



July 6-August 27

TO FAAP OR NOT TO FAAP, THAT IS THE QUESTION

PRESENTERS:

Nicole Wetmore and
Quenton Wright

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Bios



Quenton Wright

As a labor economist at Charles River Associates, Quenton assists employers with pay audits, diversity monitoring, OFCCP compliance, EEO investigations, and litigation support in large class-action discrimination matters. Her particular niche is in measuring and mitigating her clients' OFCCP risk, especially with respect to pay equity. In addition, she maintains a dynamic web-based platform, which over the past nine years, has been used to administer quarterly D&I scorecards to employers looking to measure diversity progress and bring accountability to their diversity programs.



Nicole Wetmore

As the Director of Global HR Compliance, Programs & Strategy, Nicole is focused on finding solutions to the complexities Dell faces when hiring, developing and retaining top talent from all around the world while maintaining compliance with ever-changing government regulations. Her leadership role in Dell's HR Services organization is responsible for complex areas of HR such as Affirmative Action Plans, Pay Equity, Business Continuity Plans, reporting and analytics as well as designing programs to enable Dell's HR strategy for the future. Nicole also has a passion for mentorship and networking and is currently the national leader for Team Member Experience & Culture Pillar in Dell's Women's Employee Resource Group.

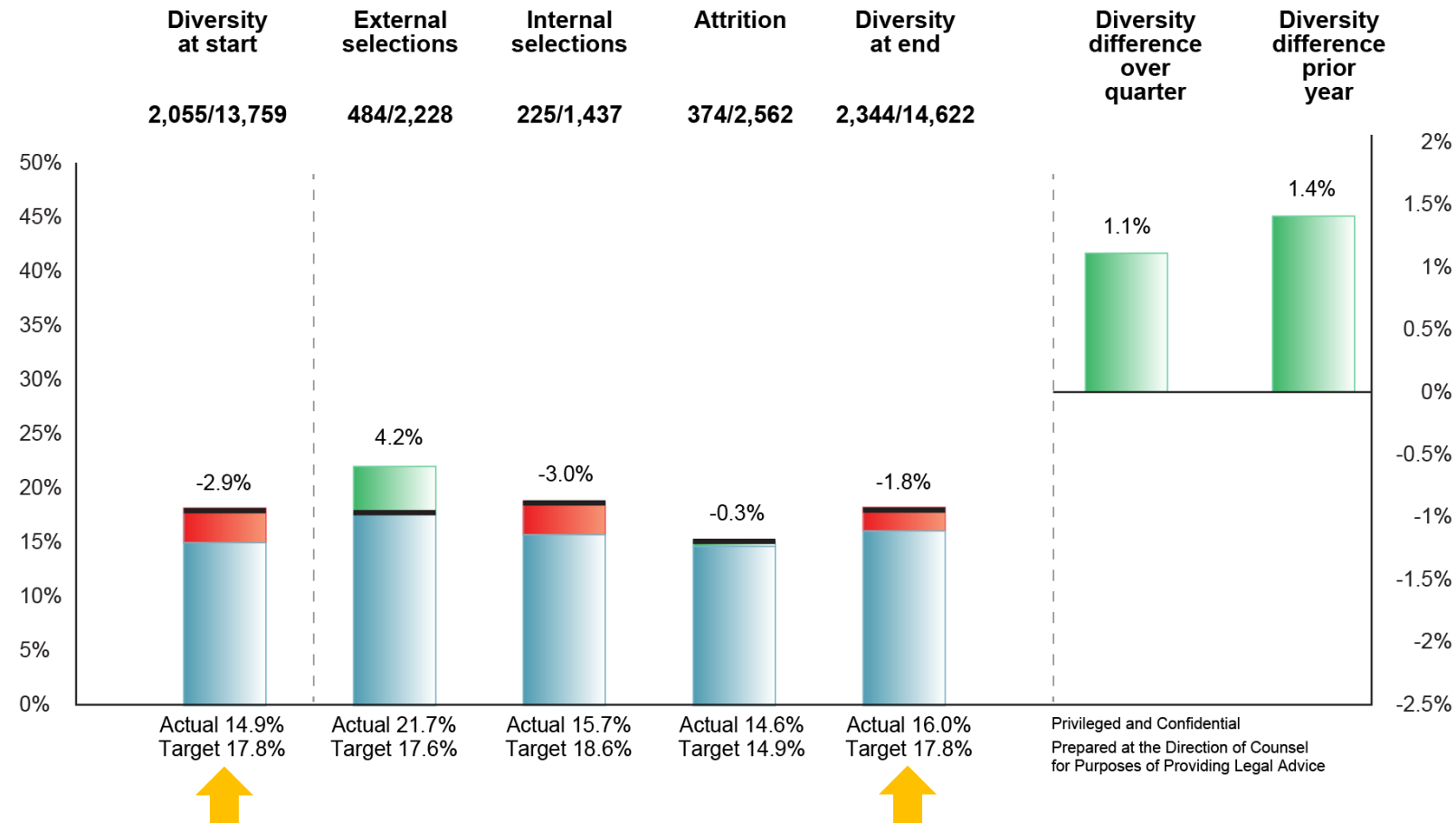


Overview of content

- Considerations in measuring diversity progress against benchmarks
- Pros and Cons of FAAPs
- FAAP requirements and the submission process
- Considerations for the job group structure within FAAPs

Diversity metrics – what is the goal?

2019 Companywide - Grade B, C, D – POC



Considerations in building external benchmarks



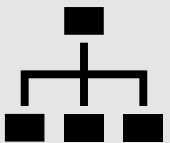
Type/Level of Work

- Industry, EEO-1 Category, Occupation Code, Type of Degree



Labor Market/Recruiting Geography

- Local, Regional, National



Reporting by

- Organizational Structure, Function, Level

Historical labor
market may not
be reflective of
current labor
market

- Influences from COVID-19
 - Unemployment insurance claims
 - Opportunity as people re-enter the labor force
 - Suspension of nonimmigrant worker visas through 2020
 - Economic disruption stifling movement
 - Employers less likely to hire
 - Employees less likely to change employers
- There may be instances where benchmarks are not representative of the true availability

Considerations in building internal benchmarks

- Level and type of work
 - Pattern of movement between levels of responsibility (i.e., grade, band)
 - Pattern of movement across different types of work within the company
 - Scope of work (e.g., Job Function, Job Family, Job Codes)
- Organizational structure
 - Business lines
 - Geographic location
- Timeframe
- Influences from COVID-19
 - Voluntary turnover
 - RIFs and job elimination



What
is a
FAAP?

OFCCP FAAP FAQs

“The regulations implementing Executive Order 11246 permit federal supply and service contractors to develop affirmative action programs (AAPs) based on business or functional units rather than contractor establishments. These functional AAPs **(FAAPs) allow a contractor to organize its AAP to reflect how the company operates functionally**, and thereby may make it easier for contractors to organize and analyze data, identify issues, establish clear lines of responsibility for implementing its AAP, and monitor progress.”

<https://www.dol.gov/agencies/ofccp/faqs/faap#Q2>

What is a FAAP? (continued)

- “An *establishment* refers to a facility or unit that produces goods or services, **such as a factory, office, store, or mine**. In most instances, the unit is a physically separate facility at a single location, although OFCCP may consider several facilities located at two or more sites as a single establishment when the facilities are in the same labor market or recruiting area. A single establishment may contain several different functional units (e.g., a sales division, a research division, and a division of service workers)”
- “A *functional or business unit*, on the other hand, is not **generally defined by physical location**, but rather refers to a component within an organization that operates autonomously in the ordinary course of the organization's business, **potentially spanning several different establishments**. A functional or business unit should also have identifiable personnel practices or transactional activities specific to the functional or business unit (e.g., applicant flow, hires, promotions, compensation determinations, terminations, etc.) that are distinguishable from other parts of the organization's business. **Functions or business units are identified and defined based on the organization's existing business operations, personnel practices, and management structures.**”

Pros and Cons of FAAPs

Pros

- Flexibility to structure metrics the way your organization operates
- Appoint individuals responsible for each plan
- Drives similarly situated employees to be placed in the same groups

Cons

- May result in larger plans which can increase the risk in an audit
- A single FAAP compliance evaluation may result in multiple onsite visits
- Increased administrative maintenance

Stability of Plan Structure

- Ensure that your units are a manageable size while high enough so that reorganizations and restructures do not regularly occur
- As a business explores different physical footprints (reduction in sites, increased work from home opportunities, etc.)

Are FAAPs right for you?

- **What is the ultimate goal of your plans?**
 - Compliance
 - Minimize risk in an audit
 - Have insightful diversity metrics
 - Minimize the risk in an audit AND have insightful diversity metrics
- **What are your budget and resource constraints?**
- **Who can facilitate change within your organization?**
 - How does your organization recruit for talent? What is the structure of your Recruiting organization and how are recruiting budgets allocated (location vs business)?
 - How does your organization manage pay decisions?
 - How does promotion opportunity differ by business or functional area?

Requirements per OFCCP FAAP FAQs

Constructing FAAPs

- “The functional or business unit must exist and operate independently (e.g., managing official has ultimate responsibility for the decisions made within a functional or business unit),
- have at least 50 employees,
- have its own managing official,
- and have the ability to track and maintain its own personnel activity.”

Same required AAP components as establishment-based plans

Timing considerations

- “OFCCP must receive the request for a functional AAP agreement no later than 120 calendar days prior to the expiration of the current corporate headquarters' AAP, or within 120 days from the award of the federal contract if this is a new contractor.”

The FAAP submission process

- OFCCP must approve FAAP structure
 - It has 60 days to respond to a Federal Contractor's request
 - OFCCP may want to talk through the application
- Provide clear FAAP definitions up front
- Consider external support
- Federal Contractors have 120 days following the effective date of the FAAP agreement or certification to notify OFCCP its FAAPs are implemented
- FAAP agreements expire after five years
 - But, modifications to the FAAPs (from an acquisition, merger, or restructuring) also require approval from OFCCP
 - Contractor must submit and explanation within 60 days of the change
 - Directive 2013-01 Revision 2, Section 9(b) includes additional details

FAAPs maximize the utility of diversity metrics

Creates accountability with individuals who have the authority and financial opportunity to influence change

Allow for more similarly situated employee groups

Aligns to global diversity strategy

External benchmarks

Under establishment-based plans, there was likely one local recruitment area

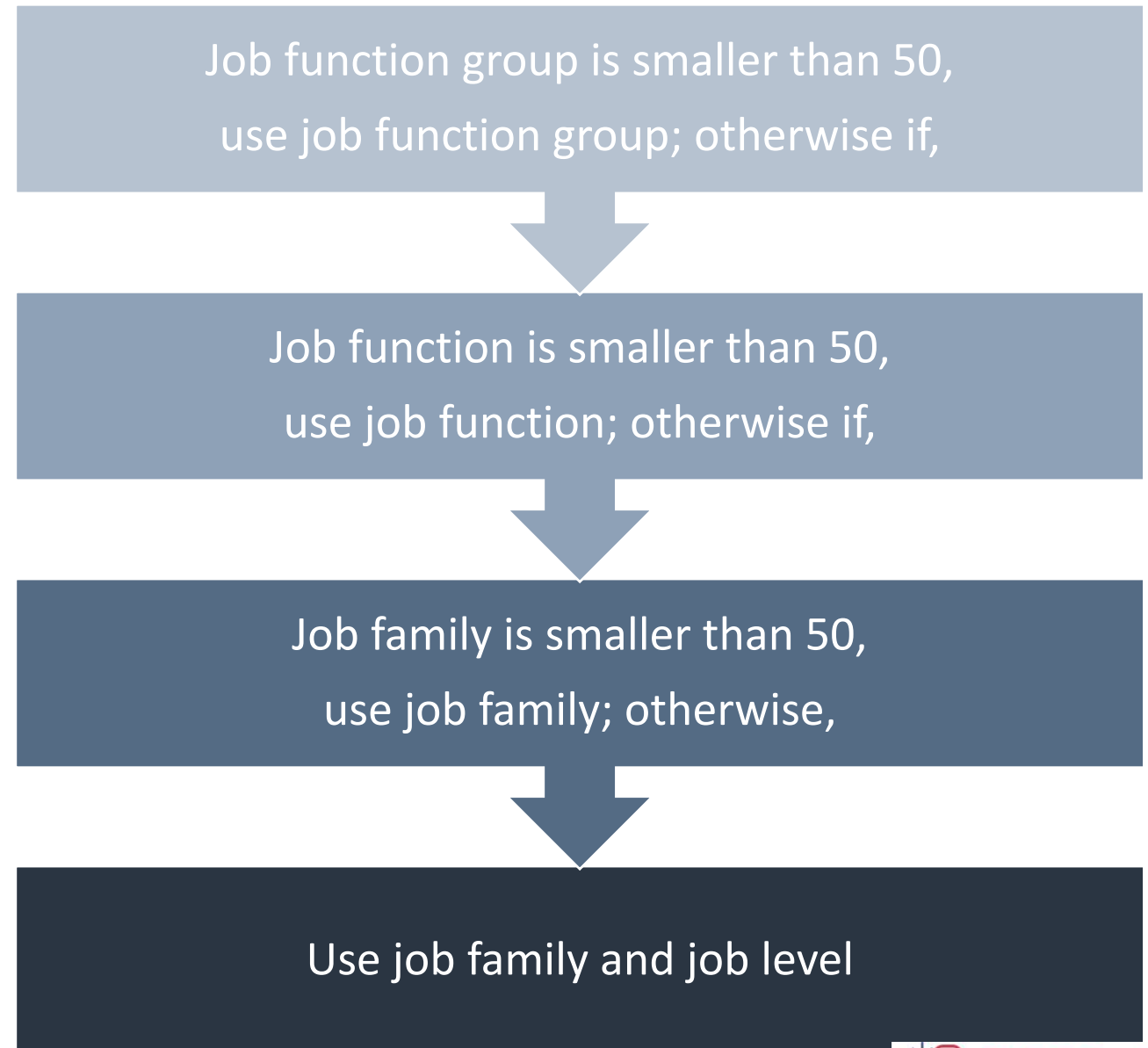
Under FAAPs, you need to factor in multiple location recruitment areas, to the extent that a local recruitment area is used in recruiting for the job group

Minimize risk under FAAPs

- One challenge in preparing AAPs that make sense, is that they are used to monitor many different employment processes
- Depending on where the risk is, develop your FAAP-JGs with that in mind
 - If you have had audits where pay is the focus for OFCCP, then structure your FAAPs and job groups in a way that makes sense given how you pay people (e.g., splitting out exempt/non-exempt, commission-attaining, functional groupings)
 - If instead you want your plans to reflect how you recruit and hire for particular groups of employees, then think about the hiring process and how the job groups should be modeled against that process



Building job groups in a FAAP plan





To FAAP or not to FAAP?

- FAAPs allow for customization
- Metrics are tied to organizational structure
- Allows for more similarly situated employee groups
- May bring additional burden/expense/risk
- It depends!

Questions?



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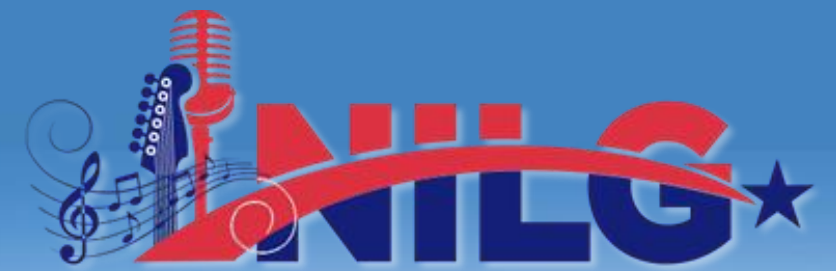
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