DEFICIENCIES IN THE BACKGROUND VERIFICATION PROCESS FOR NYC TRANSIT EMPLOYEES – FINAL (MTA/OIG #2019-13)

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OVERVIEW

In 2019, the Office of the MTA Inspector General (OIG) concluded a review of the background and criminal history verification process for the largest classification of employees (the Competitive Class) that MTA New York City Transit (NYC Transit or NYCT) hires. The purpose of the review was to examine whether Competitive Class hires are properly vetted for employment by the two agencies responsible for this screening. **In short, we found that the process is significantly deficient and raises many of the same concerns OIG discussed in a 2004 report, 15 years ago.**[1] NYC Transit's generally positive responses to our recommendations are summarized below.

I.   EXECUTIVE SUMMARY

NYC Transit and its associated subsidiaries (collectively, NYC Transit) have tens of thousands of employees, many of whom interact with the public directly or work in safety-sensitive positions. To ensure that new employees are qualified and suitable for such positions, NYCT requires candidates to consent to a verification process that includes a criminal background check.

Two groups conduct background checks for distinct sets of NYC Transit employees:

- The New York City Department of Citywide Administrative Services (DCAS) is responsible for examining the criminal records of individuals in certain civil service titles, ranging from Bus and Train Operators and Station Agents to Administrative Engineers. Based solely on its review of these criminal records, DCAS decides to conduct a broader review of the claimed education and experience for only a relatively small number of these employees.

- NYCT's Background Investigations Unit (BIU) is responsible for examining hires in the remaining positions. BIU checks all non-civil service employees. Additionally, apart from criminal records checked by DCAS, BIU is by default responsible for vetting most civil service hires' backgrounds—except those for whom DCAS decides to do a broader review. In other words, BIU is supposed to verify the reported education and work experience for most new employees.

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[1] *See* OIG #2004-02L, pp. 1-9.

To determine whether the current system adequately screens and investigates new employees of NYC Transit, the OIG conducted an audit of the background verification process for all Competitive Class hires—meaning those whose titles are subject to a competitive exam. Competitive Class employees include Bus Operators, Station Agents, and several types of Maintainers, among other titles.

NYC Transit's Human Resources Department (HR) performs the initial screening of applications for Competitive Class positions. After being hired, employees' backgrounds are checked by either DCAS or BIU, depending on jurisdiction. Notably, these verification processes begin after NYC Transit has hired the employee.

On July 31, 2019, we shared our Draft Report with NYC Transit for comment. NYCT's October 24, 2019 response noted that OIG's findings and recommendations "support Transit's commitment to ensuring that our employees are qualified for their positions." NYC Transit generally agreed with the recommendations and outlined steps the agency will take to strengthen its background verification practices. NYCT also added, "However, there are serious financial, external and operational constraints that limit the extent to which [OIG's] recommendations can be implemented at this time." NYCT's specific responses appear at the end of the Report.

A. Summary Findings

The OIG audit team identified the following deficiencies and areas of concern:

1. **NYC Transit could be hiring employees who have not met stated qualifications for their positions and/or who falsified their credentials without detection.**

   When performing the initial screening of applications for Competitive Class positions, HR takes an applicant's reported credentials at face value rather than contacting the educational institutions and prior employers reported by the applicant to verify the alleged qualifications.

   After NYC Transit hires a new employee, neither DCAS nor BIU consistently or sufficiently verifies the new employee's reported education and experience. During a recent 12-month period we analyzed, DCAS did not contact educational institutions or prior employers for at least 78% of the employees hired into its titles. Despite DCAS having delegated responsibility for checking such employees to NYC Transit in 1997, BIU also did not conduct such checks for any new employees in DCAS titles. Any of these employees could have falsified their educational background or professional experience with little or no chance of detection. In other words, it's largely an honor system. In addition, BIU attempts to validate stated credentials for only a very small sample of the hires that are under its sole jurisdiction, and it only began this process in September 2017. *(See pp. 7-10.)*

2. **NYC Transit officials erroneously believed that DCAS was more broadly verifying employees' education and experience qualifications, on at least a sample basis.** *(See p. 13.)*

3. **Both DCAS and BIU take too long to complete background investigations that identify deficiencies warranting the removal of employees.**
    For employees in titles subject to DCAS review, DCAS has the authority to order termination on the basis of unfavorable background check results. We found that when employees were terminated at DCAS' direction, they had been on the job for an average of nearly a year. Employees terminated based on BIU's background verifications were on the job for an average of over 3 months. Many of the terminated employees remained on the job for such an extensive period of time that they had already completed one of NYC Transit's comprehensive and costly training programs and were working in safety-sensitive positions with direct customer contact. *(See p. 11.)*

    A significant cause of delay in terminating an employee is that DCAS will not order the termination until it has completed both the employee's criminal history check *and* the verification of stated educational and employment credentials—even if the criminal history alone would be sufficient to justify the termination. This practice allows employees who present a risk to remain in NYC Transit's employ longer than necessary or desirable. *(See p. 12.)*

4. **Our examination of data strongly suggests that a number of individuals whom DCAS reviews and accepts for employment would not be accepted if NYC Transit's BIU conducted the review.**

    In an analysis of approximately 2,600 Bus Operators who graduated from training classes between January 2015 and August 2017, we found that NYC Transit terminated 11 individuals as a result of BIU's background verification. In these cases, BIU found that the individuals had failed to disclose to NYC Transit material aspects of their criminal histories, and thus BIU recommended to HR management that the employees be terminated. The employees' undisclosed convictions—some relatively recent, others decades old—included the felonies of rape, criminal possession of a weapon, robbery, and criminal sale of a controlled substance, among other serious crimes.

    In contrast, DCAS did not order the termination of a single Bus Operator from this period, although it was responsible for reviewing approximately 38% of these Bus Operators' histories. Because it is unlikely that the group of Bus Operators under DCAS' purview differs significantly from the BIU group, this disparity in termination rates raises the question of whether DCAS' standards for termination are sufficiently aligned with NYC Transit's own policy. *(See pp. 12-13.)*

5. **DCAS does not regularly inform NYC Transit of DCAS' progress in completing background checks or of the status of individual employees' verifications.**

For example, DCAS does not tell NYC Transit either which employees it has selected for in-depth investigation (based on unfavorable criminal history results) or those it has decided not to investigate. *(See p. 13.)*

B. Recommendations

We make several recommendations to address these deficiencies.

1. For the Subsidiaries, whose employees are non-civil service and thus subject to NYC Transit's full authority, the agency should significantly **increase the number of Competitive Class hires for whom the Background Investigations Unit verifies educational and work experience qualifications.** The agency should focus this additional scrutiny on positions with substantive educational and/or experience requirements.

2. Regarding NYC Transit's civil service positions, agency leaders should **develop a strategy to accomplish the longer-term goal of becoming an independent civil service agency**, thus gaining clear authority over—and accountability for—the hiring process.

3. Until NYC Transit achieves full control over its civil service positions, to strengthen its hiring process and reduce the chances of hiring unqualified employees, management should:

    a. **Establish a risk-based approach to verify the educational and work experience qualifications for a substantial percentage of Competitive Class hires** for whom DCAS does not conduct a full investigation.

    b. **Develop a clear understanding of how DCAS assesses the criminal histories** of new employees, decides when to open an investigation, and determines whether to require an employee's termination, and then use this knowledge to inform NYC Transit's own review of its employees' qualifications.

    c. **Accelerate the background verification processes** used by both agencies, without diminishing their thoroughness and accuracy, through negotiation and coordination with DCAS.

    d. In collaboration with DCAS, **identify and implement additions to the 2018 Memorandum of Understanding with DCAS** to document how DCAS will inform NYC Transit about the status of individual employees' background checks, how NYC Transit will transmit documents to DCAS, and how both agencies will take steps to make the background verification process more efficient and transparent.

The OIG's Report, which appears below, provides added context and describes our findings and recommendations in more detail.

II.   BACKGROUND

A. Audit Purpose

NYC Transit has tens of thousands of employees, many of whom interact with the public directly or work in safety-sensitive positions. To ensure that new employees are qualified and suitable for such positions, NYC Transit requires candidates to consent to a verification process that includes a criminal background check and a review of prior education and work experience. After noting problems that occurred with adequately vetting new employees, the OIG decided to review the verification processes for certain positions within NYC Transit to determine whether new employees' credentials received sufficient scrutiny. Our review focused on a group of positions described as the Competitive Class, which we define below.

B. NYC Transit Job Titles and Classifications

NYC Transit's civil service workforce is divided into four classes, only one of which, the Competitive Class, is subject to competitive examination and is relevant to this report.[2] Three subsidiary MTA operating units also hire many employees through competitive exams: The Manhattan and Bronx Surface Transit Operating Authority, The MTA Bus Company, and the Staten Island Rapid Transit Operating Authority (collectively, the Subsidiaries).[3] Employees of the Subsidiaries who work in positions with a competitive examination are considered part of NYC Transit's Competitive Class employees for the purposes of this report.

New York State law confers civil service status on all employees working directly for NYC Transit, but not on those working for the Subsidiaries.[4] Accordingly, Subsidiary employees deemed Competitive Class employees for this report do not have civil service status. Both New York State law and the rules of the Municipal Civil Service Commission of New York City govern employment with NYC Transit.[5] The Personnel Rules and Regulations of the City of New York are applicable to NYC Transit.[6]

C. Features of Competitive Class Job Titles and the Exam

Approximately 90% of the employees working for NYC Transit or one of the Subsidiaries are in a Competitive Class title. In addition to having an associated title-specific examination (Exam), nearly all of the Competitive Class titles have clearly defined educational and/or work experience qualifications (Qualifications) that applicants must possess. The NYC Transit Human Resources Department (HR) ranks qualified applicants based on their Exam

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[2] The remaining three classes of employment, which are not pertinent to this report, are the Exempt Class, the Non-Competitive Class, and the Labor Class. Civil Service Law §40.

[3] The Manhattan and Bronx Authority is a subsidiary of NYC Transit; the other two are subsidiaries of the MTA itself.

[4] *See e.g.* Public Authorities Law (PAL) §1203-a(3)(b).

[5] PAL §1210(2).

[6] PRR Rule II, Section V, ¶2.5.

scores and then creates a list for each title from which it extends employment offers. For many Competitive Class titles, the Exam consists solely of a written and/or practical test, and the test score is the sole factor in the ranking. For some other titles, HR also scores applicants' self-reported Qualifications, typically adding points for these asserted Qualifications to the test score.[7] Lastly, for a small number of Competitive Class titles, the Exam consists *solely* of a scoring of reported Qualifications, without any written or practical test.

D. The Different Reviewing Agencies

Two different entities conduct background verifications of NYC Transit employees depending on their job titles. The DCAS is responsible for ensuring that the appointment, promotion, and employment of NYC Transit civil service employees comply with law.[8] DCAS is also the starting point for the background verifications of NYC Transit employees whose titles are subject to a competitive examination and who have civil service status. DCAS reviews the criminal records of all such hires and also checks the Qualifications of those found to have significant criminal records. Some examples of the job titles that DCAS vets in this way are NYC Transit Bus Operators, Station Agents, several types of Maintainers, and Administrative Engineers.

NYC Transit's Background Investigations Unit (BIU), a small group within HR, performs the background verifications for all new hires for the Subsidiaries.[9]

Over the past two decades, DCAS gradually delegated to NYC Transit more responsibility over certain aspects of the civil service hiring process.[10] Most relevantly, in 1997 DCAS transferred the primary responsibility for confirming the Qualifications of most new civil service employees—those without significant criminal histories.

DCAS has retained the authority to order terminations based on its background reviews of civil service employees in positions within its jurisdiction. NYC Transit may also dismiss a civil service employee who the agency determines lacks the minimum Qualifications for their position.

In 2013, NYC Transit ended an unsuccessful multi-year effort to change New York State law to create an independent civil service commission for the agency. This would have enabled

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[7] Each such position has its own scoring formula. For example, in seeking a position requiring at least two years of experience, an applicant with four years of experience could receive more points than one with two years.

[8] New York City Charter, Chapter 35, §811.

[9] NYC Transit has legal authority to perform these verifications for all of the Subsidiaries. *See* PAL §§ 1203-a, 1266(5).

[10] For example, in 2011, NYC Transit and DCAS entered into a Memorandum of Understanding (MOU) authorizing NYC Transit to develop and administer Exams for about 65 NYC Transit titles that can be open to external applicants. DCAS and NYC Transit updated the MOU in 2018 but made no changes to its language on background verifications.

NYC Transit to replace DCAS as the entity making civil service hiring and termination decisions. Notably, DCAS had suggested and supported this effort. Given the complexity of the proposed change, NYC Transit management worked closely with DCAS, the NYC Law Department, and the Office of the Mayor to draft the legislation. After much joint effort, the bill was introduced in the New York State Assembly but did not advance, primarily because of what NYC Transit describes as unified opposition from the unions involved. Union leadership feared that their members would lose certain protections afforded by the current system. NYC Transit sought to assuage these concerns but was not successful; thus in 2013, the agency concluded this effort to seek autonomous civil service authority. However, a senior HR official told us that NYC Transit and the MTA continue to explore the possibility of adjusting NYC Transit's role in the current civil service system.

E. The Reviewing Process

Notably, the verification process begins *after* NYC Transit has hired an employee. HR submits new employees' names for background verifications either to DCAS or BIU, depending on which entity has jurisdiction over the job title; i.e. new NYC Transit civil service hires in the Competitive Class are sent to DCAS, while all others are sent to BIU.[11] An HR official told us that the agency hired 3,613 Competitive Class employees in the 12-month period ending June 30, 2018; DCAS was responsible for reviewing 3,037 of these hires (84%) while BIU reviewed the remaining 576 hires (16%) for the Subsidiaries.

III.   FINDINGS

A. Neither DCAS nor NYC Transit Adequately Verifies the Qualifications of Competitive Class Hires

1. NYC Transit HR's "Face-Value" Review of Reported Qualifications

Prospective employees report their Qualifications on multiple application documents. HR personnel then review the information to ascertain whether it meets the requirements for the job title and take steps to complete each applicant's file as needed. For example, when a position has an educational requirement, HR requires applicants to submit a relevant school diploma before the agency will make a job offer. Importantly, though, HR staff members do not verify the reported information with educational institutions. The same is true for prior work experience; HR does not seek confirmation from the former employers named on applicants' documentation. Instead, HR officials told us that at this stage of the process, reported Qualifications are taken at "face value" and assumed valid for the purposes of qualifying and scoring applicants.

HR officials told us this initial face-value approach was a practical necessity at the pre-

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[11] In addition to the Subsidiaries, BIU is responsible for background verification of new NYC Transit hires into the Exempt, Non-Competitive, and Labor classes. BIU either performs this work internally or refers cases to the MTA's all-agency contractor for these services.

hire stage, given the large number of applicants under consideration. Nevertheless, HR should detect problems that are self-evident in the application documents. As the following example from a recent investigation makes clear, NYC Transit HR's face-value review of applicants' self-reported Qualifications can be so cursory that it fails to detect obviously suspect information:[12]

The OIG received a complaint alleging that an NYC Transit maintenance employee had falsified his professional experience in 2012 when he applied to take the civil service exam for Car Inspector—the position to which the agency eventually appointed him in 2013. In evaluating his application, HR credited the employee with four years and four months of professional experience, a total that satisfied the position's requirements.

Our review of his application materials—which included his date of birth—revealed that if the reported information were accurate, the employee would have been just 13 years old at the start of his first qualifying full-time position.

In discussing this matter with the OIG, HR officials acknowledged that they should have caught the discrepancy between the employee's age and his purported work experience in 2012, prior to extending an offer of employment. (The individual resigned from NYC Transit during the OIG investigation.) Aside from resulting in the hiring of an unqualified candidate, this lack of diligence created an unfair process for applicants whose Qualifications actually met the agency's requirements.

Once an employee accepts an offer and starts work, DCAS and BIU perform background verifications on the employees under each department's purview, as described below.

2. DCAS' Limited Background Verifications for Competitive Class Civil Service Positions

NYC Transit obtains the fingerprints of new civil service hires and submits them to DCAS. In our discussions with DCAS officials, they explained their process as follows. DCAS first reviews each employee's criminal history. If the individual has no such history, DCAS takes no further action concerning that applicant. For new employees with a criminal history, DCAS requests copies of their application documents from NYC Transit and, in some cases, contacts the applicant for further information. After reviewing this material, DCAS personnel either conclude their review without taking any action or open a full investigation. DCAS officials told us they base these decisions on such factors as the age and severity of the past offenses. However, as we discuss more fully later, the standards DCAS uses in evaluating new employees' criminal backgrounds apparently differ from NYC Transit's own standards in ways that are troubling.

Significantly, only when DCAS chooses to open a full investigation does it attempt to verify an employee's education and work experience. DCAS officials told us that in the year ending June 30, 2018, the agency initiated 652 investigations, representing only 21.5% of NYC Transit's Competitive Class civil service hires that year. Therefore, based on the approach

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[12] *See* OIG report #2019-18.

DCAS described to us, they did not review the Qualifications of the remaining 78.5% of hires into these titles. Additionally, although DCAS managers told us that DCAS may conduct additional inquiries if a reviewer notices discrepancies or derogatory information in an applicant's reported Qualifications, reviewers do not actively look for such information, and DCAS has no formal guidelines governing such reviews.

DCAS managers also told us that the hiring agency is responsible for ensuring that civil service hires possess the minimum Qualifications for their positions. NYC Transit officials did not dispute this. However, at no point does NYC Transit attempt to verify the Qualifications of civil service employees whose criminal history review was performed by DCAS. Further, while NYC Transit HR officials told us they believed that DCAS verified new employees' Qualifications more broadly, at least on a sample basis, this proved to be inaccurate. Indeed, DCAS told us it does not do any sampling, and stated further that the only time a new Competitive Class civil service employee's reported Qualifications might be subject to verification is when DCAS decides to open an investigation. Even in these instances, the extent to which DCAS verifies this information during an investigation is unclear. At a minimum, for the year ending June 30, 2018, any of the nearly 80% of these new employees for whom DCAS did not open an investigation could have falsified their educational background or professional experience with little or no chance of detection.

3. Reductions in DCAS' Verification Activity Over Time

Such limited verification of Qualifications of Competitive Class civil service hires is not a recent development and has long been a concern to us. The OIG performed an in-depth review of NYC Transit's background verification process in 2004 (OIG #2004-02L), raising issues similar to those detailed here. Our 2004 report noted that DCAS had previously been responsible for verifying the Qualifications of all new civil service hires under its purview. However, during that audit, the Director of the DCAS Investigations Division told OIG staff that DCAS had stopped performing this function for every hire in the mid-1990s, when DCAS reduced its investigative staff from 30 investigators to six. As noted above, in 1997 DCAS delegated responsibility to NYC Transit for most verifications of Qualifications. Beginning in 1999–2000, annual agreements between DCAS and NYC Transit changed the scope of DCAS' responsibility for background verifications from all new Competitive Class civil service hires to only those whose fingerprint checks revealed criminal activity or who had derogatory information on their employment forms. Despite this clear change in scope, our 2004 audit showed that NYC Transit had not adjusted its procedures to take on additional responsibility for vetting new employees' credentials.

Based on this history, in our 2004 report we recommended that NYC Transit verify the Qualifications of employees it hires on the basis of competitive civil service exams. NYC Transit rejected this recommendation, except as to positions for which scored Qualifications are a deciding factor in the ranking. In rejecting a broader verification effort, the agency asserted that blue-collar or skilled trade work is frequently intermittent and informal, making it difficult to identify, locate, and contact past employers, particularly those in foreign countries. Furthermore, NYC Transit said that controls it had already implemented—competitive Exams,

training programs, and probationary periods—were more effective at ensuring that new employees are qualified for their positions.

However, when we discussed these findings with HR personnel during the current audit, one HR manager told us that an Exam alone—even one including a practical component—does not test for all of the skills needed to satisfy the requirements of a job title. While the combination of Exams, training, and probation is a significant safeguard, it is no substitute for confirming Qualifications. Effectively enabling applicants for civil service positions to falsify or embellish their credentials undermines the hiring process and makes it unfair to those job seekers who are honest about their own Qualifications. While senior HR officials did not dispute this, they stated that NYC Transit currently does not have the necessary resources to conduct a significantly increased number of background verifications.

4. *BIU's Review: Background Verifications for Competitive Class Non-Civil Service Hires*

We learned that like DCAS, BIU does not verify the Qualifications reported by applicants for most of the competitive positions that fall under its purview. Shortly after we began this review, BIU started evaluating the Qualifications of a sample of approximately one out of every 30 new employees hired into operating positions at the Subsidiaries. BIU focused these efforts on skilled trade positions, such as Mechanics and Electricians, as these titles have specific experience requirements. As of March 2019, the first seven reviews had resulted in one termination: BIU found that the work experience claimed by the employee—which he described as full-time, paid employment as an electrician—was at most part-time, and the only compensation was a minimal stipend for food and transportation. (Under NYC Transit policy, candidates cannot use such unpaid work to meet its experience requirements.)

We recognize that verifying Qualifications can be very labor-intensive without necessarily yielding fruitful results. However, verification is an essential process, and in examining some of BIU's recent reviews we observed that the BIU staff is capable of tracking down and evaluating information about past work experience, including overseas. The fact that this small number of reviews has already resulted in a termination based on falsified Qualifications strengthens our judgment that NYC Transit can and must address the deficiencies in this process to provide reasonable assurance that its competitive hires are qualified for their positions.

In our view, NYC Transit should expand the number of competitive hires—both civil service and non-civil service—for which it verifies Qualifications, using a risk-based sampling approach in deciding which positions should receive these additional screenings. At a minimum, we believe that further scrutiny is necessary for positions with substantive and specific educational and/or experience requirements, regardless of whether those requirements constitute all or part of the scores used to rank applicants. Enough new employees should undergo this augmented screening process to create the expectation among *all* applicants and new employees that NYC Transit is likely to verify the Qualifications and other information they report.

B. DCAS Takes Much Longer than BIU to Order Background-Based Terminations; NYC Transit Contributed to the Problem

We learned that between January 2015 and August 2017, NYC Transit terminated 36 employees as a result of information obtained from DCAS and BIU background verifications. Specifically, the employees were terminated because they had falsified, misrepresented, or were unable to provide proof of their Qualifications, had failed to disclose material facts concerning their criminal history, or both.

Reflecting the bifurcated nature of the agency's verification process, NYC Transit carried out 12 of the terminations at the direction of DCAS and 24 based on BIU's recommendation. In analyzing NYC Transit's records, we identified a significant disparity in the length of time it took DCAS and BIU to complete their respective processes. When DCAS conducted the review, the 12 employees remained on the job for an average of 47.2 weeks before DCAS terminated them. In contrast, the 24 employees in BIU's jurisdiction were terminated in 14.3 weeks after being hired—about one-third of the time it took DCAS to act.

The timely completion of these verifications is vital because many competitive job titles require new employees to complete training before the agency places them into full service; if the agency can identify disqualifying information before fully training an individual, it can save money and reduce the risk to its operation and the public. We reviewed the training periods for a sample of eight of the 12 employees terminated at DCAS' direction. For seven of those sampled (87.5%)—all of whom were in safety-sensitive positions, with six of them regularly interacting directly with the public as part of their employment in titles such as Station Agent, Conductor, and Train Operator—the termination occurred *after* the employees had completed training, meaning that NYC Transit incurred significant costs to train employees who were eventually disqualified. Similarly, most of the employees terminated based on BIU's background checks had completed training, though their average time on the job was less than for employees reviewed by DCAS.

When we asked DCAS officials why these 12 background verifications took an average of 47 weeks to complete, they attributed that time to BIU's delay in sending DCAS the employees' application documents, which it needs to conduct its assessment. In evaluating this claim, we learned that as of April 30, 2018, DCAS was waiting for NYC Transit to respond to 57 outstanding requests, of which 41 had been pending for at least six weeks, with 15 of those 41 outstanding since January 2018. NYC Transit management explained that the delays stemmed from problems that NYC Transit staff members experienced when using an internal content management system, but the staff eventually responded to all 57 requests. Management further assured us of their expectation that in the future the agency would fulfill these requests within one week.

Certainly, NYC Transit should continue to monitor its response time to DCAS requests and, if necessary develop additional procedures to ensure the timely provision of documents to DCAS. However, while NYC Transit's delay in forwarding application materials was a

contributing factor, it does not fully explain why terminations directed by DCAS took an average of 33 weeks longer than those initiated by BIU.

In seeking to understand other causes of this delay, we learned that once DCAS officials open an investigation, they will not order an employee's termination until they complete the investigation—including the verification of Qualifications—even when the applicant's criminal history alone would be enough to justify the termination. These officials explained that they complete this entire process because terminated employees' appeals often address their Qualifications, and DCAS needs to be prepared to defend its decision in a legal or administrative proceeding. In contrast, NYC Transit told us it will take prompt action to terminate an employee as soon as BIU discovers an undisclosed criminal history that, in and of itself, meets Transit's criteria for termination.[13]

Clearly, DCAS takes much longer than NYC Transit to complete its background verifications in cases resulting in termination, and NYC Transit needs to seek improvements in DCAS' turnaround time. Employees who are eventually disqualified as a result of the background verification process—whether because of insufficient Qualifications or a problematic criminal history—should not be working for NYC Transit for many months, often in safety-sensitive positions, prior to termination. As noted, the agency also incurs significant training costs for each new employee, costs which then recur when NYC Transit needs to fill a position formerly held by individuals who falsified their record during the hiring process. In our view, NYC Transit should no longer consider such a lengthy process acceptable.

C. Termination Rates Based on Bus Operators' Criminal Histories Varied Greatly Between NYC Transit and DCAS

During our review, we recognized that some individuals whom DCAS reviews and accepts for employment might be rejected had NYC Transit conducted the review. We analyzed the outcomes of the background verification process for the approximately 2,600 newly hired Bus Operators (Operators) who graduated from their training classes between January 2015 and August 2017. The position of Operator has no required Qualifications, and NYC Transit reviews all candidates' driving records pre-hire. Therefore, any terminations would likely be based on undisclosed criminal records.

Our analysis revealed that as a result of BIU's background checks, NYC Transit terminated 11 Operators for not disclosing material aspects of their criminal histories. The employees' undisclosed convictions—some relatively recent, others decades old—included the felonies of rape, criminal possession of a weapon, robbery, and criminal sale of a controlled substance, among other serious crimes. In contrast, we found that DCAS did not order the termination of a single one of the roughly 38% of the Operator graduates who were NYC Transit civil service employees. When we brought this disparity to the attention of DCAS and NYC

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[13] Unlike DCAS, NYC Transit has not established an internal process by which an employee can appeal a termination based on the results of BIU's background verification. An NYC Transit official told us the agency planned to do so.

Transit officials, they could not offer a definitive explanation for such disproportionate termination rates between these groups of Operators.

NYC Transit officials should work with DCAS to address any substantial inconsistencies between the agencies' respective processes for evaluating disclosed and undisclosed criminal records. NYC Transit should also continue to explore whether DCAS would agree to give NYC Transit additional control over performing the background verifications for some or all of its competitive civil service titles.

D. NYC Transit Lacks an Accurate Understanding of DCAS' Verification Process

As mentioned above, NYC Transit officials are responsible for sharing application documents with DCAS but are otherwise not involved in DCAS' verification process. DCAS ordinarily communicates with NYC Transit only when ordering a termination; notably, DCAS does not inform NYC Transit upon completing its background review of a given employee without ordering a termination. Further, DCAS does not notify NYC Transit when it opens an investigation or decides not to do so.

We found that NYC Transit officials were not well informed about how DCAS verifies the backgrounds of NYC Transit's competitive-class civil servants. Specifically, some key managers were generally unfamiliar with the scope and methodology DCAS uses for initiating investigations or ordering terminations. For example, three HR managers erroneously believed that DCAS used a random sampling protocol in deciding when to open some investigations; however, as discussed above, DCAS personnel denied using any such sampling procedure. Some of these HR managers told us they based this belief on information DCAS had provided them in the past. It is troubling that NYC Transit managers did not maintain current knowledge of DCAS' practices in this area.

In another example of an incomplete understanding between the two agencies, the NYC Transit managers we spoke with were unable to offer a clear explanation regarding the disproportional terminations of Bus Operators, as also discussed above. Further, the managers had not made any proactive effort to question DCAS about the disparity, despite having access to all of the data needed to reveal it.

In a positive development, we learned that NYC Transit HR managers and high-level DCAS officials have begun holding quarterly meetings to discuss testing and hiring matters affecting both agencies. However, the HR managers we spoke to said that the group had not yet discussed the background verification process. These meetings represent a good opportunity for NYC Transit managers to learn about DCAS' standards and methods, raise any concerns, and then take the necessary steps to reduce the risks inherent in the current verification process.

To address the deficiencies we identified, NYC Transit should work with DCAS, first to develop a better understanding of the methodology DCAS uses in conducting its background

verifications, and then to reassess the 2018 Memorandum of Understanding so as to reach an agreement on the agencies' respective roles and responsibilities in managing this important process.

IV.   CONCLUSION

The conditions we describe here have existed for at least the past two decades. While some circumstances may have changed in that time, the same deficiencies we identified in 2004 persist today. These deficiencies unfairly put truthful job applicants at a disadvantage and NYC Transit's customers, operations, and property at risk.

Clearly, a fundamental problem is that NYC Transit lacks full authority over the hiring process for its civil service employees. While the agency has previously sought this authority— which would require changes to New York State law—those efforts have not succeeded. The current two-agency process makes it difficult to hold NYC Transit accountable for conducting adequate background reviews. To improve the civil service hiring process it is critical that top executives from both NYC Transit and DCAS promptly work together to identify appropriate and permanent solutions. In addition, NYC Transit should take steps to improve its own program for evaluating the credentials of both civil service and non-civil service employees.

V.   RECOMMENDATIONS

In its response dated October 24, 2019, NYC Transit stated that it would take steps to improve the background verification process. Overall, the agency agreed with OIG's recommendations, as set forth below, and described its plans to implement them to the extent possible, given the financial and other constraints the agency faces.

1. For the Subsidiaries, whose employees are non-civil service and thus subject to NYC Transit's full authority, the agency should **significantly increase the number of Competitive Class hires for whom the Background Investigations Unit verifies educational and work experience qualifications.** The agency should focus this additional scrutiny on positions with substantive educational and/or experience requirements.

    Agency Response: "Transit plans to increase the number of verifications conducted for hires in the titles covered by the Report to the extent feasible given current BIU resources." After the MTA awards a new all-agency contract for background investigation services in early 2020, the "new contract should enable the BIU to reallocate some of its resources towards performing additional verifications for titles covered in the Report. The goal will be to double the number of verifications in the covered titles from 1-in-30 hires to 1-in-15. Beyond this, expansion of the BIU caseload is only possible with additional resources....Transit plans to seek the necessary internal approvals for a reasonable increase in BIU headcount."

2. Regarding NYC Transit's civil service positions, agency leaders should **develop a strategy to accomplish the longer-term goal of becoming an independent civil service agency**, thus gaining clear authority over—and accountability for—the hiring process.

Agency Response: "Senior management at Transit, MTA and DCAS is keenly aware not only of the potential benefits of establishing an independent civil service commission for Transit and Bridges & Tunnels, but also of the significant costs and formidable political and labor relations obstacles to the necessary legislation. Where opportunities present themselves, Transit will continue to advocate for the continued development of such a strategy."

3. Until NYC Transit achieves full control over its civil service positions, to strengthen its hiring process and reduce the chances of hiring unqualified employees, management should:

   a. **Establish a risk-based approach to verify the educational and work experience qualifications for a substantial percentage of Competitive Class hires** for whom DCAS does not conduct a full investigation.

   Agency Response: "As discussed in the response to Recommendation 1 above, Transit plans to increase the number of verifications conducted for hires in the titles covered by the IG Report within the capacity of the current BIU staff. These additional verifications will be in titles which have a significant safety or public-facing aspect. In addition, HR will establish a practice whereby the Examinations Unit and/or Employment Center can flag to the BIU for special handling (i.e., an expedited investigation) any candidate whose claimed education and experience may be questionable."

   Because the agency's written response did not specifically address civil service positions in DCAS' jurisdiction—the subject of this recommendation—OIG sought clarification and learned that the above response does refer to positions for which DCAS performs the initial review.

   b. **Develop a clear understanding of how DCAS assesses the criminal histories** of new employees, decides when to open an investigation, and determines whether to require an employee's termination, and then use this knowledge to inform NYC Transit's own review of its employees' qualifications.

   Agency Response: "Transit will meet with DCAS management in the 4th Quarter of 2019 to gain a clearer understanding of DCAS procedures for assessing criminal histories of new employees and how it determines when to open an investigation and whether to require an employee's termination. Transit will then use this knowledge to inform its own procedures regarding the review of employees' qualifications."

   c. **Accelerate the background verification processes** used by both agencies, without diminishing their thoroughness and accuracy, through negotiation and coordination with DCAS.

   Agency Response: "In working with DCAS to understand its procedures for assessing criminal histories of new employees as per Recommendation 3b, Transit will also

determine the potential to accelerate background investigation processes through negotiation and coordination."

d. In collaboration with DCAS, **identify and implement additions to the 2018 Memorandum of Understanding with DCAS** to document how DCAS will inform NYC Transit about the status of individual employees' background checks; how NYC Transit will transmit documents to DCAS; and how both agencies will take steps to make the background verification process more efficient and transparent.

Agency Response: "Modifications to the MOU requiring DCAS to change its background verification process to make it more efficient and transparent may also require negotiation and concessions by both parties if such changes would involve additional work or responsibilities on the part of DCAS. Nonetheless, Transit will review with DCAS all of the relevant issues raised in the Report and determine the possibility of resolving those issues through a modified MOU."

The agency response further stated, *"In addition to the specific actions that we will be taking in response to the above Recommendations, New York City Transit will also request that MTA Audit Services schedule a follow-up review of BIU operations, in the near future."*