

>> Hello and welcome to today's webinar early resolution solution process. Representing the mid-Atlantic Region. Before I introduce the speakers I have a few housekeeping items. The session is being recorded and a transcript will be made available on the website shortly as well as a recording. There is a copy of the presentation attached to the webinar that you can download. It's under the handout section. You should have received an email with instructions for today's session which include add link for closed captioning if you need it. Question also be taken at the end of the session. Before our speaker's presentation I want to take a moment to thank our sponsors that you see on the slide right now. Thank you to the sponsors and we appreciate all their assistance.

And now I'd like to turn it over to Josh.

>> Thanks Tony and the NILG for coming up with this webinar series and inviting us to participate in it in lieu of us being together in at national harbor which would have been in a couple of weeks. I've been on a couple of sessions so far and I enjoyed them. I know we will enjoy our session on the early resolution process and OFCCP's early directive and how it's been so far since it's been in place. Those who don't know who I am I'm the managing attorney of my own law firm -- other partner to introduce herself in a second. Both of us were at large law firms prior to being here. The firm [Inaudible] in 2015 was Mendelson and helped manage a significant portion where all of the OFCCP practice. And so like I said very happy to be talking to you today. I'll let Alissa introduce herself.

>> I just want to say that when we typically get together at the NILG conferences, it is wonderful to see all the faces and friends who stop by our exhibit table and I really hope that for those who have never come to a conference before but are appreciating this year's virtual conference I look forward to you stopping by in Nashville next year. I want you to know that in solidarity I am wearing my straw hat today. So with that, I will turn it back over to Josh.

>> Okay. All right. Thanks Alissa. Here is an outline of what we're going to talk about today. We're going to do context of why there is a need to have a directive dealing with early resolution procedures for compliance reviews and we'll talk about the directive and specifically talk about the three different types of procedures [Inaudible] violations. Speak a little bit about non-material violations and then non-discrimination material violations and then Alissa will focus on the big one which is material violations involving discrimination. I'll talk about the early experiences with early resolution [Inaudible] first 13 agreements that are out there that will publicly available on their FOIA page and we'll talk about the patterns we're seeing in those. As part of the early resolution agreements there's self-auditing and reporting that's involved. Alissa will talk about the self-audits and the hiring [Inaudible] and I will speak on the compensation side of the house. That's what we'll talk about today. With that we'll go to the next slide.

So first of all, why new directives? For those of you who've had OFCCP audits that resulted in a compliance ultimately, you know it was a long process but even when there is violations and clear violations, that the contractor was aware and OFCCP was on to -- investigation and collecting all the data and the back and forth and then eventually getting around to a Notice of Violations and then going through the conciliation process. You know, and not too infrequently when a case results in violation discrimination the contractor may be well aware that's where this thing is going and yet you had to go through all the hoops and all the time lag, if you will, of going through the full audit process.

So all the data collections, all the interviews with all your people. All the information requests. All the effort to pull all those things together. When in some instances you sort of knew where this was going the land and other cases where there's multiple audits that are going on and you have similar issues that you want to resolve together or perhaps the issue you're seeing in the one audit is indicative of a more global issue for 2 contractor that there may be some benefit for OFCCP to be able to work that contractor to give incentive to resolve that issue beyond the audit happened. This may be reasons -- some opportunity to look at these things -- look at these things and accelerate the process and not let a full audit have to play out with NOV. As we know now there's an interim step of Predetermination Notice going to start discriminations. The PDN the response and then the NOV. But now there's the option to try to resolve this earlier and I think is -- OFCCP's benefit [Inaudible] to the contractor too. Go to the next slide.

This is more about the process. They do on site, two weeks or one week. More information requests more analyses. Reach a good conclusion often without ever soliciting your input. Then NOV was issued about whether this was legitimate or not Predetermination Notices. Respond to the PDN, may modify things and eventually come with a NOV.

And yet as I mentioned, there may be instances where you sort of knew this is -- get to the end of this and just resolve it so we can get the remedy in place. By the way, it's also good for the victims to not have to wait for the whole process to play out before there and an agreement -- proactive hiring and everything else that's going to go into place. It's good for the contractor as well that you'll have the opportunity to put in moderate and corrective procedures that's going to have OFCCP's blessing. Not guessing on the corrective action whatever policy or process which was showing problematic. Bottom line is we had to go through this whole very long process, ultimately very often would take two, three even sometimes longer than that for a whole compliance review to go through and many of us have worked in this area have been involved with compliance reviews. You knew as soon as the [Inaudible] submission, there was a problem that you were going to have a hard time explaining and the second [Inaudible] was asking questions about that area, the writing was on the wall, if you will. Yet you had to go through with a multiyear process to get resolution which didn't make sense for anyone.

Go now to the next slide, which is about the directive, which is more than 18 months old. Two years old at the end of November. And we're just saying what this is just quoting from the directive itself. Designed to help contractors and OFCCP to achieve their mutual goal of EEO

and federal contracting. Allow contractors with multiple establishments to develop corporate-wide or multi-establishment resolutions and also corrective actions if you will.

And basically, you can be through this process prior to the issue of a Predetermination Notice which [Inaudible] hasn't made any finding of a violation -- that's basically now they're the directive that was issued under Craig Lean. They're going to issue a predetermined notice -- share with you the information that was used in their analysis and give you an opportunity to respond and after evaluating your response, then decide what, if any, violations they want to cite you in the formal violations. At that point -- cause notice is when you're not providing information to OFCCP or not complying with the audit process. Do a denial of access or show cause [Inaudible] breaks down and you're not coming to the table and agreeing to negotiate with them and may threaten to go to enforcement. May want to seek to resolve part of that happening. But another thing that happens is there may be an audit where there was a Predetermination Notice or NOV and the contractor sees an opportunity or OFCCP sees an opportunity to build in more than one establishment [Inaudible] into the resolution. In some instances that there has been a finding in the one audit may be using the early resolution conciliation process to pull in the agreement into other facilities [Inaudible] it has been used in that context as well.

And goes without saying the early resolution -- then there's no requirement for the issue was of a Predetermination Notice or NOV which previously there had to be a NOV before you conciliate. Sort of letting the process be streamlined and also be broader potentially when that's in mutual interest of the contractor at OFCCP.

Before -- go to the next slide, as I mentioned before when -- the next slide yet? There we go.

Basically three separate types of procedures. One really doesn't involve an early resolution conciliation at all but if there's non-material violation. Let's say you had a workforce analysis that wasn't done the right way or your good faith efforts were somewhat deficient, maybe not completely ignored but deficient, the compliance officer may have you engage in compliance assistance and then they'll just be a closure letter referencing the non-material violations of what sort of resolution you came to, to sort of fix those relatively minor technical violations if you will.

The next type is material violations but one's not involving discrimination. That's on slide 10 please.

So examples of that would be massive recordkeeping problem. Really bad applicant tracking. Having no audit or reporting systems, no self-analysis. You drop the ball. Major recordkeeping problems or maintaining your AP. OFCCP will probably want corporate wide corrective action in these situations. The thought being if you really drop the ball in this one AP you probably have done it in others. So the contractor will either pull in all or some subset of your remaining establishments and have some reporting that you'll have to do to OFCCP with regard to that. Now in these types of early resolution Conciliation Agreements there's going to be reporting on

multiple facilities about the self-audit progress reports on these technical deficiencies. But the relief from compliance reviews which is a big incentive for the contractor in doing [Inaudible] that's going to be limited to specifically the facility being audited. That does not get -- other facilities can be still audited through other compliance evaluation but these serious technical violations OFCCP is going to make sure they monitor more than just the one single entity. That entity gets five years without an audit. You -- serious technical violations you may want to have a normal Conciliation Agreement for that facility only and you get the standard two year window and your reporting's only on that facility or that functional plan as the case may be but if you do want to get a longer audit period and maybe it's to your advantage, I need to make sure -- applicant tracking or doing several assessments or several audits of our AAP or you may want for that reason to have more facilities brought in. I can see why companies may want this. Now let's turn to the discrimination and that's what Alissa will talk about.

>> Thanks Josh. Most of OFCCP's oldest cases fell into this third category where the OFCCP through its analysis and investigation had found instances of discrimination. And OFCCP's process would be that within 14 calendar days of completing the desk audit, the compliance officer would discuss the finding and -- regional management. The district office was supposed to contact the contractor to schedule some interviews with appropriate company employees, rejected applicants and HR staff by phone or video conference and the compliance officer would request some electronically available information to find the indicators identify potentially -- calculate an estimated monetary remedy. What's happening here is, that the old CCP is using mathematical analysis to preliminarily identify problems with the contractor's data. It wants to conduct sort of a group of essential interviews and then it wants to find out whether there's information to refine some of the indicators that it had in the hiring case. It might be some refined applicant flow. Some information from HRIS or payroll or tracking systems. But the idea here is, that the OFCCP is going to try to use readily available information from computer systems, HRIS in order to refine some of these analyses. And contractors have a shortened amount of time though, to provide the information to OFCCP. Let's go to slide 12.

When OFCCP gets the information, the compliance officer is supposed to expedite and seek a refined analysis within 14 days. If the refined analyses still indicate -- assistant director and/or the district director would contact the contractor and offer early resolution. Found itself dealing with, it seemed that the OFCCP had at least started off with this -- the implication of this directive by looking at the aged cases and starting here at about the second bullet point, in slide 12. So the OFCCP is now looking at its list of age cases, how can it move some of these cases and rather than continue the very long and drawn out process of going through these full compliance reviews. In litigation, you sometimes hear scorched earth discovery. We're going to such great length. Option for an early out they would keep pursuing it but this is about the point that OFCCP began looking at some of these cases and trying to figure out which ones had a potential to move off its books. If the contractor maintains some records refined some things, that's at the point where they came in with all of these aged cases and let's go to slide 13 if we could Tony.

And so if the contractor was willing to get out of the audit early through an early resolution process, the parties were going to meet within 14 days of the agreement to discuss the finding proposed remedy and the corrective actions. And this is where some of our compliance reviews began. There's no doubt the contractor feels it still has more information for OFCCP to consider we can certainly offer it. Indicators it's not necessary if you proceed down this path if you think you want to resolve this early and you have more information to supply. Was still open to receiving some of this information but if you don't have anything else to offer you see where this is headed, the OFCCP has the ability to move these audits into the early resolution process. And OFCCP, when it finds instances of discrimination, that the contractor cannot rebut successfully the OFCCP is going to seek wheel whole -- back pay in a hiring case, job officers, salary adjustments in a compensation case and other remedies in corrective action. The OFCCP is looking for relief on the half of -- early resolution process. Let's go to slide 14.

The early resolution Conciliation Agreement will require the contractor to review all or a negotiated subset of its remaining establishment's for similar violations for the reporting period and if necessary implement corrective actions at those establishments as well. So now you begin to see where this is headed which is you have a compliance review at one facility. The OFCCP has identified discrimination, patterns in hiring, issues with compensation, and the employer wants to be able to resolve this efficiently. By doing so, the employer is being asked to put more facilities into the mix. If it's happening at one facility, the thought is, it could be happening elsewhere.

The carrot if you will for the employer is if they have admitted to -- when the employer is willing to resolve a discriminatory finding, not really admitting anything. Willing to resolve with monetary remedies, inferences of discrimination that OFCCP found and wrap in other facilities to the progress reports, the OFCCP will take each one of these wrapped in facilities as part of the progress report out of the typical compliance review scheduling process. So for the carrot of being willing to proactively submit data on additional facilities that may not currently be under audit, the employer will be conducting its own self-audit, will be reporting information to OFCCP but now these facilities will not be scheduled for a compliance review for five years. Okay? So on the flip side, you had some news reports which were very critical of this process. The employer is going to be taken off the list and they're not going to be subject to audit and there's no oversight. Nothing could have been further from the truth. These employers were absolutely going to be subject to additional oversight but rather than having the OFCCP devote its limited resources to the investigation, now the employer is proactively going to conduct self-audit and they were very described, very detailed. We eat get into the categories that employers will have to go through if they want to be let off these audits for five years. This is not a simplified process.

So one of the strategies that we have to be thinking about as counsel to the employer community -- how hard or easy is it for us to put together progress reports on multiple facilities

every six months for a period of five years? That's a lot of work. But it takes our facilities off the audit list.

So it's through this whole process when you get to the end of the process, if it turns out that conciliation failed for whatever reason the employer and OFCCP can't reach an agreement -- or the process -- we're not coming to an agreement on the monetary remedies if conciliation fails can always resume the audit. It will keep the process going. It has the right to request more records, any more data. It can put the contractor through the rest of the paces of a typical compliance review.

So let's go to slide 15.

And OFCCP initially, when it was trying to get these aged audits off the books, some of these conciliation processes were lasting more than 60 calendar days because they had been sitting out there for a long time but OFCCP's goal is to try to get these audits wrapped up in 60 days. As long as the parties are making progress you might get more time. If there isn't an early resolution OFCCP is going to go back to the process of completing the audit. Think about this. OFCCP's motivation to try to bring relief to the victims of discrimination. Finding these victims who have moved on, it doesn't happen in the real world. And individuals who may have been the victims five and seven years ago, they will never see a dime of these remedies. Bringing these audits to an early resolution really benefits both parties. Victims of discrimination can be found sooner, the audit concludes the employer is not using resources to spend its time defending things for three and five years. The employer resolve the matter with -- agrees to monitor, submits data for five years there are semiannual progress reports. Now has the tools to keep an eye on contractor establishments. It seemed to us that this was very much of a win/win for both sides, in our opinion.

And with that I'm going to turn it back to Josh who can talk about some of the early experiences that contractors have had under this new process.

>> thanks Alissa. Had to unmute myself there. Sorry for the 10 second delay. Early experiences. So the first thing that I mentioned earlier is not been limited to matters in which a PDN, NOV or show cause [Inaudible] has been issued. I think that's sort of logical when it's often been done to try to pull multi-point facilities into an audit. [Inaudible] perhaps earlier in the audit or they haven't begun into this resolution process even if there's one audit where they're actual [Inaudible] issued. And you know, I think this is a practical reality and most of the many -- most aged cases that have been around the longer have been a PDN or NOV stage and have been stuck there for a long time. This is another opportunity to perhaps move forward and move on. In general I think OFCCP has been doing quite a good job in the last couple of years -- I think they've used the [Inaudible] as part of that.

So no doubt they were inviting employers to use this process, a way to resolve the aged audits and bring in multiple audits typically with them.

And as I said, the typically the [Inaudible] really found very attractive is if there's one audit and the employer is willing to pull in others that's been very appealing to OFCCP and obviously the contractor to early resolution.

One thing that's been talked about, I don't know that I've seen it personally, but I know Paul [Inaudible] mentioned this is a good dialogue where they were thinking about letting the early resolution process be used in situations where it was just one compliance review. Certainly, myself I have not experienced that directly. I think OFCCP realize that why cut itself out of this opportunity to resolve these audits even when it may not follow multiple AAPs and multiple establishments.

The next slide is a slide I put together that this is sort of summary information on the first 13 early resolution Conciliation Agreements. I will go through some observations I have for these. One thing you're seeing on the hiring side, particularly, certain subset of jobs that are usually at play and that you're seeing a similar situation with those jobs across multiple audits.

So that's often what you're seeing in the hiring side of things.

In the comp things, in particular on compensation, in many of these OFCCP and the contractor together have used an opportunity to transition the contractor from establishment AAPs to functional AAPs or to bring in -- there's a logic to that and that is, often you don't have very meaningful or good pay analysis groups in certain companies when you're doing establishment by establishing AAPs because on some level pay analysis group and those concepts -- relationship there and just doing things on a location by location basis may not lend it's to pay analysis groups. Sometimes you have weird and awkward fits for the compensation and doing a regression analysis and systemic analysis for an establishment AP because it's a square peg in a round hole situation. It's not surprising. It makes a lot of sense that some of these compensation early resolution Conciliation Agreements were doing two things simultaneously. They were resolving the issues at hand and implementing -- transitioning the contract over to affirmative action plans will be a much better fit, in particular for looking at employer compensation practices.

And so you can see there's at least two where that was done and another one that involved FABS and compensation. Another couple interesting things seen going on.

Two of the ones that are relatively more recent are the Time Warner and Verizon communication. See the numbers in parentheses in both of those. So the number of audit locations column, the number that's not in parentheses, that's the audit locations that had either a PDN or NOV. So [Inaudible] actually found problems.

The number in parentheses is the number of audits that were ongoing for those particular contractors and that basically OFCCP either decided to cut off those audits or maybe they were on a S sat list and not continue with those audits in light of getting an early resolution Conciliation Agreement.

And then the early resolution as you can see the number of facilities in the -- agreement is not always the same as the number of facilities being audited. In some instances it's more like in Sysco systems there. In some systems it's less and that's usually because what facilities are relevant to the issue being addressed. Maybe the jobs that were issued exist in some facilities some of which were under audit, some of which weren't. There's a disconnect. The parentheses in the Verizon -- Conciliation Agreement remedies to be paid. There's monitoring facilities that closed. There's some creativity going on in here and the thing you can see all the way over in this column on the right is in general, these are pretty big dollar cases. Historically, it wasn't too often when OFCCP had six figure cases where the number was bigger than a 3. But one of the things so OFCCP's credit and how they're doing things in the last couple years there's been lots of cases well over \$300,000, \$400,000 and many of them are on this list. And so you know, they're getting better at figuring out how to move these cases forward and getting a place to get the contractor to the table and I think there's lots of things going into it, the early resolution Conciliation Agreements would be part of it.

But you know, so there's a lot you can see here and you can see that what the audit locations are. Another thing that's going on is contractors that have a lot of facilities C sat list are using the early resolution Conciliation Agreement to preempt the audit. Report on those facilities for five years -- you agree you won't conduct audits at the rest of the facilities. That's another dynamic that's happened in some of these. That's another high level. These are all available -- would have been this current fiscal year or last fiscal year. You can literally look at each one of these. On OFCCP's FOIA website. Get an idea of how these work. Issuing contractors are seeing and that you can think about from a compliance perspective. Multiple audits that were concerning and wanted a way out sooner rather than later or wanted a way out that was broader than the [Inaudible] single compliance review.

So Alissa is going to talk about -- a big element of these Conciliation Agreements is the self-reporting to OFCCP. Alissa is going to talk about that and the context of hiring and I will talk about compensation. Early resolution [Inaudible] quite a bit of time for questions as well.

>> Thanks Josh. If we could go to the next substantive slide too. If the national office at OFCCP is listening in to today's web seminar, one of the things that we would love for them to consider doing is when they display the Conciliation Agreements in the Freedom of Information Act website page, to distinguish between the types of resolutions if possible. Honing people in on which are the ones are early resolution. That could be a great subdivided category. I think it's important.

>> And to Alissa's point I flipped through every CA on there since the early resolution directive went in place. Most of the ones that users can assess early resolution conciliation are labeled that way but some of them don't have that label. But most of them they are labeling that way. It would have saved me a lot of time. I had to open every within. I could tell whether it was early resolution or not. Once you open the document. But that would be helpful.

>> Why is there a self-audit? Plain and simple, if OFCCP at the compliance agency as an enforcement agency is going to allow an employee -- at each of the facilities that it is wrapping into this Conciliation Agreement, there needs to be something in exchange for the reprieve in lieu of OFCCP doing the auditing the employer is going to do the own self-audit. It needs to replicate what OFCCP would have done had it been allowed to conduct a compliance review. In the first thing in the hiring context is that the employer needs to get a baseline sense of how its selection process is working. And it has to do with self-diagnosis of what is working and what isn't working and fix what wasn't working, conduct training, and then report periodically to OFCCP on these decisions.

Go to the next slide.

So the first thing that OFCCP is going to expect you to do is, to evaluate the policies and processes that are currently in use. You have to go back one Tony. Slide 20, Tony. There we go. So the first thing is that the employer has to get a sense of its baseline. In a hiring context, you have to look at all the different policies and procedures that you use as part of the hiring process. And one of the obligations may be for you to conduct your own on sight visits to the facilities you're wrapping in. It's not just enough that you have a policy or a process. The real question that OFCCP would evaluate had it been given the chance to do the compliance review, is whether or not the process is really have been implemented on a consistent basis in each of the facilities. So making sure that, for example, recruiters really do understand how to use an electronic applicant tracking system, what your dispositions mean, what are they supposed to be doing, how their decision making is really working in actuality. You're going to have to put together an analysis of whether or not things really are or are not working in accordance with your policies and procedures as part of this initial report to OFCCP.

You are expected to look at your interview process, your applicant tracking system. You want to make sure that whatever the issue was under review, female hiring issue and remember we can do this in both directions. It could be a male hiring or white hiring issue. OFCCP is not only focused on women and minorities. Whatever it was, the OFCCP is going to be expecting you to implement processes that are going to be correct whatever the problem was in the facility that was under audit. And you have to be transparent with OFCCP. That has been an adjective that OFCCP has used with the contractor community. Well now it's our turn to be transparent. You want the facilities off the hook, you have to be transparent about how your processes work and whether they work well.

Let's go to slide 21.

And so within 60 days after you sign off on this enhanced compliance agreement or the IRCA. I say enhanced compliance agreement because when you go into the early resolution Conciliation Agreement there's a section in the Conciliation Agreement called enhanced compliance agreement. And that's where a lot of these positions are being set out. The ones that involve this self-audit that you are going to undertake for the privilege of getting a lot of

your facilities off the audit list for a while. You have to submit to OFCCP a proposal. What you're going to audit, who are you -- use a consultant. Are you looking at the applicant tracking system. You have to lay it out for them. You have to estimate how much time you're going to need to do this. OFCCP has been relatively flexible in giving you time to evaluate these processes. I will say that our experience in going through this was very much pre pandemic. I suspect that they're being fairly generous these days in allowing employers a little more latitude in conducting these types of self-audits since it really isn't necessarily the ability to go and visit every within of these facilities and see if it's working in person. But the evaluation process and the recommendations that you are going to develop for yourself, typically cover the last two bullets, the procedures to recruit, to screen, applications or resumes. To select people for phone screens, to interview these candidates. To select them or give them an offer. To put them through your post offer processes. Every step of the process. You're going to have to evaluate your recruitment effort if that was an issue. The recommendations for additional strategies. If it turns out that as part of your self-audit you're not getting a sufficient percentage of qualified minorities or qualified females then maybe that's one of your recommendations, to change up where you traditionally have been recruiting candidates. OFCCP is willing to let you be creative with your own self-audit. Go to slide 22.

And they're very much going to pay attention to subjectivity, bias in the hiring process, and these types of issues where OFCCP's compliance agreements well before all of the discussion these days that we've been having about bias and race and systemic racism. All of these were issues that OFCCP was looking at before. But now these issues are taking a heightened level of scrutiny. For good reason. Looking at the process and the criteria used to select someone. Within of the things that -- one of the things that I see in my practice when OFCCP says, that we have to put together a list of the qualifications. Remember the list of the qualifications is not necessarily what are you doing in the process of screening these candidates. You're not just looking for one or two things on an expression of interest. And it's very important as you are thinking about how do you move candidates from one step to the next. You have to conduct that interview with those recruiters. Because that is the process that your recruiters are following to make sure you understand how are they holistically looking at this expression of interest, to decide whether to give someone an interview or not.

And you know, the process that you use to select people to move on to the next process or eliminate candidates from further consideration need to be well thought out. There's no sense in your putting together this self-audit and then every six months you're going to come back to a data analysis where you're doing the same thing all over again, you corrected nothing. Not looked at the process, not improved anything. You'll find yourself in the same place. It's not going to be very helpful. The OFCCP in a hiring context is looking for you to establish or describe the procedures that you're using to ensure that people are expressing an interest in employ are tracked and you're documenting the disposition that you are giving each of the applicants who is actually considered for an open position.

The OFCCP wants to understand how you retain documents. Record keeping is a very important issue for OFCCP. In my opinion, a lot of the cases where OFCCP reached a conclusion about whether there is or is not discrimination are largely based on the employer's lack of records to defend its non-selection of individuals in the hiring process. In my opinion, rarely, does OFCCP have anecdotal evidence, stories, descriptions about discriminatory hiring practices. Recordkeeping plays a very crucial role in whether OFCCP feels you are going to be able to conduct a self-audit of your practices or not. Once you've set out what the process is, how it's going to work in practice, you have to train all of the employees who are involved in the hiring process. Whether you have outside recruiters or outside people looking at expressions of interest and they have to be trained too. If you have people within your organization who receive resumes the applicant tracking system, applying dispositions. Making decisions about phone screens, and interviews and interview forms. Everything needs to be tracked, trained. Everyone needs to be on board in order for you to be let off this five-year hook. OFCCP is expecting in a hiring case for the contractor to continue to perform adverse impact analyses. These mathematical equations that are evaluating the rate at which you are making decisions with one gender, relative to another, with one race, relative to another, or multiple other races, you have to be running these mathematical equations. And OFCCP is going to look at them. And if it turns out that there is a statistically significant difference in hiring rates, the OFCCP is going to pay very careful attention to your explanations. Just because there is a statistical significant doesn't mean there's discrimination but you have to be able to explain what's going on.

So let's go to slide 23.

>> Can I add to what you said -- [Overlapping Speakers]

>> Excuse me. Alissa, can you repeat what you said on the slide a little bit? Go back around 2 minutes. You were coming in and out a little bit garbled. Thank you.

>> On slide 22?

>> Yes. From the third bullet.

>> Okay from the third bullet. Sorry.

So the third bullet talks about making sure that the employer is retaining the documents that it needs in order to explain its selection decisions. Record keeping is a very important issue for OFCCP. And I relayed that in my opinion, a lot of the cases that OFCCP resolved involving allegations of hiring centered around the employers lack of having good records to explain not just why it hired who it hired but why it didn't hire the other individuals who met the definition of applicant.

>> Alissa.

>> Yes.

>> I was going to say Alissa is saying in her opinion. It really isn't an opinion. The reality is almost every OFCCP hiring case, there's a recordkeeping problem with the contractor. And what that recordkeeping problem is doing is it's meaning that we can't know OFCCP can't know and even worse the contractor can't know whether or not the reason there was a difference in hiring rates by gender or race was because of gender or race or other job-related reason. It's not that there's no case there but you don't have a defense to this disparity. So recordkeeping is in your interest and almost all of these cases are recordkeeping cases. There's some it's just okay, we had this policy which is problematic. Your numbers are off and don't have good records of why you didn't hire who you didn't hire. Because you don't have those records, they are inferring and I think on some level fairly so, that the reason is discrimination as opposed to your job-related reason. Not just race or gender.

>> Well said. And so my fourth bullet that I may have glossed over in this garbling is it's important to be training everyone who plays a role in the resume or application review and screening and hiring process. Make sure that you really wrap in as many people who play a role as you can and one of the things I would encourage you to do if you have the ability to record the training, any time you have a new person, a new hiring manager, a new recruiter, make sure that you are [Inaudible] this training for them otherwise you're going to find yourself in the same situation that you were in when OFCCP entered in the early resolution agreement with you. You have to be pulling data every six months on hiring and applicants for the affected job, job title, job group. Whatever the issue was. If you're going to be pulling this data on hires and applicants in six months you have to run your own mathematical analyses. Your adverse impact equations. The equations that are looking at the rate at which you are making decisions for one gender relative to another, one race relative to another. You have to be looking at these equations and getting underneath them. If it turns out that there is a statistically significant difference in the hiring rates, that doesn't mean that discrimination is a fore gone conclusion but you have to be able to get underneath that and explain what is the step that's causing the process and be able to be transparent with OFCCP. If you see something you're going to say something and you're going to correct it.

Let's go to slide 23.

And you have to describe this entire evaluation that you conducted. You're going to have to summarize your current policies, your procedures, all of this information. Anything that you recommend for revision, policies, practices, your recommendations, how you're going to train. All of this is going to be transparent and disclosed as part of this initial meeting or process with OSCCP. I guess we're not meeting so much anymore. This initial disclosure if you will. All of this has to be gathered. You have to send it to OFCCP. They're going to evaluate your presentation of your self-audit. If they agree that you seem to be on the right path in conducting your own self-audit, they can have a conference call with you to discuss it, then you're going to be given the green light. Go ahead and do the training. Go ahead and implement the changes. Go ahead and implement the new procedures. So let's go to slide 24.

So once you conducted the self-audit, OFCCP has any concerns, typically they will tell you what they want you to tweak here and there. Assuming that you set out the process in a good way, the OFCCP likes the process -- recommendations, then you have a 180 days to implement everything. Six months. The training program has to be presented. The training has to be mandatory for people who are participating in the hiring process and it should find its way all the way up to the executives who own these processes. Whether it's the talent acquisition director or the human resources director. It's really important for the leaders to be on board with all this corrective action. You have 90 days from when OFCCP gives you this blessing or approval to conduct the training. So let's go to slide 25.

And all employees who are new to the workforce but are involved in the hiring process, they should be doing this training as well. We get to every six months. Submitting progress reports on hire -- you have to look at the disparities and OFCCP anticipates meeting once a year, having a conference call to discuss the implementation of your documentation -- concerns you may have. Anything else that would be beneficial, mutually beneficial to this continued partnership. Let's go to the last of my slides before I turn it back to Josh.

And in a hiring case, where the employer has agreed to resolve findings or allegations of discrimination, the first progress report, if not the second one as well depending on how long it takes the remedies to reach the class members, the documenting the monetary payment, any of the hiring activity if hiring was part of the early resolution Conciliation Agreement. If you're going back and sending out letters to all of these non-hired applicants. Evaluating them. All of that information has to be included in these progress reports. And in the one that we dealt with OFCCP wanted to keep an eye on things. As part of the agreement in every other report based on this employee's cycle of when it did the affirmative action plans and when the progress reports are due, in the second, fourth, 8 and final progress report, the employer is sending the narrative in for the women and minorities and protected veterans [Inaudible] just like we would have to submit. The contractor had been selected for a compliance review. So now you get to see what this means. In exchange for not undergoing an OFCCP full compliance review you're doing the self-audit. Correcting some of these problems. Reporting them to OFCCP. This is really not a situation as some people in the public press describes where the employer is being completely let off the hook for violations and given a green light to discriminate. Nothing could be further from the truth. OFCCP has limited resources and it knows it and I think this was one of the very creative ways that OFCCP reached -- in order to resolve these audits, move the aged cases off the books, get to remedy sooner for the population that had been the alleged victim of discrimination, the carrot to the employer is it has facilities that are being taken off the list, the [Inaudible] progress reports. They are time consuming. They involve a lot of self-audit. So I think it's a win/win and I think employers need to be thinking about resolving these audits using the early resolution process as one of the options they -- other thing too, when you're submitting simultaneous data for 61 facilities, you're going to have a lot of consistency in that submission and that's another thing to be thinking about. What does it mean to pull data for 61 facilities every six months and is

everything consistent? Those are things to think about. With that I'm turning it over to Josh who can describe what the process point looks like in a compensation case and then we'll conclude the portion that we wanted to present on and turn to some questions.

>> Thanks Alissa. So a lot of what you are seeing in what Alissa just covered is yeah there's this reporting the self-monitoring but you built into this predictability about how OFCCP is going to look at it and what they're going to look at and what they're going to find. There's great advantage to that because you can stay ahead of things. You know how the world is going to be carved up, what unites you're looking at -- what the structure is and how they're going to look at it. As true as that is in a hiring case it's more true when we're talking about the pay side. OFCCP gave us a lot more clarity about how they're conducting their reviews of compensation and looking at compensation of their audits and how they're doing regressions and how they're putting together pay analysis groups and what variables they would like to use and what the size of the pay analysis groups need to be, how many people need to be in each variable use. How many variables you're allowed to use. There's a lot of predictability and how OFCCP might look at your compensation data in an audit. Once in agreement and you have this self-enhanced reporting more or less of this process negotiated what the pay analysis groups are going to be, what the variables are going to be. You know what formula to plug in and how things need to look. You can stay ahead of things to make sure you're monitoring things and making sure your numbers are tracking with what they need to do and make directions in realtime -- corrections in realtime. That's one of the advantages of the early -- on the pay side because you basically up front gotten buy in from OFCC in and gotten buy there from you about what things we're going to use what variables will be relevant and what we're going to do. The big part of it -- the parameters of what they agreed to.

You're going investigate any situation where there's statistically significant disparity when you run those regressions and implement remedies to correct any time this significant disparities are unexplained and meet annually with OFCCP with companies monitoring. Tony I'm going to challenge you a little bit here. Can we possibly flit back to slide 17? I want to point something out on the big chart.

And then after that we can go to questions. All right. So you'll notice for Sysco systems. Intel corporation. Those are two compensation ones. You'll notice I have a plus. So there was the initial remedy for the violation found. That's first. 2 million. Plus 550,000 for five years. In this Conciliation Agreement Sysco systems, they're going to put \$550,000 each of the five years that there's this early resolution agreement to basically the money will be toward what they find in these regressions that are running. That they have a budget set aside to remedy situations where there's disparities in pay analysis groups like Intel \$300,000 for five years. They have agreed up front that each year there's \$300,000 disparities that are in the self-monitor -- there's another element where they've gotten these commitments that we're going to actually put budget tear money aside and we're going to use each of the years -- agreement to address whatever deficiencies we find in our annual pay equity analysis. You can see it in the chart two

instances how that played out and that concludes the substance of what we had for our deck. We asked NILG to pull out any questions you would have and cover those at the end. I will turn it over to those guys to throw questions our way.

>> Thank you Josh. There are a few questions. The first one is, for FAAP contractor, does Erica mean audit relief for all facts for five years?

>> The answer is it depends. That's a subject of negotiation with OFCCP. It could be a subset of FAPS. Where you have a similar set of facts or circumstances so you may have a compensation issue or same types of jobs or maybe they happen to be these are our FAPS that currently have on the C sat list and build them in. That's something you can negotiate with OFCCP. It's not too often where it's just going to be the one. Probably not going to be too -- especially if you have dozens of functional plans. It most certainly would be a subset of those.

>> Has OFCCP be willing -- seeking full make full remedies?

>> So on the aged cases, OFCCP was very willing to negotiate on money and that was an incentive because rather than having the case drawn out, if you would take it off their books, there's no doubt they would be willing to be flexible with some of the assumptions that they often build into their remedy equations. Certainly in my case they were willing to be flexible with remedy assumptions.

>> Do you have any recommendation about AP training for hiring managers such as how often we should provide the training and/or what should be included etc.

>> I'll start and you can follow up Alissa. At a minimum annually, perhaps more often, there's not -- there's not a more important area that you need to train your folks in terms of affirmative action compliance and risk than applicant tracking and disposition of amply cants and training the recruiters. Best practices become very far from best practices very quickly. There's a few reasons for that. Reason one is recruiting in general, as a position, there tends to be a lot of turnover. The second one is just a mindset. Recruiters are typically of the mindset that their job is to find the best person to fill the role. Much less so on what am I recording and what am I thinking about with the people we didn't hire? And let you reinforce over and over again that this is a central part of their job. Recording what happened to all those people we didn't hire. Why they fell out? When? What step? You know, bad habits come in very quickly. I would say at a minimum you want do this annually because that's how quickly things can go south and the consequences when they go south is that point that Alissa said about her opinion and I said it's not an opinion. It's reality that almost all of the hiring cases their recordkeeping problems [Inaudible] also discrimination problem but at a minimum they're a recordkeeping problems.

>> I think the question was with respect to hiring managers and I just want to make sure that we're addressing the concept of managers in addition to the recruiters. Because sometimes I think that managers are not in the applicant tracking system. They're making selection

decisions and sometimes the question is, the recruiters know what to do and hiring managers trying to get them trained is sometimes very difficult. I would say when OFCCP does a compliance review they go back two years and so any person who played a role in the hiring in the last two years potentially can be audited and OFCCP routinely in on sight visits or now the virtual visits they're asking the question. When was the last time you had equal opportunity training? When was the last time you were trained in the different facets of the hiring process and you don't want these managers to be looking at the OFCCP and saying I have no recollection of being trained on this topic. I do think it's important for you to develop a training session that managers can watch. I think you can do it very efficiently. I want to be very conscious of the NILG's prohibition of selling services but there are definitely people out there who can put together a program for hiring managers. It shouldn't take more than 15 to 30 minutes to do something decently. It would be great if you could capture their attention from 30 to 60 minutes and put it on a shared drive. When someone is promoted into a hiring manager role, making decisions, it should be something that has to be replaced. Every single time so they understand what is their role in a government contractor compliance and recordkeeping environment. I don't care where they came from. But if they came from a situation where they were not in a government contractor workplace, this world is very regulatorily and compliant wise different. They have to understand, we're a got contractor. Different recordkeeping rules. This is what we need to abide by a why.

>> Are there any regulations they can use to make affirmative action training mandatory?

>> There are regulations. Yes. When you go into the veteran disability [Inaudible] revised in 2014, everything has a training component in all of them. So 300.44 J741 -- all of the training obligations are contained in the regulations and although there isn't a training regulation in the executive order regs it's very important that anyone who plays a role in ensuring equal opportunity be given this training at a minimum, I agree, once a year.

>> There's a follow up question to that. If a hiring manager has been trained, do you recommend retraining and at what intervals?

>> If a hiring manager has been trained, I'm a big fan of asking them to go through the training at a minimum once every two years. Things change, processes change. Applicant tracking change. Important to go through the retraining every two years but every year would be great.

>> Hiring manager every two years is acceptable. I think [Inaudible] really does -- do dispositions recording -- I think it really does need to be annual.

>> Here, I found my reg copy. Good thing I'm in the office. All personnel involved in the recruitment screening, selection, promotion, disciplinary and related processes shall doesn't they should or may. Shall be trained to make sure the contract -- program are implemented.

>> Thank you. I think you covered the other question that was coming in about hiring training and the regulations for [Inaudible] any suggestions on -- [Inaudible] yes Tony.

>> One follow up question. There was one follow up question on the training Alissa and Josh. When you talk about training for best practices purpose, what do you recommend? Self-paced, live or webinar? And what gives the greatest impact based on your experiences?

>> I don't know. I've become a big fan of webinars where the employer had people who are on the call and -- I always say do you want us to capture the question and answer, do you want us to cut it off? I've had clients do it both ways? Some of us simply want us to run through the deck, preserve the recording and don't want the Q&A captured and others feel strongly, they want to be able to ask the questions. When you get recruiters some of them are shy. Not going to know the questions or you might get a director or a vice president who is not shy and ask the hard questions. What about Earth greens or pipelines. And by capturing the questions, there's interaction. So I don't know. I don't know anyone who is doing live training in a middle of a pandemic but I've become a fan of webinars lately.

>> I agree. I don't think there's one right answer. For different organizations there's different answers. There's things you need to think about is what's going to get people to actually participate and what's going to get the message to stick and what's an efficient way to get it out to everyone. We found webinars work well because you basically it's easy to get out and you can record them so it can be also something to refer back to. Self-pace may work but you have to have a way that people are getting there and doing it and check that they're doing it. Some way of maybe making sure they're absorbing it. Depending on the culture of your organization having people live works better with the organization and if that's the case, that's what you should do. I think it's organization dependent but webinars I think for a lot of employers will work quite well but it's really going to be -- there's lots of ways to get there.

>> It is 3:16 p.m. We'll can a few more questions. Yes, the webinar is recorded and will be available on the NILG website. Any suggestions on staff needed to prepare for the self-audit for what you have described it for? And how does self-reporting option impact audited when complaints are filed?

>> 2 people moneyed to be involved? A compensation case the people involved in making compensation decisions are different than hiring. You have to be thinking about the processes that sort of led to OFCCP's initial preliminary allegation or finding of discrimination. What was the process? Who owns the process? Who can implement the corrective action? It really kind of depends on what you find out. I don't know if there's one or two people or two org. units that have to be involved. It depends on what the violation was and the best way to resolve it.

>> I'll also add you obviously need someone who can run the analytics for you whether that be a consultant or in house, a law firm if the case may be. Also doing these self-analytics and often you're going to have drafts of these things have we run it right? Run it correctly? Running through drafts and testing everything out, it probably is worthwhile to have that project of testing your analytics and running the tests versions of it directed by an attorney. Whether that

be an outside attorney, in house attorney or what not. So the testing of your own numbers before you finalize everything that can be done out of privilege.

>> One last question and then we'll wrap this up. 60 days mentioned on slide 21 and 24 the same thing? 60 days to submit the proposal or to conduct the self-audit?

>> So in our case, OFCCP really didn't stick to that. We needed more time to do things. And OFCCP gave us additional time but we were aiming for 60 days to send them the proposal and then timing really wasn't an issue. I know the directive tells them they should be doing things in 60 days. They are being flexible with how much time you need. Tell them what you need and why you need it and honestly they will have a very good discussion with you. They're not looking to rigidly adhere to a deadline. They want you to do it right, done proactively. They want it done thoroughly. If you need additional time, tell them what you need. There's nothing to stop you from negotiating some additional time in the agreement itself. So just tell them what you need and why and lately they've been very, very helpful.

>> All right. Thank you Josh and Alissa for a great webinar. There are just a few questions we didn't get to. We'll post the answers on the NILG website. Thank you again for our sponsored [Inaudible] is the latest sponsor for the virtual webinar. We thank them and the other sponsors. Don't forget next year we'll be in Nashville at the Omni National Hotel. Check back on the website [Inaudible] the HRCI activity and [Inaudible] numbers are available in the presentation slides. Thank you so much and again, Josh and Alissa we appreciate your presentation. Thank you everyone.

[Concluded]