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>> Good afternoon, everyone. Welcome to today's webinar, OFCCP audit, changing rules and changing strategies for success. I'm excited about this session. My name is Alicia Wallace. I'll be the moderator for the session. I am one of the midwest representatives. Before we get started with the conference, I have a few housekeeping items I need to cover.

The session will be recorded and a transcript will be made available on the NILG website sometime after the presentation.

You should have also received a copy of the presentation in the handout section which you can download. You should have received an e-mail from our implements Tony Kaylin with instruction on today's session that should also have included a link for closed captioning.

We will be taking Q & A at the end of the session and a speaker and team will monitor that. And we'll just do all of the questions at the end.

Before I introduce our speakers I just want to take a moment to thank some of our sponsors. Thank you so much for all that you do and making these NILG webinars a success, couldn't do it without you. We really appreciate all of the sponsors.

So let's move forward. So I am excited to introduce our speaker for today's webinar, Mickey Silberman. He's family and he's presented at NILG conferences for many, many years. He's no stranger to any of us.

So without further ado, I think I'll introduce Mickey and let him get started but I want you to know that we may go over a little bit. If you know Mickey like I know Mickey, it may be over, so have patience but we will try to get to the Q & A at the end.

Mickey, the platform is all yours.

>> All right. Thank you, Alicia. Hey, folks. It is good and also very interesting and dishes are different to experience this with you. And let me take a moment before we

jump in to our session. I want to compliment the NILG. They have done an excellent job of adjusting to and pivoting to I think a very effective format for presenting this year's conference. So kudos to Tony and to the NILG board and Li will I shall, thank you for introducing me.

So folks, change is upon us in so many ways. And one change for me after 25 years of practicing at a few different firms, I started my own firm just a few months ago, we'll chat about that maybe a little bit more at the end if we have time, but everyone is undergoing change and change is not always a bad thing, and this has been a good and exciting time for me.

I hope this has been an interesting and challenging and exciting time for you. So with that in mind, some things change. Some things don't. OFCCP is still here, folks. OFCCP is, as much as possible, attempting to basically conduct business as usual. And business is good. The agency measures itself and it is measured by its success in bringing back monetary recovery around findings of systemic discrimination, in addition to work in terms of the relationship with contractors to provide technical assistance and education.

We're going to talk today about OFCCP changes, changes in their strategy, changes in their enforcement priorities.

Bottom line, changes in what we see in audits, on the ground, how they are actually enforced by OFCCP and how you as the contractor need to change the way you think about compliance reviews and the defense of those compliance reviews.

But before we do that, we have our lawyers' disclaimers. Some of you I work with. For those of you I don't, this is not legal advice. We will talk about cutting edge developments and changes that we see in OFCCP audit space but do not take this as legal advice.

Instead, take this information back to your expert, your attorney, you may be that expert for your organization. And measuring sure what we talk about today makes sense in your world. Don't simply stamp it on top of your compliance process.

But we will also have an opportunity for Q & A both during the session I'll pause at a couple of different points, and then we've also allotted some time at the end for Q&A. So feel free to ask questions about your situation, although a good way to frame that is to say I know someone at another company who has this scenario. Let's do it that way. All right, folks. What are we going to talk about today? What we are going to talk about the OFCCP and we're going to talk about their success, in every traditional measure in terms of the monetary recovery and the findings of systemic discrimination, which are really two of the main pillars, maybe the two top pillars for the agency, when we measure their successful performance, there's a lot to talk about there. It continues to be in the area of pay and hiring systemic discrimination findings, OFCCP has ambitious plans in the area of promotion and promotions focused audits. We will not talk about those very much today. We will await OFCCP and their guidance and direction.

One thing I give the agency credit for is transparency is one of director Craig Liebman's four main pillars for measuring the performance of the agency, and he has said, as recently as his keynote speech, for this conference a few weeks ago, Craig mentioned that there will be focused reviews, focused entirely on promotions, but that there will be quite a bit under transparency, there will be quite a bit in the way of information that OFCCP shares in advance of those focused reviews about its approach

to promotions. We'll talk just a touch about that today in the context of how we see promotions being enforced in the current audits, but we'll leave that primarily for OFCCP to be transparent and lead on some sometime in the near future.

What we're going to deep dive on particularly today is the issue of cracking the code. How is the OFCCP as you'll see in a moment brought record monetary records, what is the entry point in your affirmative action plans? And how can we become privy to and be able to assess where OFCCP is likely to enter? What is their entry point that lead to most investigations that ultimately produce big multi million dollar settlements and findings against you, the contractor, which along with that comes PR, bad publicity implications, implications within the organization, let's see if we can crack that code together.

All right. I want to spend a moment on the new OFCCP compliance letter that they actually have approval for all of their different audit letters, their focused reviews for section 503, focusing on disability compliance, their focused reviews on veterans compliance, we understand from Craig and the agency that we will start seeing the VRA compliance reviews that were on the C cell list from 2019 that was a special supplemental list for veterans audits, there were 500 audits slated on that C sell list. We understand from Craig that we are going to start seeing those scheduling letters for the focused reviews going out in the coming weeks.

We also have approval for OFCCP's compliance check letter, not going to spend time there today.

We are going to spend just a moment, and fortunately, it is just one moment, on the new compliance review scheduling letter so this is one of the four letters, the fourth of the father as I'm laying them out, that received the approval of office of management and budget, OFCCP in their current audits and then the next round of audits we will see we'll talk about that in a little bit will use the new scheduling letter.

But here's the good news. I don't have one or several slides beyond this on the new compliance review scheduling letter because there's very much little to talk about. OFCCP actually proposed changes to its compliance review scheduling letter that would have been, if approved, significant and wide ranging and in some ways create additional significant burden for employers that are undergoing audit.

But the good news is that the final letter that was approved and that OFCCP is now using as their new compliance review letter has very little changes and the changes themselves are minor in nature, they're more technical in nature, they do not create new significant burdens or strategic changes in how you need to approach your audits and responding to that letter.

So nothing more on that, other than to recognize that OFCCP does have a new letter. Hi a client recently that had a audit prep checklist that was working off of the old scheduling letter. So one note I would have for you here, for those of you who listening in who have an audit prep checklist that seeks to track the OFCCP letter point by point, we're going to give the OFCCP this and we're going to give them that in response to this request, take a look at the new scheduling letter, look at your audit checklist and it may need some minor updating based on what we know from the new scheduling letter but again, minor changes.

All right. I'm going to tease you with this and then we'll talk about this later in the session because this is interesting. I've been practicing for 25 years. I've been involved

in literally at this point more than 10,000 compliance reviews, and I have never seen in before. OFCCP recently entered into a conciliation agreement with a contractor where they mandated as part of the violation and the remedy that the employer set affirmative action percentage placement goals for whites. I have had a number of you reach out to me as you've learned about this with some confusion and consternation and looking for guidance here. We'll talk about this just because it's, I, it is a really interesting issue. But we'll get to that in a little bit and then I'll give you some good news at the end in terms of the take a-pe way.

We are going to talk about a OFCCP proposed rule or regulation that they put out late in 2019. Comments have been split in early 2020. And now we are waiting OFCCP's final decision and approval for them with regard to a fairly controversial regulation, proposed regulation, that would have a pretty profound effect on us in terms of what OFCCP could find in the way of systemic discrimination and what they would and would not need to delve on straight in order to make that finding. We'll talk about that in a little bit.

But here's where I want to spend my time at least for the next while with you. I want to talk to you with you about your job groups. Because I have seen over the last year or two that where OFCCP is doing a deep dive investigation, the entry point, not necessarily where the land in any multi ultimate settlement, the groupings that you use has your job groups, have remained, for many of you, largely static. You think of your job groups for many of you like you think of your E01 categories or for those in higher ed, you think of your IPEDs categories, they exist, they will continue to exist, we've had them, it ain't broke, don't fix it. Let's just keep using these.

I am here to tell you as we go through the next section of our talk today, that your job groups have become the primary entry point for OFCCP where they conduct increasingly the agency is conducting very efficient investigations they are trying to get in based on the initial submission of the your AAP. They are trying to review your data and other parts of your plan, and they're trying to close it down quickly if they can. A if not, they prioritize it for a deep dive investigation.

We're going to talk about the changing landscape, the changed landscape, really, and how you need to change along with it. What does this produce? This entry point primarily into your job groups as produced be a OFCCP record recovery. In 2019, their fiscal year, OFCCP brought back more than \$41 million in settlements in conciliation agreements with employers. Findings of significant pay, systemic discrimination and hiring. That's where the OFCCP winds up spending its time.

By the way, they're not more interested in hiring than they are terminations or promotions. They go where the numbers take them and the numbers are taking them as an entry point through your job groups but then a further investigation, the numbers take them to primarily pay and hiring. We're going to focus on that today and see how your job groups are, in many ways, creating false positives.

Your groups are creating the false impression that there may be systemic discrimination there. We'll talk more in a moment.

Director Lean mentioned a few weeks ago to all of us who listened in on his keynote that he expects the 2020 less in for OFCCP to be perhaps slightly less or maybe on par with the monetary recover row that OFCCP saw last year. This will once again, if they come -- get boo get into this ballpark, will be the second highest dollar numbers that the

OFCCP has brought back. So the OFCCP is doing something right in terms of its finding, its entry point that allow it to conduct these deep dive investigations. By the way, and Craig spoke at language, and we actually had a good session I think last week presented by some folks on the early resolution conciliation agreements or IRCAs but the clear take away here is that, and there was some skepticism, and I will tell you that I was a skeptic, as to whether employers would actually utilize, it is volunteer, to utilize these IRCAs, or early resolution conciliation agreements, and in fact, Craig told me that he expected this would be an effective vehicle and one that was attractive for employers and, Craig, you were right. Last year we had a significant number, dozens of these IRCAs and director lien mentioned that he expects by end of fiscal year 2020, with is September 30th of this year, that's when the government's fiscal year ends, that there may be as many as 50IRCAs when you combine them for the last two years. So by any measure, the OFCCP has come up with a vehicle. It has been effective. It has been well received by employers. And the OFCCP is bringing back bigger numbers than ever before with that.

What is that common entry point in many of these, the IRCAs. I've been involved in a number of them. And looking at the affirmative action plans that ultimately led to multiple million dollar IRC

Settlements, as I mentioned, your job groups, the ones that you have kept more or less the same for the last many years, they are the primary entry point. And we're going to unpack why that is. It is a fascinating developing storied you the OFCCP has gotten to this place and how you, as the employer, need to think differently with a different set of rules.

So let's start at the beginning. Job groups have a long and interesting history. Horse folks on the call who have been doing this for decades like I have, you know this. Job groups are the basic building block in your affirmative action plan. They don't exist anywhere else in your HR processes. If I went and spoke with your comp people, very often I defend comp manager audits a comp manager interviews and you its, and when the comp managers asked about job groups and how are they used and incorporated into the pay system, there very often is just a blank stare, silence for a few minutes on what have now been all of these virtual interviews. Your comp people, your recruiters, those in talent management, when I ask them about job groups, they may have a passing idea or a knowledge of your job groups because they've undergone some training, maybe by you, about the affirmative action plans and the goals. But otherwise, your job groups are constructs that exist solely in the affirmative action plan because of the OFCCP mandate that you create job groups.

OFCCPs are very clear and the regs have been unchanged for decades now. You, the employer, not the OFCCP you construct job groups based on similar content, wage, and opportunity in jobs and then you combine those jobs to create your job groups.

So first let's just get foundational here. Why do we even have job groups? Why do we combine jobs at all? Why can't we just look at, for instance, utilization and goals for individual jobs?

Well, it has to do with sample size. Think about your plans. Maybe you have, you're an employer with ten affirmative action plans and on average the plans have 500 employees per plan and if you were to break out your job groups solely along job title

lines, let's say 500 employees, and you might have 50 job titles in your workforce, that's an average of 10 employees per job title.

OFCCP is in the business of identifying systemic trends. That's what they are. They have twin pillars of enforcement and by the way they focus on affirmative action and nondiscrimination. And when it comes to both of those, OFCCP uses your job groups to see if they can identify broad systemic trends that emerge from your workforce. We create job groups in order to get to sufficient sample size. To allow trends to emerge. But here's part of the interesting history. When these were first mandated by the OFCCP decades ago, there was no notion of using job groups as a unit of analysis, for example, to look at pay or to look at hiring or promotion, or terminations. Job groups were used, many of you on the call who I have known for decades now, you know this, job groups were used back in the day for the sole purpose of conducting utilization analysis and setting affirmative action goals. And does everybody remember this. What happened then or now in a worst case scenario if you get your availability analysis wrong, if you get your availability analysis wrong. If you don't, if you are clearly not in compliance, using those job groups, and meeting or not meeting your affirmative action goals, there is no monetary exposure whatsoever. There are simply technical violations be a potentially for lack of outreach for good faith efforts. That's it. There is no systemic discrimination findings. There's no money changing hands. You're not writing a check. You don't have a conciliation agreement that's going to be published on the OFCCP's website saying they found systemic discrimination. That was the structure and how things existed with first the creation of job groups and in the decades following that.

However, over the last many years, we have seen job groups creep. We have seen your job groups used by the agency in many other ways not originally envisioned by the OFCCP regulations and importantly not envisioned by you or more likely your predecessor or predecessor's predecessor who created those job groups solely for the purpose of utilization analysis. And goals and good faith efforts.

Okay. So we're going to look through over the next couple of minutes an actual example of this, but I want you to be asking yourself this question. My job groups, they were solo created for AAPs many years ago. Do they actually align in any meaningful way with my recruitment practice, my hiring promotion eggs termination practices or my pay practices? As the we box on audits, as we work on AAPs on a annual basis, many more of you than not, when we examine your job groups, we are struck by the fact that you cannot answer that question that I just posed, do your job groups take in to account hiring promotion, compensation, yes, could you envision the OFCCP using those against you in audits. And the answer is most certainly no. But we acknowledge now that job groups have become the default unit for analysis for OFCCP when it starts its audits not only for utilization but also for adverse impact. And for pay.

You have not yet adjusted, some of you have, kudos to you, I have given feedback on revised job group structures over the last year or two. You are in the distinct minority, those of you who have captured the idea that OFCCP's enforcement approaches changed using the job groups and we must change with it.

For most of you, job groups often remained unchanged since that time, they were used solely for affirmative action goal setting, and as a result, and here is the critical takeaway, folks, this is where it gets real. Your job groups as they're currently

structured for most of you will create false positives that lead to, and here's the key, avoidable OFCCP deep dive investigations. These are avoidable.

By the way, I want to be very clear here. I don't want you to avoid internally a finding of real potential systemic discrimination. You are an affirmative action employer. I believe in this and I'm sure you do as well. The purpose of the affirmative action plan and the analysis of what I call the life cycle of your employees from recruitment, hiring, promotion, termination, pay, right from beginning to end and pay in between, if there is a real issue, there I want you to find it and fix it.

My concern for you is your job groups, as they're structured, are not appropriate for finding real issues and instead create false positives.

Now, you can in an audit, and we often do, you can absolutely argue that OFCCP should want use your job groups to make any type of preliminary findings or pursue a further investigation. You are then engaged in the OFCCP in arguing after they have found a preliminary flag right now in the OFCCP's world, under Craig Lean as he created greater efficiencies for the agency, and I have seen it over the past year, the agency at a field level truly as has embraced this idea, get in, see if there are any issues, if not, get out.

Right now your job groups, are more literally many of you, making the OFCCP pause and conduct the further investigation based on the false positives. And once the OFCCP is down in the trenches on this issue, you can argue it as much as you want to but now have you an argument as opposed to revising job groups that allow you to truly present your data in a meaningful way and avoid the false positives.

What are going to do over the next few minutes? We are going to look at an actual example from a client that we worked on recently who brought us their plan when they got an audit and I'm going to show you before and after picture, the methods for being critical in your review of your job groups and revising them, almost inevitably, you will revise them.

You are allowed to, the regulations. You create those job groups and you get to revise them.

We need to realize that given what changed enforcement reality for the agency where they are looking for this entry point, which gives them large groups to work with, they have been extremely effective with their use of your existing agreed job groups and we need to do a comprehensive review.

The bottom line is we are going to restructure these to better align similar and more importantly, separate dissimilar jobs that you have grouped together. If we do this right, this is a clear take away for you, folks. If you do this right, if you create a new strategic job group structure, you will find that the false positives, not any and all red flags, as we'll show new a month moment, but the policy false positives that indicate that there may be a discrimination issue falsely, those will be reduced or you're able to avoid them entirely while still using your job groups for what they were originally intended which is utilization analysis and goal setting.

All right. How do we do this? What are the mechanics? What are the steps? Well, that's a good question.

Let's answer it together. The first thing I want to do is start with this. And you've heard me say this many times but it is worth repeating in this context. Big numbers are bad numbers. Sometimes people ask me in detail what I mean by that. Big inspection are

bad in the sense that they can be very misleading. Indicate to OFCCP there may be discrimination, solely based on overbroad groupings of your workforce in to overbroad job groups.

Looking at a data over a too long a period of time over multiple years.

Look at this example and I want you to see what is the same and what is different.

Well, this is a hiring analysis for males and females. We're looking at this to begin with over the course of let's say a year. And what we see is that there were 50 females who applied, one of whom was hired. 2% hiring rate. For males we also had 50 applicants, five of whom were hired for a 10% hiring rate. I'm showing you the 80% rule result.

Most of us not in this 80% rule. Although that largely is a vestige at this point of the analysis that the OFCCP relies on. Really it all about the is if deviation result. And look at this, females are 2%, males are 10%, and we have a standard deviation of 1.68. We were below statistical significance which is at a tipping point of 1.96 and change. We have no issue here statistically.

What happens when the numbers start to grow? Well, it is the same ratio of applicants and hires. It is the same comparison of female and male selection rates. 10 versus -- 10 out of 550 out of 500. We've taken the number above and we've multiplied everything by ten and now with the same selection rates we have a standard deviation of 5.32, just about two standard deviations, Is is the OFCCP's tipping point, we'll talk a little bit more about developments in that area, but we are now red. We are literally a red flag for OFCCP at five standard deviations.

What happens when we take the same numbers and extrapolate them out? If we say with the same 2% and 10% but now over 5 thousand and 5,000 applicant and a total of 600 hires, we are now at 16.8 standard deviations.

Now, we're going to talk in just a few minutes about account if a that standard deviations are just that. It is just a deviation from what would be expected statistically.

And beyond two standard deviations, what it tells us is this disparity in the hiring rates, it is unlikely to happen paced on chance. I want you to hear those words. This is unlikely to happen based on chance.

That's all that a statistical tipping point of two standard deviations tells us. However, OFCCP has over decades in virtually every systemic investigation I've been involved, has making the working assumption that when you get to two standard deviations, it is no longer unlikely to happen just based without chance, it is unlikely to occur without discrimination, replace the word chance here. With discrimination and that's the mindset that the agency brings to this.

And you'll see in that proposed regulation I showed a few moments ago if is finalized that way, the OFCCP will actually embed in regulation this thinking. When you get beyond a certain standard deviation, the numbers speak for themselves. There likely is discrimination. The employer then better be able to explain all of those decisions when, in fact, standard deviation of two or more tells us it is unlikely to be based on chance.

I want everyone here to understand because it will be useful for your own thinking and in defending audits that the fact that it is unlikely to be based on chance does not mean therefore it is likely to be based on discrimination, but we'll come back to that concept.

The bottom line here is we're simply showing that hiring rates that remain the same throughout the different is he nays yo when we get to bad big numbers, we get to bad numbers.

So I'm going to show you now a job group structure. It is very common to what I've seen with many of you. It has remained unchanged for ten years or 15 years. This is for an actual client, the name and the job group totals, the job group names, everything has been changed to protect the innocent. This is an actual progression that we've gone through just a few months ago.

And by the way, I have my colleague, Jessica Carol, who is our lead data analyst, she's the head of data analytics for us, she's with me and she is our numbers and our Excel person. Jess, I'm going to ask you at some point, I'll probably just swap over control of the screen, I'm going to ask you to help us drill down in to our numbers in a Excel file in just a few minutes.

But let's start big picture, guys. It is very common that I see this. You have more senior officials and managers and more junior. You've broken them up into two job groups. This may align with EEO1 categories where you have a 1.1 and 1.2. You may have done it for other reasons. But back in the day when we were relying on this solely for the purpose of goals and good faith efforts, this was acceptable. By the way, you'll see in a couple of minutes that the restructure that you do strategically is actually going to help us greatly on utilization analysis and goals. They're going to be much more meaningful. But I'm not focussing on that right now. I'm focussing on where the monetary exposure is from false positives. And so we have a more senior group of officials and managers. We have a more junior group.

We also have the majority of our workforce here, there are about 500 employees in this plan. The majority of them are in the professional ranks. This is a research and science-based company. They are producing services and products related to science and scientific products. We won't go in to detail in that to keep confidentially but you'll see detail in a moment.

Here, again, your job groups are senior professionals and junior professionals. By the way, I want to give you a little feedback on your job group naming.

Whenever I help an employer work on a job group and help them structure them, there may be a more senior and more junior job group, my recommendation is that not call them junior. Your employees who worked hard to get in to management, the employees who work hard to get in there professional, you don't want to go junior, so you can go to roman, call the senior, senior, and call the group below it just without any prefix to it, right? So it could be senior officials and managers and then just officials and managers. That's an aside. That came out of the actual job group naming.

Okay. So that's where we are. Now let's see what happens using that job group structure. Well, remember we had junior professionals. We're going to look at our applicant and higher comparison here for a one year period. We a lot of applicants apply? Employer, by the way, may have been overbroad in their definition of applicant. You're entitled to do that.

There's also strategic opportunity to use the inter in the applicant rule to -- to scale down on those who actually define as an applicant. But put that aside. These are pretty big numbers. We have 0 hires for the junior professionals group I just showed you over the course of the year. Black folks are being hired at 1%. White folks being

hired at 8%. We have 80% rule of 33%. That's not important here. What is just important is we are just over 4 standard deviations.

I remember mentioned a moment ago the big numbers and bad numbers when we get to five standard deviations or 16 who previously worked in the solicitor's office. That's the department of labors legal department that supports the OFCCP. And then she came and worked with us adds an attorney and she had a wonderful insight which was you know, when we get to two standard deviations, that's good, that's the tipping point statistically, but when we get to four or five or, in my example, 16, which get up and we slap hands and we do a little happy dance. Because we know when you've got big standard deviations like that well beyond your two standard deviations, we know almost certainly there is discrimination there and we know almost certainly there is going to be a big monetary payout because of that discrimination.

I would disagree with that approach. But understand that if OFCCP sees four standard deviations as we see here, we are well beyond the tipping point. OFCCP will prioritize this, begun, they're being efficient now, for one of their deep dive investigations.

But that is not all. We also look at promotions and I mentioned, I won't spend a lot of time here because we're waiting to hear from OFCCP over the coming months in to a year or so, what they're going to do in their approach to promotions but right now, OFCCP still does look at promotions adverse impact, and you should as well, to make it simple here, we are using the incumbency data from the prior year, so there were 997 employees in the job group, you could see a total of 47 females, 0 males, and we had a total of 25 promotions. This is in our junior officials and managers group. So I want to us think about this practically.

We're looking at a hiring flag for black folks when it comes to entering the organization but here, we start to creep into an area of grahams ceiling area. Females moving in to higher levels of management from the junior officials and managers into the more senior, we see that males do much better than females. We are at 3.3 standard deviations. This, again, unstructured and submitted as this would like lie invite OFCCP and they would accept the invitation to do a deep dive into your promotions, the underlying come bent, who posted, who was competitive, not competitive, so forth. The OFCCP would be off to the races based on these statistical flags.

But guess what, what we found at the quick glance is that the job groups were falsely completing these flags producing overlarge is it statistically significance indicators because of overbroad job groups that were too large and also remember seniors in terms of the jobs we put together.

So with that in mind, Jess, I'm going to, let's see if I have this ability here, change present Jessica, I am going to pass this over to you and I'd like to see if you can -- oh, wow, you're good, Jess. Jessica has put together, we've cleaned it up completely so it is no longer client specific in anyway. But she's put together the before and after picture with some modifications to make it generic but a before and after picture that OFCCP -- that we looked at when we first analyzed the data. This was on the eve of submission. The stat demeanor flags that I just showed you.

I'm going to talk you through this, but this is the employee we talked about in more detail, the senior managers and the junior official managers.

And when is what Jessica and I noticed. Why don't roll down, Jess. Stop right there if you don't mind. We have VPs, senior officials and managers, we have VPs, you'll see

that we have directors, we have associate directors. Thank you, Jess. Keep on rolling down if you don't mind. We then, remember, the -- the employer here broke this up in to two job groups. We have VPs, directors and associate directors.

And then Jess, why don't we roll down. In the junior officials and managers we had senior managers, we had managers, if you take a look at the column trite will here, and we also had supervisors.

And when we looked at salary grade, a real grade construct, as opposed to the job group which would be an artificial, a created construct for purposes of let's say looking at pay. When we looked at function, when we looked at hierarchy, when we looked at actual salary, remember the three factors that the regulations say, look at the job, meaning the real job content, look at the opportunity, the opportunity for advancement, and look at pay or pay opportunity.

When you look at that here and you think of career ladders, for your supervisors up to managers, senior managers, associate directors, directors and a VPs, you have very distinct levels, you have different job content, you have different opportunity for advancement, and you have different pay.

Well, that's what we saw grouped together. But what we also saw was an opportunity to break these apart. And Jess, why don't we go down. Let's take a look at our professionals. Because here too, as a reminder, folks, we had senior professionals.

Now, let's look at this group together. Pause there for a moment if you could, Jess.

What became interesting to us here, Jess, is not only were there different levels, notice the salary grade in column H, not only were there different levels of jobs put together, they're also, think of them, if you could visualize it, folks, different functional cylinders or functional career ladders. So we had scientific professionals. But who also rolled in with IT professionals. That were also rolled in with in-house counsel or HR managers or recruiters or logistical professionals. And the only distinction here, if you can roll down, Jess, if you don't mind, the only distinction that of add of as you look at those different titles is that the employer had created a more senior level job group 201. And a more junior level. And this was tied in part to salary grade. It was tied to some other factors. But the bottom line is, we had this combination will of jobs that if we think with employment counsel and process engineer and systems add Mr. Er, marketing analyst, I just pulled a copy of these out, they are clearly not similar if we were to think about them as a legal concept of similarly situated jobs, that appropriate for comparison to determine where there may be pay comparisons that are problematic or let's say hiring trends that look at combined groups of applicants. When we've got a requisition for the application specialist. Or for the viewings aspect, the process engineer, the bottom line here is these are fundamentally different jobs. And the idea of looking at these at the job group level is unnecessarily problematic in terms of the false positives, the flags that are created.

Now, some of you will ask and by the way, I encourage employers to do this, under the OFCCP scheduling letter, you have the option of providing data either, this is for your apps, hires, promos, terms, for your personal activity, you can either by job group or by job title.

The challenge that we have here is that there are so many discrete job titles that exist that if we were to submit by job title, you can certainly do that, but if you were to do that, then you may very well have groups are simply too small in terms of hiring trends,

promotion trends, where OFCCP will say, you know what, we'll take it upon ourselves to roll up to the job group level because the job titles are producing groups that are simply too discrete, they're too small, the numbers are too small, we really can't get a handle on systemic trends in the workforce.

So in terms of strategy, I want everyone to be aware, you can certainly choose to submit it at the job title level. But what I found at OFCCP increasingly over the last couple of years has relied on your job groups even if they need to roll up your job title submitted data to roll it up in order to get broad statistical trends.

So Jess, roll down a little bit more, if you don't mind. And let's stop there. Again, just soak in, if you would, folks, in the job title column, see who has put together here, HR consultants, system administrator, scientist molecular researcher. These are fundamentally different jobs.

Now if we were using this solely for the purpose of putting together job groups for utilization in order to get a broad picture of availability, we could pick occupational titles that align with these different jobs. We could aggregate that data along with feeder group, internal feeder group data, to allow us to see if it is just for utilization and goal set action, we could say, yeah, we could approximate availability. We could get a pretty good picture of it with these groups remaining together.

But once we enter into this job group creep area of OFCCP using it for pay comparisons, folks, look at your HR consultant and your system administrator and your will I logical analyst. There is no way that you would or that I would or that your comp manager would say, those are all appropriately compared jobs own though they ago across different functions, different career ladders, the market is demanding of different type of skill sets, differently for the biological analyst than for the HR consultant, but these are all grouped together.

Jess, why do went go to the happy part of this. Which is the job group structure after. And I want to spend a moment with you on this before we look at statistic s because this is where the rubber meets the road with the OFCCP. By the way, Dr. Robert Logeness, many of you know him, heads up OFCCP enforcement and also heads up their statistics function and I think highly of Bob and I have listened to him give presentations that are very useful contractors. He will be presenting tomorrow I think, not necessarily on what I'm talking about, but I suspect there will be a good amount of overlap.

I want to spend just a moment on this. Because look at what we've done here with that same workforce. We have now broken up the job group structure in a way that aligns based on opportunity for advancement, the VPs are now all together, they are direct reports in the to the official and manager, the EVP. You next see the next level down are those directors who report directory into the VP itself. They are at a similar level of do you want for advantages want, if there was availability, their next step career ladder guys would be in to VP itself. Their opportunity in terms of pay, look at their salary. They're all in the same grade, by the way. I'm not necessarily advocating that you structure your job groups solely based on grade, but take pay constructs in to account because OFCCP is going to use those groupings for comparison. But you can see salary wise, these are folks in the 140 to 185 range or so. Significantly less than those VPs and you're going to see in a moment, more than our associate directors. When we look at this and try to anticipate OFCCP using these groupings for purposes of across the board analytics, hiring, promotion, pay utilization, we'll talk about a the

response to that in just a moment. But the bottom line here is, in this is about a winning strategy, folks, to get to groupings that are still large but that are not misleading in the analytics. They are not going to produce false positives in the same way that those overbroad groupings that I showed you earlier, that simply do not align with the reality of this employer's HR process, career ladders, opportunities for advancement, opportunity for pay and content.

Remember, those things I just shared with you together, the OFCCP three factors that you should take into account, and also the issue of aligning it with the reality of your workforce, your pay structure, your opportunity for advancement, your career ladders and so forth.

I do want to pause for a moment, roll back up if you don't mind and let's take a look at the VPs for a second. We have a total, look at column B, we have a total of eight VPs. OFCCP is looking for systemic trends. What I hear often from you is well, for pay, OFCCP generally looks for a minimum of 30 employees and five and five on both sides of the fence to compare.

And you only have eight VPs. When we get to the top of the house, folks, we're not going to have groups of similar jobs that are at 30 or more generally speaking. This is in to the direct manager. This is his leadership team. And the bottom line here is that there are eight of them. There is nothing in OFCCP regulations or in their compliance manual that speaks to what size a job group has to be in order to be reasonable. It has to be a reasonable job group structure but in this case it would be unreasonable to put together directors and VPs just to achieve a certain minimum size. We don't want groupings that are large enough for statistical trends to emerge and you're going to see for the great majority of the workforce, that is the case. But here's a key takeaway that I ask you to really internalize, now and in your next audit and with your restructuring of your job groups.

It is not your job to create groups large enough for the OFCCP can run the statistics the way they want. It is the OFCCP's job to come up with the right statistics based on your job groups.

If we put together larger job groups just because the OFCCP would prefer that for their statistical modeling, that puts the cart before the horse. Remember, the regulations say to you the employer, you create the job group structure, Jessica and I each may be in a financial services company, I've got 10,000 pros, each based out of Chicago, nonetheless, we may wind up with very different job group structures, based on opportunity, wage, opportunity, and opportunity for advancement and job content.

So the bottom line here is do not shy away from job groups that are smaller than the 30. A rule of thumb for me is when you get to the top of the house and you are appropriately grouping your job groups, something like this where you have a half-dozen -- a dozen less VP levels, direct reports, into your top manager, that's probably aligned with the reality of who that next level in the hierarchy is.

Look at an org chart or your workforce. When you start peeling horizontal strips, right, just strips across, at the different levels in your career ladders, those are your job groups.

Now sometimes your job groups may be very large. But they're still grouping together similar jobs based on content and opportunity. And sometimes they're smaller.

So Jessica, roll down here again. We've got eight VPs. And now staying in column B, we have 21 directors, still less than 30, but we're getting numbers where there's a meaningful basis for comparison.

And now we go down and look at our associate directors, we're at 34. Senior managers, let's just roll down and touch those numbers, just 31.

The bottom line here is we are getting to numbers that is statistically meaningful. I'm going to come back to OFCCP's take on this or anticipated take. But this gets to a much more meaningful look at the workforce.

Jess, let's go down to the professionals for a moment. I want to spend a moment there. And stop right here if you could. So the same way that we had broken out more hierarchy refs in the job groups, just if you think about the career ladder and management from supervisor or assistance manager and manager, we've done so something else here with professionals that much more aligns the job groups with the reality of your workforce, with the reality of hi you recruit and hire, who gets compared. In our previous look, the before picture, we simply had a more junior and a more senior set of provide fess as. However, watch what happens here. Jessica, working with the client, we created three distinct functional cylinders or career ladders, if you will, that we saw as very distinct.

So we have scientific professionals, why don't we roll down, Jess, if we could. Look at the jobs now we're no longer combining your HR specialist with a principle scientist or with an in-house counsel. Instead, your scientist and other scientific positions are grouped together.

We also have three tiers. Let's roll down, Jess, if you could. We have three tiers of job groups. In your scientific professionals, all of which are producing good numbers. Remember, this workforce has a total of about 500 employees. This is not especially large, right. You don't need thousands of employees to create more meaningful job groups and still maintain good statistical coverage, meaning groups that are large enough for analytics.

Right. Here are your scientific professionals. Jess, let's roll down if we could. So we've gone from two hierarchical levels to three and we've now created functional cylinders, IT professionals. Roll down, Jess, if you can.

We've got three levels, remember, some are going to be less than 30. Most of these are more than 30. We see our IT professionals, three levels.

And finally, look at the jobs, we've now grouped together people who are much more similar. Then have you the corporate professionals and these are really the folks who make an organization run, regardless of whether it is a scientific company, whether it is financial services, whether it is producing cars or hats or anything else, it is me and you, it is the in-house counsel, it is the HR professional.

As someone else within the organization that makes it run as an organization, not be involved in the what you're producing in the way of the product. These are your corporate professionals. And Jess, if we could roll down. Again, we have three levels here. And let's just pause there if you could for a moment, just so you can soak in the types of jobs we're talking about.

And then roll down, Jess. Here you'll find entry level corporate professionals. Now, Jess, if you can, action transfer back to me the screen share because I want to go in and show again where the rubber meets the rode here if you will.

Here you can see my screen again, folks. Remember how the numbers are four standard deviations or 3.3. Let's take a look at what happens now.

Well, we've broken up our officials and managers into distinct levels that align with the reality of our workforce, starting from the bottom, think about promotions, the progression within the workforce, supervisors, managers, and senior managers used to be all together, they have been broken up. Associate directors, directors, VPs, they've been broken up. Most of these continue to have numbers that are meaningful for statistical trends. I want to come back to that in a moment.

That's interesting, but this is the more interesting. Remember we had four standard deviations. When we were looking into hiring in our entry level professionals. Check this out. We have now taken your professional groups and we have taken in to account those functional, take a look at the names here, is, 2, 3, and here are IT professionals, look at the numbers of employees, these are the corporate professionals. But that's not it. We have not just broken out the cylinders, we've also broken out the hierarchical levels, the career ladders.

And I want you to see something in this, folks. This is what gets me excited about your strategic review and revision of job group structures. I'm telling you to do it because of my concern around false positives when it comes to pay and hiring flags in particular. We're looking for real flags. We're not looking for false positives that can prompt the OFCCP to do a deep dive into this but in doing this, a move the motivation a revamp of the job group structures to make them more aligned and more real is it being.

You use this for utilization analysis.

Up until now we've had two now because we've broken this out in a strategic way, your utilization and goals and good faith efforts analyses are going to be much more meaningful when you're looking just at corporate professionals together. Right, because the corporate professionals, one, entry level corporate professionals, they are your true feeder, much more accurate feeder for corporate professionals too. IT professionals, this is the career ladder, folks. We're not seeing people from science professional one into IT professionals 2. They're moving up in the science Africa rear ladder. So now have you created something that is much more meaningful in terms of getting a real availability and [pro grepps](#) within the workforce as well.

All right. What do the statistics show when we break it out that way, we have meaningful trends, but let's look at this. Where we previously had four standard deviations, when we looked at entry level professionals, black versus white, look at what happens now, look at the analysis column.

Corporate professionals broken out separately, that's a more appropriate comparison is at 1.48 standard deviations. IT professionals, entry level is .88 and now scientific standing on its own, it is still a statistical flag at 2.29 but for less than the four standard deviations and this has meaning in terms of the proposed regulation we mentioned at the outset that we're going to turn to in just a moment.

I want you to also see the promotions. Remember we ran a promotions analysis that showed us 3.3 standard deviations. Well, these are the first three levels of management. Remember we're not breaking this out into functional cylinders like scientific. You could consider that. But looking at the three discreet levels, they used to be all together, managers, supervisors and supervisors managers. Again, we're below standard deviation for suture surpiser managers.

For senior managers guess what we have found here, potentially. I want you to look at the rate for males and rate for females. This is moving from senior management in to its promotion from, in to director roles.

And note that we have 14 female incumbents, zero of whom were promoted throughout the year.

We had 16 male -- 6 male incumbents, six of whom were promoted throughout the year. We have found here, folks, a glass ceiling or a potential glass ceiling for a real a discrimination issue. We also may not have. It could be that the six males who were promoted were, in fact, the best qualified for those opportunities. And the 14 if he females, to the extent they're in the same job, had expressed an interest in those openings if they were competitive, had been significantly less qualified.

But the bottom line here is I want you to see the strategic restructure here is not designed to simply make flags go away. It is to get at what is more real, what may be a hidden barrier to equal employment opportunity and the advancement of the company for females. This gets to a picture that aligns your job groups and your AAP much more so with the reality of your work force and the career ladder and the advancement opportunities, as opposed to just some overbroad job group.

All right. I want to take a look just very briefly at pay here because for pay, when we have the job group together, the 120 employees for junior professionals, the before picture, whites were paid the highest on average base salary, 80,000, and then you can see the standard deviation results when which conducted regressions and you can see that there was a standard dev 2 and then black and Hispanic folks are showing at above 3.

But watch what happens when we break out our entry level professionals into the three cylinders. Scientific, IT professionals, and corporate, the thing that I was struck by most is while we saw whites as the overall highest paid when you combine the groups, note that for some scientific professionals, whites were the highly compensated. That's the asterisk in blue. They're making 80,000.

But in the IT professionals, Asian itself are the highest compensated at 87. And in our corporate professionals, black folks were making the most.

Notes that we see not standard -- not a statistical flags in all instances but rather than in a couple of isolated areas. By the way, you can run a regression that produces a standard dev result which is what we have here.

If it is a smaller group, you, there are smaller statistical analyses. Remember I mentioned earlier for OFCCP. The bottom line is they need to find the proper statistical analysis for the right comparison group. You don't need to make groups overlarge for them just so they can find to use the statistical analysis they prefer. So the upshot on this is we're not trying to eliminate fluctuations for its own sake. We're trying to get to what are more real flags.

I want to be clear here before we leave on this and touch on one or two things and then open it for questions. I want to be clear that I don't consider job groups necessarily to be an appropriate comparison group for pay.

The bottom line is we are anchored in what Title 7 principals and case law says and it is the OFCCP's job to identify those employees who similarly situated that may be in this job group structure or it may be smaller, even more discreet than that, but the bottom line is this approach, when the OFCCP hits this early fork in the road in the

audit, do we close this down in the interest of efficiency or do we do a deep dive because of the flags we see, this is the same data, the same pay, the same hiring and you get a vastly different outcome with the strategic restructure. I mentioned OFCCP's proposed regulation and I want to tie in to everything we just did. Note that when we looked at those adverse impact trend, we were above 3 standard deviations for hires and promos but even in the few frays we had after the restructure, we were below three standard deviations.

Why is this important? OFCCP has proposed the regulation, by the way, the NLRB has put in a comment on being that, this was earlier in the year. Many other organizations, we put in a detailed comment which the key here is this. It was proposed. Comments have gone in. And now OFCCP has said that this is a priority in terms of trying to get this regulation completed in this semiannual cycle.

What OFCCP has said, and I'm going to just jump to the chase here. Two to three standard deviations, OFCCP needs anecdotal evidence to buttress or support that flag. Remember we looked at flags a moment ago that are between two and three. But if the OFCCP finds three standard deviations or more, OFCCP need not produce anecdotal evidence.

But I will tell you as a lawyer, as an aside, this approach is not consistent with Title 7, so I think OFCCP is thinking about it right now internally. But the bottom line is this has been a priority for them, this regular, and we'll see what they come out with. But realize what that what we did with those statistical flags, the standard deviation, versus the before picture, this is going to have a profound effect of OFCCP says, once we get to three, we do not need to produce any type of supporting evidence, the statistics speak for themselves.

Okay. Last thing I'll just mention in just one minute is goals for lights. I've been doing this for 25 years, folks. This is out of annual conciliation agreement OFCCP recently entered in to with an employer out of the Pacific region. And in 25 years, I've never seen OFCCP seek to or include in a conciliation agreement the obligation that an employer set affirmative action placement goals for whites. This is the actual language right out of this. However, this is the same language we've just highlighted it. I want you to look at this.

The statement of violation says this employer and this is a matter of public record, I did not work with emphasis, that's the name of the company, this is on the OFCCP's website, that Emphasis had underutilization as it relates to, and I want to look at the words, particular minority groups or for men and women of a ticket minority group when establishing placement goals. And then OFCCP said, Emphasis failed to establish goals for white applicants in this particular job group, computer systems analyst.

Other than I have had a number of you say should I be setting goals for whites and the answer is no. And by the way, I spoke with Director Lean about this, I spoke with him yesterday about it, we had a good conversation, we agree on some aspects, we may agree to disagree, but the bottom line is, as your lawyer here I'm telling you there is no obligation under the regulations for an employer to establish goals for whites under any circumstances.

I'm completely in favor of you looking for systemic discrimination wherever you may find it. But the bottom line here is don't set goals for rights there. Is just no obligation to under the regulations and OFCCP is a law enforcement agency if the law does not state

that you're required to, I would be very, very careful about agreeing to do so or choosing to do so if the law does not allow for it, really, or permit it, honestly.

So the bottom line is there were very unique circumstances as director lien described to me in this case which led the OFCCP to make this decision, but don't set goals for whites.

All right. What do we have as takeaway, OFCCP's has clearly found their effective entry points for the in-depth investigations and they have results to show for this. The job group crept from the earlier job group structures is creating, in many instances, massive false positives. And avoiding in resultable deep dive investigations.

By the way, many of the OFCCP's settlements, they are not ultimately based on the job group structure but it is their entry point for the investigation. Therefore, undertake a comprehensive review of your job groups and revise them and the way I showed you was just one way to think about it but revise them to come up with a strategic job group structure, knowing how the OFCCP using these groups and don't set goals for whites.

Those are our key takeaways, and I think, Jess, guys, we said we may go over a couple of minutes. Jess, if we have questions, I'm happy to see if we can take some questions right now. And while I'm doing that, Alicia, if this makes sense, while we're taking the questions, first, have you my contact information, folks, reach out. By the way, I mentioned we started a new firm. We're going to go live with our we shall site at the end of this week, that's very exciting.

Have you my e-mail. We're going to be doing a regular blog on OFCCP and development. So please e-mail me if you want to give me your contact information. I'm not going to put you on without you asking. But let me know if you want to join in for the fun. And of course we have our conference hopefully in-person conference next year in Nashville.

I'm going to leave up here, Alicia, if this makes sense, here are those wonderful sponsors you mentioned but I'm also going to leave up, let's say, I'll leave up this which is the SHRM credit information you need for those of us who are HR professionals while we're taking any questions.

So with that in mind, Jess, I'm going to turn it to you. If there's anything that looks like good questions, feel free to shoot.

>> Sure. And you know, I had to log out and look back in, Mick, so I may have missed some questions in the chat box. But we have one that says, we have our job group set up in a way that our pro fission as job group does include a variety of jobs like the recruiters, HRs, and IT people, all in one group. However we used this to calculate policy I availability and utilization analysis. Do you suggest we consider regrouping our job groups so it helps with pay analyses or can we do a separate pay analyses by grouping similarly situated jobs together without having to redo the AAP job groups?

>> So thank you. That's a wonderful question and it points out something that I may not have been clear on. I want to be very clear, folks. We're speaking about what OFCCP does with your data in their audits. I am not recommending under any circumstance s that you conduct a proactive bay pay analysis based on the job groups. I wouldn't recommend doing so after we've done our strategic restructure of the job group that I've shown you over the last few minutes. The bottom line here is you should be, I encourage you, to conduct meaningful proactive pay analysis. It should align with your pay system and structure. And you should group the workforce together in a way that

allows you to see meaningful statistical trends immerge but now let's come back to that first part of the question, Jess. Because it is not a question what you do with your job groups, it is a question of what we know is the job group creep that the OFCCP does. Your job groups will be a unit of analysis for OFCCP to analyze your item 19 pay data that you submit to of course.

So I do a lot of these for clients, you know, separate from the AP, you're constructing a proactive analysis. For pay. But the bottom line here is recognize that that jock group struck toward professionals, that puts your HR people and IT people and others together, OFCCP will use that as are default building block for its pay analysis and then they're going to hit an early fork in the road. Have we hit big flags here? If yes, let's do a deep dive investigation. We may ultimately make a finding on groups other than the job groups but this is our entry point into that deep dive investigation. The savvy, sophisticated employer here is going to realize that how OFCCP uses it and they are going to revise job groups accordingly not to try to hide anything. We're not trying to hide discrimination. We're trying to fix it internally if we have it. But what we don't want are false positive red flags when we have scientific and IT and HR professionals together. Very good question.

What else, Jess?

>> Will there are quite a few, Mick, so we might have to answer some of these off-line. Isn't OFCCP fighting tooth and nail when the job group doesn't fit their analysis?

>> Yeah. It's a well framed question and the answer is it, in some instances they are. But guys, I don't mean to be glib about this. That is their issue. It's not ours. OFCCP has a challenge here. They want broad groupings so that they can conduct systemic analyses and identify flags that relate to the pay system or the hiring system.

I completely understand that that is their mandate. But it is not our job to create job groups in a way and by putting together dissimilar jobs that we would not compare internally for hiring purposes and pay purposes. It is not our job to do that work for them just because they would prefer that. It is our job to create job groups that are based on similar jobs, think about these words, similar in job content, why should IT and your scientific and HR professionals are not, they don't have the same job context, period, end, full stop, they do not have the same job content. Any likely don't have the same opportunity for advancement. They may within their respective career ladders. But in terms of comparison, they don't have the same opportunity to move into the director of HR for operations. If they are a scientific or IT professional. You would if you're the HR person probably at some point in the career ladder.

The point is this. If the OFCCP wants to fight two tooth and nail, I'm just using the phrase in the question, if they want to fights tooth and nail to get job groups that they prefer so it can fit into their statistical modeling, then let them come up with groupings but they're going to have to be able to demonstrate, this is the catch-22, folks, and I want you to remind the OFCCP of this, I do often, they are the law enforcement agency. They are not a HR consulting practice. That gets to group and regroup and reform groupings for purposes of how they want to analyze things.

The agency enforces the law and the law says individuals who are similarly situated for pay purposes, for hiring purposes and so forth, that's who ought to be compared. How the OFCCP gets there depends on the individual employer, depends on modeling that employer's actual pay system, modeling their actual recruitment and hiring system, don't

be, because OFCCP wants groupings in a certain way of a certain size, that you, in your discretion, as the employer, under the OFCCP's regs, put together job groups in the way that you think they want them. Do it in a way that's meaningful and similar for you both in terms of that, those functional cylinders, the career ladders in the same function, and horizontal levels in terms of hierarchy based on pay and opportunity.

Jess, why don't we do this. Why don't we take one more and then, folks, Jess and I are going to be given all of the questions in a format where we can then provide responses and by the way, you have my e-mail address in the deck. If you have a question that was not responded to, please, I encourage you to send me an e-mail and we can do it that way as well. We follow-up. Jess, pick one more. Don't give me an easy one, don't lob me a softball.

>> Well, on a different track, Mick, based on the conciliation agreement you were speaking about where goals were set for whites, this request says should we be setting goals for males.

>> Here's what's interesting is OFCCP, as I mentioned, enforces the law. The law in this case is the skiff orders that were signed by various presidents and also the regulations. Those are the things that carry the force of law.

And Jess, to that good question. If folks go into the regulations that carry the force of law, in the section that has to do, I believe it's 2.1, action but I don't have it in front of me, 60.2.1. In the section that speaks to putting together availability analyses, putting together utilization analyses and setting goals, the language is clear, it says, that the employer has a obligation to conduct availability analyses and to establish goals for quote-unquote minorities and woman. It says nothing about males and it says nothing about whites.

And actually the phrase minorities and woman is really important here. Jess, it's a great question because OFCCP, it simply said for minorities, you need to set goals for minorities, OFCCP I think in the emphasis conciliation agreement may have interpreted it this way, well, minorities can mean any race group if they're in the minority in that particular workforce and if they're substantially underutilized, right? Minorities could mean whites are in the minority. Here's the problem with that interpretation. It fails based on the plain language of the regulations because it says employers have an obligation to conduct analyses and set affirmative action goals for quote-unquote minorities and woman. I don't care how much of a minority the men are in the workforce, there's nothing in the phrase minorities and woman that would permit the OFCCP to say, well, men in this case were the minority it only speaks to woman and the way minority has been interpreted here in the regulations is it only speaks to race and ethnic minorities to exclude whites. That is why write mortgages and woman is so important in terms of the reasonable interpretation.

And I want to leave -- I would leave with this, Jess. The bottom line is remember what I said early on, folks. There are two pillars of legal obligations OFCCP rules and regulations for employers and also in terms of enforcement for OFCCP. There's affirmative action and nondiscrimination. Those are two separate. So OFCCP is well within its rights to look at whites and males when it comes to the nondiscrimination pillar. And whether there may be adverse impact trends against whites, whether there may be pay discrepancies that based on race or gender and it relates to whites and males.

There the language in the executive order and the regulations, supports that. But in the separate pillar of affirmative action right which is where your obligation to set goals comes from, it clear that there is no obligation for the employer to set goals for whites or males. You can't discriminate against them. But the affirmative action goes beyond mere compensation. It is setting goals. I spoke with Craig Lean about this yesterday, I don't mean to joke about this but you can't help but think about this. Jess, you work with a lot of our clients to identify good faith efforts sources, uniquely, for individuals with disabilities and other organizations.

There are lot of organizations that we can develop relationships with for good faith he was when we have goals there. I want you to think in practical terms, folks. If we're setting goals for whites and then looking for organizations that you need uniquely focus on whites and white rights to the exclusion of minorities or others, guys, there are white organizations out there in America, they're often white supremacist organizations. Those are the ones that we want to set a goal and then they're going to be where we put our recruitment and outreach and good faith efforts is if had I don't know of organization that is I would consider to be reputable within the range of normal society. That would be our targeted white outreach and recruitment sources.

So I laughed a little bit with Craig yesterday that when it comes to identifying good faith efforts to outreach sources for a white goal, we may get into am so shaky territory pretty quickly. So that's the answer is neither males nor whites, do not set a goal, obligation under the law and you will get in trouble with the law if you do that. Certainly set goals for minorities and females. Certainly look at nondiscrimination wherever the numbers take you. And with that, I think we're about right at the bottom of the hour. We're going to stop here. But we will follow-up with any questions you receive.

Jessica, thank you for driving the car on our job group a analysis, that was you a am so, and also asking some questions.

>> Of course.

>> And Alicia, I don't know if you want us to turn it back to you or if you want to say any final words, but we are done on our end.

>> A man, there was a lot and gave good tidbits. Thank you so much for a great webinar. And Jessica, thank you for managing the Q & A. We do have quite a bit of questions. I have captured them all. I will send them over. I do want you all to know we will have answers, we will post them on the NILG website.

Thanks again for all of the sponsors. You guys don't forget, next year's conference hope will be live and it is going to be in Nashville, the national hotel. You can check back and forth to the national the NILG website and I watch for e-mails in the registration of when it opens. For those of you who need HRCI and SHRM activity credits, the information was available at the back end of the slide. Mickey, thank you so much. Thanks, sponsors. You guys did good out there. We'll see you next time.