- So, what is the message? Do we need to be using these methods?

I believe Bret addressed this very well on two occasions with very strong statements. He said OFCCP will not be using these methods but the methods may help contractors assess their pay systems generally. I also said that I was not prescribing Fishers or Stouffers or any particularly method but such methods could help contractors gain insights on systemic issues and that we are certainly exploring such tests for future implementation.

- Given what was presented by our speaker yesterday, if job groups get smaller, would you be combining job groups to create a larger group for better statistical analysis?

  - And if so, how would you do it?

Not sure if this question is directly relevant to this session. None of the segments were about aggregation of PAGs.

- Can we get a copy of the excel spreadsheet being used?

  - Much more useful if you share the Excel Workbook-- if you want this to be helpful to attendees.

  - *The agency will not be sharing anything beyond the presentation slides.*

- In the MAUT example, not giving any consideration for prior experience before coming to the company? Education?

  - Related to Bret's simulation.

The example was intentionally simple for heuristic purposes. It did not at all intend to imply that only 2-3 factors be examined. In practice, included factors are determined by current best practices of pay equity studies.

- So does OFCCP do the utility calculations and if so what do they do with them?

  - Related to Bret's simulation.

Bret answered this, that we do not currently use this method. We may be exploring the method and its practical implications, but we are far from this point.

- In populations with larger sample sizes, have you done any robustness testing to see how often the MAUT employees identified align with a regression model computed residual?

- *Partially answered – underpowered models, looking at small groups in the first place, etc.*

Good question, good partial answer. I think, if we are interested in further exploring the methodology, we can do robustness checks with groups sufficiently large to also run regression analysis. It's a good point, though, that the method is intended as an alternative to regression when regression can't be credibly conducted.

- What other factors will you consider when doing the analysis generally?

The same factors one would include in a regression analysis.

- What are the control variables?

  - Related to David Garber's simulation (note).

Control variables in the simulation were tenure and performance rating, the latter coded as a categorical variable with 4 possible values (bad to good). Note that the simulation was intentionally designed to be so simple, for heuristic purposes. The simulation itself is not something any contractor would actually do – it was to generate data from an employer who is, in fact, discriminating. Then we can see if standard regression analysis is able to detect the discrimination, given the small group size of 30 employees each.

- Can you really state that the employer is discriminating based on statistics alone? Doesn't Title VII require anecdotal evidence? Is it more accurate to state that the there is a statistically significant disparity rather that the legal conclusion of discrimination?

  - Related to David Garber's simulation (note).

Well, in Title VII cases the supreme court has allowed plaintiffs to make a prima facie case on the basis of statistics alone. Whether you believe that applies to OFCCP may be another issue, but its settled law as far as federal issues are at hand.

We know that the employer used in the demonstration is, in fact, discriminating. We know this because we designed the simulated dataset this way. The exercise was intended to show that standard regression methods applied to individual PAGs cannot detect such discrimination under all circumstances (in this circumstance, again, part of the simulation design, PAG size was too small at 30 employees each). The overall point is that systemic analysis suggests the need for an omnibus test that combines information across PAGs.

If we did not know that facts of this case (as designed in the simulation), we would certainly strongly prefer to gather anecdotal information that suggests discrimination rather than a justified or random disparity. Statistics can be considered, however, part of this anecdotal information – particularly, descriptive statistics are simply direct measurements of phenomena of interest.

This appears modeling not discrimination law…Title VII requires OFCCP to analyze what factors the employer used, not what a model would predict. Analogic so held, per usual Title VII law and kicked OFCCP's comp analysis out for this reason, among others.

The point of the exercise is to demonstrate that, even when we know all of the facts (as we do in the simulation itself), the standard regression methods will not detect the facts under certain conditions (such as when group sizes are too small and we are neglecting to look at the data in a more comprehensive manner). Most courts require statistical analysis. If the circumstances of the analysis (ie., small group size) prevent detection of true behavior, then the conclusion isn't that the behavior isn't true but that it is impossible or highly unlikely for the analysis to detect it.

OFCCP wants Kors to pay based on how long they have been employed…just like the federal government?

I don't think any presenter was saying this.

What effect the Analogic case decision had on how the OFCCP does their analyses

I'm not sure this is directly related to the presentations.

What does MAUT stand for?

Multi-attribute Utility (analysis), slide 20.