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NILG

>> KEVIN CARPENTER: Good morning. Or good afternoon welcome to day two of the NILG 2020 webinar series. My name is Kevin Carpenter representing the Pacific region. I'm pleased to be here virtually, but certainly wish we were altogether at National Harbor.

I have a few housekeeping items before we get started. The session is being recorded. There is also a copy of the presentation attached to the webinar you can download. And a transcript will be made available. You should also have received a link to closed captioning if you need it. If you have a question please use the chat functionality. Before I introduce our speakers I want to take a moment to thank our sponsors. And Tony can you go to the next slide please.

The support you have shown us these past few months has been amazing and greatly appreciated. Thank you to the sponsors you see on the screen for supporting the NILG and its webinar series. Now let me introduce our speaker for today's webinar behind the curtain best practices and lessons learned for managing organization during an agency review. Cheri Burgess from Princeton University and is the director for institutional equity EEO. Sam Starks is the executive director of affirmative action and equal employment -- equal opportunity employment programs at the University of Pennsylvania.

Cheri and Sam, welcome and thank you for presenting today. I'm going to turn it over to you Cheri.

>>CHERI BURGESS: Thank you very much, Kevin. Hi, everyone. I'm very happy to be here today. I'm Cheri Burgess and I work in higher education, but I have also held positions in corporate and in government and private practice settings and I have more than 25 years experience managing agency investigations and reviews. I'm very happy to share my best practices and lessons learned with you today.

Sam?

>>SAM STARKS: Thanks, Cheri. Again, Sam Starks. And I

have worked in higher education for 15 plus years. I was with corporate America working on best practices with a major airline. Then I decided to take the dive and go the highest route. We are excited to be here presenting with you today. As Kevin said I wish it could be in person, however, this is the next best thing.

Okay, Cheri.

>> CHERI BURGESS: Could we go to the first slide please.

Maybe we can back it up.

Thank you very much.

Okay. Sooner or later your organization will be involved in some sort of agency review or investigation whether it's by the EEOC, the Department of Energy, the Department of Education OFCCP or perhaps your state or local agency.

And these reviews can take a variety of form from the investigation of an individual employee complaint to a more comprehensive compliance review. Sometimes an individual complaint investigation can turn into a fuller compliance review. They can take weeks to months and even years at times to complete. And for the purpose of this presentation, Sam and I we may be using interchangeable terms such as investigation or review, compliance review or audit. And while the agencies may use different terms for their reviews, the information that we discuss today can be applied generally to just about any review by any agency.

So Sam and I wanted to do this presentation because while we have seen lots of sessions covering how to present your information during an investigation or review, that's just one piece of the job when you are facing a review. We had not seen a lot of sessions dedicated to how to manage the internal process of an agency review behind the scenes. And the second piece is what I found is equally if not more important because regardless of the outcome how you manage the review on behalf of your organization and especially how you manage the experience with the stakeholders, can result in opportunities to advance further. We'll discuss several iterations for managing internal process such as defining a role, managing expectations, that's a big one, internal and external communications, how you utilize legal counsel. Managing witness interviews, on site visits. These days virtual visits. And dealing with the aftermath.

Sam, would you start us off and Tony could you advance to the next slide.

>> SAM STARKS: Great. So now you have received the notice of an agency review at your organization. What are your next steps? So one of the things that we found very helpful in having dealt with these different agency reviews through the years is to understand and to articulate clearly to your organizational leadership that you will be the point person. Normally it's people in positions like Cheri and I that are the point person for our higher ed organization. So understand that at one time or another the notice might not necessarily come to you and your department or your office. It might go to someone in a different part of your organization.

Regardless of that, after you are able I believe to learn about the actual compliance review when you receive the letter, you are then able to articulate your organization to be the conduit for this type of agency review. It's very important that you streamline the process so there is not varying information across the board to your organization. You also want to make sure that the agency is very clear that you or your department is the point of contact for the actual compliance review.

So when you are trying to make sure that the agency is onboard with how this is going to proceed, it's so important to develop your relationships with your compliance officer and the agency. We'll talk a little bit more about that in a bit. One of the things we have learned being at various universities I have been in universities in the south and now, I'm here in the north, these type of compliance reviews or investigations, audits, whatever comes from the agency are very consistent in how they are actually performed. There are a number of variables that go into how your actual agency review is done because in some instances you could actually be in the same city with the actual compliance officer. And in other cases, they could be in another city or another part of your state or your area coming in to do it. So that requires a different type of tenor on how the investigation is afforded an opportunity to work. Transparency is very important. You have to make sure that you are very clear what your leadership on actually, what it means when you receive the actual compliance review letter because there are a lot of different

things the agencies ask for that many people in your organization won't be aware of because this is not necessarily their area of purview. So they don't really focus a lot on various policies or what protocol is in place for your university regarding some of these issues that the agencies like the Department of Education, the OCR, OFCCP will actually be looking at your organization to review. And we have already been put on notice that under the current restrictions of this pandemic that's going on, that things are going to be done differently. As all of us are now experiencing a new normal in our world, understand that every agency and organization is trying to make sense out of this as well.

None of us have a roadmap for what we're in store for. Nobody is going to get it all right. But I think it's going to be very important for us to be patient and have some type of grace in dealing with these external agencies and even our own internal leadership at our organization. Working remotely and sometimes working in the work inside of the office at the workplace are two very different things. Access to data and to files and to hard copies of things. There is a lot of variables that go into supplying the information for these reviews. Just being very clear about what you can actually present and what you need some time with is very important as you move forward with this.

And what is most important for you as the point person or the leader of this type of agency review is for you to be able to define your role as Cheri will tell you about.

>> CHERI BURGESS: Thanks, Sam. Before we move on let me just add an additional point. When you get that notice of agency review if it's gone to another office within your organization and you request the actual letter from that office, you want to make sure you get the actual letter, check the date when it was received or signed for, and include that date in your written acknowledgment back to the agency so that there is agreement on when to start the clock on the mission deadline. And if that letter went to another office within your organization, check the address that's on file either with the agency or for some agencies through Sam make sure you update it so the next time it comes to your office. Just wanting to add that. Tony, could you go to

the next slide.

Thank you.

So as Sam said one of the first points is to understand and define your role in the review. And as we mentioned earlier for many of us we will be the primary point of contact for the agency as well as internally. You will be coordinating the collection of information and compiling and submitting responses to the investigating agency as appropriate.

How big a list this can be depends on several factors. Is this a complaint, an individual employee complaint where there is perhaps fewer pieces of evidence and information and witnesses to be interviewed or is this a full on audit OFCCP or another agency.

Are you a single contributor in your organization? Or do you have a fully staffed team. Have you developed relationships with colleagues in departments that are the keepers of needed information or have you just started at your organization and you are still in the getting to know you phase.

Take a realistic inventory of your own capacity and expertise and think proactively of the guidance and partnership you might need and poll those partners. It's a shared responsibility you should not be working alone.

Early on you also want to make sure that key stakeholders and colleagues understand your role and your function in the organization and how the agency investigation that you are facing is going to work.

To the extent that you can, it will be pretty critical to educate your key partners on the seriousness and priority of an agency investigation so that they are not surprised when you ask them to turn around requested data and information quickly.

I will also strongly urge you to resist doing the work of other offices or departments when you are collecting data and information. I have to admit I did that for years at one organization and so for example, I would just say send me everything. I will sift through it to pull what is needed. In my mind at that time I was saving my colleague the burden of the effort of the task when they had other operational work to do and felt that I was also expediting the task. Remember, you did not create the situation that led to the agency review and doing the

work of other departments does not help the organization. They need to know the organization's policies and procedures. They need to have a role in the shared responsibility and they need to understand the scope of the work that you do. It helps to build your credibility of a subject matter expert when they have a role in the process. Instead create a project plan to get you through the agency review. Start that project plan early. Form work teams. Depending on the information that you need and delegate work tasks and check in with your teams frequently.

Also, as Sam had mentioned try to develop relationships with the officials and investigators at the agencies. Especially those that your organization most frequently deals with. I found that it makes my job easier when an agency investigator picks up the phone and calls with a heads-up that my organization would be investigated. Attending local ILG meetings are a good way to meet and get to know your agency officials and investigators and to let them get to know you as someone who is committed to nondiscrimination and EEO and who submits complete responses in a timely manner. Sam, do you have any additional points?

>>SAM STARKS: Yeah. I think you covered it really well, but I would emphasize that shared responsibility unlike Cheri, I have only been at large organizations that in most cases were very decentralized. I didn't have the luxury of trying to do it all. I immediately knew that this was a university process that needed to take place within the individual departments to add their part. You are not in this alone. You don't have to act as the lone ranger there. You have a lot of people that are in these areas that should be doing their part with data, with protocols, with policies, with a lot of information that depending on the review or the complaint as Cheri has said that you receive. So I cannot emphasize that enough. You are automatically going to be the point person. You are going to be the one in charge because your department or your area is probably charged with the obligation of taking care of these type of situations and issues that arise.

So getting support from leadership will be very important as you proceed to go through this type of review or complaint which leads me into the role of legal counsel. I have often told my

colleagues that I am very close with the general counsel at my university because I am keenly aware that they are the ones that will have to defend this information that is released from our university. So it's very important for me to make these relationships and really sustain them so that I could go to the ones that are to my area for reviews and for thoughts on these types of issues. And usually your general counsels at your universities are educated on employment and labor law. So they are ready to deal with these types of barriers and they normally have these types of reviews or complaints that cross their desk. I cannot say that enough about understanding who and what your organization is through the eyes of your general counsel. So understanding the role again about how their guidance is so critical to making sure we manage this type of review or complaint effectively. However, you must let people do their job. People in institutional research that do data, it's their job to actually present the information you need. But where you come in, your expertise, is how it's interpreted. Because you have a central role in creating the narrative. Allow the full group. When you form your core advisory groups for these reviews or these complaints, make sure that they have a voice and that they can understand and hear your voice because you are now being looked at as the expert to try and guide this process. Don't you agree Cheri?

>>CHERI BURGESS: I do and actually I have a question, Sam. When it comes to external counsel, I know from my perspective I think it's a good idea to pull in external counsel especially for these larger more involved reviews to pull them in early so that you can get them on the same page in terms of handling the investigation. This would apply to individuals in organizations that might not have an internal legal counsel as well. How soon do you pull in external counsel, Sam.

>>SAM STARKS: Well, we try to get them on board immediately when we receive the actual compliance review or the complaint. But what we actually do is we have them kind of on stand by as we are going through the process and talking with the agencies. So if it becomes more laborious and it's going on and on we might have to bring them in and push some of the work towards them because we might have other issues to focus on. But

definitely, it's a good idea to give them the heads up right at the beginning of the process so that going down the line they can be prepared in case they need to step in as well. But luckily for me and my organization, I have a large general counsel department. So we have a lot of people that have been able to be helpful to me during these actual compliance reviews and the complaints for that matter. How about at your organization?

>>CHERI BURGESS: I would say we have my office has a very close relationship with our internal legal counsel office. And that's always been -- that's something that we developed that relationship early on. And so I think that's very helpful. Even when you are not in a review situation that you do develop that relationship so that everyone does understand their role. And also, just to make the point of keeping counsel in the background when handling agency reviews. The agency investigator or investigators want to hear from the organizations including you as the point person. Not legal counsel.

So bringing them in, but keeping them in the background if needed has been the approach that in my experience that we have taken.

Okay. So Tony, could we go to the next slide.

Thank you.

So managing expectations. That's a lot of the work -- a lot of the work will be -- that's a big part of the work for you as the point person. And having a communication plan early is key to successfully managing the organization during a review. Who is on the need to know list. And go down your list of senior leadership, internal legal counsel, perhaps your communications team. Key partners for information which might include Human Resources, department managers, potential witnesses, other stakeholders. And what do these individuals need to know up front. Certainly they need to know the facts of the review, that there is one and what the scope of the investigation is. They should be informed what your role is and the review, what the review process will look like, if there is an anticipated timeline and they will always want to know what their role will be in the process.

They should -- you should be prepared to let them know early on what the range of outcomes might be. And what the initial next

steps are. And how frequently you will keep them updated and how. How you update them.

And for certain audiences such as top leadership you might be able to anticipate up front. It's okay to let them know if the risk areas are not yet apparent, but do let your leadership know soon as you can. You might wish to hold a series of meetings with specific audiences to be able to discuss more fully and answer questions up front.

Make sure that you speak to your organization in layman's terms. This will help you to manage fears that your partners might have in the organization especially if the organization hasn't been the subject of an agency review in some time. If you will need additional resources such as staff to help manage the review, to make that request early. If the leadership understands the scope of the review and the potential risk and outcomes, you will have a better chance of getting the resources you need. As Sam had mentioned you don't have to be a lone ranger trying to manage a review or investigation all on your own.

And this is a great opportunity to get some needed resources even on a temporary basis. It could end up being staff for example, that you might be able to hold on to. As you think about managing the expectations within your organization, be sure to consider any complicating factors whether it's a critical vacancy which can slow down the collection of information, if there are systems needs, or restrictions related to the pandemic. You want to communicate all of this to your organization's leadership as early as possible. And you want to anticipate the natural points at which you give your leadership updates. Sam, is there more that you would like to add.

>>SAM STARKS: Well, I think you have hit some of the points Cheri. It's important to have a communication plan in place. That is the first thing that I worked on when receiving these types of agency reviews. Because the clearer you are in what you need to do, what your timeline and whose responsible for it who is responsible for it, the better you can articulate that when given the overall feel about how this is going to go. And rest assured as we heard from different agencies both federal and state, these compliance reviews and sometimes the complaints can take a long time. It's not just a six-month and they are done. These

compliance reviews sometimes are going on for years.

So you have to keep the expectation managed and you have to keep your organization in check with it because they sometimes kind of you know as far as how they are able to mitigate their own emotions and you need to be the person that can harness them in, pull them back off the cliff in other words, when they are spiralling out.

I think those are very important things to do. Complicating factors like you said, I was at one university and had a compliance review and I was down some of my principal staff members. I was trying to hire during the actual review which was very interesting in and of itself, but I had to move forward without those people being in place because I had not hired them. You have to take into account what are you going to be able to do if ABC and D are not in place. It's like a missing continuity that organizations have. You must be able to function and operate if there is a an absence of certain things. That's a point to keep in mind. Can you go to the next slide please.

So when you are required to respond to these information requests, there is a lot that goes into that. Some of the things that Cheri and I thought were very important, we put our heads together and we thought, what do we need to tell the people that are listening that is of the utmost importance so that they, if they haven't gone through these type of agency reviews, you will, so we wanted to make sure that we gave you some real tips on how you can manage this and be in control of it. Because we want to seem like we know what we're doing. We're trying to lay out a model for you all to use when dealing with these type of issues. Number one, form a core advisory group. That group must be made up of the decisionmakers and the approvers within your organization.

They are the ones that will be able to be another set of eyes on the information that goes out from your university and to agree and allow that information to go out. Of course without a doubt we have already talked about the importance of using your own general counsel or an external general counsel on your team. But you need your top leadership to be there so that they understand every step of the way what you are actually responding to with this type of compliance review or with a letter,

whether it's a complaint or review. You have to look at the organization's information to really see what is available. One of the things I found very helpful and Cheri I'm not sure about you when we received these compliance review letters or complaint letters as well we go through it line by line. And we break it down into an actual outline so that we can respond beside it yes or no whether we have this in place or we don't have this in place. The importance of us doing that is to make sure that we are able to present clearly what we already have, whether that's a policy, whether that's a protocol or a guidance or some specific type of data or investigative information, whatever is needed. A lot of times things aren't necessarily electronic. There are hard copy files that you have to take into consideration. And these things especially during this very unique unprecedented time we're in are sometimes not accessible. Many of us are not able to go back to our workplaces and many of us don't have these things from years back depending on when you received the review or the complaint when it's actually I guess geared as far as the dates and timeline we don't have easy access to it.

Understanding that you might not be able to get all of the documents at once. It's okay if you don't understand one of the lines or something that the agency is asking for. You can ask them for clarification. That's why we said earlier, it's very important for you to have and develop a relationship with your compliance officer or the reviewer so that you can talk to that person if something comes up that you don't understand or if you need more guidance or if you are not going to be able to understand the scope of what the request is. They can sometimes streamline it, because what I found is that there is a different train of thought with a lot of federal agencies when dealing with higher educational institutions. We sometimes have different definitions of what we think the same thing is. So it's very important that you are very clear with them. Cheri, has that ever happened with you all and your review you are on two different pages.

>>CHERI BURGESS: Sure. I would say don't be afraid to pick up the phone and call the investigator. Sometimes you can get clarity better on a phone call than you can through an e-mail. But memorialize your conversation in a follow-up e-mail so that

everyone is on the same page with the understanding.

>>SAM STARKS: Right. That is very important. You have to always follow up with some type of e-mail or documentation after because if these things go on for a number of months or a number of years, it's very difficult to recall verbal conversations. But it's a lot easier to pull up that e-mail from two years prior to say here is what we agreed on at that time. That's very important. Good point, Cheri. Also, when you are going to communicate with them, you and your core advisory group also have to decide how that's going to be. Because as the person who is overseeing the audit, you shouldn't automatically just decide to pick up the phone or just to shoot off an e-mail. I found it very helpful for me to always ask some member of my core advisory group how I should respond because when you are so close to the issue as we become after working on it day after day and university wide or organizational wide, we become too close to it. And sometimes we can't see through another lens. So it's very important to get someone else's opinion about how to communicate with different things that are asked by the agency. Like do you do it directly. Do you go through general counsel. Is it by e-mail. Can you just pick up the phone. Whatever it is. Always have someone else who is part of your core advisory group to weigh in on that. Another reason that I found it was very important to have a relationship with the compliance officers is when you are asking for an extension. It's very easy to get these requests, get bombarded with a lot of information they need and then there is a follow-up with them for more information and you immediately think sometimes I can't do all of this in that time period. There is no way.

I would suggest that what might be a better practice is if instead of immediately trying to go and ask for an extension, try to see how much of the information you can compile within the timeline. I feel that the agency appreciates the fact that we try to get this information to them within this arbitrary timeline they have come up with, but we have to take into consideration what is actually going on within our organization. For example, is the organization shut down because there is a holiday. Is there time off of our organization where we're not working. Is there major activity coming up for the organization. For example, I had a

compliance review for my organization and they wanted to come on campus the day of our commencement. Well, that's a busy day at most organizations that are higher ed institutions and it's just not possible. There are some things we can do. Some we just can't do. So that type of thing. I was able to say we can't do it that day. We might be better switching a couple days later for you to come on campus. And when you have a relationship with your compliance officer you can talk them through this because it's reasonable and rational. But if they don't know, they are not going to consider it. So you have to be the one to say, this is what we're going through now. We need a little bit of grace. We need some time so that we can get through this particular moment and we'll come right back up to it. So when you need an extension, you also want to make sure that how you write the request for the extension is even reviewed. Right, Cheri, wouldn't you agree with that.

>>CHERI BURGESS: I would. I want to point out just acknowledge that the agencies are more liberal with giving extensions during the pandemic, but it's still a good practice to be able to explain why you need an extension. And just to your point of having someone check your e-mail, as with -- I would say all e-mails, something that we don't always think of from of mind, check the tone in those e-mails. The agency investigators and all of us, we're all really in the same -- we're all trying to get to the same end goal. But check the tone so that you are not coming across in a way that you don't intend, you don't want to come across flippant or collecting information and responding can be very frustrating and you don't want to convey that in your e-mail. It's always good to have someone else take a look at what you are writing before you press send.

>>SAM STARKS: Good point Cheri.

>>CHERI BURGESS: That's all I had to add.

>>SAM STARKS: Let's go to the next slide. Let's get into some of the meat of this. So when we're talking about submitting the data, there are a lot of considerations we need to take into account. One of the things that you want to make sure that you do with your organization is to limit the scope of the submission

without being evasive. You are not trying to be secretive, but I think it's important to give them exactly what they ask for. I think being more efficient that way is helpful to them as well. That way they don't have to try to weed through some of this to get to the point. Because if they have to weed through it, they are still going to come back to say, this is what we asked for. And we're not exactly sure where it is.

Right? Because everyone is overwhelmed. Everyone is doing their own job. Everyone has a lot of things going on. So as clearly defined as the information can be from the compliance review or from the complaint, whatever the agency sends, the better it will be for your organization.

If they ask for data, you actually should literally listen. If you are talking about it. Or thinking about it. To what the letter is actually saying.

And interpret it in a way that follows it to the T, to the letter.

Don't add additional data. Give them what they ask for.

So sometimes that's what we go back to saying these lines of the request can be interpreted very broadly. And sometimes it takes a little more clarity coming from the compliance officer for your organization so that you can understand exactly what they want.

That's the time you should not be afraid to ask them what specifically are you asking for. What do you think we are able to give you in relation to this particular question. Right? Be very diligent in responding to all of these requests. This information that we have in our organization is very sensitive. We all know that. And of course there are a lot of different opportunities for information to get shared in a way that might not be the most positive for your organization. So just be very diligent about that when you are responding to these requests and make sure that your core advisory group is in on it offering their opinion on how you are going to actually disseminate this information to the agency. There are a myriad of ways to get information to them. One of the things I have noticed is that agencies aren't as technologically advanced in the way they are able to accept information. So that is one of the things in the beginning when you are having these conversations with these agencies you need to ask them how do you want us to deliver the information to you.

The days of using all of those trees with all of that paper has passed. But sometimes hard copy information is the only thing available depending on the timeline and date for the request. But for the most part, it's a little past. Because your organization might be up to date with technology. That doesn't mean the federal agency is going to be equipped the same way. So you want to be very transparent in all of the information that you submit whether that's data or policies. If you don't currently have these things in existence at your organization, when you receive the letter from the federal agency, that is not the time to create it. I don't care if you have been talking about it for a year. And you are at the end of creating this policy. It is not the time to get that policy out after that letter has been received. You have to remember websites are date stand stamped. Time is clearly there. So it's easy for them to actually backtrack and look in the archives to see when these policies or protocols were first put out there. So this is not the time to do that. You have every opportunity to tell the agency that you know we were already working on this. However, we didn't get it through fruition. That's okay because that's truthful. Transparent and you are being honest. But to create something because you are thinking we should have already had this done, possibly maybe you should have, but that's not the time after you receive this letter to put out any new correspondence or new protocols at your organization.

Cheri, what do you think about that when it comes to creating new policies or protocols out thereafter you receive the letter?

>>CHERI BURGESS: I think there is some tension between business as usual and if you are in the 11th hour of getting something to publish in terms of policy, but I do think it makes sense to explain where you are if it's relevant to the review to the agency.

And if I might adjust going back to interpreting requests literally and what you are submitting, I do agree while you should answer the questions or the request that are asked, you can and you should if it's appropriate look to add context if it's critical for understanding the information and for advancing your position. The other point I would like to also just expand on, Sam, if you don't mind, this goes back to, unless I'm jumping ahead, having

the information source review the draft, which is the last bullet on this screen. Make sure that the internal source does review any draft submission before you send it to the agency. I have been in situations where the information source, someone at my organization, had questioned why I wrote something the way I did in a submission to an agency on a review. And I was able to tribute what I wrote back to the information source. Sometimes verbatim from their own writing or their own website or materials. You want the internal narrative about you as the point person guiding that review to be that you are collaborative by including partners in the process and that you did not misrepresent the information that they provided to you. It has a sort of feel of covering yourself, but you want to be able to point to -- if you are questioned, you want to be able to point to the information that you pulled from. So that's just something I wanted to add.

>>SAM STARKS: I think you are absolutely in line with how I feel. This should be done.

You can never have enough eyes on this information before it leaves your organization to go to the agency. Bottom line. Let's go to the next slide, because that gets us into talking about how we manage these actual interviews. So there are a lot of different ways that you can work within your organization to manage how this agency comes in contact with you. Whether that be by phone, by video or actually in person. But hopefully during this time of Covid-19, I would think that virtually or by phone is probably the select choices for communication. But there are a lot of things you want to do on campus before you even get to that. You want to make sure you have the witnesses and narrow their topic for what they are to speak about. It's like preparing them to give a deposition, so to speak. You want to hear their side of the story. You want to make sure that they are answering the question that they will probably be asked during that particular session.

Sometimes you have these wonderful people with the best intentions that can be verbose. Sometimes that can lead from one thing into the next. That's not what you want. You want them to be very clear. Very succinct. Answer the question and

move on. That's how you want it. You must prep your witnesses and you must practice with them answering the questions for you.

So you as the point person in the organization want to really try to drive this agenda. You drive the agenda and the logistics. You understand your campus, your organization better than anyone else does that's involved with this process.

So you want to make sure that you can lay out exactly how this goes, especially if it's with someone who is coming on campus where they are to park at from where they eat, where they walk to the building, what they will see as they are walking to the building. But in this day and age with us doing it virtually you are able to control it a lot different where I because you are able to control it by flooding the agency with all the information that you would want them to notice such as your equal opportunity policies, or your nondiscrimination statements. All those things that they would have gotten in the initial request, but might have overlooked. You want to make sure that they get that when you are starting with these interviews.

Make sure that you are a part of the interviews as well.

You can be in the interviews. You can take notes. It's a lot easier to have your voice there for the compliance officer.

Because if they have a question, they can turn to you as opposed to talking to someone who is just a witness there that might not be aware of how this is supposed to run.

Make sure you are there. And make sure that you have a hand in all of the interviews. Take notes so that you can understand, you can follow up if there is something that wasn't answered. If there is something that was asked that you felt was a little outside of the scope, that's something you can take back to talk to your core advisory group. So you can get clarity on how do I proceed with this when I go back to the agency.

When they are finished with the interviews, they are supposed to send you notes. The agency does.

So when they send you notes, that's the time to look at it with the witnesses to make sure that this is what they articulated, this is what they said, this is how they said it just so there is no confusion. Cheri I know you have gone through a lot of these different type of interviews. How did it work for you?

>>CHERI BURGESS: A few points from my perspective. I like to communicate with the witnesses in advance to give them plenty of time to get used to the idea that they will be a participant in the review. By the same token I'm in favor of conducting mock interviews with management witnesses so they know what to expect and I can gauge how they will be perceived during the actual interview. The last thing you want is for your manager witness, and I speak to manager witnesses because in my experience those are the only ones I have ever been able to sit in on, I have never been committed to sit in on a line employee interview, but the last thing you want is for your manager witness to be hostile or reluctant with the agency investigator because they don't want to be there. I also put in writing an introduction to the witnesses so they know what is going on, to encourage them to be truthful during the interview. I like to reiterate the organization's non retaliation policy and make sure they know that the organization is not telling them what to say. If I can, I like to hold a group meeting with employees who may be called as witnesses so that they can ask questions, quell their fears and put a face to a point person. Seems to ease people's tensions. And with the actual interviews, if there is a team, if you have a team who can, if there is multiple simultaneous interviews, it might be folks in your office, it might be legal counsel who can sit in on those manager interviews and then as you said in terms of the witness knowing that they are allowed to ask to read over interview notes and make any necessary corrections, that always seems to put people more at ease. Those are just a few additional points that from my perspective have worked for me. Anything else on this? If not we can move on to the next slide. And this is picking up from some of the points that Sam you made just now. Even though we're in the throws of a pandemic, let's talk about the on site visit because this part of the review can be especially daunting. And typically, agency investigators will come on site to inspect the premises, are you're required posters up, are your buildings accessible. They might want to inspect records and often they will want to interview witnesses and there might be a single investigator or there could be a team of investigators especially if there are multiple individuals that they

will want to interview. And these visits could last anywhere from several hours or multiple days or more. Part of your job is to make it efficient for the investigators to get information that they are looking for while framing it in the appropriate context so that they fully understand how your organization operates. As Sam said you know your organization best. But you do your organization and yourself a disservice if you don't take the opportunity to educate the investigators and make sure that they have the full context.

So since there could be several moving part was the site visit from records review, interviews, touring facilities you will want to designate a member or two of your team to serve as a crew sort of like your back stage crew to make sure that everything runs smoothly and to get people where they need to be. So create an internal road map and agenda with times and locations for the visit. And make a less detailed external agenda for the investigators. This will keep everyone organized and on track. I think of it as sort of writing a script that then everyone knows how to follow.

So what are the key points that you want to ensure that you make to the investigators? I'm also in favor of an opening meeting if possible, especially if the visit will last several days and broad in scope so that the investigators can meet a few key leaders and partners if the review involves especially critical or confusing information, consider having a key partner make an informational presentation.

If there is a power point from that presentation, always get your legal counsel and your core advisory group to make sure they see it first. But if there is something that the investigator can keep afterwards that's helpful. You might want to schedule in a daily debrief with the investigator so we can receive and consider any request for additional information and get feedback.

Following up on logistics as Sam you started to go down that road, try to secure a contained location for the on site review. You want to look for a location that is accessible, that has several rooms in close proximity in case there will be multiple simultaneous interviews and for efficiency sake you want your witnesses to come to the interview site rather than requiring the investigators to travel to each witness. You also want the

location if you can to have additional space for storing files, conference space for you and your team. And restrooms and food should always be near by. Speaking of food, just note most agencies do not allow their investigators to accept meals.

However, it is appropriate to have water and light snacks in the room in case the interviews go long.

Also, consider how the investigators will get to and from your location. If they are taking public transportation, do anyway need assistance getting to your site. And if they are driving, try to secure parking in a location closest to where they will be conducting interviews. What identification will they need to access your location. Also think about the morning and evening commute. Will rush hour impact their arrival and departure time? In New Jersey, where I live and work, rush hour can be a mess. I only live ten miles away from work. But it can take over an hour to get home at certain times.

Before you even agree on visit dates, you should get these questions answered so that you can start early to arrange the agenda and then once you have the dates and details confirmed, you will want to make sure to update your leadership and key partners of what is about to come.

Again, if your organization is working remotely, during the pandemic, you won't have an on site visit, but you can still create an agenda for an opening presentation, witness interviews, a debrief session, and you might consider breaking up the components of the virtual visit over several days so neither you nor the investigators get fatigued. How does that sound to you.

>>SAM STARKS: Sam that makes perfect sense.

Understanding who all will be on that call. If it's virtual, then we need to make sure that we can control as much of the narrative as possible. If you want to share a power point, to give them further guidance, I think that's a great idea as well. I think the more information that you can utilize to make it as clear as possible for the agencies, the better you are.

The less questions they might ask because they might have all the answers. So I think you are right on target Cheri.

>>CHERI BURGESS: Tony, could we go to the next slide then?

This slide is all about possible outcomes. And of course, the

best possible outcome is a finding of no violation or a finding of no discrimination. If you get that outcome make sure you express your gratitude and appreciation to all those who assisted and participated in the review.

You might have pressure from your leadership to know when it's over. And I want to encourage you to resist the urge to communicate the outcome or throw that celebration party before you have it in writing. Take it as a lessons learned from me when it's not actually over.

In terms of a violation, we know that that can take a couple of forums. One is a finding of unlawful discrimination. This is when your legal counsel will be involved or likely will lead on next steps whether it's to negotiate a settlement or agreement or to make an administrative appeal or litigation. The second of a technical violation you often see these arise from an OFCCP audit where there is some technical regulatory obligation.

Training and postings and monitoring by the agency.

Regardless of the outcome, you will want to communicate the findings to the organization's leadership and provide a recap on the process. And this is also your opportunity to identify key takeaways. Best practices, process improvements.

That will help you do your job better going forward.

Sam, do you have anything else to adhere?

>>SAM STARKS: No. I think that was good.

>>CHERI BURGESS: Okay. We will continue with the next slide then.

Which is all about the aftermath.

So regardless of the outcome, again, use it as an opportunity to drive organizational change and strengthen the current processes. And if you not already done so during the review, this is the time to identify process gaps or short falls in resources or gaps in expertise.

Be transparent, be precise and truthful, but also be diplomatic in your communication. And if the outcome is negative don't assign blame, don't feel that you and your team failed. Move forward with any process improvements that you identified during your review. Sam, do you anything else to add? Would you mind recapping some best practices which are on the next slide.

>>SAM STARKS: They are. No, I think you are absolutely right when it comes to process improvements. Understand that the aftermath and what you get from the agency, that is the time as you are going through this type of review or complaint to see where your gaps are within your organization. And if you have those gaps listed from a federal agency, then that's exactly what you need to be able to speak and articulate to leadership to say this is what I'm saying. This is what we need to be put in place. It gives you an opportunity to strengthen your operation within the organization whether that's a new type of system to collect data or strengthening or creating a policy. This gives you the opportunity to look at that in a whole different way. So with best practices, what I normally say to my organization is just take a breath. Stay calm. This is not the end of the world. This is routine. Because remember, a lot of us receive compliance reviews just based on almost a lottery system. It's just your time. So there was nothing that prompted it. That's one of the Number one questions they get -- you get asked. Why are they here. Why are they on our campus. Why are they talking to us. Sometimes it's the luck of the draw and your organization's opportunity. With a complaint it's usually triggered by something so you can hone in on what that is. Making sure you clarify the roles of people and where they are to be within the narrative of how this is going to go is very important. It allows you to manage their expectations by having a communications plan that's very clear, very transparent. And diplomatic. We have to work across our organization with a lot of different people and offices. We want to make sure that we come across in a very palatable amicable way with them so not trying to tell them how to do their job. We're trying to work with them. We want to make sure we communicate that in that manner. We're all in this together. We're all colleagues. And this is a university issue. Not the issue of one department and one office. I understand that you might be the leader, but you get to articulate that this is a university issue that we all have a stake in. By working with the agencies in a way that is balanced is very important. By not just promising them the moon and the stars and not being able to deliver. Get them what they asked for in

the best way possible with your documents and data submission. What they asked for is very important. And again, this is an opportunity for you to move forward at your organization and strengthen your processes if they need assistance.

So those are some of the best practices that I know about. What about you Cheri, anything else you would like to add?

>>CHERI BURGESS: The only other thing I would adhere and I'm sure there is lots of additions that individuals on this webinar could add to this list, I would just say keep a record of all the communication, internal and external. We often think about keeping a record and keeping organized our submissions to the agency, but keep a record of your internal communications to your leadership, to your partners as well. That's also -- you are going to still be involved when the review is over. And you want to make sure that you have a record of things being decided upon, promises that have been made, positions that have been taken in the different departments and people that you have worked with. That's all I wanted to add. And I think Kevin, do we have time for some questions?

>>KEVIN CARPENTER: We sure do. Can you hear me okay? Cheri and Sam?

>>SAM STARKS: Yes.

>>CHERI BURGESS: Yes.

>>KEVIN CARPENTER: We do have time. Let me take them in the order that I received them.

This goes back to Cheri when you were talking on the managing expectation slide. And the question is what is your timing for meeting with the CEO about the review.

>>CHERI BURGESS: I like to -- once I receive the letter of the -- for the review and understand what it's asking for, I like to get in really early. Often times I will pull together that core group of the people who need to know and the CEO so that they all hear the same message. And if it's possible to get time with the CEO -- face time with the CEO in a room and ask questions that's helpful. I don't typically wait for after the first submission. I like them to know early because if people are coming on campus, if agency investigators are coming into the organization, the top leadership needs to know that up front. For your job for

your role I think it helps to ensure that they understand that you are guiding the organization. The earlier you can get to them and give them a sense what is going on potentially what some of the risks are or pain points, the better you set yourself up. We talked about getting kudos at the end regardless of the outcome. It starts with how you began and starting early with communicating.

>>KEVIN CARPENTER: Thank you. Next question. This is related to the slide responding to information request.

Sometimes the compliance officer in an OFCCP audit doesn't always know what to ask for. How do you deal with the tendency of in-house counsel to recommend providing only in caps what the agency is asking for versus providing more than what the agency asked for because you are trying to anticipate where the agency is headed. Great question.

It's a lot of work to gather this data. How hard is it to convince the organization to pull more data or different data than what is asked for.

>>CHERI BURGESS: I will take the first stab. I'll be brief if that's okay.

>>SAM STARKS: Okay.

>>CHERI BURGESS: I think that it's certainly attention. But you don't want to collect and submit a bunch of data and then have to go back and do it again.

So I'm not terribly in favor, especially if you can tell that what is being requested doesn't quite align with how your organization operates and to either use more context or can use some interpretation. This is where I would suggest getting on the phone, talking with the investigator and understanding what is it that you are really trying to get to. We can figure out what you need.

Sam?

>>SAM STARKS: I agree. I definitely do not adhere to the process of giving them more data to provide the context.

You should give them exactly what they ask and give them the opportunity if it's not what they need to come back to you.

Right? Because there is a chance they might not come back to you. Like Cheri said talking to your core group to say, let me see

if this makes sense. Maybe I should reach out to the compliance officer. That type of thing. I think that's very important that you get clarity in that way, but I would not give them more information for their clarity unless they ask for it.

Okay?

>>CHERI BURGESS: All of that said, if your counsel is strongly positioned in how they want you to respond, you may not want to be out on the limb by yourself going against your counsel's advice. But I suggest you have a conversation with them to explain your position as well.

I know that's giving you sort of counter answers, but there is more than one way to approach it.

>>KEVIN CARPENTER: Great thank you. We're almost at time, but I think there are a lot of questions in the cue that I would like to get to and I think it will be very beneficial to everyone. Let me just keep going.

And this is related, Sam, when you were talking to responding to information requests. And the question is, can work authorization be considered a basic qual for the affirmative action disposition reasons?

>>SAM STARKS: Can it be considered as a basic qualification? Is that --

>>KEVIN CARPENTER: Yes. Work authorization.

>>SAM STARKS: Yeah. I do. I believe -- it's something that would be needed for it. Right? So if you need the work authorization, then absolutely, it should be included as a qualification. However you have to remember every organization has a template for how they create positions information questionnaires or whatever your organization might call it. So you kind of have to work with HR to see what is allowed there and either give them guidance on strengthening it or following their lead. Cheri, what do you think about that? I know you all deal with this as well.

>>CHERI BURGESS: Right. I would say if someone is not authorized to work that you are really not considering them beyond that. You are not considering their application even. So it's a matter as you said, Sam, of how you structure the application and the questions and what questions are asked to

sort of filter through the applicants.

Yes, I would agree with you.

>>SAM STARKS: It takes HR as well.

>>KEVIN CARPENTER: Thank you. Next question. Sam, this is the context is when you were talking about the managing interview information. The question is how do you handle when non management employees request you to be present at their meetings with the agency.

Great question.

>>SAM STARKS: Well Cheri and I have different thoughts about this. Just to be candid with you.

I feel that it's important for the individual to be comfortable because we know that a lot of them have never gone through something like this before. So what I have done at another university is I have talked with the compliance officer to explain that even though this individual is not a manager and these employees are as Cheri termed them lined employees they would feel more comfortable if I were in the room. One of the reasons that worked for me is because with the managers, it was both myself and a member of the general counsel's office in the room. So what happened was with the line managers, we removed the general counsel individual and it was just me because I had been the one to sit in on all the prep sessions with these individuals and they just felt more comfortable and the compliance officer understood and allowed it for me.

>>CHERI BURGESS: Were you a potted plant in the room?

>>SAM STARKS: I should have been a potted plant in the room, but I wasn't. You know I have tendencies to have guided a conversation. I thought it was important because sometimes the line employee froze up and I had to remind them, this is what you discussed with me. I think this is -- like I would say it very politely. I think what the compliance officer wants to hear is how did you feel when this was put into play for your position. That kind of. So a general nudge for them.

>>CHERI BURGESS: Yeah. I think the line employee can make that request to the agency investigator to have you or the

point person in the room. I personally haven't had that opportunity. And so I go in with that assumption up front as I'm explaining to that line employee what is going on, the fact that they are not in trouble, they are going to be asked to tell the truth about what they understand, I try to answer their questions. And I try to assure them that the university or the organization is not going to retaliate against them for participating in this process. So I go in with the assumption that I won't be able to sit with them and so I try to give them as much information up front so they are not going in blind and in the dark.

So to speak.

>>SAM STARKS: Right.

>>KEVIN CARPENTER: Thank you. As a follow-up to managing interviews, the question is do you prepare your plan for interviewing witnesses? In other words, do you conduct an analysis of potential witnesses with sensitivity about potential issues that may come forward from a particular interviewee?

>>SAM STARKS: Yes. Let me be clear. Yes. You want to be sure who you have presented before the agency can speak in a very truthful and honest way without their own biases really overwhelming it because you have to be honest. Some people have very different agendas and when the opportunity presents itself, they will jump on it.

>> You want to make sure if you have that opportunity that all these people will see, that you talk to them and you understand where their mindset is. Because you want to make sure you are controlling the narrative that is given for the university. And that's not to say silence someone. That's not what I'm saying. But you need someone that is going to speak to factually what is going on and what their experience has been without them being bias. There could be something else that that employee has going on that the agency would not know about, but you in your role might know about it. So you just want to make sure you present the best witness. How do you feel Cheri.

>>CHERI BURGESS: I would agree. Most of us in this role I won't say all, have responsibility for internal investigations and you might know or you are HR and you might know if you have employees who are going through somewhat unfavorable situations with their employment. And so you do want to

know -- it's prudent to know before you are putting people before an external reviewer what are the potential additional considerations that you want to be aware of you want to have an idea to the extent you can of the scope of what the witnesses might say. What type of information they might say. I think that's part of you doing your job for your organization.

>>SAM STARKS: I agree.

>>KEVIN CARPENTER: Thanks, everyone for hanging tight. We're going to try and hold the line open for another ten minutes. We still have a few questions in the cue. I think the next one is related again to managing interviews. You have or know of an effective sample of a project plan also in addition to the general counsel who else should be included in your core advisory group.

>>CHERI BURGESS: Great question. I would say you know yes, I think that you -- with your project plan, even a basic -- if even if you have basic, you want to make sure all the components of the review are there so that you are not missing anything. And if it's a matter of an effective sample, Kevin maybe you can come back to that, and perhaps provide some samples, or links to samples, and then in terms of the second question, can you repeat that Kevin?

>>KEVIN CARPENTER: Sure. In addition to the general counsel, who else should be included in the core advisory group.

>>CHERI BURGESS: Right. I think it depends on the review. If you are talking about a more involved review such as state or federal Department of Labor, OFCCP, then you are likely going to be looking at all of your various -- other than general counsel, you are likely going to have folks from HR, whether it's your staffing team or employee relations team who are also part of the group, if you have a person who serves as a diversity and inclusion manager or director who can speak to some of the initiatives that your organization is taking, those are great partners to make sure that you have in the core group. If there are individuals in specific departments, know how specific departments operate, you may have those individuals. I also like the idea of making sure your external communications team is looped in up front.

They are great at helping to craft internal messages. They often at my organization -- inaudible. At some point if at any point there needs to be a broad communication done, they can really help you in crafting that.

Sam, can you add anymore?

>>SAM STARKS: Yeah. I think you are right on target with that. One of the things I would caution you about with your core advisory group I would definitely keep it to less than ten people. Five would be more ideal. Because remember, this core advisory group is going to be there to be the lens for you with the communication and dissemination of information and also to apply approvals there. So you don't need too many people involved in that group because what I did was had a core advisory group and then I created subcommittees for other areas depending on what the request was when a compliance review. I had subcommittees I would meet with. They would funnel the information to us and then the core advisory group, we could decide from there. But I was dealing with a large decentralized organization too. I just thought it made better sense. In a small organization, it would be different.

>>CHERI BURGESS: Right.

>>KEVIN CARPENTER: Thank you. Five more minutes. Next question. This is related to on site visits. Have you hand -- how do you handle, this is appropriate given today's environment, Covid-19 protocols related to your organization as related to agency investigators coming into your organization?

>>CHERI BURGESS: My organization is not yet open really for visitors and I don't know -- it's funny. I don't know how many agency investigators are actually looking to come on site. What I would say is in terms of protocols -- well most of us are probably still not on site and not looking to go on site too soon. In terms of the protocols, looking at having a review in a virtual format I think there is quite a bit that can be replicated. You lose the tour of your facilities if there needs to be a tour. But a lot of us are posting required say employment posters electronically as well as having a physical posting. I think you have to -- what can translate, what can be converted over to a virtual format. Sam,

your thoughts.

>>SAM STARKS: Yeah. I definitely agree with that. There are a lot of creative ways I think you could handle that. One of the other things that you could actually do is you could have a recording for the agency to look at. Almost like a face time or a real live type of interaction so that they can see the certain buildings that you are talking about and where the posters are located. Technology gives us opportunities that we didn't previously have. Just remember that. There are a lot of creative things you all can do for to review.

Such as setting up a call where the person from the interviewee and the general counsel and you and the compliance officers can be present on the call. And you can do the mock interview, the set up that way as well. So because we do have this opportunity to work remotely, there should be no reason that the compliance review could not move forward in terms of interviews.

>>CHERI BURGESS: Paper archived records, that might be something that you just -- it might take an inordinate amount of time to be able to get the approval to get into your organization just to dig around and find documents. That might be something that might have to be -- I do agree that there is quite a bit that you can do online as we do internal investigations through a virtual format a lot of these -- I would say though just because virtual does not necessarily mean that everyone is automatically available at a given time. There is still going to be the challenge of scheduling witnesses for example, for interview. There is still a lot of the same challenges will be there. But you might get a break on actually having to parking and finding a location as you would on a physical on site visit.

>>KEVIN CARPENTER: Thank you. I think we have time for just one more question.

As part of your analysis upon being informed of an agency review, do you examine findings of any previous agency reviews parenthesis to understand if the issue identified in the previous review has been resolved or addressed.

>>CHERI BURGESS: I think it's a good idea to do that. If you

are in an organization that had multiple different reviews and -- ideally if there is a theme of issues that have come up, hopefully you have addressed the issues before. But yes, I think that it makes sense to see has there been a past concern, has it arisen before, how was it addressed previously, was the way it was addressed remedied, if need be, was it effective. I hope that's helpful. Sam, I'm going to punt to you.

>>SAM STARKS: That's exactly what I was thinking. Because when a review of some kind is completed, that's where the aftermath comes in. That's where you are able to get to leadership and then to get to the department centers to say here are some of the things that were found and this is what we need to do to self correct. To rectify those things whether it's creating a policy, a pipeline whatever it is. You should have the time to do that. So you wouldn't have to go back to a previous review if you actually followed up after getting your finding from a compliance review.

That would save you time.

Okay? That's it.

>>KEVIN CARPENTER: Thanks Sam and Cheri for an amazingly dynamic webinar. There is a couple questions we didn't get to and I think I'll be able to determine who they came from and we can have Sam and Cheri address via e-mail. Thank you again to all of our sponsors. Don't forget next year we will be in Nashville August 1st through the fourth. If you have not signed up, remember there are webinars going through the end of August. If you have not signed up, you can go to the National ILG.org website and sign up. So everyone, thank you. And thank you so much Sam and Cheri for a great webinar. And take care and stay safe and thanks to our sponsors again.

>>CHERI BURGESS: Thanks Kevin, Tony. Thanks to everyone. Hope to see you next year.

>>SAM STARKS: Thanks. Good-bye.

>>KEVIN CARPENTER: Take care.