating criminal wrongdoing and refer such cases to FIT and USAO.	≥95% of chain of command cases processed in accordance with this paragraph. - FIT and USAO notified of ≥95% of chain of command cases involving potential criminal wrongdoing.	- Review samples of chain of command investigations. - Review USAO logs. - Review UFRB docket and dispositions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
67	Within 60 days from the effective date of this Agreement, MPD shall complete the development and implementation of a policy to enhance the UFRB, subject to approval by DOJ. The policy shall require the UFRB to conduct timely reviews of all use of force investigations. The policy shall set forth the membership of the UFRB and establish timelines for UFRB review of use of force investigations. The policy shall authorize the UFRB to recommend discipline for violations of MPD's policies and training. The policy shall authorize the UFRB to direct District supervisors to take non-disciplinary action to enable or encourage an officer to modify his or her performance. The policy shall require the UFRB to act as a quality control mechanism for all use of force investigations, with the responsibility to assign to FIT, or return to the investigating unit, all incomplete or mishandled use of force investigations. The policy shall provide the UFRB the authority and responsibility to recommend to the Chief of Police, or his designee, investigative protocols and standards for all force investigations. The policy shall require the UFRB to conduct annual reviews of all use of force cases examined to detect patterns/problems and to issue a report to the Chief of Police with findings and recommendations.	1. Development of UFRB policy that: • Requires timely reviews of all use of force investigations. • Sets forth UFRB membership and establishes timelines for reviews. • Requires UFRB to perform quality control for use of force investigations. • Requires UFRB annual reviews and reports. 2. UFRB acting in conformity with these provisions, including • Performing timely reviews. • Serving quality control function in use of force investigations. 3. UFRB conducts annual reviews of all use of force cases.	1. Development and implementation of UFRB policy with required provisions as set forth in this paragraph. 2. UFRB reviews use of force investigations within 90 days of completion of investigations. 3. UFRB files reflect quality control function. 4. UFRB recommends meaningful investigative protocols consistent with best police practices. 5. UFRB's annual reviews reflect meaningful effort to • detect patterns and problems • formulate findings and recommendations.	1. Review UFRB policies and procedures. 2. Review UFRB docket and case index. 3. Review samples of UFRB dispositions. 4. Monitor UFRB hearings. 5. Review UFRB annual reports.	
	2. Investigations of Misconduct Allegations				
68	The Office of Professional Responsibility shall be responsible for the investigation of allegations of criminal misconduct set forth in the categories in paragraph 72, (a) through (i) below. Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to allocate sufficient personnel and establish procedures to accomplish this new responsibility.	1. MPD staffing plan and procedures for OPR misconduct investigations.	1. Development and implementation of staffing plan and procedures for OPR misconduct investigations. 2. OPR conducts or supervises timely investigations of allegations of criminal misconduct	1. Review OPR policies and procedures. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
69	MPD shall notify the USAO immediately, in no case later than the next business day, following the receipt or discovery of any allegations of criminal misconduct referred to in paragraphs 72 and 73. In every incident involving allegations of criminal misconduct referred to in paragraphs 72 and 73, the USAO shall notify and consult with the Chief of Police or the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.	1. Prompt notification of USAO by MPD in specified categories of cases.	1. Prompt notification (no later than next business day) in ≥95% of cases involving potential criminal misconduct by officer.	1. Review USAO Notification Log 2. Review FIT investigations 3. Review samples of misconduct investigations. 4. Review OPR personnel needs assessment.	
70	MPD shall consult with the USAO regarding the investigation of an incident involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73. If the USAO indicates a desire to proceed criminally based on the on-going consultations with MPD, or MPD requests criminal prosecutions in these incidents, any compelled interview of the subject officers shall be delayed, as described in paragraph 71. However, in order to ensure the collection of all relevant information, all other aspects of the investigation shall proceed. The USAO shall respond to a written request by MPD for charges, declination, or prosecutorial opinion within three business days, by either filing charges, providing a letter of declination, or indicating the USAO's intention to continue further criminal investigation.	1. Development and distribution of policies requiring consultation with the USAO in all investigations involving specified allegations of criminal misconduct 2. Development and distribution of policies requiring delay of compelled statements by officers potentially subject to prosecution. 3. Development and distribution of policies requiring continuation of other aspects of investigation.	1. Development and DOJ approval of policies requiring • consultation with USAO • delay of compelled interviews • continuing of investigation while case pending at USAO. 2. Prescribed consultation with USAO takes place in >95% of cases. 3. Delay of compelled statements takes place in 100% of cases in which USAO or MPD seeks to have case pursued criminally. 4. Remainder of investigation proceeds in >95% of cases in which certain compelled statements are delayed.	1. Review MPD policies and general orders. 2. Review USAO notification log. 3. Review samples of misconduct investigations. 4. Discussions with USAO.	
71	MPD and the USAO jointly acknowledge the need to continue consultation throughout the course of an investigation; and recognize the investigative process may ultimately proceed to an administrative conclusion and/or criminal charges. MPD agrees that it will not compel or order a subject officer to make a statement if the USAO has not yet issued a written criminal declination, for all incidents involving allegations of criminal misconduct in the categories of matters described in paragraphs 72 and 73.	Same as ¶ 70.	Same as ¶ 70.	Same as ¶ 70.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
72	Within 60 days from the date of this Agreement, MPD shall develop a plan, subject to approval of DOJ, to reallocate responsibility for MPD administrative complaint investigations of misconduct complaints from chain-of-command District supervisors to OPR with respect to the following:	1. Development and approval of MPD plan re allocation of responsibility for misconduct investigations between the chain of command and OPR.	1. Development and implementation of plan with required provisions. 2. OPR investigations opened in $\geq 95\%$ of the cases described in ¶¶ 72(a)-(j).	1. Review MPD policies and procedures defining jurisdiction over misconduct investigations. 2. Review Corporation Counsel dockets. 3. Review JSOC logs. 4. Review samples of OPR and chain of command misconduct investigations.	
a	all referrals pursuant to paragraphs 76 and 77;				
b	all civil suits alleging any misconduct by an officer while acting in an official capacity;				
c	all civil suits against an officer for off-duty conduct (while not acting in an official capacity) that alleges physical violence, threats of physical violence, or racial bias;				
d	all criminal arrests of or filing of criminal charges against an officer;				
e	all allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;				
f	all allegations of unlawful search and stops;				
g	all allegations of unlawful seizure (including false imprisonment and false arrest);				
h	any act of retaliation or retribution against an officer or person; and				
i	all allegations of strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose; and				
j	OPR shall assign for investigation outside of the District Chain of Command all allegations of misconduct related to the types of misconduct covered by “a” to i” of this paragraph; and	1. OPR shall not refer misconduct referred to in 72(a)-(i) to chain of command.	1. $\geq 95\%$ of specified cases are investigated by OPR rather than chain of command.	1. Review samples of misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	OPR shall assign to FIT all allegations of excessive force by an officer involving a use of deadly force, as defined in paragraph 15, a serious use of force, as defined in paragraph 33, or any use of force indicating potential criminal conduct by an officer, as defined in paragraph 35.	1. OPR refers to FIT allegations of excessive force involving use of deadly force, use of serious force or use of force indicating criminal conduct.	1. 100% of cases involving allegations of excessive force use of deadly force, use of serious force or use of force indicating criminal conduct are investigated by FIT.	1. Review samples of OPR and chain of command use of force and misconduct investigations. 2. Review all FIT investigations. 3. Review UFRB dispositions. 4. Monitor UFRB hearings.	
73	OPR shall also assign for administrative investigation outside of the District chain of command the following:	1. Investigations by entity other than chain of command in cases where: a. a person is charged with resisting arrest and the prosecutor or court dismisses the charge based upon officer credibility b. MPD receives written notification that (i) evidence is suppressed for a constitutional violation, or (ii) other judicial finding of misconduct. 2. MPD makes written requests to prosecutors' offices for notification of these cases.	1. ≥95% of specified cases assigned for investigation outside the chain of command. 2. Record maintained of MPD written requests for notice from USAO.	1. Review samples of chain of command and OPR investigations. 2. Review MPD written requests for notice from USAO.	
a	all incidents in which both (i) a person is charged by an officer with assault on a police officer, resisting arrest, or disorderly conduct, and (ii) the prosecutor's office notifies MPD either that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility;				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
b	all incidents in which MPD has received written notification from a prosecuting agency in a criminal case that there has been (i) an order suppressing evidence because of any constitutional violation involving potential misconduct by an MPD officer, or (ii) any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or District of Columbia judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. MPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred.				
74	All administrative investigations of misconduct allegations conducted pursuant to paragraphs 72 and 73 shall be completed within 90 days from MPD receiving the complaint, or within 90 days from the criminal declination described in paragraph 71, where applicable, absent special circumstances which must be documented. At the conclusion of each such investigation, the investigator shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the misconduct incident and any other misconduct identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.	1. OPR and chain of command investigations completed within 90 days of complaint or declination, absent documented special circumstances. 2. OPR and chain of command investigative reports contain required documentation, including • description of all misconduct identified during investigation • summary and analysis of all relevant evidence • proposed findings and analysis.	1. ≥90% of OPR investigations complete within 90 days of declination, absent documented special circumstances. 2. ≥95% of OPR reports containing required documentation and information, as specifically set forth in this paragraph.	1. Review samples of chain of command and OPR investigations.	
75	The Corporation Counsel's Office shall notify OPR whenever a person files a civil claim against the City alleging misconduct by an officer or other employee of MPD.	1. Corporation counsel notification of OPR of civil suits alleging MPD employee misconduct.	1. ≥95% notification of OPR of civil suits alleging MPD employee misconduct.	1. Review Corporation Counsel case logs. 2. Review OPR case logs. 3. Review samples of OPR and chain of command misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
76	MPD shall continue to require all officers promptly to notify MPD of the following: the officer is arrested or criminally charged for any conduct; the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or the officer is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges any of the following: physical violence, threats of physical violence, racial bias, dishonesty, or fraud by the officer. Officers shall report this information either directly to OPR or to a supervisor who shall report the information to OPR.	1. Development and distribution of policy requiring prompt notification by officers of specified occurrences.	1. Development and DOJ approval of policies or general orders requiring prompt notification by officers of delineated occurrences. 2. MPD documentation of proper notifications in $\geq 95\%$ of such cases	1. Review policies, procedures, and general orders. 2. Review internal records related to notifications from officers. 3. Review training regarding these reporting obligations.	
77	MPD shall require officers to report to MPD without delay: any conduct by other officers that reasonably appears to constitute (a) an excessive use of force or improper threat of force; (b) a false arrest or filing of false charges; (c) an unlawful search or seizure; (d) unlawful discrimination; (e) an intentional failure to complete use of force reports required by MPD policies and in accordance with procedures; (f) an act of retaliation for complying with any MPD policy or procedure; or (g) an intentional provision of false information in an MPD or OCCR investigation or in any official report, log, or electronic transmittal of information. Officers shall report such alleged misconduct by fellow officers either directly to OPR or to a supervisor who shall report the information to OPR. This requirement applies to all officers, including supervisors and managers who learn of evidence of possible misconduct through their review of an officer's work. Failure to voluntarily report as described in this paragraph shall be an offense subject to discipline if sustained.	1. Development and distribution of policy requiring prompt notification by officers of suspected officer misconduct.	1. Development and DOJ approval of policy or general order requiring prompt notification by officers of suspected officer misconduct. 2. Distribution of policy or general order regarding reporting of suspected officer misconduct. 3. Implementation of new recruit and in-service training regarding the reporting of suspected officer misconduct. 4. Such acts of misconduct reported in $\geq 95\%$ of cases in which evidence comes to officer or supervisor's attention.	1. Review FIT investigations. 2. Review samples of misconduct investigations. 3. Review citizen complaints and OCCR investigations. 4. Review civil suits filed against MPD officers. 5. Review new recruit and in-service training regarding these reporting obligations. 6. Review disciplinary files.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
78	The City shall in fiscal year 2002 provide all necessary funds to fully implement paragraphs 68 and 74. Misconduct investigation responsibilities shall be transitioned as positions are filled. Prior to positions being filled, investigation responsibilities shall be transitioned commensurate with available resources. Positions shall be filled and investigation responsibility transition shall be completed by December 31, 2002.	1. City must provide all available funds to permit OPR to conduct all investigations of specified criminal misconduct and to complete such investigations within 90 days. 2. Transition of investigations to OPR completed by December 31, 2002.	1. Transition of investigations to OPR completed by December 31, 2002 2. Devotion of resources sufficient for OPR to conduct and complete specified investigations within 90 days. 3. ≥95% of OPR investigations complete within 90 days of declination, absent documented special circumstances.	1. Review OPR staffing levels. 2. Review OPR needs assessments. 3. Interviews with OPR investigators.	
79	OPR shall continue to review all misconduct complaints as they are received. OPR shall determine whether a misconduct complaint meets the criteria (set forth in paragraphs 72 and 73) for being assigned for investigation outside of the District Chain of Command.	1. OPR review misconduct allegations and determine whether assignment to chain of command appropriate.	1. OPR review of all misconduct complaints received. 2. ≥95% of cases referred to appropriate investigative body.	1. Review OPR case assignment documents. 2. Review OPR case assignment policies and procedures. 3. Review samples of misconduct investigations.	
80	MPD shall prohibit any officer who has a potential conflict of interest related to a pending misconduct investigation from participating in any way in the conduct or review of that investigation.	1. Development and distribution of policy prohibiting officers with a potential conflict from participating in the investigation.	1. Development and DOJ approval of policy or general order prohibiting officers with a potential conflict of interest from participating in the investigation. 2. ≥95% of misconduct investigations reflect no conflicts of interest.	1. Review policies, general orders, and manuals. 2. Review samples of misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
81	In conducting administrative misconduct investigations (whether conducted by FIT, Chain of Command, or OPR, following a criminal declination, where applicable) MPD shall, subject to and in conformance with applicable law, at a minimum:	1. MPD investigations shall involve, at a minimum, the items specified in ¶¶ 81(a)-(g).	1. ≥95% of misconduct investigations follow procedures specified in ¶¶ 81(a)-(g).	1. Review investigative policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of OPR and chain of command misconduct investigations. 4. Interviews with citizen complainants.	
a	tape record or videotape interviews of complainants, involved officers, and material witnesses in investigations involving a serious use of force or serious physical injury (if a complainant or non-officer witness refuses to be tape recorded or videotaped, then MPD shall prepare a written narrative of the statement to be signed by the complainant or non-officer witness);				
b	whenever practicable and appropriate, interview complainants and witnesses at sites and times convenient for them, including at their residences or places of business;				
c	prohibit group interviews;				
d	notify the supervisors of the involved officers of the investigation, as appropriate;				
e	interview all appropriate MPD officers, including supervisors;				
f	collect, preserve, and analyze all appropriate evidence, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate; and				
g	identify and report in writing all inconsistencies in officer and witness interview statements gathered during the investigation.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
82	In conducting misconduct investigations, MPD shall continue to assess the propriety of all officer conduct during the incident in which the alleged misconduct occurred. If during the course of an investigation the investigator has reason to believe that misconduct occurred other than that alleged, the investigator also shall investigate the additional potential misconduct to its logical conclusion.	1. Development and distribution of policy requiring that evidence of misconduct other than that alleged be investigated.	1. Development and DOJ approval of policy requiring that evidence of misconduct other than the allegation that prompted the investigation also be investigated. 2. In ≥95% of cases indicating evidence of unalleged misconduct, such misconduct is investigated.	1. Review policies, general orders and manuals. 2. Review FIT investigations. 3. Review samples of misconduct investigations. 4. Review OCCR investigations.	
83	Within 120 days from the effective date of this Agreement, MPD shall develop a manual, subject to approval by DOJ, for conducting all MPD misconduct investigations. The manual shall include timelines and shall provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.	1. Development and distribution of manual, approved by DOJ, regarding conduct of misconduct investigations including • Timelines • Investigative templates • Guidance re witness interviews • Guidance re investigative reports	1. Development and distribution of DOJ approved misconduct investigations manual. 2. In-service training that appropriately and completely trains MPD personnel regarding the Misconduct Investigations Manual.	1. Review misconduct investigations manual, including related templates. 2. Monitor investigator training.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
84	Within 90 days from the effective date of this Agreement, MPD shall develop a plan, subject to approval by DOJ, to ensure that all MPD investigators (whether conducting use of force investigations or misconduct investigations) receive adequate training to enable them to carry out their duties. All MPD investigators shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism. MPD shall provide specialized training to investigators who conduct shooting investigation. The training shall occur within 180 days of the approval of the plan.	1. Development and distribution of a DOJ approved plan for training investigators including in the following areas: • use of force and use of force reporting; • canine deployment; • transporting individuals in custody; • restraints, arrests; • report writing; • investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; • cultural sensitivity; • ethics; • integrity; and • professionalism.	1. Development and distribution of a DOJ approved plan for investigator training. 2. Development of in-service training and re-training programs focusing on use of force investigations, including in the delineated areas. 3. Certification of attendance at investigative training on at least annual basis by $\geq 95\%$ of all MPD officers and supervisors who conduct misconduct and use of force investigators.	1. Review of in-service training programs and curricular materials. 2. Review in-service training attendance records. 3. Review investigator training records.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	IV. RECEIPT, INVESTIGATION, AND REVIEW OF MISCONDUCT ALLEGATIONS				
	A. Coordination and Cooperation Between MPD and OCCR				
85	Within 60 days from the effective date of this Agreement, the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB).	1. Development of a plan, in consultation with DOJ, that delineates the roles and responsibilities of OCCR and MPD in the receipt, investigation and review of complaints.	1. Development and implementation of a DOJ approved written policy that, at a minimum, specifies: • each agency's responsibility for receiving, recording, investigating and tracking complaints; • each agency's responsibility for community outreach and education; • exchange of information and referrals; • role and responsibilities of MPD officials on the CCRB. 2. Operations and activities of MPD and OCCR consistent with written plan. 3. ≥95% of cases handled consistently with allocation of roles and responsibilities specified in written plan.	1. Review MPD policies, general orders, and manuals related to conduct of misconduct investigations. 2. Review OCCR policies and manuals related to the investigation of citizen complaints. 3. Review agreements and MOUs between MPD and OCCR. 4. Review samples of MPD misconduct investigations. 5. Review samples of OCCR investigations.	
86	The City shall provide OCCR sufficient qualified staff, funds, and resources to perform the functions required by this Agreement and by District of Columbia Law 12-208 creating OCCR, including the conduct of timely, thorough, and independent investigations of alleged police misconduct; the conduct of mediation; the conduct of hearings; and the operation of a professional office.	1. Sufficient resources to OCCR to conduct timely, thorough and independent misconduct investigations, mediation, hearings, and operation of a professional office.	1. ≥90% OCCR investigations completed within 135 days absent documented special circumstances. 2. Development and implementation by OCCR of systems and procedures for conducting investigations, mediation, and hearings.	1. Review OCCR policies and procedures. 2. Review samples of OCCR investigations. 3. Review OCCR docket. 4. Monitor OCCR mediation and hearings. 5. Review CCRB decisions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	B. Public Information and Outreach				
87	MPD shall continue to require all officers to provide their name and identification number to any person who requests it.	1. All officers provide name and identification numbers to persons who request the information	1. Officers provide names and identification numbers in ≥95% of instances in which request is made.	1. Review citizen complaints. 2. Review chain of command use of force and misconduct investigations. 3. Interviews with MPD officers. 4. Monitoring of citizen complaint process.	
88	Within 90 days of this agreement, the City and MPD shall develop and implement an effective program to inform persons that they may make complaints regarding the performance of any officer. This program shall, at minimum, include the development and distribution of complaint forms, fact sheets, informational posters, and public service announcements describing both the OCCR and MPD complaint processes. The City shall make such materials available in English, Spanish, and other appropriate languages.	1. Development and implementation of effective program to inform persons of right to make complaints regarding officer performance. 2. Program includes distribution of complaint forms, facts sheets, informational posters, and public service announcements describing OCCR and MPD complaint processes. 3. Such materials are available in English, Spanish, and other appropriate languages.	1. Development and distribution of complaint forms, fact sheets, informational posters, and public service announcements at ≥95% of MPD facilities, including HQs, District Stations, District substations, libraries, the MPD Web site, etc. 2. A placard (which includes the phone number of MPD's Office of Professional Responsibility) posted at each of above-listed facilities and describes the complaint process. 3. Materials available at above locations in English, Spanish, and other appropriate languages. 4. Materials of sufficient quality to inform persons of their right to make complaints against police officers and processes for doing so. 5. ≥95% of MPD officers understand the complaint process.	1. Review MPD and OCCR complaint forms, facts sheets, informational posters, public service announcements. 2. Visits to HQs, District facilities, District substations, libraries, and MPD Web site. 3. Monitor in-service training. 4. Interview MPD officers. 5. Discussions with MPD's public relations office. 6. Monitor community outreach meetings.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
89	Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD Headquarters, all MPD District stations and sub-stations, libraries, the internet, and upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility.	Same as ¶ 89.	Same as ¶89.	Same as ¶ 89.	
90	MPD shall require all officers to carry informational brochures and complaint forms in their vehicles at all times while on duty. MPD shall require all officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. MPD shall prohibit officers from discouraging any person from making a complaint.	1. All officers required to carry informational brochures and complaint forms in their vehicles at all times while on duty. 2. All officers required to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. MPD prohibits officers from discouraging persons who wish to make a complaint.	1. ≥95% officers carry informational brochures and complaint forms in vehicles while on duty. 2. Development and implementation of MPD policy requiring officers to inform persons who object to an officer's conduct that persons have a right to make a complaint. 3. Development and implementation of MPD policy prohibiting officers from discouraging persons who wish to make a complaint.	1. Review citizen complaints. 2. Review sample of OCCR investigations. 3. Review sample of chain of command use of force and misconduct investigations. 3. Discussions with MPD officers. 4. Review policies, training curricula and lesson plans. 5. Conduct complaint process testing. 6. Interview citizen complainants.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
91	For the term of this agreement, MPD shall conduct a Community Outreach and Public Information program for each MPD District. The program shall require the following:	1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b.	1. Establishment of a Community Outreach and Public Information program for each MPD District with all of the requirements set forth in ¶¶ 91a-b.	1. Review policies and publications related to the Community Outreach and Public Information programs in each of the MPD districts. 2. Monitor community outreach open meetings with the public. 3. Review records documenting the convening of such meetings.	
a	to continue at least one open meeting per quarter in each of the patrol service areas for the first year of the Agreement, and one meeting in each patrol service area semi-annually thereafter, to inform the public about the provisions of this Agreement, and the various methods of filing a complaint against an officer. At least one week before such meetings the City shall publish notice of the meeting (i) in public areas, including libraries, schools, grocery stores, community centers; (ii) taking into account the diversity in language and ethnicity of the area's residents; (iii) on the City and MPD website; and (iv) in the primary languages spoken by the communities located in such area.	1. At least one open meeting per quarter in each of the patrol service areas during the first year of the MOA. 2. At least one meeting in each patrol service area semi-annually thereafter to advise the public about the provisions of the MOA and the methods of filing a complaint. 3. Publication of notice of such meetings at least one week in advance made in the manner described by ¶ 91a.	1. Semi-annual public meetings in ≥95% of the patrol service areas held. 2. ≥95% of public meetings preceded by at least one week notice and made in the manner and locations described by ¶ 91.a, including taking into account language and ethnicity of area residents.	Same as ¶ 91.	
b	the open public meetings described above shall continue to include presentations and information on MPD and MPD operations in order to enhance interaction between officers and community members in daily policing activities.	1. Open public meetings include presentations and information on MPD and MPD operations to enhance interaction between officers and community members.	1. ≥95% of semi-annual public meetings in each of the patrol service areas include information re MPD and MPD operations.	Same as ¶ 91.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	C. Receipt of Complaints				
92	Within 90 days from the effective date of this Agreement, MPD shall make it possible for persons to initiate complaints with MPD in writing or verbally, in person, by mail, by telephone (or TDD), facsimile transmission, or by electronic mail. MPD shall accept and investigate anonymous complaints and complaints filed by persons other than the alleged victim of misconduct. MPD shall ask anonymous and third-party complainants for corroborating evidence. MPD shall not require that a complaint be submitted in writing or on an official complaint form to initiate an investigation.	1. Within 90 days, MPD able to receive citizen complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail. 2. MPD accepts and investigates anonymous complaints and complaints by persons other than the alleged victim. 3. MPD asks anonymous and third-party complainants for corroborating evidence. 4. MPD does not require complaints be in writing or on an official complaint form.	1. Establishment of citizen complaint infrastructure to receive complaints in writing, in person, by mail, by telephone (or TDD), by fax, or by e-mail. 2. Development and implementation of a DOJ approved complaint policy providing that MPD accept anonymous complaints and complaints by persons other than the alleged victim; ask anonymous and third-party complainants for corroborating evidence; and not require complaints be in writing or on an official complaint form.	1. Review MPD policies and procedures. 2. Conduct citizen complaint surveys. 3. Conduct citizen complaint process testing.	
93	Within 120 days from the effective date of this Agreement, the City shall institute a 24-hour toll-free telephone hotline for persons to call to make a complaint regarding officer conduct. The hotline shall be operated by OCCR. The City and MPD shall publicize the hotline telephone number on informational materials and complaint forms. The City shall tape record all conversations on this hotline and shall notify all persons calling the hotline of the tape recording. The City shall develop an auditing procedure to assure that callers are being treated with appropriate courtesy and respect, that complainants are not being discouraged from making complaints, and that all necessary information about each complaint is being obtained. This procedure shall include monthly reviews of a random sample of the tape recordings.	1. Within 120 days, implementation of a 24-hour toll-free hotline for receipt of complaints regarding officer conduct. 2. Hotline operated by OCCR. 3. Hotline calls tape recorded and persons calling the hotline notified of tape recording. 4. Development of auditing procedure to ensure calls are handled in the manner prescribed in ¶ 93, including monthly reviews of random samplings of tape recordings.	1. Implementation of citizen complaint hotline operated by OCCR. 2. ≥95% of hotline calls tape recorded and tape recording disclosed to callers. 3. Development and implementation of auditing procedure, including monthly reviews of random samplings of tape recordings.	1. Conduct citizen complaint surveys. 2. Conduct hotline testing. 3. Review hotline tape recordings. 4. Review OCCR hotline auditing procedures and monthly hotline reviews.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
94	Within 60 days from the effective date of this Agreement, MPD's Office of Professional Responsibility (OPR) shall be responsible for receiving all complaints filed directly with MPD. MPD shall assign and record a control system number for each complaint immediately. All complaints made at MPD locations other than OPR shall be forwarded to OPR within 24 hours, or the next business day. Within 24 hours, or the next business day OPR shall notify OCCR of any complaint alleging any of the following: harassment; use of unnecessary or excessive force; use of insulting, demeaning, or humiliating language; or discriminatory treatment.	1. Within 60 days, OPR responsible for receiving all complaints filed directly with MPD. 2. Immediate assignment of a control system number for each complaint. 3. Complaints submitted to all MPD locations forwarded to OPR within 24 hours or by the next business day. 4. Within 24 hours or by the next business day, OPR shall notify OCCR of complaints alleging: harassment; unnecessary or excessive use of force; use of insulting, demeaning or humiliating language; and discriminatory treatment.	1. Development and implementation of policies and procedures related to OPR's handling of complaints filed directly with MPD. 2. ≥95% of complaints filed with MPD immediately assigned CS number. 3. ≥95% of complaints submitted to MPD forwarded to OPR within 24 hours or by the next business day. 4. OCCR notified of ≥95% cases involving complaints involving allegations described in ¶ 94 within 24 hours or by the next business day.	1. Review OPR policies and procedures. 2. Monitor OPR complaint receipt processes. 3. Review OPR and OCCR complaint files and records. 4. Review samples of misconduct investigations. 5. Conduct complaint process testing.	
95	The City shall continue to locate OCCR offices separate from any building occupied by other MPD personnel.	1. OCCR offices located separately from any building occupied by other MPD personnel..	1. OCCR offices maintained separately from buildings occupied by MPD personnel.	1. Visit OCCR offices.	
	D. OCCR Misconduct Investigations				
96	Within 90 days from the effective date of this Agreement, the City shall develop and implement a plan, in timely consultation with DOJ and the Monitor, to ensure that the investigative staff of OCCR receive adequate training to enable them to carry out their duties. OCCR investigative staff shall receive training and re-training in MPD policies and procedures, including, but not limited to, use of force and use of force reporting, canine deployment, transporting individuals in custody, restraints, arrests, report writing; investigative and interview techniques, including examining and interrogating witnesses, and collecting and preserving evidence; cultural sensitivity; ethics; integrity; and professionalism.	1. Within 90 days, development and implementation of a plan regarding the training of OCCR investigative staff. 2. OCCR staff shall receive training in the areas described in ¶ 96.	1. Timely development and implementation of a plan regarding the training of OCCR investigative staff. 2. ≥95% of OCCR investigative staff fully trained in areas described in ¶ 96.	1. Review policies, procedures and lesson plans related to training of OCCR investigators. 2. Monitor OCCR training. 3. Review personnel files of OCCR investigators. 4. Review attendance roster for OCCR training. 5. Review MOU.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
97	Within 90 days from the effective date of this Agreement, the City shall develop a manual, in timely consultation with DOJ, for conducting all OCCR complaint investigations. The manual shall include timelines and provide investigative templates to assist investigators in gathering evidence, conducting witness interviews, and preparing investigative reports.	1. Within 90 days, development of a manual regarding the conduct of OCCR complaint investigations that includes the items described in ¶ 97.	1. Timely development of a DOJ approved manual regarding OCCR complaint investigations including all of the items described in ¶ 97	1. Review OCCR complaint investigations manual.	
	E. Evaluating and Resolving MPD Misconduct Allegations				
98	MPD shall continue to make findings based on a “preponderance of the evidence” standard. Within 90 days, MPD shall develop a policy and training implementing this standard.	1. Development of policy and training implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations.	1. Development of DOJ approved policy implementing the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 2. MPD investigators trained to use the “preponderance of the evidence” standard applicable to MPD misconduct investigations. 3. MPD investigators make findings based on “preponderance of the evidence” standard.	1. Review MPD policies, procedures, and manuals related to misconduct investigations. 2. Review training curricula and lesson plans related to misconduct investigations. 3. Review of samples of MPD misconduct investigations.	
99	In each misconduct investigation, MPD shall consider all relevant evidence including circumstantial, direct and physical evidence, as appropriate, and make credibility determinations, if feasible. There shall be no automatic preference for an officer’s statement over a person’s statement. MPD shall make efforts to resolve inconsistent statements between witnesses.	1. MPD misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. MPD investigators do not give automatic preference to an officer’s statement over a person’s statement. 3. MPD investigators make efforts to resolve inconsistent statements between witnesses.	1. ≥95% of misconduct investigations consider all relevant evidence and make credibility determinations if feasible. 2. ≥95% of misconduct investigations do not involve automatic preference of officer’s statement over citizen’s statement. 3. ≥95% of misconduct investigations demonstrate, where appropriate, effort to resolve inconsistent statements between witnesses.	1. Review samples of misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
100	MPD shall resolve each allegation in a misconduct investigation by making one of the following dispositions:	1. MPD resolves each allegation of misconduct by making one of the dispositions defined in ¶¶ 100a-d.	1. ≥95% of misconduct investigations resolved with a disposition of unfounded, sustained, insufficient facts, or exonerated.	1. Review samples of misconduct investigations.	
a	“Unfounded,” where the investigation determined no facts to support that the incident complained of actually occurred;				
b	“Sustained,” where the person’s allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;				
c	“Insufficient Facts,” where there are insufficient facts to decide whether the alleged misconduct occurred;				
d	“Exonerated,” where a preponderance of the evidence shows that the alleged conduct did occur but did not violate MPD policies, procedures, or training.				
101	MPD shall not close any misconduct investigation without rendering one of the dispositions identified above. [100 a. “unfounded” b. “sustained” c. “insufficient facts” d. “exonerated.”] Withdrawal of a complaint or unavailability of the complainant or the victim of the alleged misconduct to make a statement shall not be a basis for closing for an investigation without further attempt at investigation. MPD shall investigate such matters to the extent reasonably possible to determine whether or not the allegations can be resolved.	1. MPD shall not close any misconduct investigation without rendering one of the dispositions identified in ¶¶ 100a-d. 2. Withdrawal of complaint or unavailability of complainant or victim shall not be a basis for closing an investigation without further reasonable attempt at investigation to determine whether allegations can be resolved.	1. ≥95% of closed investigations include disposition of unfounded, sustained, insufficient facts or exonerated. 2. ≥95% of closed cases involving withdrawal of complaint or unavailability of complainant demonstrate further reasonable investigation and attempt to resolve allegations.	1. Review sample of misconduct investigations. 2. Interviews with citizen complainants.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
102	At the conclusion of each misconduct investigation, the individual responsible for the investigation shall prepare a report on the investigation, which shall be made a part of the investigation file. The report shall include a description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation; and proposed findings and analysis supporting the findings.	- At the conclusion of each misconduct investigation, the responsible individual shall prepare a report that shall be included in the investigation file. - The final investigation report shall contain: - A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; - A summary and analysis of all relevant evidence gathered during the investigation; and - Proposed findings and analysis supporting the findings.	≥95% of completed investigations include final report containing: - A description of the alleged misconduct and any other misconduct issues identified during the course of the investigation; - A summary and analysis of all relevant evidence gathered during the investigation; and - Proposed findings and analysis supporting the findings.	Review sample of misconduct investigations.	
103	MPD shall complete all misconduct investigations within 90 days after receiving the allegations unless the complexity of the case dictates otherwise, or within 90 days from a criminal declination, where applicable.	All misconduct investigations shall be completed within 90 days after receipt of the allegations or from a criminal declination, unless complexity of the case dictates otherwise.	≥90% of misconduct investigations completed within 90 days after receipt of the allegations or from a criminal declination, unless file indicates complexity of case dictated otherwise.	Review sample of misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
104	MPD shall require its Unit Commanders to evaluate all misconduct investigation to identify underlying problems and training needs. After such evaluations, the Unit Commander shall implement appropriate non-disciplinary actions, if any, or make a recommendation to the proper MPD entity to implement such actions. Sustained misconduct allegations will be handled pursuant to the disciplinary policy described in paragraph 105.	1. Unit Commanders shall evaluate all misconduct investigations to identify underlying problems and training needs. 2. After such evaluations, Unit Commanders shall implement or recommend appropriate non-disciplinary actions, if any. 3. Sustained misconduct allegations shall be handled pursuant to the disciplinary procedures described in ¶ 105.	1. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to evaluate all misconduct investigations to identify underlying problems and training needs. 2. Development and implementation of DOJ approved policies and procedures requiring Unit Commanders to implement or recommend appropriate non-disciplinary actions following evaluations of misconduct investigations. 3. Development and implementation of disciplinary policies and procedures related to sustained misconduct allegations that are consistent with ¶ 105.	1. Review policies and procedures related to Unit Commander evaluation of misconduct investigations. 2. Review Unit Commander evaluations of misconduct investigations. 3. Review Unit Commander directives and referrals regarding non-disciplinary actions taken in response to evaluations of misconduct investigations. 4. Discussions with Unit Commanders. 5. Review disciplinary policies and procedures.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	V. DISCIPLINE AND NON-DISCIPLINARY ACTIONS				
105	Within 120 days from the effective date of this Agreement, MPD shall revise and update its disciplinary policy, General Order 1202.1 (Disciplinary Procedures and Processes), subject to the approval of DOJ. The policy shall describe the circumstances in which non-disciplinary action is appropriate. The policy shall describe the circumstances in which District-level discipline or corrective action is appropriate. The policy shall establish a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at the District level. It shall also specify the procedure for notifying complainants in writing of the resolution, including significant dates, general allegations and the disposition.	1. Within 120, revise and update disciplinary policy that: • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition.	1. Development and implementation of DOJ approved revised and updated disciplinary policies and procedures that: • Describes circumstances in which non-disciplinary action is appropriate. • Describes circumstances in which District-level discipline or corrective action is appropriate. • Establishes a centralized and formal system for documenting and tracking all forms of discipline and corrective action, whether imposed centrally or at District level. • Specifies the procedure for notifying complainants in writing of the resolution, including significant dates, the general allegations and the disposition.	1. Review disciplinary policies and procedures. 2. Review sample of misconduct investigations. 3. Review MPD disciplinary records. 4. Review officer personnel files, including district level records. 5. Interviews of citizen complainants.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	VI. PERSONNEL PERFORMANCE MANAGEMENT SYSTEM				
106	PPMS: The computerized data shall be used regularly and affirmatively by MPD to promote civil rights integrity and best professional police practices; to manage the risk of police misconduct, and potential liability thereof; and to evaluate and audit the performance of MPD officers of all ranks, and MPD units, sub-units, and shifts. It shall be used to promote accountability and proactive management and to identify, manage, and control at-risk officers, conduct, and situations. This system shall be a successor to, and not simply a modification of, MPD's existing automated systems.				
107	PPMS shall contain information at minimum on the following matters:	NA	NA	NA	
a	all uses of force that are required to be reported in MPD "Use of Force Incident Report" forms or otherwise are the subject of a criminal or administrative investigation by the Department;	1. PPMS includes information on all uses of force requiring UFIR or serving as a basis for a criminal/ administrative investigation.	1. Uses of force requiring UFIR entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Uses of force subject to criminal or administrative investigation entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs. 2. Review PAMS database. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review canine unit deployment database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
b	all instances in which a police canine is deployed to search for or find a member of the public;	1. PPMS includes information on all canine deployments to search for a member of the public.	1. Canine deployments to search for member of the public entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review samples of chain of command and OPR use of force and misconduct investigations. 5. Review use of force statistics 6. Review PAMS database.	
c	all officer-involved shootings and firearms discharges, both on-duty and off-duty;	1. PPMS contains information on all off-duty and on-duty shootings and firearms discharges by officers.	1. On- and off-duty shootings and firearms discharges involving officers entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs. 2. Review FIT investigations. 3. Review use of force statistics. 4. Review PAMS database.	
d	all other lethal uses of force;	1. PPMS contains information on all lethal uses of force.	1. Lethal uses of force correctly entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review canine unit deployment database. 2. Review UFIRs. 3. Review FIT investigations. 4. Review use of force statistics. 5. Review PAMS database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
e	all studies, reviews, or determinations with respect to the criminal, administrative, tactical, strategic, or training implications of any use of force, including all preliminary and final decisions regarding whether a given use of force was or was not within MPD policy;	1. PPMS contains information on all studies, reviews, or determinations with respect to criminal, administrative, tactical, strategic, or training implications of any use of force (including preliminary and final decisions regarding whether a given use of force was or was not within MPD policy).	1. Such studies, reviews, determinations, and decisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review use of force statistics. 2. Review MPD studies, reviews, determinations. 3. Review data from disciplinary review board. 4. Review DDRO database. 5. Review data from Personnel Management Office, OPR, OCCR, DDRO, and chain of command databases.	
f	all vehicle pursuits and traffic collisions;	1. PPMS includes all vehicle pursuits and traffic collisions.	1. Vehicle pursuits and traffic collisions entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review UFIRs and OPR files. 2. Review FIT investigations. 3. Review PAMS database.	
g	all complaints (whether made to MPD or OCCR);	1. PPMS includes information on all complaints made to MPD. 2. PPMS includes information on all complaints made to OCCR.	1. Complaints made to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Complaints made to OCCR correctly recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review OCCR database. 2. Review OPR database. 3. Review OCCR complaint records. 4. Review PAMS database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
h	with respect to the foregoing clauses (a) through (g), the results of adjudication of all investigations (whether criminal or administrative) and a chronology or other complete historical record of all tentative and final decisions or recommendations regarding discipline, including actual discipline imposed or non-disciplinary action taken;	1. PPMS includes information on all results of adjudication of investigations described in (a) through (g). 2. PPMS includes a complete chronology or historical record of all tentative and final decisions or recommendations regarding discipline. 3. PPMS includes information on all actual discipline imposed or non-disciplinary action against MPD officers.	1. Results of adjudication of investigations described in (a) through (g) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Chronology or historical record of all tentative and final decisions and recommendations regarding discipline recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Actual discipline imposed or non-disciplinary action taken recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review USAO database. 2. Review DDRO database. 3. review data from disciplinary board. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review Personnel files. 8. Review PAMS database.	
i	all commendations received by MPD about officer performance;	1. PPMS includes information on all commendations on officer performance.	1. Commendations on officer performance entered into PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review PAMS database.	
j	all criminal arrests and investigations known to MPD of, and all charges against, MPD employees;	PPMS includes information on all: 1. Criminal arrests of MPD employees; 2. Investigations of MPD employees known to MPD; and 3. Charges against MPD employees.	1. Criminal arrests recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Investigations known to MPD recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Charges against MPD employees recorded in PPMS with $\geq 95\%$ level of accuracy and completeness	1. Review USAO database. 2. Review DDRO database. 3. Review OPR files. 4. Review OCCR files. 5. Review chain of command files. 6. Review personnel files. 7. Review PAMS database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
k	all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the City, or its officers, or agents, resulting from MPD operations or the actions of MPD personnel;	PPMS includes information on all: 1. Criminal proceedings initiated against the City, its officers, or agents resulting from MPD operations or actions of MPD personnel recorded; 2. Civil or administrative filings filed against the City, et al.; and 3. Civil lawsuits served upon the City, et al.	1. Such criminal proceedings against the City, etc. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Such civil or administrative filings filed against the City, et al., recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Civil lawsuits served upon the City, et al. recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review civil and criminal court dockets. 2. Review USAO files. 3. Review DDRO records. 4. Review OPR files. 5. Review OCCR files. 6. Review chain of command files. 7. Review PAMS database. 8. Review Corporation Counsel records.	
l	assignment, and rank history for each officer;	PPMS includes information on: 1. Assignment of each officer; and 2. Rank history of each officer.	1. Assignment of each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Rank history for each officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review PAMS database.	
m	training history;	1. PPMS includes the training history of each officer..	1. Officers' training history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review training compliance suite. 3. Review canine records. 4. Review PAMS database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
n	all management and supervisory actions taken pursuant to a review of PPMS information, including non-disciplinary actions;	1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS.	1. Management and supervisory actions taken pursuant to a review of PPMS information (including non-disciplinary actions) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review PPMS database. 2. Review DDRO files. 3. Review chain of command files. 4. Review PAMS database.	
o	educational history;	1. Educational history recorded in PPMS.	1. Educational history recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database.	
p	military service and discharge status;	1. Military service and discharge status recorded in PPMS.	1. Military service and discharge status recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review personnel files. 2. Review outside employment database. 3. Review PAMS database. 4. Review military personnel databases.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
q	all instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer or that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer; and	PPMS includes information on all: 1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer; and 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer.	1. Instances in which MPD is informed by a prosecuting authority that a declination to prosecute any crime was based in whole or in part upon concerns about the credibility of an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Instances in which MPD is informed by a prosecuting authority that a motion to suppress was granted on the grounds of a constitutional violation by an MPD officer recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review USAO records. 2. Review Corporation Counsel files. 3. Review criminal case files. 4. Review personnel files. 5. Review DDRO disciplinary records.	
r	PPMS further shall include, for the incidents included in the database, appropriate additional information about involved officers (e.g., name and badge number), and appropriate information about the involved members of the public (including demographic information such as race, ethnicity, or national origin). Additional information on officers involved in incidents (e.g., work assignment, officer partner, field supervisor, and shift at the time of the incident) shall be determinable from PPMS.	1. For incidents included in PPMS, appropriate additional information about all involved officers (including name and badge number) should be recorded in PPMS. 2. For incidents included in PPMS, appropriate information about involved members of the public (including demographic information) recorded in PPMS. 3. Every officer's work assignments, officer partners, field supervisors, and shifts recorded in PPMS.	1. Appropriate additional information (e.g., name and badge number) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 2. Appropriate information about involved members of the public (including demographic information) recorded in PPMS with $\geq 95\%$ level of accuracy and completeness. 3. Officers' work assignments, officer partners, field supervisors, and shifts recorded in PPMS with $\geq 95\%$ level of accuracy and completeness.	1. Review officer reports. 2. Review FIT reports. 3. Review personnel files. 4. Review PAMS database.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
108	MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan for inputting historical data into PPMS (the “Data Input Plan”). The Data Input Plan shall identify the data to be included and the means for inputting such data (direct entry or otherwise), the specific fields of information to be included, the past time periods for which information is to be included, the deadlines for inputting data, and the responsibility for the input of the data. The Data Input Plan shall include historical data that are up-to-date and complete in PPMS.	1. Development of appropriate Data Input Plan that identifies: • the data to be included, • the means for inputting the data, • the specific fields to be included, • the past time periods for which information is to be included, • the deadlines for including data, and • the responsibility for inputting data. 2. Proper training on inputting data according to Data Input Plan. 3. Proper implementation of Data Input Plan.	1. Development of Data Input Plan that identifies: • the data to be included, • the means for inputting the data, • the specific fields to be included, • the past time periods for which information is to be included, • the deadlines for including data, and • the responsibility for inputting data. 2. Submission of plan and approval by DOJ. 3. Data entered into PPMS in accordance with Data Input Plan, including meeting deadlines for entry of data.	1. Review Data Input Plan. 2. Monitor training regarding inputting data. 3. Monitor implementation of Data Input Plan.	
109	PPMS shall include relevant numerical and descriptive information about each incorporated item and incident, and scanned or electronic attachments of copies of relevant documents. PPMS shall have the capability to search and retrieve (through reports and queries) numerical counts, percentages and other statistical analyses derived from numerical information in the database, listings, descriptive information, and electronic document copies for (a) individual employees, MPD units, and groups of officers, and (b) incidents or items, and groups of incidents or items. PPMS shall have the capability to search and retrieve this information for specified time periods, based on combinations of data fields contained in PPMS (as designated by the authorized user).	1. Relevant numerical and descriptive information (including attachments) about each item/incident included in PPMS. 2. PPMS must be able to run reports/queries that will search for and retrieve the listed information for specified time periods.	1. All relevant numerical and descriptive information (including attachments) about each item/incident entered into PPMS with $\geq 95\%$ level of accuracy and completeness. 2. PPMS has search capability to run reports/queries that will search for and retrieve the listed information for specified time periods.	1. Test queries and test requests for reports.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
110	Where information about a single incident is entered in PPMS from more than one document (e.g., from a complaint form and a use of force report), PPMS shall use a common control number or other equally effective means to link the information from different sources so that the user can cross-reference the information and perform analyses. Similarly, all personally identifiable information relating to MPD officers shall contain the badge or other employee identification number of the officer to allow for linking and cross-referencing information.	1. PPMS must link different documents and entries related to the incident using a common control number or other equally effective means. 2. PPMS must link all personally identifiable information relating to MPD officers using badge/ID number.	1. Documents and entries related to a single incident are linked in PPMS via a mechanism such as a common control number at a level of reliability $\geq 95\%$. 2. All personally identifiable information relating to an MPD officer is linked in PPMS via the badge or ID number at a level of reliability $\geq 95\%$.	1. Review PPMS database.	
111	MPD shall, within 90 days, prepare for the review and approval of DOJ, and thereafter implement, a protocol for using PPMS, including, but not limited to, supervision and auditing of the performance of specific officers, supervisors, managers, and MPD units, as well as MPD as a whole. The City shall submit for the review and approval of DOJ all proposed modifications to the protocol prior to implementing such modifications.	1. Development of appropriate protocol for using PPMS. 2. Proper training on protocol for using PPMS. 3. Proper implementation of protocol for using PPMS, including distribution of protocol and training. 4. DOJ reviews and approves all proposed modifications to the protocol prior to the implementation of such modifications.	1. Development and DOJ approval of PPMS protocol. 2. Protocol for using PPMS permits: • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 4. Implementation of PPMS, including establishment of system and training of personnel, permits: • supervision and auditing performance of specific officers, • supervision and auditing performance of MPD units, supervisors and managers, and • supervision and auditing of MPD as a whole. 5. City submits for DOJ approval all proposed modifications to the protocol prior to implementing such modifications.	1. Review data-entry and use of PPMS. 2. Review training sessions on use of PPMS protocol. 3. Review auditing of performance of specific officers, supervisors, managers, and MPD units. 4. Review communications between DOJ and MPD.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
112	The protocol for using PPMS shall include the following provisions and elements:				
a	The protocol shall require that, on a regular basis, but no less than quarterly, managers, and supervisors review and analyze all relevant information in PPMS about officers under their supervision to detect any pattern or series of incidents that indicate that an officer, group of officers, or an MPD unit under his or her supervision may be engaging in at-risk behavior.	1. At least quarterly, managers and supervisors review and analyze all relevant information in PPMS to detect indications that an officer, group of officers, or an MPD unit may be engaging in at-risk behavior.	1. Establishment of a protocol requiring at least quarterly reviews and analysis by managers and supervisors of information in PPMS for indications of at-risk behavior. 2. Quarterly reviews for at risk behavior and their findings are documented.	1. Review PPMS protocol. 2. Review reports related to quarterly reviews for at-risk behavior.	
b	The protocol shall provide that when at-risk behavior may be occurring based on a review and analysis described in the preceding subparagraph, appropriate managers, and supervisors shall undertake a more intensive review of the officer's performance.	1. When potential at-risk behavior is identified, appropriate managers and supervisors undertake a more intensive review of the subject officers' performance.	1. Establishment of a protocol requiring intensive reviews of officer performance by appropriate managers and supervisors performed in all cases where potential at risk behavior is identified. 2. Intensive reviews of officer performance where potential at-risk behavior is identified and their findings are documented.	1. Review PPMS protocol. 2. Review reports related to intensive reviews of officer performance where potential at-risk behavior is identified.	
c	The protocol shall require that MPD and managers on a regular basis, but no less than quarterly, review and analyze relevant information in PPMS about subordinate managers and supervisors in their command regarding the subordinate's ability to manage adherence to policy and to address at-risk behavior.	1. At least quarterly review by managers of relevant information in PPMS regarding the ability of subordinate managers and supervisors to manage adherence to MPD's policies and to address at-risk behavior.	1. Establishment of a protocol requiring quarterly reviews and analysis of relevant information in PPMS for ≥95% of subordinate managers and supervisors. 2. Quarterly reviews of subordinate managers and supervisors and their findings are documented.	1. Review PPMS protocol. 2. Review quarterly reviews of subordinate managers and supervisors.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
d	The protocol shall state guidelines for numbers and types of incidents requiring a PPMS review by supervisors and managers (in addition to the regular reviews required by the preceding subparagraphs), and the frequency of these reviews.	1. Development of guidelines for the numbers and types of incidents requiring a PPMS review by supervisors and managers and the frequency of these reviews.	1. Establishment of a protocol stating guidelines for the number and types of incidents requiring a PPMS review by a manager or supervisor. 2. Establishment of a protocol; stating guidelines as to the frequency of PPMS reviews by managers and supervisors.	1. Review PPMS protocol. 2. Review guidelines re PPMS reviews by managers and supervisors.	
e	The protocol shall state guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of the information in PPMS required pursuant to this protocol.	1. Development of guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS.	1. Establishment of a protocol stating guidelines for the follow-up executive, managerial or supervisory actions (including nondisciplinary actions) to be taken based on reviews of information in PPMS.	1. Review PPMS protocol. 2. Review guidelines re follow-up actions to be taken by executive, managerial or supervisory personnel based on PPMS reviews.	
f	The protocol shall require that managers and supervisors use PPMS information, among other relevant information, in determining when to undertake an audit of an MPD unit or group of officers.	1. Managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers.	1. Establishment of a protocol requiring managers and supervisors required to use PPMS information, in addition to other relevant information, in determining when to undertake an audit of an MPD unit or group of officers. 2. ≥95% of audits of MPD units or groups of officers include use of PPMS information.	1. Review PPMS protocol. 2. Review documentation related to audits or investigations of MPD units or groups of officers.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
g	The protocol shall require that all relevant and appropriate information in PPMS be taken into account for pay grade advancement, promotion, transfer, and special assignment, and in connection with annual personnel performance evaluations. Supervisors and managers shall be required to document in writing their consideration of any sustained criminal or administrative investigation, adverse judicial finding or significant monetary settlement, in determining when such officer is selected for special assignment, or assignment with increased pay, transfer, promotion, and in connection with annual personnel performance evaluations. For purposes of this paragraph, a special assignment shall include, but not be limited to, assignment as a training officer, assignment to any specialized unit or to OPR.	1. Protocol requires that PPMS information be taken into account for: • pay grade advancement, • promotion, • transfer, • special assignment (including assignment as a training officer, to any specialized unit, or to OPR), • annual personnel performance evaluations. 2. In connection with the above employment actions, supervisors and managers shall document in writing their consideration of: • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement,	1. Establishment and implementation of a protocol requiring that PPMS information be taken into account for: • pay grade advancement, • promotion, • transfer, • special assignment (including assignment as a training officer, to any specialized unit, or to OPR), • annual personnel performance evaluations. 2. Establishment and implementation of a protocol requiring supervisors and managers to document in writing consideration of • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement. 3. In ≥95% of the above employment actions, supervisors and managers document in writing consideration of • any sustained criminal or administrative investigation, and • adverse judicial finding or significant monetary settlement.	1. Review PPMS protocol. 2. Review personnel files. 3. Review PPMS records.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
h	The protocol shall specify that actions taken as a result of information from PPMS shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS.	1. Protocol requires that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS.	1. Establishment of a protocol requiring that actions taken as a result of PPMS information shall be based on all relevant and appropriate information, and not solely on the number or percentages of incidents in any category recorded in PPMS. 2. ≥95% of employment or auditing actions that include use of PPMS information reflect consideration of all relevant and appropriate information in addition to PPMS data and avoid selective use of PPMS data.	1. Review PPMS protocol. 2. Review personnel files. 3. Review PPMS records.	
i	The protocol shall provide that managers' and supervisors' performance in implementing the provisions of the PPMS protocol shall be taken into account in their annual personnel performance evaluations.	1. Protocol provides that performance of supervisors and managers in implementing PPMS protocol shall be considered in their personnel performance evaluations.	1. Establishment of a protocol requiring that performance of supervisors and managers in implementing PPMS protocol be considered in their personnel performance evaluations. 2. Performance evaluations for ≥95% of supervisors and managers include documented consideration of their performance in implementing the PPMS protocol.	1. Review PPMS protocol. 2. Review managers' and supervisors' personnel files.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
j	The protocol shall provide specific procedures that provide for each MPD officer to be able to review on a regular basis all personally-identifiable data about him or herself in PPMS in order to ensure the accuracy of that data. The protocol also shall provide for procedures for correcting data errors discovered by officers in their review of the PPMS data.	1. Protocol provides specific procedures for officer review on a regular basis of all personally-identifiable information in PPMS to ensure accuracy of data. 2. Protocol establishes procedures for correcting data errors in PPMS discovered by officers.	1. Establishment of a protocol providing: • Procedures for individual officers to regularly review for accuracy information in PPMS related to the individual. • Procedures for correcting data errors in PPMS identified by individual officers. 2. Officers permitted to regularly review all data related to the individual officer. 3. Requests for data changes promptly reviewed and officers receive timely notification of response to request. 4. ≥95% of sustained requests for data changes are made in PPMS.	1. Review PPMS protocol. 2. Monitor requests for correction of PPMS data.	
k	The protocol shall require regular review at no less than quarterly intervals by appropriate managers of all relevant PPMS information to evaluate officer performance citywide, and to evaluate and make appropriate comparisons regarding the performance of all MPD units in order to identify any patterns or series of incidents that may indicate potential liability or other at-risk behavior. These evaluations shall include evaluating the performance over time of individual units, and comparing the performance of units with similar responsibilities.	1. Protocol requires at least quarterly reviews by appropriate managers of PPMS information to: • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior.	1. Establishment of a protocol requiring at least quarterly reviews by appropriate managers of PPMS information to: • Evaluate officer performance citywide, and • Evaluate and make comparisons regarding the performance of all MPD units to identify indicia of potential liability or at-risk behavior. 2. Quarterly reviews of PPMS data performed to evaluate the above issues.	1. Review PPMS protocol. 2. Review quarterly PPMS reviews of citywide officer performance.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
l	The protocol shall provide for the routine and timely documentation in PPMS of actions taken as a result of such reviews of PPMS information.	1. Protocol provides for the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data.	1. Establishment of a protocol requiring the routine and timely documentation in PPMS of actions taken as a result of reviews of PPMS data. 2. ≥95% of actions taken as a result of PPMS information are documented in PPMS within 10 days of the action.	1. Review PPMS protocol. 2. Review PPMS database.	
m	The protocol shall require that whenever an officer transfers into a new assignment, the commanding officer shall promptly cause the transferred officer's PPMS record to be reviewed by the transferred officer's watch commander or supervisor.	1. Protocol requires commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor.	1. Establishment of a protocol requiring commanding officers to ensure that a transferred officer's PPMS record is reviewed by his new watch commander or supervisor. 2. ≥95% of transferred officers' PPMS records are reviewed by his new watch commander or supervisor.	1. Review PPMS protocol. 2. Review PPMS database. 3. Review personnel files. 4. Interviews of watch commanders and supervisors.	
n	The protocol shall require that all relevant and appropriate information in PPMS shall be considered in connection with the adjudication of misconduct allegations and determinations of appropriate discipline for sustained misconduct allegations.	1. Protocol requires all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations.	1. Establishment of a protocol requiring all relevant and appropriate information in PPMS be considered in connection with the adjudication of misconduct allegations and determination of discipline for sustained misconduct allegations. 2. ≥95% misconduct investigations and disciplinary actions reflect consideration of PPMS data.	1. Review PPMS protocol. 2. Review misconduct investigations. 3. Review disciplinary records.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
o	MPD shall train and thereafter hold managers, and supervisors accountable, consistent with their authority, for risk management and for use of PPMS and any other relevant data to address at-risk behavior, to deal with potential or actual police misconduct, and to implement the protocol described above.	1. MPD properly trains managers and supervisors to effectively use PPMS. 2. MPD holds managers and supervisors accountable for risk management and use of PPMS to address at-risk behavior, to deal with misconduct, and to implement the PPMS protocol.	1. Training fairly, accurately, and properly summarizes principles of use of PPMS. 2. ≥95% of managers and supervisors attend training regarding the use of PPMS. 3. MPD holds managers and supervisors accountable for use of PPMS and implementation of the PPMS protocol. 4. MPD holds managers and supervisors accountable for risk management of officers. 5. ≥95% of managers and supervisors complete training on risk management.	1. Review PPMS training materials. 2. Review PPMS training courses. 3. Review MPD documents reflecting evaluations of managerial and supervisory performance.	
113	The City shall maintain all personally identifiable information about an officer included in PPMS during the officer's employment with MPD and for at least five years thereafter (unless otherwise required by law to be maintained for a longer period). Information necessary for aggregate statistical analysis shall be maintained indefinitely in PPMS. On an ongoing basis, MPD shall enter information in PPMS in a timely, accurate, and complete manner, and maintain the data in a secure and confidential manner.	1. All personally identifiable information about an officer must be included in PPMS during officer's employment with MPD and for 5 years thereafter (unless otherwise required by law). 2. Information necessary for aggregate statistical analysis must be maintained in PPMS indefinitely. 3. MPD must enter information into PPMS in a timely, accurate, and complete manner, and maintain its security and confidentiality.	1. All personally identifiable information about an officer included in PPMS with a ≥95% level of completeness and accuracy. 2. Personally identifiable information is maintained for 5 years (unless otherwise required by law). 3. Information must be entered into PPMS within 10 days of its availability with a ≥95% level of accuracy and completeness. 4. Information must be kept secure and confidential. 5. Personnel records for ≥95% of MPD officers present in PPMS.	1. Review PPMS data. 2. Review personnel files. 3. Review misconduct investigation files. 4. Review disciplinary files.	
114	PPMS shall be developed and implemented according to the following schedule:				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
a	Within 60 days of the effective date of this Agreement, subject to approval of DOJ, MPD shall issue the Request for Proposal (RFP).	1. Issue PPMS RFP.	2. PPMS RFP issued.	1. Review PPMS RFP.	
b	Within 210 days of the issuance of the RFP, MPD shall select the contractor to create the PPMS.	1. According to modification, select contractor by 9/16/03.	1. Contractor timely selected.	1. MPD correspondence regarding selection of contractor.	
c	Within three months of the effective date of this Agreement, MPD shall submit the protocol for using PPMS required by paragraphs 111 and 112 hereof to DOJ for approval. MPD shall share drafts of this document with the DOJ and the Monitor to allow the DOJ and the Monitor to become familiar with the document as it develops and to provide informal comments on it. MPD and DOJ shall together seek to ensure that the protocol receives final approval within 30 days after it is presented for approval.	1. Timely submission of PPMS protocol to DOJ and the OIM.	1. Timely submission of PPMS protocol to DOJ and MPD. 2. DOJ approval of PPMS protocol.	1. Review PPMS protocol.	
d	Within 12 months of selecting the contractor pursuant to paragraph 114(b), the City shall have ready for testing a beta version of PPMS consisting of: (i) server hardware and operating systems installed, configured and integrated with MPD's existing automated systems; (ii) necessary data base software installed and configured; (iii) data structures created, including interfaces to source data; and (iv) the use of force information system completed, including historic data. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using use of force data and test data created specifically for purposes of checking the PPMS system.	1. According to modification, City must have beta test version of PPMS (as described) ready on time. 2. DOJ and OIM allowed to test system.	1. Beta test version of PPMS ready on time. 2. DOJ and OIM allowed to participate in beta testing.	1. Monitor beta test version of PPMS.	
e	The PPMS computer program and computer hardware shall be operational and fully implemented within 18 months of the selection of the PPMS contractor.	1. According to modification, PPMS must be fully operational on time.	1. PPMS made fully operational on time.	1. Monitor PPMS development and implementation.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
115	MPD shall, until such time as PPMS is implemented, and to the full extent reasonable and feasible, utilize existing databases, information and documents for all the purposes set forth herein for use of the PPMS.	1. Use existing databases, information and documents for the purposes set forth for PPMS until PPMS implementation.	1. Data required to be captured by PPMS provisions of MOA are being captured by existing databases, to the extent they are capable of capturing the data..	1. Review PAMS data. 2. Review other databases containing information that will be migrated into PPMS (Training, UPPS/TACIS, LERD, Firearms Testing, Outside Employment, Canine, FIT, DDRO, Medical Services).	
116	Following the initial implementation of PPMS, and as experience and the availability of new technology may warrant, MPD may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. MPD shall submit all such proposals for review and approval by DOJ before implementation.	1. Once PPMS is implemented, development of modifications as needed. 2. All proposed modifications reviewed and approved by DOJ before implementation.	1. 100% of all proposed modifications are submitted to DOJ for review and approval prior to implementation.	1. Review PPMS data tables and fields, documents, standardized reports, and queries. 2. Review proposed modifications and communications between MPD and DOJ.	
117	OPR shall continue to be responsible for developing, implementing, and coordinating MPD-wide risk assessments. OPR shall be responsible for the operation of PPMS, and for ensuring that information is entered into and maintained in PPMS in accordance with this Agreement. OPR further shall provide assistance to managers and supervisors who are using PPMS to perform the tasks required hereunder and in the protocol adopted pursuant hereto, and shall be responsible for ensuring that appropriate standardized reports and queries are programmed to provide the information necessary to perform these tasks.	1. OPR responsible for development, implementation, and coordination of MPD-wide risk assessments. 2. OPR responsible for timely and accurate entry of information into PPMS. 3. OPR provides necessary substantive and technical assistance to managers and supervisors. 4. OPR responsible for ensuring that standardized reports and queries elicit appropriate information.	1. PPMS protocol approved by DOJ. 2. OPR training fairly, accurately, and appropriately summarizes principles of PPMS protocol. 3. OPR ensures accuracy of information input into PPMS through systematic quality control and periodic audits. 4. Information in PPMS is ≥95% accurate when compared to source document. 5. Audit and quality control tests demonstrate that PPMS generates accurate and complete information in ≥95% of cases.	1. Review PPMS protocol. 2. Review OPR training materials regarding PPMS. 3. Conduct sampling to determine accuracy and completeness of data entry. 4. Review source documents for information input into PPMS. 5. Review PPMS quality control tests and audits.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	A. Performance Evaluation System				
118	Within 6 months of the effective date of this Agreement, MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to:	1. Development and DOJ approval of appropriate plan to enhance new Performance Evaluation System. 2. Proper training on plan to enhance Performance Evaluation System. 3. Proper implementation of plan to enhance Performance Evaluation System. 4. Preparation of annual evaluations for MPD sworn employees accurately reflecting quality of employee's performance.	1. Development and DOJ approval of plan to enhance new Performance Evaluation System. 2. Training fairly, accurately, and appropriately summarizes plan to enhance Performance Evaluation System to provide annual evaluations to sworn MPD employees that accurately reflect each employee's performance. 3. ≥95% of sworn MPD employees receive annual evaluations. 4. ≥95% of annual evaluations of sworn MPD employees address civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior. 5. ≥95% of annual evaluations accurately reflect the performance of sworn MPD personnel relating to civil rights integrity, adherence to law, and, for supervisors, their review of at risk behavior.	1. Review plan. 2. Monitor training. 3. Audit evaluation process. 4. Review MPD personnel files.	
a	civil rights integrity and the employee's community policing efforts;	Same as ¶118.	Same as ¶118.	Same as ¶118.	
b	adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States;	Same as ¶118.	Same as ¶118.	Same as ¶118.	
c	with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity.	Same as ¶118.	Same as ¶118.	Same as ¶118.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	VII. TRAINING				
	A. Management Oversight				
119	Within 30 days of the effective date of this Agreement, MPD shall centrally coordinate and review all use of force training among training components to ensure quality assurance, consistency and compliance with applicable law and MPD policy. MPD shall conduct regular subsequent reviews at least semi-annually and produce a report of such reviews to the Monitor and DOJ. Any substantive changes to use of force training must have prior approval of the Director of Training.	1. Centrally coordinated review of all use of force training components. 2. MPD semi-annual reviews of use of force training and issuance of reports to OIM and DOJ. 3. Director of Training approval of substantive changes.	1. Performance of a centrally coordinated review of all use of force training components. 2. Performance of semi-annual reviews of use of force training and issuance of reports to the OIM and DOJ within a reasonable time after each review. 3. Formal approval by the Director of Training of all substantive changes to the use of force training.	1. Review semi-annual use of force training review reports. 2. Review training manuals, curricula, and lessons plans. 3. Monitor training sessions.	
120	MPD shall continue to have all training materials reviewed by General Counsel or other legal advisor.	1. Review of all training materials by legal advisor.	1. All training materials in use by MPD reviewed by legal advisor for consistency and compliance with applicable law and MPD policy. 2. Procedures implemented to provide for legal advisor's review of all new and revised training materials prior to their introduction.	1. Review semi-annual use of force training review reports. 2. Review records reflecting review by MPD General Counsel or other legal advisor. 3. Interview with MPD General Counsel or other legal advisor.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
121	With respect to MPD- sponsored training, MPD Director of Training shall continue, in coordination with the Curriculum Development Specialist (CDS), and MPD Training Task Force to:	Director of Training, in coordination with the CDS and MPD Training Task force, shall be responsible for:	1. Staffing of Director of Training and Curriculum Development Specialist positions and offices. 2. Procedures for the coordination between Director of Training and the CDS. 3. Policies and procedures for the office of the Director of Training setting forth, defining, and implementing the responsibilities identified in ¶¶ 121a-g.	1. Review records prepared and maintained by the Director of Training and the Curriculum Development Specialist. 2. Review policies, general orders, directives or procedures re the coordination between Director of Training and the CDS and Training Task Force. 3. Review policies, general orders, directives or procedures re the operations and duties of the office of the Director of Training. 4. Review curricula, reports, evaluations, and assessments prepared and issued by the offices of the Director of Training and Curriculum Development Specialist. 5. Review files of the office of the Director of Training and the Curriculum Development Specialist. 6. Review training records of FTOs. 7. Review records of recruit training assignments. 8. Review instructor training rosters. 9. Monitor instructor	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
				certification training. 10. Participate in ride-alongs with FTOs. 11. Review evaluations of probationary officers. 12. Interview probationary officers.	
a	oversee and ensure the quality of all use of force training by all trainers, wherever it occurs: academy, in-service, field, roll call and the firearms range;	1. Oversight of all use of force training.	1. Director of Training oversight of all use of force training and trainers.	Same as ¶ 121.	
b	develop and implement use of force training curricula;	1. Development and implementation of use of force training curricula.	1. Director of Training oversight and approval of the development and implementation of use of force training curricula.	Same as ¶ 121.	
c	select and train MPD officer trainers;	1. Selection and training of MPD officer trainers.	1. Director of Training oversight and approval of the selection and training of MPD officers. 2. ≥95% FTOs attend training for MPD trainers.	Same as ¶ 121.	
d	develop, implement, approve and supervise all in-service training and roll call curricula;	1. Development, implementation, approval and supervision of all in-service and roll call curricula.	1. Director of Training oversight, approval and supervision of the development and implementation of all in-service training and roll call curricula.	Same as ¶ 121.	
e	establish procedures for evaluating all training (which shall include an evaluation of instructional content and the quality of instruction;	1. Establish procedures for evaluating training and instruction.	1. Director of Training establishment and approval of training evaluation procedures.	Same as ¶ 121.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
f	MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers.	1. Within 120 days, development of protocol to enhance Field Training program, including: • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers.	1. Timely development of a protocol related to the Field Training program addressing: • Criteria for selecting Field Trainers. • Training of Field Trainers. • Time probationary officers spend in program. • Assignment of probationary officers to Field Trainers. • Evaluation of probationary officers by Field Trainers. 2. 100% of probationary officers participate in field training program upon completion of Academy training. 3. 100% of FTOs conducting field training are certified.	Same as ¶ 121.	
g	conduct regular needs assessments to ensure that use of force training is responsive to the knowledge, skills, and abilities of the officers being trained.	1. Regular needs assessments related to use of force training.	1. Director of Training oversight of regular needs assessments related to use of force training.	Same as ¶ 121.	
122	The CDS shall prioritize his/her efforts to focus on use of force curriculum and instructor development. The CDS shall within 180 days of the effective date of this Agreement, review, revise, provide written approval, and implement, subject to DOJ's approval, all current force-related training material (including curricula and lesson plans), as well as subsequent changes, to ensure:	1. Within 180 days, CDS review, revision and approval of all existing force-related training material, including curricula and lesson plans, to ensure: • Consistency in content and format. • Incorporation of current law and policy. • Clear learning objectives and suggestions to trainers. • Appropriateness of training aids.	1. Timely review, revision and approval by the CDS of all force-related training material in existence at the effective date of the MOA to ensure the requirements of ¶¶ 122a-d are met. 2. Timely review, revision and approval by CDS of all changes in force-related training materials.	1. Review records prepared and maintained by the CDS. 2. Review of use of force-related training material, including curricula and lesson plans. 3. Monitoring of force-related training courses.	
a	internally consistent content and format;				
b	incorporation of current law and policy requirements;				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
c	the presence of clear, behaviorally-anchored learning objectives and suggestions for trainers of how to present material effectively; and				
d	the appropriateness of proposed training aids.				
123	The CDS shall regularly review, at a minimum every quarter, all force related training for quality assurance and consistency and shall regularly audit training classes.	1. CDS regularly reviews, at least quarterly, all use of force related training. 2. Regular audits by the CDS of training classes.	1. Preparation of quarterly reviews by the CDS of all force-related training concerning quality and consistency of training. 2. Documented regular audits by the CDS of training classes.	1. Review CDS quarterly reviews of force-related training. 2. Review CDS audits and evaluations of training classes.	
124	MPD shall continue to enhance its procedures to provide adequate record keeping of lesson plans and other training material such that the most current, supervisory approved training documents are maintained in a central, commonly accessible file, and are clearly dated.	1. Training program record keeping improved to establish: • Central, commonly accessible file for lesson plans and training materials. • Training materials clearly dated.	1. Establishment of a central, commonly accessible file room for lesson plans and training materials. 2. ≥95% of training materials clearly dated and readily accessible.	1. Review training materials located in central file. 2. Review training materials, including lesson plans and curricula.	
125	MPD shall continue to maintain training records regarding every MPD officer which reliably indicate the training received by each officer. The training records shall, at a minimum include the course, curriculum, instructor, and day and tour delivered for each officer.	1. Maintenance of training records for every MPD officer, which include course, curriculum, instructor, and day and tour delivered.	1. Maintenance of current and complete training records for ≥95% of MPD officers.	1. Review samples of training records. 2. Periodic review of Training Management System.	
	B. Curriculum				
126	The parties agree that sound critical thinking and decision making skills are critical to reducing use of excessive force and to ensuring officer safety. Accordingly, MPD shall ensure that all force-related training incorporates, in a coherent manner, critical thinking and decision making instruction, applicable law, and MPD policy.	1. MPD force-related training curricula shall incorporate critical thinking and decision making instruction, applicable law and MPD policy.	1. 100% of force-related training programs and curricula adequately incorporate critical thinking, decision-making instruction, applicable law and MPD policy.	1. Review force-related training curricula and lesson plans. 2. Monitor training sessions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
127	MPD shall continue to provide all MPD recruits, officers, supervisors and managers with annual training on use of force, subject to approval by DOJ. Such training shall include and address, inter alia:	1. Annual training on use of force for all recruits, officers, supervisors, and managers, addressing: • Use of force continuum. • Use of force reporting requirements. • Fourth Amendment requirements. • Examples of use of force dilemmas and interactive exercises.	1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training on use of force that includes and addresses the issues identified in ¶¶ 127a-d. 2. DOJ approval of annual use of force training.	1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records.	
a	MPD's use of force continuum;				
b	MPD's use of force reporting requirements;				
c	the Fourth Amendment and other constitutional requirements;				
d	examples of use of force and ethical dilemmas faced by MPD officers and, where practicable given the location, type, and duration of the training, interactive exercises for resolving use of force dilemmas shall be utilized.				
128	MPD shall continue to provide recruits, officers, supervisors, and managers with training in cultural diversity and community policing, which shall include training on interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons of different sexual orientations, and persons with disabilities.	1. Training for recruits, officers, supervisors, and managers in cultural diversity and community policing.	1. ≥95% of active MPD personnel in each of the categories of recruits, officers, supervisors and managers attend annual training re cultural diversity and community policing.	1. Review force-related training curricula and lesson plans. 2. Monitor training sessions. 3. Review sample of training records. 4. Review training class rosters.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
129	MPD shall provide all supervisors, (officers with the rank of sergeant and above) with mandatory supervisory and leadership training which, in addition to the subjects addressed in paragraphs 127 and 128, shall teach command accountability and responsibility, interpersonal relationship skills, theories of motivation and leadership, and techniques designed to promote proper police practices and integrity, including the prevention and detection of use of excessive force, throughout the supervisor's command responsibility and which include proper supervisor/employee communication skills. MPD shall prioritize the topics covered in the initial training to focus on MPD's new use of force policies and procedures, new Canine policies and procedures, the new Use of Force Review Board, and revised administrative and misconduct investigation policies and procedures; MPD shall provide initial training on these topics within 180 days from execution of this Agreement and thereafter shall provide supervisory training on an annual basis.	1. Sergeant and above training addressing: • Requirements of ¶¶ 127 and 128. • Command accountability and responsibility. • Interpersonal relationship skills. • Theories of motivation and leadership. • Techniques to promote proper police practices and integrity. 2. Within 180 days, initial training on: • New use of force policies and procedures. • New canine policies and procedures. • New Use of Force Review Board. • Revised administrative and misconduct investigation policies and procedures. 3. Annual supervisory training.	1. ≥95% of active MPD supervisors attend sergeants annual sergeants and above training incorporating the requirements of ¶¶ 127-29. 2. ≥95% of active MPD supervisors attend sergeants and above initial training re new policies and procedures related to use of force, canines, UFRB, and administrative and misconduct investigations.	1. Review sergeants and above training curricula and lessons plans. 2. Monitor sergeants and above training sessions. 3. Review sample of training records.	
130	MPD shall ensure that training instructors engage students in meaningful dialogue regarding "real-life" experiences involving use of force and applicable law and MPD policy when conducting force-related training. Training instructors shall encourage opportunities to explain MPD's use of force policy, reporting requirements and force-related law throughout all use of force training.	1. Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy.	1. Training engage students in dialogue re "real life" experiences involving use of force, applicable law and MPD policy.	1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions, including new recruit training.	
131	MPD shall ensure that training time is used in an efficient and productive manner and shall take effort to eliminate "down time" of student officers during recruit and in-service training by providing a variety of use of force training activities for students awaiting required one-to-one student-teacher training.	1. Efficient use of training time to eliminate "down time."	1. Efficient use of training time to eliminate "down time."	1. Review use of force training curricula and lesson plans. 2. Monitor use of force training sessions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
132	Role Play and Range 2000 Courses				
a	Within 60 days of the effective date of this Agreement, MPD shall review the Role Play (formerly known as “Simmunitions”) and the Range 2000 training courses to ensure consistency with the law and MPD policy. MPD shall immediately develop a standardized curriculum, lesson plan and instructional guidelines with a list of each scenario including the title, content, lesson objectives and, for the Range 2000, the possible variations available, and shall include a checklist of items to address when critiquing students to ensure consistent application and efficient training. The curriculum, lesson plan and instructional guidelines shall be reviewed by the CDS and MPD General Counsel to ensure consistency with the law and MPD policy, and submitted to DOJ for approval.	1. Within 60 days, review Role Play and Range 2000 training to ensure consistency with the law and MPD policy. 2. Development of a standardized curriculum, lesson plan and instructional guidelines for Range 2000. 3. Checklist to ensure consistent application and efficient Range 2000 training. 4. CDS and General Counsel review of lesson plan and instructional guidelines to ensure consistency with law and MPD policy.	1. Timely review of Role Play and Range 2000 training courses and consistency of these courses with law and MPD policy. 2. Development and implementation of a standardized curriculum, lesson plan and instructional guidelines for Range 2000 that include the items required in ¶ 132a. 3. Development and implementation of a checklist for the critiquing of students training on the Range 2000. 4. CDS and General Counsel (or legal advisor) review of Range 2000 curriculum, lesson plan and instructional guidelines.	1. Review Role Play and Range 2000 curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play and Range 2000 training sessions. 3. Monitor the office of the CDS. 4. Review evidence of CDS and General Counsel (or legal advisor) review.	
b	MPD shall allow sufficient time to ensure that every student officer participates in one or more Role Plays. Within 180 days of the effective date of this Agreement, MPD shall begin videotaping students in order to replay their decisions and actions during the critique portion of the courses. MPD shall have instructors challenge students to comply with applicable legal standards and MPD policy. Videotapes shall not be subject to the retention policy described in paragraph 176.	1. Every student officer participates in one or more role plays during training session. 2. Within 180 days, MPD shall videotape students on course and use videotapes to critique students.	1. Every student officer participates in one or more Role Plays during training session. 2. Timely implementation of procedures for videotaping students participating in Role Plays and using videotapes to critique students.	1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review sample of videotapes.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
c	MPD shall add additional simulations to comport with the training needs assessment and deficiencies identified in use of force investigations, which can either be created by MPD or obtained from other local and federal law enforcement agencies.	1. Add simulations to comport with training needs assessment and deficiencies identified in use of force investigations.	1. Review by the Director of Training and CDS of training needs assessments and results of use of force investigations. 2. Modification of simulation programs to reflect needs assessment and deficiencies identified in use of force investigations.	1. Review Role Play curriculum, lesson plans, instructional guidelines and evaluation checklists. 2. Monitor Role Play training sessions. 3. Review needs assessments. 4. Review use of FIT and chain of command use of force investigations to inform training.	
133	MPD shall, within 120 days, provide copies and explain the terms of this Agreement to all MPD officers and employees in order to ensure that they understand the requirements of this Agreement and the necessity for strict compliance. After MPD has adopted new policies and procedures in compliance with this Agreement, MPD shall provide timely in-service training to MPD officers regarding the new policies and procedures and the relevant provisions of this Agreement. MPD shall incorporate training on these policies and procedures into recruit training at the Academy.	1. Within 120 days, provide copies of the MOA to all MPD officers. 2. Timely in-service training regarding new policies and procedures and relevant provisions of the MOA. 3. Incorporate policies and procedures into new recruit training.	1. Timely distribution of MOA and explanatory materials to ≥95% of current and new MPD officers and employees. 2. Development of in-service training program regarding policies and procedures related to the MOA. 3. ≥95% of MPD officers attend in-service training regarding policies and procedures related to the MOA. 4. Development and implementation of new recruit training program regarding policies and procedures related to the MOA.	1. Conduct officer surveys and/or focus groups. 2. Monitor in service and new recruit training curricula and review lesson plans. 3. Monitor in service and new recruit training. 4. Review training class rosters. 5. Monitor videotapes, Q&A sessions and other training regarding the MOA.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	C. Instructors				
134	Within 60 days, MPD shall assess (a) whether there is sufficient staff at the Training Academy; (b) what instructor training is needed in light of the courses currently being taught and those to be taught in the future; and (c) the appropriate standards for the evaluation of instructor performance by supervisors. Based on this assessment, MPD shall develop a plan for addressing training instructor needs. MPD shall submit this assessment and development plan to DOJ for approval.	- Within 60 days, MPD assess: - Sufficiency of staff at Training Academy. - Instructor training necessary in light of current and future courses. - Standards for evaluation of instructor performance. - Develop plan for addressing training instructor needs.	- Timely assessment regarding sufficiency of training staff, instructor training, and standards for the evaluation of instructors. - Development of a plan for addressing training instructor needs.	Review training/instructor assessment and plan.	
135	MPD shall, within 90 days, develop and implement subject to DOJ's approval, formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions. These criteria shall apply to all incumbent officers in these training positions and to all candidates for these training positions, and also shall be used to monitor the performance of persons serving in these positions. The criteria shall address, inter alia, knowledge of MPD policies and procedures, interpersonal and communication skills, cultural and community sensitivity, teaching aptitude, performance as a law enforcement officer, with particular attention paid to allegations of excessive force and other misconduct; history, experience as a trainer, post-Academy training received, specialized knowledge, and commitment to police integrity.	- Within 90 days, develop and implement formal eligibility and selection criteria for Academy, Field Training, and formal training (other than roll call) positions. - Criteria shall address: - Knowledge of MPD policies and procedures - Interpersonal and communication skills. - Cultural and community sensitivity. - Teaching aptitude. - Performance as a law enforcement officer. - Attention to allegations of excessive force and other misconduct, history, experience as a trainer, post-Academy training, specialized knowledge, and commitment to police integrity.	- Timely development of formal eligibility and selection criteria for all Academy, Field Training, and formal training (other than roll call) positions, including each of the criteria listed in ¶ 135. - DOJ approval of eligibility and selection criteria for Academy, Field Training, and formal training instructors. - Implementation of DOJ approved eligibility and selection criteria for instructors. ≥95% of instructors meet DOJ-approved eligibility and selection criteria.	- Review training instructor eligibility requirements and selection criteria. - Review position announcements. - Monitor instructor training.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
136	MPD shall develop an instructor certification program by which the competency of the instructors is certified.	1. Development of instructor certification program.	1. Development of an instructor certification program.	1. Review of instructor certification program. 2. Review individual instructor qualifications and certifications.	
137	Within 180 days of the effective date of this Agreement, MPD shall create and implement a formal instructor training course, subject to the approval of DOJ, to ensure that all instructors receive adequate training to enable them to carry out their duties, including training in adult learning skills, leadership, teaching and evaluation, as well as training in fostering group discussions regarding use of force in “real-life” applications and the presentation of training material in a cohesive and engaging manner. MPD shall provide regular and periodic re-training on these topics. All training instructors and Field Trainers shall be required to maintain, and demonstrate on a regular bases, a high level of competence. MPD shall document all training instructors’ and Field Trainers’ proficiency and provide additional training to maintain proficiency.	1. Within 180 days, create a formal instructor training course. 2. Ensure instructors receive adequate training, including: • Adult learning skills. • Leadership. • Teaching and evaluation. • Fostering group discussions re use of force in “real life” applications. 3. Regular and periodic re-training. 4. All instructors maintain and demonstrate high level of competence. 5. Document all training instructors’ and Field Trainers’ proficiency and provide additional training.	1. Timely establishment of a formal instructor training course addressing each of the areas listed in ¶ 137. 2. ≥95% instructor participation in instructor training and re-training. 3. ≥95% instructors demonstrate “high level of competence.” 4. ≥95% of instructors and Field Trainers have regular and current documented evaluations of proficiency. 5. ≥95% of instructors and Field Trainers receive regular additional training.	1. Review curricula and lesson plans related to instructor training course. 2. Review instructors’ and Field Trainers’ evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review training class rosters. 5. Review instructor training records.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
138	MPD shall ensure adequate management supervision of use of force training instructors to ensure that their training is consistent with MPD policy, the law and proper police practices.	1. Adequate management supervision of use of force training instructors to ensure consistency with MPD policy, the law, and proper police practices.	1. Instructors and Field Trainers evaluated on training consistency with MPD policy, the law and proper police practices. 2. ≥95% in service and new recruit instructors provide training consistent with MPD policy, law and proper police practices.	1. Review curricula and lesson plans related to instructor training course. 2. Review instructors' and Field Trainers' evaluations and personnel files. 3. Monitor instructor and Field Trainer training. 4. Review CDS semi-annual reports and course evaluation forms.	
139	MPD shall ensure consistent and thorough instruction of approved lesson plans. All instructors must have and use a copy of current lesson plans during classroom instruction.	1. Consistent and thorough instruction of approved lesson plans. 2. All instructors have and use current lesson plans.	1. Approved and current lesson plans are distributed to 100% of all instructors. 2. ≥95% of training sessions use current and approved lesson plans.	1. Review training curricula and lesson plans. 2. Monitor training sessions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	D. Firearms Training				
140	MPD shall continue to ensure that all officers, supervisors as well as line staff, complete the mandatory semi-annual re-qualification firearms training. Re-qualification shall consist of more than shooting a passing score, but shall consist of satisfactorily completing all re-qualification courses, as discussed in paragraphs 127 and 128, to include, Range 2000 and Role Play courses. MPD shall continue to revoke the police powers of those officers who fail to satisfactorily complete re-certification. MPD shall centralize administrative consequences of failure to attend re-qualification firearms training to ensure consistent application of such consequences.	1. All officers, supervisors, and line staff complete mandatory semi-annual re-certification firearms training. 2. Re-certification consist of: • Passing shooting score. • Range 2000 and Role Play courses. 3. Revocation of police powers of officers who fail re-certification. 4. Centralize administrative consequences for failure to attend re-certification and ensure consistent application of consequences.	1. ≥95% of officers, supervisors, and line staff satisfactorily complete semi-annual firearms re-certification training. 2. Re-certification program consists of all required programs, including scored shooting evaluation and participation on Range 2000 and Role Play courses. 3. 100% of officers failing re-certification have police powers revoked. 4. Implementation of a centralized recordkeeping and tracking system for firearms training and re-certification and consistent application of corrective action for failure to satisfactorily complete firearms re-certification training.	1. Monitor firearms training and re-certification. 2. Monitor firearms training and re-certification recordkeeping and tracking systems. 3. Review firearms re-certification records. 4. Review officers' personnel files.	
141	MPD shall ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and the failure to utilize safe gun handling procedures at all times.	1. Firearm instructors critically observe students and provide corrective instruction.	1. Firearms instructor training includes training on critical observation students and provision of corrective action. 2. Evaluation of firearms instructors' proficiency includes critical observation of students and provision of corrective instruction. 3. ≥95% firearms instructors satisfy the requirements of ¶ 141. 4. No incidents of uncorrected unsafe weapon handling during firearms training and re-certification sessions.	1. Review evaluations of firearms instructors. 2. Monitor firearms instructor training.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
142	Within 60 days, MPD shall create and implement, subject to DOJ's approval, a checklist identifying evaluation criteria to determine satisfactory completion of firearms recruit and in-service training. Such checklists shall be completed for each student officer by a firearms instructor, who shall sign the checklist indicating that these criteria have been satisfactorily reviewed during training. The checklist shall include, but not be limited to, an evaluation of a student officer successful training of the following:	1. Within 60 days, create and implement a checklist identifying evaluation criteria for firearms recruit and in-service training. 2. Checklist completed for each student officer. 3. Checklist shall include evaluation of following: • Finger off trigger unless justified and ready to fire. • Exercise sound judgment and engage in decision making skills in Range 2000 and Role Plays. • Proper firearm hold and stance.	1. Timely development of checklist for evaluating satisfactory completion of recruit and in service firearms training, including areas listed in ¶¶ 142a-c. 2. Checklist completed for ≥95% of officers receiving firearms training	1. Review firearms training checklist. 2. Review officer personnel files and firearms certification. 3. Monitor firearms training.	
a	maintains finger off trigger unless justified and ready to fire;				
b	exercises sound judgment and engages in decision making skills in Range 200 and Role Plays;				
c	maintains proper hold of firearm and proper stance.				
143	MPD shall immediately review and integrate all firearms training into a training curriculum that ensures material is presented in a logical manner that promotes optimal fire safety and user responsibility.	1. MPD review and integration of all firearms training into training curriculum with logical presentation, optimal fire safety, and user responsibility.	1. Firearms training curriculum is logically presented and promotes optimal fire safety and user responsibility.	1. Review firearm training curricula and lesson plans. 2. Monitor firearms training sessions.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
144	MPD shall regularly, at a minimum every 3 months, consult the manufacturer for accurate, consistent and current information regarding all Glock specific instructions and guidelines, particularly regarding cleaning, maintenance and marksmanship. MPD must establish procedures to ensure that such information is continually updated as necessary and such practices are duly documented.	1. Every three months, consult with manufacturer for accurate, consistent and current information re Glock. 2. Establish procedures to ensure information is updated as necessary and practices are documented.	1. Implementation of procedures to regularly obtain, at least quarterly, from the manufacturer accurate, consistent and current information on the Glock. 2. Implementation of procedures to ensure information related to the Glock is continually updated. 3. Practices related to the procedures required under paragraph 144 are adequately documented in ≥95% of cases.	1. Review procedures re consultation with Glock manufacturer. 2. Review documentation related to consultations with Glock manufacturer. 3. Review records related to updated information regarding the Glock. 4. Interview Glock representatives.	
	E. Canine Training				
145	MPD shall complete development and implementation of a comprehensive canine training curriculum and lesson plans which specifically identify goals, objectives and the mission of the Canine Unit, consistent with the Canine policy described in paragraphs 44-46 of this Agreement.	1. Complete development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA¶¶ 44-46.	1. Development and implementation of comprehensive canine curriculum and lesson plans. 2. Curriculum identifies goals, objectives and mission of Canine Unit, consistent with MOA¶¶ 44-46.	1. Review canine training curriculum and lesson plans. 2. Monitor canine training program.	
146	MPD shall continue to purchase only professionally-bred canines. MPD shall ensure that, within 180 days, all of its canines are certified in handler-controlled alert methodology. MPD shall ensure that the canines receive annual re-certification and periodic refresher training. Deviations from certification or training requirements shall result in the removal of the canine from service until such requirements are fulfilled.	1. Purchase only professionally-bred canines. 2. Within 180 days, ensure all canines are certified in handler-controlled alert methodology. 3. Ensure canines receive annual re-certification and refresher training. 4. Removal of canines from service until training and certification requirements fulfilled.	1. 100% of canines are professionally-bred. 2. 100% of canines are certified in handler-controlled alert methodology. 3. ≥95% canines receive annual re-certification and refresher training. 4. ≥95% canines in service have fulfilled training and certification requirements.	1. Review records and certifications for individual canines. 2. Monitor canine re-certification and training.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
147	MPD shall continue to ensure that canine handlers are physically capable of implementing and maintaining the canine policy described in paragraphs 44-46 of this Agreement. Handlers should be able to maintain control of, and contact with the canine to ensure that the canine is not allowed to bite a suspect without a legal justification.	1. Ensure that canine handlers are physically capable of implementing and maintaining canine policy described in MOA ¶¶ 44-46. 2. Handlers able to maintain control of and contact with canines to ensure that canine does not bite without legal justification.	1. Implementation of evaluation procedures related to the physical capabilities of canine handlers. 2. ≥95% of canine handlers rated capable of implementing and maintaining canine policy described in ¶¶ 44-46. 3. ≥95% of canine handlers rated physically capable of maintaining control of and contact with canines.	1. Review physical evaluations of canine handlers.	
148	Within 180 days, MPD shall require that all of its in-house canine trainers are certified canine instructors.	1. Within 180 days, require all in-house canine trainers are certified canine instructors.	1. 100% of in-house canine instructors are certified canine instructors.	1. Review certifications for in-house canine instructors.	
	VIII. SPECIALIZED MISSION UNITS				
149	DOJ recognizes that MPD, in its discretion, utilizes temporary and permanent specialized mission units to achieve various law enforcement missions. The following provisions apply to any current or future specialized mission unit created during the existence of this Agreement in which officers engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches (the Mobile Force Unit (is an example of one such specialized mission unit.)).	NA	NA	NA	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
150	MPD shall continue to institute adequate pre-screening mechanisms of officers working a specialized mission unit to select and screen out officers who may be unprepared to participate in the specialized unit. The pre-screening mechanisms shall continue to include, at a minimum, the following: (a) whether the officer is current on his/her firearms certification and other service weapons training; (b) whether the officer has received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; and (c) whether the officer is generally fit for patrol duty and capable of achieving the relevant objectives of the specialized unit.	- Existence of adequate pre-screening mechanisms for officers, including: - methods for confirming that qualification in firearms and service weapons certification is current; - determining adequacy of training and history of reasonable uses of force; and - fitness for patrol duty and fitness for specific objectives of special mission unit.	≥95% of Specialized Mission Unit officers currently qualified in firearms and service weapons certification; documentary evidence that checks on qualification have been made. ≥95% of Specialized Mission Unit officers have received adequate training and demonstrated that he or she has a history of judicious and proficient use of force; documentary evidence that checks on qualification have been made. ≥95% of Specialized Mission Unit officers are generally fit for patrol duties and capable of achieving relevant objectives of the specialized unit; documentary evidence that checks on qualification have been made.	- Review records of Specialized Mission Units. - Review personnel files, disciplinary history and training records of officers assigned to Specialized Mission Units. - Review position announcements. - Interview supervisors and commanders of SMUs.	
151	MPD shall continue to screen officers who are interested in participating in specialized mission units to develop and maintain a pool of seasoned and competent officers with exemplary records and up-to-date training.	Existence of continuing process for screening officers interested in joining Special Mission Units.	MPD maintains continuous application and screening process for SMUs.	- Review Specialized Mission Unit personnel files - Other documentation prepared and maintained by Specialized Mission Unit supervisors.	
152	MPD shall continue to require sufficient advance notice of participating officers to all specialized unit leadership to identify the need for enhanced supervision or tailor patrol activities in light of the capacities of the volunteer officers.	Sufficient advance information about officers participating in SMUs provided to unit supervisors to identify need for enhanced supervision and tailoring officer activities.	- Advance information provided for ≥95% of officers who have volunteered for SMUs that identify factors that - require enhanced supervision - adjustment of patrol activities	- Review SMU records. - Review MPD personnel records. - Review Internal MPD communications re officers volunteering for SMUs.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
153	MPD shall continue to disqualify for service on a specialized mission unit any officer that has frequently used questionable force or generated numerous credible complaints alleging excessive force.	1. Disqualification of SMU officers and officer-candidates who have frequently used questionable force or generated numerous credible complaints alleging excessive force.	1. No more than 5% of SMU officers have records that show evidence of having frequently used questionable force, or been the subject of numerous, credible excessive force complaints.	1. Review personnel records of SMU members. 2. Review MPD documents reflecting criteria for recruiting, appointing, and discharging SMU officers. 3. Review other relevant SMU records.	
154	MPD shall continue to provide sufficient number of skilled supervisors to ensure adequate supervision of officers assigned to a specialized mission unit. Additionally, MPD shall continue to readily identify in the appropriate organizational chart and all specialized mission unit material, the Command-level official responsible for overseeing specialized mission unit activities.	1. Sufficient number of skilled supervisors assigned to SMUs to ensure adequate supervision. 2. Proper identification, in organization charts and SMU materials, of responsible Command-level officials.	1. Maintenance of appropriate supervisor/officer ratio. 2. ≥95% of MPD organization charts and SMU materials clearly identify responsible Command-level official.	1. Review of SMU rosters and personnel lists. 2. Review of relevant organization charts and SMU documents and materials. 3. Review personnel files of SMU supervisors. 4. Interview command staff.	
155	MPD shall continue to give clear instructions to sergeants and other supervisory officers who volunteer, or are assigned to a specialized mission unit that they maintain their supervisory responsibilities while volunteering. MPD shall continue to provide clear instructions to these supervisors regarding appropriate supervision and coordination when more than one sergeant or supervisor is present.	1. Clear instructions in effect for all sergeants and supervisory officers assigned to SMUs to maintain supervisory responsibilities. 2. Clear instructions to supervisors regarding appropriate supervision and coordination when more than one sergeant/supervisor present	1. Written instructions disseminated to sergeants and other supervisory personnel assigned to SMUs to maintain supervisory responsibilities 2. Written instructions disseminated to sergeants and other supervisors assigned to SMUs regarding appropriate supervision and coordination among sergeants/supervisors	1. Review written protocols extending to all SMUs. 2. Review specific protocols for individual SMUs. 3. Monitor selected SMU activities to ensure plans, procedures, and protocols are being followed. 4. Monitor SMU roll calls. 5. Review SMU operations plans.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
156	MPD shall continue to provide specialized pre-service training to specialized mission unit participants to ensure compliance with current Fourth Amendment, Equal Protection law, and address the desired knowledge, skills, and abilities of the officers participating in the program.	1. Specialized pre-service training to ensure • knowledge of 4th Amendment requirements • knowledge of equal protection law • specific knowledge, skills, abilities of unit members.	1. Creation of appropriate, specified training materials. 2. Provision of high-quality specific training for SMU unit members addressing these subject areas. 3. ≥95% of SMU officers receive training in these subject areas.	1. Review of lessons plans and other training materials. 2. Monitor SMU training sessions. 3. Review training records of SMU officers.	
157	MPD shall continue to monitor all activities of specialized mission unit participants to include, at a minimum, enforcement actions, uses of force, and complaints.	1. Continued monitoring all SMU activities, including enforcement actions, uses of force, complaints	1. MPD has active monitoring program that includes monitoring of SMU activities. 2. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities.	1. Review OPR records reflecting internal reviews and audits of SMU programs and units. 2. Review of FIT investigations. 3. Review of misconduct investigations.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
158	MPD shall continue its system of informing specialized mission unit supervisors within 24 hours of any complaint about the conduct of an officer on specialized mission unit duty. Additionally, MPD shall continue to track specifically all activities relating to officers participating in the specialized mission unit, including enforcement actions, complaints, and all misconduct investigations, to enable supervisors to determine whether particular officers should be allowed to continue to participate in the specialized mission unit duty. Investigations of specialized mission unit uses of force should be consistent with the provisions outlined in Section III(B) of this Agreement.	1. Maintaining system of prompt (24-hour) notification of SMU supervisors for complaints against SMU officers. 2. Special tracking of activities of all officers in SMU units • enforcement actions • complaints • misconduct investigations 3. Investigation of SMU member activities follows MPD rules and procedures for investigating uses of force and allegations of misconduct	1. MPD maintains system in which supervisors notified of complaints against SMU members within 24 hours in ≥95% of cases. 2. MPD monitoring and auditing program includes reviews of ≥95% of SMU officers and considers enforcement actions, uses of force, and complaints generated by SMU activities. 3. Investigation of SMU members follows MPD rules for use of force and misconduct investigations in ≥95% of investigations.	1. Review specific documents and materials documenting such notifications maintained by SMU supervisors and in other MPD record systems. 2. Review monitoring and auditing program as well as special tracking for SMU officers. 3. Review FIT investigations. 4. Review chain of command use of force investigations. 5. Review misconduct investigations.	
159	Within 120 days, MPD shall develop a plan, subject to the approval of DOJ, to limit the total number of hours an officer may work in any twenty-four hour period and in any seven- day period to prevent officer fatigue. The parties acknowledge that implementation of the plan may take into account limitations of current labor agreements, if any.	1. Development of plan to limit officer hours during 24-hour and 7-day periods to avoid officer fatigue.	1. Development of work limitation plan. 2. MPD has initiated procedures to ensure plan is being followed. 3. MPD periodically audits to ensure procedures are being followed.	1. Review MPD plan. 2. Monitor implementation of MPD plan. 3. Periodic review of internal MPD checks to ensure plan is being followed 4. Review daily work details.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	IX. PUBLIC INFORMATION				
160	MPD shall prepare quarterly public reports that include aggregate statistics of MPD use of force incidents broken down by MPD districts covering each of the geographic areas of the City, indicating the race/ethnicity of the subject of force. These aggregate numbers shall include the number of use of force incidents broken down by weapon used and enforcement actions taken in connection with the use of force. The report shall include statistical information regarding use of force investigations conducted, including the outcome. The report shall also include the total number of complaints of excessive force received, broken down by MPD Districts, and the number of complaints held exonerated, sustained, insufficient facts, and unfounded.	1. MPD quarterly reports including information described in ¶ 160.	1. Quarterly reports issued by MPD that include information described in ¶ 160. 2. Quarterly reports made publicly available.	1. Review MPD quarterly reports. 2. Monitor MPD werbsite.	
	X. MONITORING, REPORTING, AND IMPLEMENTATION				
	A. Independent Monitoring				
161	Within 90 days after entry of this Agreement, the City, MPD and DOJ shall together select a Monitor who shall review and report on MPD's implementation of, and assist with MPD's compliance with, this Agreement. If the parties are unable to agree on a Monitor, each party shall submit two names of persons who have experience as a law enforcement officer, as a law enforcement practices expert or monitor, or as a Federal, state, or county prosecutor or judge along with resumes or curricula vitae and cost proposals to a third party neutral, selected with the assistance of the Federal Mediation and Conciliation Service, and the third party neutral shall appoint the Monitor from among the names of qualified persons submitted.	1. Selection of monitor	2. Selection of monitor completed and contract signed, March 28, 2002	NA	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
162	The Monitor shall not be retained by any current or future litigant or claimant in a claim or suit against the City, MPD, or its officers. The Monitor shall not issue statements or make findings with regard to any act or omission of the City, MPD, or their agents or representatives, except as required by the terms of this Agreement. The Monitor may testify in any case brought by any party to this Agreement regarding any matter relating to the implementation, enforcement, or dissolution of this Agreement.	NA	NA	NA	
163	The Monitor, at any time, may associate such additional persons or entities as are reasonably necessary to perform the monitoring tasks specified by this Agreement. The Monitor shall notify in writing DOJ and the City if and when such additional persons or entities are selected for association by the Monitor. The notice shall identify and describe the qualifications of the person or entity to be associated and the monitoring task to be performed.	NA	NA	NA	
164	The City and MPD shall bear all reasonable fees and costs of the Monitor. In selecting the Monitor, DOJ, the City and MPD recognize the importance of ensuring that the fees and costs borne by the City and MPD are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Monitor. In the event that any dispute arises regarding the payment of the Monitor's fees and costs, the City, MPD and DOJ and the Monitor shall attempt to resolve such dispute cooperatively.	NA	NA	NA	
165	The Monitor shall only have the duties, responsibilities and authority conferred by this Agreement. The Monitor shall not, and is not intended to, replace or take over the role and duties of the Mayor, City Council, or Chief of Police.	NA	NA	NA	
166	The Monitor shall offer the City and MPD technical assistance regarding compliance with this Agreement. The Monitor may not modify, amend, diminish, or expand this Agreement.	NA	NA	NA	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
167	The City and MPD shall provide the Monitor with full and unrestricted access to all MPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to MPD by this Agreement. The Monitor's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. The Monitor shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or DOJ, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.	1. Full and unrestricted access to all staff, facilities, and documents, including databases.	1. Full and unrestricted access in response to 100% of OIM requests, except where the lack of access has been fully explained and deemed by the OIM to be acceptable	1. History of requests and responses	
168	In monitoring the implementation of this Agreement, the Monitor shall maintain regular contact with the City, MPD and DOJ.	NA	NA	NA	
169	In order to monitor and report on MPD's implementation of each substantive provision of this Agreement, the Monitor shall conduct the reviews specified in paragraphs 171 and 172 and such additional reviews as the Monitor deems appropriate. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of this Agreement.	NA	NA	NA	
170	In order to monitor and report on MPD's implementation of this Agreement, the Monitor, among other things, shall regularly review and evaluate the quality and timeliness of:	NA	NA	NA	
a	MPD employee use of force investigations, including investigations conducted by the Districts, UFRB , OPR, and FIT, pursuant to Section III(B).	NA	NA	NA	
b	disciplinary and non-disciplinary actions related to officer use of force.	NA	NA	NA	
c	use of force reports.	NA	NA	NA	
d	analyses of data concerning use of force, pursuant to paragraphs 61 and 67; and any actions taken pursuant to paragraph 105.	NA	NA	NA	
e	complaints and resulting investigations of excessive use of force.	NA	NA	NA	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
	In performing its obligations under this Agreement, the Monitor shall, where appropriate, employ appropriate sampling techniques.	NA	NA	NA	
171	The Monitor, inter alia, shall review and evaluate the quality and timeliness of appropriate samples of use of force and misconduct investigations, disciplinary and non-disciplinary actions, ordered as a result of a misconduct investigation; data contained in the PPMS; and appropriate samples of Use of Force Incident reports, canine search and injury reports.	NA	NA	NA	
172	Subject to the limitations set forth in this paragraph, MPD shall reopen for further investigation any misconduct investigation the Monitor determines to be incomplete. The Monitor shall provide written instructions for completing the investigation. The Monitor shall exercise this authority so that any directive to reopen an investigation is given within a reasonable period following the investigation's conclusion. The Monitor may not exercise this authority concerning any misconduct investigation which has been adjudicated or otherwise disposed, and the disposition has been officially communicated to the officer who is the subject of the investigation.	1. Requirement eliminated by modification of the MOA – see November 18, 2003 letter from Shanetta Y. Cutlar to Chief Ramsey.		NA	
	B. MPD Compliance Coordinator				
173	The parties agree that MPD shall hire and retain, or reassign a current MPD employee, for the duration of this Agreement, as an MPD Compliance Coordinator. The Compliance Coordinator shall serve as a liaison between MPD, the Monitor and DOJ, and shall assist with MPD's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate MPD compliance and implementation activities of this Agreement; (b) facilitate the provision of data, documents and other access to MPD employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; and (d) assist in assigning compliance tasks to MPD personnel, as directed by MPD Chief of Police or his designee.	1. Assignment of an MPD Compliance coordinator with the responsibilities described in ¶ 173.	1. Assignment of an MPD Compliance Coordinator with the responsibilities described in ¶ 173.	NA	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
174	The MPD Compliance Coordinator shall take primary responsibility for collecting information to provide MPD's status reports specified in paragraph 175.	1. MPD Compliance Coordinator responsible for collecting information included in MPD's status reports to DOJ and OIM per ¶ 175.	1. Compliance Coordinator effective in gathering information to be included in status reports.	1. Review MPD status reports. 2. Discussions with Compliance Coordinator.	
	C. Reports and Records				
175	Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Quarterly status reports filed with DOJ and MPD delineating all steps taken during the reporting period to comply with each provision of this Agreement.	1. Review MPD status reports. 2. Discussions with Compliance Coordinator.	
176	During the term of this Agreement, the City and MPD shall maintain all records documenting compliance with the terms of this Agreement and all documents required by or developed pursuant to this Agreement. The City and MPD shall maintain all use of force investigation files for at least ten years from the date of the incident. The City and MPD shall maintain an officer's training records during the officer's employment with MPD and for three years thereafter (unless required to be maintained for a longer period of applicable law).	1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of officers' training records during employment and for three years thereafter.	1. Maintenance of all records documenting compliance with terms of the MOA and all documents required under the MOA. 2. Maintenance of training records for ≥95% of officers during employment and for three years thereafter.	1. Review Compliance Coordinator records. 2. Review personnel and training records.	

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
177	DOJ shall continue to have full and unrestricted access to any City and MPD documents (including databases), staff, and facilities that are relevant to evaluate compliance with this Agreement, except any documents protected by the attorney-client privilege. Should the City or MPD decline to provide the Monitor with access to a document based on attorney-client privilege, the City shall provide the Monitor and DOJ with a log describing the document. DOJ's right of access includes, but is not limited to, all documents regarding use of force data, protocols, analyses, and actions taken pursuant to the analyses. This Agreement does not authorize, nor shall it be construed to authorize, access to any MPD documents, except as expressly provided by this Agreement, by persons or entities other than DOJ, the City, MPD, and the Monitor. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a Court or the Monitor, absent written notice to the City and either written consent by the City or a court order authorizing disclosure.				
178	DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.				
179	The Monitor shall issue quarterly public reports detailing the City's and MPD's compliance with and implementation of this Agreement. The Monitor may issue reports more frequently if the Monitor determines it appropriate to do so. These reports shall not include information specifically identifying any individual officer. Before issuing a report, the Monitor shall provide a draft to the parties for review to determine if any factual errors have been made, and shall consider the Parties' responses and then promptly issue the report.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
180	The Monitor may testify in any action brought to enforce this Agreement regarding any matter relating to the implementation or enforcement of the Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of the City, MPD, or any of their agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Monitor may have received knowledge of as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the City or its departments, officers, agents or employees. The Monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records. The Monitor shall not be liable for any claim, lawsuit, or demand arising out of the Monitor's performance pursuant to this Agreement. Provided, however, that this paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.				
	D. Implementation, Termination, and Enforcement				
181	This Agreement shall become effective upon signature by all Parties. The City and MPD shall implement immediately all provisions of this Agreement which involve the continuation of current Department policies, procedures, and practices. Within 180 days of the effective date of this Agreement, unless otherwise specified, the City and MPD shall implement the provisions of this Agreement.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
182	The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years. For the purposes of this paragraph, “substantial compliance” means there has been performance of the material terms of this Agreement. Materiality shall be determined by reference to the overall objectives of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.				
183	The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement.				
184	This Agreement is enforceable through specific performance in Federal Court. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.				
185	In the event MPD or the City fail to fulfill any obligation under this Agreement, DOJ shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to MPD and the City. MPD and the City shall have 30 days from receipt of such notice to cure the failure. At the end of the 30-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to MPD or the City, file an action in the United States District Court for the District of Columbia (the “Federal Court Action”) against MPD and the City for breach of contract and any other appropriate causes of action and may seek specific performance and any other appropriate form of relief.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
186	In any matter requiring its approval under this Agreement, DOJ shall not unreasonably withhold any such approval. DOJ shall respond in a complete and timely manner to any submission submitted by the City or MPD for approval, and shall fully outline any bases for disapproval, together with an indication of the changes required in order for approval to be given. DOJ shall provide its approval or disapproval of all matters in writing. All communications regarding approvals required by this Agreement shall take place in such a manner so as not to interfere with or delay compliance with any obligation contained in the Agreement.				
187	In addition to any other notice it may provide, DOJ shall send copies of any correspondence containing a notice of a failure to approve any submission by the City or the MPD, or a notice of a failure to fulfill obligations under this Agreement to MPD's General Counsel.				
188	In connection with the Federal Court Action, MPD and the City agree as follows:				
a	The City and MPD shall stipulate to subject matter and in personal jurisdiction and to venue.				
b	The City and MPD agree that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Corporation Counsel of the City shall be deemed good and sufficient service upon the City and MPD.				
c	The City and MPD hereby waive the right to file, and agree not to file or otherwise assert, any motion to dismiss (except for failure to state a claim), to stay or otherwise defer, a Federal Court Action alleging a failure to fulfill any obligation under this Agreement.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
d	The City and MPD agree to a trial of the Federal Court Action alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint as set forth above, or (b) the Court's earliest availability, whichever is later. The parties agree that discovery in the Federal Court Action alleging a failure to fulfill any obligation under this Agreement may begin within 15 days after service of the summons and complaint. The parties agree to submit all discovery requests and to schedule all depositions within 75 days after the service of the summons and complaint.				
189	In the event, the Court finds that the City or MPD has engaged in a material breach of the Agreement, the parties hereby stipulate that they shall move jointly for the Court to enter the Agreement and any modifications pursuant to paragraph 194, as an order of the court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.				
190	Nothing in this Agreement shall preclude DOJ, after complying with paragraph 185 (provision of notice and an opportunity to cure), from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of excessive force in addition to or in lieu of the Federal Court Action described above. In the event that any such action is filed, the City and MPD hereby waive, agree not to assert, any defense to that action based on statute of limitations, laches, estoppel or any objection relating to the timeliness of the filing of such action. Nothing in this Agreement shall preclude DOJ from filing an action under the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. Section 14141) alleging a pattern or practice of unlawful conduct other than excessive force. Nothing in this Agreement shall preclude DOJ from filing an action under any other provision of law.				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
191	Nothing in this Agreement shall be construed to require an expenditure, obligation, or contract in violation of the Anti-Deficiency Act, 31 U.S.C. §1341 et seq. The District's obligations shall be subject to the availability of appropriated funds (including funds obtained from grants and contracts) as follows:				
a	To the extent made necessary by lack of funds, beginning for fiscal year 2002, the district may obtain deferral of compliance with an obligation of this Agreement until its next annual budget cycle if, as soon as the District knows or should know of the possibility of the event, it provides in writing to DOJ a statement which shows the following:				
i	that it included in its annual budget act as adopted by the Council of the District of Columbia and submitted to the President for transmission to the Congress pursuant to section 446 of the D.C. Self-Government and Governmental Reorganization Act, D.C. Code §47-304 (1997), sufficient money to carry out such objective;				
ii	that it made diligent efforts to obtain Congressional enactment of that part of the budget act;				
iii	that it made diligent efforts to identify and utilize grant and contract funds available to the City from federal and private funding sources to meet obligations under this Agreement (DOJ will assist the City to identify potential Department of Justice grants, or other funding sources, for which MPD may be eligible to apply and will provide MPD with appropriate technical assistance regarding any related application process);				
iv	that it expressly identified in the annual fiscal year adopted budget prepared for Congressional use such obligation (not necessarily to include reference to this Agreement as such) together with the amount of money tied to performing such obligation; and				

MOA ¶	MOA Provision	MOA REQUIREMENTS AND ACTIVITIES TO BE MONITORED	DEFINITION OF SUBSTANTIAL COMPLIANCE	DATA SOURCES	STATUS
v	that Congress acted expressly to eliminate such amount of money or to reduce it below the level necessary to perform the obligation, or that Congress made an across the board reduction in the appropriation of MPD, OCCR, or any other agency with specific obligations under this Agreement as shown in the Council's budget act without expressly saving such obligation and the across the board reduction, as applied proportionately to the amount of money shown in the adopted budget for such obligation left an insufficient amount to carry out that obligation.				
b	The Mayor and MPD shall make diligent efforts to safeguard all appropriated funds available to meet obligations under this Agreement from re-programming.				
	E. Compliance				
192	This Agreement is a public document and shall be posted on the websites of the City or MPD and of the Special Litigation Section of the Civil Rights Division of DOJ.	1. MOA posted on MPD's Web site.	1. MOA posted on MPD's Web site.	1. MPD Web site.	
193	The City and MPD agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.				
	F. Modifications				
194	The Parties may jointly agree, in writing, to modify this Agreement.	NA	NA	NA	