

August 19, 2020  
NILG

>>MODERATOR: WELCOME TO THE NILG SERIES. THIS IS MARY LANE OF THE BALTIMORE ILG. THANK YOU FOR JOINING US TODAY ON THE DEPARTMENT OF LABOR'S SOLICITOR'S UPDATE. BEFORE WE GET STARTED THERE ARE A FEW HOUSEKEEPING MATTERS. THE WEBINAR IS GOING TO BE RECORDED AND A COPY PLACED ON THE NILG WEBSITE ALONG WITH A TRANSCRIPT SHORTLY AFTER TODAY. YOU CAN FIND AND DOWNLOAD A COPY OF TODAY'S SLIDES IN THE HAND OUT PORTION OF THE CHAT BOX. YOU SHOULD HAVE RECEIVED AN E-MAIL FROM TONY KAYLIN WITH A FEW INSTRUCTIONS ON HOW TO ACCESS CLOSED CAPTIONING SERVICES AND HOW TO ACCESS THE AUDIO ONLY PORTION THROUGH USING A PDF OF THE SLIDES. THE PRESENTERS WILL TAKE QUESTIONS. PLEASE TYPE THEM IN THE CHAT BOX. THE PRESENTERS MAY ANSWER SOME OF THE QUESTIONS DURING THE PRESENTATION AND WE HAVE TIME LEFT AT THE END AS WELL.

I ALSO WANT TO TAKE A MOMENT TO THANK OUR SPONSORS. THIS WEBINAR SERIES WOULD NOT BE POSSIBLE WITHOUT THEM AND WE VERY MUCH APPRECIATE THE OPPORTUNITY TO BRING THIS ENTIRE SERIES TO YOU.

OUR SPEAKERS TODAY ARE BEV DANKOWITZ, KEIR BICKERSTAFFE AND JEFF LUPARSOL. THEY ARE ALL ATTORNEYS IN THE DEPARTMENT OF LABOR OFFICE OF SOLICITOR. THE OFCCP IS ONE OF THEIR INTERNAL CLIENTS AND THEY PROVIDE THE OFCCP WITH LEGAL ADVICE AND REPRESENT THEM DURING INVESTIGATIONS I'M SORRY IN LITIGATION.

YOU WILL SEE EACH OF THEIR INDIVIDUAL AREAS OF FOCUS IN THEIR BIOS IN THE SLIDE DECK. THANK YOU ALL SO MUCH FOR BEING HERE AND PROVIDING US WITH THIS LEGAL UPDATE. I WILL NOW TURN IT OVER TO BEV TO GET STARTED ON THE PRESENTATION. THANK YOU.

>> BEVERLY DANKOWITZ: HI EVERYONE. THANKS FOR

JOINING. WE REALLY MISS BEING ABLE TO TALK TO YOU AT THE CONFERENCE NOT JUST AT OUR SESSIONS, BUT ALSO JUST INFORMALLY CHATTING IN THE CORRIDORS AND IN THE EXHIBITION HALLS.

HOPEFULLY WE'LL BE ABLE TO DO THAT NEXT YEAR.

JUST AN OVERVIEW ON WHAT WE'RE GOING TO BE TALKING ABOUT. WE'RE GOING TO START WITH A BRIEF BACKGROUND ON SOL, ITS ROLE, HOW IT'S ORGANIZED. THEN KEIR WILL TALK ABOUT POLICY UPDATES. JEFF WILL PROVIDE UPDATES ON THE ENFORCEMENT SIDE AND THEN WE WILL TURN TO YOUR QUESTIONS. WITH THAT WE'LL TURN TO BACKGROUND ON SOL. SO NEXT SLIDE. SO WE THOUGHT IT WOULD BE HELPFUL TO START OUR SESSION WITH A BRIEF DESCRIPTION OF THE ORGANIZATION AND THE ROLE OF THE OFFICE OF THE solicitor WITHIN THE LABOR DEPARTMENT. YOU ALL DO YOUR JOBS REALLY WELL. SO YOU DON'T OFTEN SEE US. AND YOU MAY NOT BE AWARE OF WHERE THE SOLICITOR'S OFFICE FITS IN WITHIN THE DEPARTMENT OR THE MANY ROLES THAT WE HAVE.

SO THE OFFICE OF THE SOLICITOR AND I WILL CALL IT SOL FOR SHORT IT'S A SEPARATE AGENCY WITHIN THE DEPARTMENT FROM WHAT WE CALL THE CLIENT OR THE PROGRAM AGENCIES LIKE OFCCP. SOL IS HEADED BY THE SOLICITOR. IT'S A POSITION THAT REQUIRES SENATE APPROVAL. THE SOLICITOR IS NOW SCANLON. THAT'S THE NUMBER THREE POSITION IN THE DEPARTMENT HIERARCHY RIGHT BELOW THE DEPUTY SECRETARY. JEFF KEIR AND I ARE IN THE CIVIL RIGHTS LABOR MANAGEMENT DIVISION MORE THE NATIONAL OFFICE OF SOL.

SOL IS SOLELY RESPONSIBLE FOR PROVIDING LEGAL SERVICES TO PROGRAM AGENCIES WITHIN THE DEPARTMENT. THIS ROLE ACTUALLY DATES BACK TO FRANCES PERKINS WHO WAS THE LABOR SECRETARY UNDER PRESIDENT FRANKLIN ROOSEVELT AND FOR THOSE OF YOU IN D.C. YOU PROBABLY KNOW OUR BUILDING IS NAMED AFTER HER. IN 1940, SHE ISSUED AN ADMINISTRATIVE ORDER STATING THAT ALL DEPARTMENT

PERSONNEL ENGAGED IN THE PERFORMANCE OF LEGAL WORK IN CONNECTION WITH ANY STATUTE ADMINISTERED IN THE DEPARTMENT PERFORMED THEIR DUTIES UNDER THE SUPERVISOR'S SUPERVISION AND CONTROL. THIS ROLE FOR SOL HAS BEEN REAFFIRMED NUMEROUS TIMES INCLUDING IN THIS ADMINISTRATION. OKAY. SO THE ROLE OF SOL. WE PROVIDE LEGAL SERVICES TO THE SECRETARY AND TO THE AGENCIES IN THREE BROAD CATEGORIES. ONE, THE OBVIOUS ONE, WE DO LITIGATION. SO WE HANDLE TRIAL LITIGATION IN FEDERAL COURT AND BEFORE THE ADMINISTRATIVE AGENCIES WITHIN THE DEPARTMENT DEPENDING ON THE PROGRAM. WE LITIGATE APPEALS TO TRIAL DECISIONS. IN SOME PROGRAMS, WE HAVE THE AUTHORITY TO HANDLE FEDERAL COURT LITIGATION OURSELVES. IN OTHERS WE WORK WITH THE JUSTICE DEPARTMENT. AND WE WORK WITH THE JUSTICE DEPARTMENT TO DEFEND OUR AGENCIES WHEN THEY GET SUED. WE ALSO PROVIDE ADVICE. SO THIS INCLUDES ALMOST EVERYTHING KEIR WILL TALK ABOUT WHEN I'M DONE. WE WORK CLOSELY WITH -- WE USE OFCCP AS AN EXAMPLE. WE WORK CLOSELY WITH THEM TO DRAFT AND REVIEW DOCUMENTS LIKE THE COMPLIANCE MANUAL, THE TECHNICAL ASSISTANCE GUIDES, OPINION LETTERS, FAQs, HELP DESK INQUIRIES, NOVEL QUESTIONS, ALSO DIRECTIVES, POLICY INITIATIVES AND SIMILAR DOCUMENTS. WE ALSO DO RULE MAKING. WE WORK WITH OFCCP TO DEVELOP THE FRAMEWORK FOR NEW RULES. WE MAY HELP DRAFT PORTIONS AND THEN WE REVIEW THE TEXT OF THE NEW RULE AND THE PREAMBLE THAT EXPLAINS THE TEXT. WE WORK WITH OFCCP TO MOVE THE RULE THROUGH DEPARTMENTAL REVIEW. WE HELP MAKE REVISIONS. AND THEN ONLY RULES HAVE TO BE APPROVED BY OMB BEFORE THEY ARE PUBLISHED AND SO WE WORK WITH OFCCP IN THE OMB REVIEW PROCESS TO ANSWER QUESTIONS AND TO DO WHATEVER REDRAFTING IS NECESSARY. AND THEN ONCE THE RULES ARE PUBLISHED, WE HELP

OFCCP PREPARE DOCUMENTS TO ROLL OUT THE RULES. SO TRAINING FACT SHEETS FAQs WHATEVER IS NECESSARY.

SO THAT'S BROADLY SPEAKING WHAT SOL DOES IN A NUTSHELL. SO HOW ARE WE ORGANIZED. THE solicitor WORKS IN WHAT WE CALL THE FRONT OFFICE. SHE HAS A POLITICAL DEPUTY NOW TIM TAYLOR. AND TWO CAREER DEPUTIES. ONE CAREER DEPUTY STAN KEEN WHO IS MY BOSS OVERSEES THE NATIONAL OFFICE DIVISIONS. AND ONE CAREER DEPUTY KATHY BISELL WHO USED TO BE MY BOSS OVERSEES THE REGIONAL OFFICES.

THEN THERE IS THE NATIONAL OFFICE WHICH WE'RE PART OF IN CLRM. IN THE NATIONAL OFFICE, THERE ARE TEN DIVISIONS ORGANIZED BY PROGRAM AREAS. AND EACH DIVISION HAS ITS OWN CLIENT AGENCY. SO FOR EXAMPLE, ONE DIVISION HANDLES ONLY OSHA. ANOTHER ONLY MINE SAFETY. ANOTHER ONE WAGE HOUR.

SO OUR DIVISION IS A BIT UNIQUE BECAUSE WE SERVE MULTIPLE AGENCIES. IN ADDITION TO OFCCP WE PROVIDE LEGAL SERVICES FOR THE CIVIL RIGHTS CENTER, WHICH HANDLES INTERNAL DISCRIMINATION COMPLAINTS AND ALSO DISCRIMINATION IN PROGRAMS THAT RECEIVE DEPARTMENTAL ASSISTANCE. WE ALSO WORK WITH THE OFFICE OF LABOR MANAGEMENT STANDARDS, THE WOMEN'S BUREAU, THE OFFICE OF DISABILITY EMPLOYMENT POLICY, THE FAITH BASED OFFICE, AND WE WORK WITH JOB CORE AND THE OFFICE OF APPRENTICESHIP ON THEIR NONDISCRIMINATION OBLIGATIONS.

SO GENERALLY THE NATIONAL OFFICE DIVISIONS DO EVERYTHING, BUT TRIAL WORK ALTHOUGH SOME DIVISIONS DO SOME TRIAL WORK, BUT MOSTLY WE DO APPELLATE LITIGATION AND DEFENSE OF CASES AND THEN EVERYTHING ELSE. SO ADVICE, GUIDANCE, DIRECTIVES, POLICY INITIATIVES AND RULE MAKING. SO IN CLRM, WE HAVE COUNSEL. SO OUR MANAGERS, THEIR ROLES ARE DEFINED BY CLIENTS AND FUNCTIONS.

SO KEIR WHO YOU WILL HEAR FROM NEXT IS OUR OFCCP POLICY AND REGS COUNSEL. HE WORKS PRIMARILY WITH OFCCP'S POLICY DIVISION AND HE PROVIDES ADVICE ON ALL OF THE INITIATIVES AND GUIDANCE DOCUMENTS AND RULES THAT I MENTIONED BEFORE. FOR LEGAL SUFFICIENCY. POINTS OUT VULNERABILITIES AND HE WORKS WITH OFCCP. AND THEN JEFF IS OFCCP ENFORCEMENT COUNSEL. HE WORKS PRIMARILY WITH OFCCP'S OPERATIONS AND ENFORCEMENT DIVISIONS TO PROVIDE ADVICE ON ENFORCEMENT RELATED MATTERS. ISSUES THAT ARISE DURING COMPLIANCE REVIEWS, COMPLAINT INVESTIGATIONS AND THEN CASES IN LITIGATION.

SO HE OVERSEES OFCCP LITIGATION IN CLRM WHICH MOSTLY INCLUDES APPELLATE AND DEFENSE OF CASES. A BIG PART OF WHAT HE DOES IS WORK WITH THE REGIONAL OFFICES IN A NUMBER OF WAYS. HE KEEPS THEM APPRISED OF OFCCP DEVELOPMENTS. HE MAY PROVIDE SAMPLES OF PLEADINGS THAT ADDRESS PARTICULAR ISSUES. ON A DAILY BASIS, HE TALKS THROUGH ISSUES, PROVIDES ADVICE, HE MAY REVIEW SELECT BRIEFS OR MOTIONS TO ENSURE PROGRAM CONSISTENCY AND HE HELPS COORDINATE AMONG THE REGIONS WHEN THERE ARE MULTI REGION CASES. SO THAT IS THE NATIONAL OFFICE. NOW ONTO THE REGIONAL OFFICES AND I WILL REFER TO THEM AS RSOL THERE ARE SIX REGIONS. THERE IS BOSTON, NEW YORK, PHILADELPHIA, ATLANTA, CHICAGO, DALLAS AND PACIFIC. THERE ARE SEVEN SUB REGIONAL OFFICES AND THEY ALSO HAVE COUNSELS WHO OVERSEE ENFORCEMENT PROGRAM AREAS INCLUDING OFCCP.

SO FOR OFCCP OUR SOL HAS TWO MAIN ROLES. FIRST, THEY ADVISE OFCCP REGARDING ITS WORK IN THE FIELD. SO DURING INVESTIGATIONS AND COMPLIANCE REVIEWS. SO IF YOU ARE SCHEDULED FOR AN AUDIT AND SOL BECOMES INVOLVED, IT WILL BE SOMEONE FROM A REGIONAL OFFICE. SO THEY ADVISE OFCCP ON ISSUES THAT ARISE DURING THE COMPLIANCE REVIEW. FOR EXAMPLE, IF A CONTRACTOR QUESTIONS WHETHER IT'S

COVERED OR REFUSES TO PROVIDE CERTAIN REQUESTED DOCUMENTS, OFCCP WILL CONSULT WITH THE RSOL OFFICE. THEY MAY DISCUSS WITH OFCCP THE PROGRESS OF A REVIEW, THEY MAY ADVISE ON ADVISE ON ADDITIONAL INFORMATION NEEDED AND THEN WHEN THE REVIEW IS DONE, THEY WILL REVIEW AGENCY FINDINGS. SO THE PRE DETERMINATION NOTICE, THE NOTICE OF VIOLATIONS, THE NOTICE TO SHOW CAUSE. THEY ALSO ADVISE ON SETTLEMENT STRATEGIES. THEY REVIEW CONCILIATION AGREEMENTS AND THEY MAY PARTICIPATE IN SETTLEMENT MEETINGS OR MEDIATIONS. SO THEIR SECOND ROLE IS THEY ARE THE DEPARTMENT'S TRIAL LAWYERS. IF OFCCP FINDS A VIOLATION THAT IT'S UNABLE TO CONCILIATE ENFORCEMENT REFERRALS GO TO THE REGIONAL OFFICES.

THEY WILL DO AN INDEPENDENT ASSESSMENT OF THE CASE. THEY WILL REVIEW ALL DOCUMENTS IN THE INVESTIGATIVE FILE. EVALUATE THE STRENGTHS AND WEAKNESSES OF THE CASE AND THEN THEY WILL DRAFT A LEGAL ANALYSIS SETTING OUT THEIR RECOMMENDATION AS TO ENFORCEMENT.

WE'LL TAKE A LOOK AT THE LEGAL ANALYSIS MOSTLY TO ENSURE PROGRAM CONSISTENCY. AND THEN RSOL WILL SEEK THE APPROVAL OF THE SOLICITOR TO FILE THE CASE AND OF OFCCP TO FUND THE CASE.

THEY MAY REACH OUT ABOUT CONCILIATION DEPENDING ON THE SETTLEMENT HISTORY OF THE CASE BEFORE FILING. BUT THEN THEY WILL FILE A COMPLAINT WITH THE OFFICE OF ADMINISTRATIVE LAW JUDGES AND CONDUCT THE TRIAL LITIGATION.

OCCASIONALLY WE'LL PARTNER WITH A REGION IN LITIGATION. ONE OF OUR ATTORNEYS MAY BE PART OF THE TRIAL TEAM, BUT RSOL TRIES THE CASE. AND THEN AFTER AN ALJ ISSUES A RECOMMENDED DECISION, THE CASE COMES TO CRLM TO HANDLE THE APPELLATE LITIGATION BEFORE THE DEPARTMENT'S ADMINISTRATIVE REVIEW BOARD.

IF THE DEPARTMENT WINS THE CASE BEFORE THE BOARD, THE CONTRACTOR CAN SEEK REVIEW OF THAT

DECISION IN FEDERAL DISTRICT COURT. IF THAT HAPPENS, WE'LL WORK WITH THE JUSTICE DEPARTMENT TO DEFEND THE BOARD'S DECISION.

SO THAT'S AN OVERVIEW OF THE WORK OF SOL IN OUR DIVISION.

AND I WILL NOW TURN IT OVER TO KEIR FOR OFCCP POLICY UPDATES.

>>KEIR BICKERSTAFFE: ALL RIGHT. THANK YOU BEV. IF I COULD GET THE NEXT SLIDE ANTHONY.

SO HERE IS JUST A LITTLE BIT OF A ROADMAP OF WHAT I'M GOING TO TALK ABOUT HERE TODAY. APOLOGIES THERE WILL BE PROBABLY SOME OVERLAP WITH THE OFCCP POLICY PRESENTATION THAT HAPPENED A FEW WEEKS AGO, BUT HOPEFULLY I WILL GIVE SOMEWHAT OF A SPIN ON THINGS OF INTERESTING AND NEW. FIRST, I WILL TALK ABOUT THE PRESENT RULE MAKING AGENDA AND WHERE OFCCP IS ON THAT. THERE IS A NUMBER OF SIGNIFICANT RULES THAT ARE BEING PURSUED CURRENTLY. THEN I WILL TALK SOME ABOUT THE RECENT DIRECTIVES THAT HAVE BEEN ISSUED. TALK A LITTLE BIT ABOUT FOCUSED REVIEWS SPECIFICALLY AND HOW THOSE ARE GOING TO BE A PART OF OFCCP'S SCHEDULING LISTS GOING FORWARD. A BRIEF UPDATE ON THE PENDING ICR PACKAGES ACTUALLY PENDING IS A BIT OF A MISNOMER. I THINK MOST OF THE MAJOR ICR PACKAGES THAT OFCCP OPERATE UNDER HAVE BEEN RECENTLY REAPPROVED AND REAUTHORIZED. SO THAT IS -- WE'LL GO OVER THAT TOUCH A LITTLE BIT UNDER SOME RANDOM OTHER PIECES OF POLICY AND GUIDANCE THAT OFCCP HAS BEEN ISSUING AND THEN A BRIEF TALK AT THE END OF MY PRESENTATION ABOUT SOME FOIA LITIGATION WITH REGARD TO TYPE TWO EEO ONE FORMS THAT OFCCP HAS BEEN ENGAGED WITH IN RECENT MONTHS.

THAT'S MY OUTLINE. NEXT SLIDE PLEASE.

OKAY. SO OFCCP'S MAIN RULE MAKING AGENDA, THERE IS THREE MAJOR RULES THAT I WANT TO TALK ABOUT AND THEN THERE IS ALSO A PENDING PRM THAT IS ON

THE UNIFIED REGULATORY AGENDA THAT I WILL TOUCH ON. THE FIRST RULE LISTED THERE IS THE TRICARE RULE. THIS WAS PUBLISHED BACK IN JULY IN THE FEDERAL REGISTER FOLLOWING N PRN THAT WAS PUBLISHED IN NOVEMBER 2019. AND THE UPSHOT OF THE FINAL RULE IS THAT JUST TO PROVIDE A LITTLE BIT OF BACKGROUND AS PROBABLY MANY OF YOU ARE AWARE THE DEGREE TO WHICH OFCCP HAS AUTHORITY OVER TRICARE PROVIDERS AS SUBCONTRACTORS UNDER ITS REGULATIONS HAS BEEN THE SUBJECT OF SOME LITIGATION. OVER THE PAST DECADE OR SO. AND SO THIS RULE MAKING WAS IN PART AN ATTEMPT TO ADDRESS THAT. SO IN THE FINAL RULE, IT ASSERTED THAT CONGRESS WHEN IT PASSED THE 200012 NDAA WHICH HAD SOME LANGUAGE PERTAINING TO TRICARE, THE RULE ASSERTED THAT CONGRESS INTENDED TO REMOVE OFCCP'S AUTHORITY OVER TRICARE PROVIDERS. AND IT IS A PROPER USE OF OFCCP'S REGULAR AUTHORITY TO RECONSIDER ITS PREVIOUS POSITION INFORM ITS REGULATIONS TO THAT LEGISLATIVE EFFORT.

IN THE ALTERNATIVE THE RULE ALSO STATED THAT IF FOR WHATEVER REASON THAT BASIS WAS NOT LEGALLY SUFFICIENT, THAT OFCCP HAD THE AUTHORITY TO GRANT NATIONAL INTEREST EXEMPTION FOR THOSE SAME PROVIDERS. SO UNDER EITHER THEORY OF THE CASE, SO TO SPEAK. THE RESULT IS THAT TRICARE PROVIDERS WHO ARE PREVIOUSLY CONSIDERED SUBCONTRACTORS UNDER OFCCP'S REGULATIONS ARE NOW NOT UNDER OFCCP'S AUTHORITY. THERE IS ONE CAVEAT TO THAT. IF THEY ARE TRICARE PROVIDERS WITH A SEPARATE CONTRACTOR ASIDE AS A TRICARE PROVIDER THAT MEETS THE THRESHOLDS IMBEDDED IN OFCCP'S LAWS THOSE ENTITIES WOULD REMAINDER OFCCP ENFORCEMENT AUTHORITY. EXAMPLE OF THAT MAYBE A UNIVERSITY HOSPITAL THAT HAS -- THAT MAY SEE TRICARE PATIENTS, BUT MAY ALSO HAVE SEPARATE GRANT SEPARATE CONTRACT WAS THE FEDERAL GOVERNMENT FOR CERTAIN SERVICES.



SO THOSE PROVIDERS WOULD REMAINDER OFCCP'S AUTHORITY. ADDITIONALLY EVEN THOSE TRICARE PROVIDERS WHO ARE NOW NOT UNDER OFCCP'S AUTHORITY REMAIN SUBJECT TO ALL APPLICABLE FEDERAL STATE AND LOCAL LAWS PROHIBITING DISCRIMINATION PROVIDING FOR EQUAL EMPLOYMENT OPPORTUNITY.

ONE OTHER NOTE IN THE TRICARE FINAL RULE THE ISSUE CAME UP ABOUT WHETHER OFCCP WOULD CONTINUE HAVING AUTHORITY OVER PROVIDERS PARTICIPATING IN THE FEDERAL EMPLOYEE'S HEALTH BENEFITS PROGRAM IN THE U.S. DEPARTMENT OF VETERANS AFFAIRS HEALTH PROGRAM. THE RULE DID NOT TAKE ANY SPECIFIC ACTION WITH REGARD TO THOSE PROGRAMS. THERE IS STILL A DIRECTIVE 2018 - O TWO WHICH VAHPP PROVIDERS REMAIN SUBJECT TO AND THE AGENCY IS ALSO CONSIDERING FURTHER SUB REGULATORY GUIDANCE TO ADDRESS SPECIFIC QUESTIONS WITH REGARD.

THE SECOND RULE THERE LISTED IS THE RELIGIOUS EXEMPTION. NOW WE'RE GETTING INTO RULES THAT ARE STILL IN THE PROCESS OF DEVELOPING A FINAL RULE. I'M A LITTLE BIT MORE CONSTRAINED IN WHAT I CAN SAY. THE RELIGIOUS EXEMPTION WAS PUBLISHED BACK IN AUGUST 2019. THE STATED INTENT OF THAT PROPOSED RULE WAS TO ENSURE THAT CONSCIOUS AND RELIGIOUS FREEDOM ARE GIVEN BROAD NECESSARY PROTECTION PROVIDED BY LAW AND RECENT SUPREME COURT CASE LAW PERTAINING TO RELIGIOUS FREEDOM AS WELL AS EXECUTIVE ORDERS 13798 AND 13831 THAT WERE ISSUED IN THIS ADMINISTRATION.

SO THAT PROPOSAL SOUGHT TO CLARIFY THAT RELIGIOUS ORGANIZATIONS MAY MAKE EMPLOYMENT DECISIONS HELD WITH TENANTS AND BELIEFS WITHOUT FEAR OF SANCTION OF THE FEDERAL GOVERNMENT AND PROPOSAL REAFFIRMED EMPLOYER'S OBLIGATIONS NOT TO DISCRIMINATE ON THE BASIS OF THE PROTECTED BASES THAT ARE IN OFCCP'S REGULATIONS CURRENTLY. THAT PROPOSED RULE RECEIVED OVER 109,000

COMMENTS WHICH IS QUITE A LOT FOR AN OFCCP RULE. ORDERS MAGNITUDE WE HAVE SEEN FOR OTHER RULES. WE REVIEWED THOSE COMMENTS AND WE CONTINUE TO WORK TOWARDS FINAL RULE. WE ALSO NOTE THAT THERE HAVE BEEN SOME SOME SUPREME COURT CASES THAT HAVE BEEN ISSUED THAT ARE POTENTIALLY RELEVANT TO THE RULE MAKING THAT OFCCP IS CONSIDERING. WE'RE CONSIDERING THOSE AS WELL TO ENSURE THAT THE FINAL RULE IS CONSISTENT WITH APPLICABLE LAW.

AND THEN FINALLY I WILL JUST MENTION THE RESOLUTION PROCEDURES. THIS IS PROPOSED RULE. THIS IS ALSO SOMETIMES REFERRED TO AS THE PDN PROPOSED RULE. THIS WAS PUBLISHED IN THE END OF DECEMBER 2019. ESSENTIALLY WHAT THIS RULE DID WAS THE PROPOSAL CODIFIED TWO FORMAL NOTICES THAT THE AGENCY HAS USED FOR DECADES PRE DETERMINATION NOTICE AND NOTICE OF VIOLATION CURRENTLY AREN'T MENTIONED IN OFCCP'S REGULATION SO THE PROPOSAL PUT THEM INTO THE REGULATIONS. THE PROPOSAL ALSO PROPOSED DEFINITIONS OF STATISTICAL EVIDENCE AND NON STATISTICAL EVIDENCE. AND PROPOSED STANDARDS FOR THE TYPE AND AMOUNT OF EVIDENCE THAT OFCCP WOULD NEED TO HAVE IN ORDER TO ISSUE A PDN OR NOV.

WE RECEIVED COMMENTS NOT 109,000, BUT FEWER THAN THAT, BUT THE COMMENTS WE RECEIVED WERE QUITE DETAILED. WE'RE REVIEWING THEM CAREFULLY AND WE'RE CONTINUING TO WORK TOWARDS THE FINAL RULE THERE AS WELL. LASTLY I WILL MENTION NOT ON THE SLIDE THERE, BUT ON UNIFIED REGULATORY AGENDA PLACED THERE IN SPRING 2020 OFCCP PUT UP A PROPOSED RULE THAT WOULD ADDRESS FUNCTIONAL AFFIRMATIVE ACTION PROGRAMS. AND IT REVISED THE REGULATIONS IN CHAPTER 4160 TO CLARIFY FEDERAL CONTRACTORS AND SUBCONTRACTORS CAN ORGANIZE THEIR PROGRAM. UNDER OFCCP'S LAWS. AND WOULD CODIFY A VOLUNTARY PROGRAM CURRENTLY AUTHORIZED BY OMB THAT ALLOWS FEDERAL

CONTRACTORS AND SUBCONTRACTORS TO ORGANIZE AFFIRMATIVE ACTION PROGRAMS BY FUNCTIONAL UNITS. THAT NPRM IS IN DEVELOPMENT AS WELL.

NEXT. THESE HAVE BEEN PASSED WITHIN THE LAST NINE MONTHS. GOING THROUGH QUICKLY. THE FIRST PERTAIN TO CALLED THE SPOUSES OF PROTECTED VETERANS. IT APPLIED MORE BROADLY. THE POINT OF THE DIRECTIVE WAS TO CLARIFY THE NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS THAT HAVE TO COMPLY WITH VEVRAA AND ITS REGULATIONS. ONE OF THOSE REGULATIONS AT 416300.21 PROHIBITS CONTRACTORS FROM DISCRIMINATING AGAINST A QUALIFIED INDIVIDUAL BECAUSE THAT INDIVIDUAL IS KNOWN TO HAVE A CLOSE RELATIONSHIP OR ASSOCIATION TO THE PROTECTED VET. IT'S NOT JUST THE PROTECTED VETERANS THEMSELVES PROTECTED, BUT THERE IS AN ASSOCIATION DISCRIMINATION THAT COULD BE BROUGHT BY SOMEONE WHO IS CLOSE RELATIONSHIP ASSOCIATION WITH A PROTECTED VETERANS.

THE DIRECTIVE CLARIFIES THAT AND PROVIDES A SAMPLE NONDISCRIMINATION POLICY STATEMENT ON THE ISSUE THAT CONTRACTORS CAN CHOOSE TO POST IF THEY WISH. CLARIFIES OFCCP IN THE COURSE OF INTERVIEWS IT DOES DURING COMPLIANCE EVALUATIONS WILL ASK QUESTIONS OF MANAGERS AND EMPLOYEES RELEVANT TO COMPLIANCE WITH THIS NONDISCRIMINATION OBLIGATION.

SECOND THERE WHAT IS KNOWN AS THE EFFICIENCY DIRECTIVE AROUND OUR OFFICE OR THE EFFICIENCY COMPLIANCE EVALUATIONS DIRECTIVE WAS ONE THAT SET SEPARATIONAL GOALS FOR OFCCP. A COUPLE SPECIFIC ONES BEING TO COMPLETE COMPLIANT EVALUATIONS WITHIN 180 WITH CASES WITH NO PRELIMINARY FINDINGS OF DISCRIMINATION AND FOR THOSE CASE WAS DISCRIMINATION FINDING TO ISSUE PDN WITHIN ONE YEAR OF THE SCHEDULING ISSUED. IT MENTIONS OFCCP'S NATIONAL OFFICE SENIOR STAFF WILL GET ALERTS IF COMPLIANCE EVALUATIONS ARE

OPEN FOR 12 MONTHS WITHOUT THE ISSUANCE OF PDN AND WILL CONTINUE TO GET INTEGRAL ALERTS THEREAFTER. IT ALSO PROVIDES THAT CONTRACTORS CAN REQUEST STATUS REVIEW OF A COMPLIANCE EVALUATION IF FIT HAS BEEN OPEN FOR MORE THAN 12 MONTHS WITHOUT A PDN OR IF IT HAS BEEN OPEN FOR MORE THAN TWO YEARS WITHOUT EITHER CLOSURE OR REFERRAL TO THE SOLICITOR'S OFFICE.

CONTRACTORS CAN REQUEST THAT STATUS REVIEW PROVIDED THEY HAVE PROVIDED ALL INFORMATION REQUESTED BY OFCCP.

THE THIRD DIRECTIVE MENTIONED IS THE PREREFERRAL MEDIATION PROGRAM. THIS FOLLOWS WITH OFCCP'S REAL INTEREST IN RECENT YEARS TO ATTEMPT TO RESOLVE CASES PRIOR TO ENFORCEMENT WHENEVER POSSIBLE AND TO TRY TO USE THAT TO LEVERAGE GOOD FORMS OF PERSPECTIVE RELIEF IN THOSE AGREEMENTS. SO THE MEDIATION PROGRAM FORMALIZES THAT A MEDIATION VIRTUALLY IN ALL CASES WILL OCCUR AFTER THE ISSUANCE OF A SHOW CAUSE NOTICE AND BEFORE A CASE IS REPORTED TO THE SOLICITOR'S OFFICE FOR ENFORCEMENT. THE DIRECTIVE PROVIDES THAT MEDIATORS WOULD BE SELECTED FROM SPECIFIED SOURCES GENERALLY THE FMCS FEDERAL MEDIATION AND CONCILIATION SERVICE THEY HAVE IMMEDIATERS ON HAND THAT CAN BE USED. POTENTIALLY THE OFCCP OMBUDS PERSON WHO YOU HEARD FROM LAST COUPLE OF WEEKS MARCUS STERGIO MAY BE ABLE TO SERVE IN CERTAIN CIRCUMSTANCES IF ALL PARTIES AGREE AND THEN IN OTHER CASES PRIVATE MEDIATORS IF THAT MUTUALLY AGREEABLE THEN THE DIRECTIVE ALSO PROVIDES A NUMBER OF DIFFERENT PRINCIPLES THAT WOULD GENERALLY APPLY TO HOW THESE MEDIATIONS WOULD WORK.

THEN FINALLY MENTIONED THERE IS THE OMBUDS SERVICE. THIS DIRECTIVE FOLLOWED A PREVIOUS DIRECTIVE IN 2018 THAT ESSENTIALLY ANNOUNCED THE OMBUDS PROGRAM. AND WHAT THIS DIRECTIVE DID WAS A COUPLE OF THINGS. FIRST IT NOTED THAT THE ROLE

OF THE OM BUD HAS EXPANDED SOMEWHAT SINCE THE FIRST DIRECTIVE IN 2018 WAS PROMULGATED OR PUBLISHED ON OFCCP'S WEBSITE. AND THAT THE ROLE WOULD INCLUDE IN CERTAIN CIRCUMSTANCES PROVIDING FACILITATION SERVICES IN CASE ALSO THAT IS MUTUALLY AGREED UPON. BUT IT ALSO CLARIFY THAT THE OM BUD CONTINUALLY AGAIN WILL NOT BE CONDUCTING COMPLIANCE EVALUATIONS OR COMPLAINT INVESTIGATIONS. ATTACH TODAY THAT DIRECTIVE IS A LENGTHY OMBUDS PROTOCOL. WHICH IF YOU HAVEN'T READ I WOULD ENCOURAGE YOU. IT PROVIDES DETAIL HOW THE PROGRAM WILL WORK AND HOW THE CONTRACTOR COMMUNITY CAN UTILIZE THE OMBUDS SERVICE IN THE CASES THAT ARE ONGOING. NEXT SLIDE PLEASE.

BIT OF DELAY. I WILL TOUCH RELATIVELY QUICKLY ON FOCUS REVIEWS. THAT WAS A BIG PART OF OFCCP'S POLICY PRESENTATION FROM A FEW WEEKS AGO. AS YOU ALL KNOW I WOULD IMAGINE BY NOW HOW THIS IS SOMETHING THAT HAS BEEN A NO PUN INTENDED FOCUS OF THE AGENCY FOR SOME YEARS NOW FOCUSED REVIEWS ARE A SPECIFIC KIND OF COMPLIANCE EVALUATION THAT ARE SET FORTH IN OFCCP'S REGULATIONS THAT ALLOW OFCCP RATHER THAN DOING A FULL SCALE COMPLIANCE REVIEW TO NARROW THAT REVIEW TO CERTAIN ELEMENTS OF OFCCP'S OR CERTAIN ELEMENTS OF CONTRACTORS OBLIGATIONS THAT THEY MUST MEET. THE FIRST FOCUS REVIEWS THAT WERE ANNOUNCED A COUPLE YEARS AGO NOW WERE FOCUSED REVIEWS LOOKING PURELY AT SECTION 503 COMPLIANCE. THOSE FOCUSED REVIEWS HAVE BEEN UNDERWAY GO SOMETIME NOW. AND WE'RE NOW MOVING TO OFCCP IS MOVING TO INCLUDE FOCUS REVIEWS IN SCHEDULING LETTERS THAT WILL ADDRESS OTHER PROTECTIONS AND OBLIGATIONS UNDER ITS LAWS.

I BELIEVE LATE LAST YEAR OFCCP ANNOUNCED IT WOULD BE SCHEDULING VEVRAA FOCUS REVIEWS SIMILAR TO THE SECTION 503 REVIEWS, BUT AGAIN FOCUSED ON

VEVRAA OBLIGATIONS. AND I BELIEVE CRAIG HAS TALKED RECENTLY AND YOU WILL BE SEEING I WOULD IMAGINE THE NEXT COUPLE MONTHS MORE INFORMATION THAT IN FUTURE SCHEDULING LISTS THERE WILL BE FOCUS REVIEWS THAT ARE LOOKING SPECIFICALLY AT ACCOMMODATIONS BOTH RELIGIOUS ACCOMMODATIONS AND DISABILITY ACCOMMODATIONS. AND ALSO FOCUS REVIEW LOOKING PURELY AT THE ISSUE OF PROMOTIONS.

SO WE HAVE BEEN WORKING WITH OFCCP TO DEVELOP THOSE PROGRAMS AND PROVIDE A NUMBER OF RESOURCES SO WELL IN ADVANCE OF ACTUALLY BEING SCHEDULED FOR EITHER OF THOSE TYPES OF FOCUSED REVIEWS. THERE WILL BE RESOURCES AVAILABLE ON OFCCP'S WEB PAGE TALKING THROUGH WHAT THESE FOCUS REVIEWS WILL BE LOOKING FOR. WHAT THE EXPECTATIONS ARE OF THE CONTRACTORS ET CETERA. THAT IS WHAT IS TO COME WITH REGARD TO FOCUS REVIEWS.

NEXT SLIDE.

JUST TO RECAP OFCCP HAS A NUMBER WHENEVER IT MAKES A REQUEST TO COLLECT INFORMATION FROM TIM OR MORE INDIVIDUALS IT NEEDS TO GET OMB CLEARANCE FOR THAT. IT HAS A NUMBER OF ICR PACKAGES TIED TO DIFFERENT PROGRAMS THAT GET REGULARLY COME UP FOR REVIEW IN THE AUTHORIZATION BY OMB EVERY THREE YEARS. THE MAIN PACKAGES THAT OFCCP USES TO OPERATE ITS PROGRAM HAVE BEEN RECENTLY APPROVED. SUPPLY AND SERVICE THE SCHEDULING LETTER AND ASSOCIATED ICR FOR SUPPLY AND SERVICE REVIEWS WAS APPROVED REAUTHORIZED I THOUGHT SAY IN APRIL 2020. WHILE THERE HAD BEEN A NUMBER OF CHANGES PROPOSED TO THE SUPPLY AND SERVICE SCHEDULING LETTER ULTIMATELY MOST OF THOSE CHANGES WERE NOT ADOPTED I THINK ESSENTIALLY ALL THE CHANGES WERE NOT ADOPTED. SO THE SCHEDULING LETTER AND THE ICR PACKAGE THAT EXISTS IT WAS APPROVED IN 2020 IS NEARLY IDENTICAL

TO THE ONE THAT HAD BEEN PREVIOUSLY APPROVED YEARS BEFORE THAT.

IN ADDITION, VEVRAA AND SECTION 503 RECORDKEEPING ICRs WERE APPROVED IN APRIL AND MAY 2020. ONE NOTE IS THAT THE SECTION 503 RECORDKEEPING ICR INCLUDED A REVISED SELF-IDENTIFICATION FORM. SO THAT IS SOMETHING THAT I BELIEVE THE EFFECTIVE DATE FOR USING THAT NEW SELF-IDENTIFICATION FORM IS EARLIER THIS MONTH. I BELIEVE IT WAS AUGUST 4TH. ALL CONTRACTORS SHOULD BE USING THAT NEW SECTION 503 SELF-IDENTIFICATION FORM. OFCCP'S COMPLAINT FORM WAS REAUTHORIZED IN MAY 2020. THEN OFCCP'S CONSTRUCTION COMPLIANCE CHECK WAS APPROVED IN APRIL 2020. THIS IS A BIT OF A NEW ANIMAL PRIOR TO THIS OFCCP HAD NOT DONE COMPLIANCE CHECKS FOR CONSTRUCTION CONTRACTORS. ITS REVIEWS WERE ALL KIND OF THE STANDARD FOR COMPLIANCE REVIEWS THAT WERE DONE. BUT GOING FORWARD, I THINK OFCCP HAD AN INTEREST IN BEING ABLE TO USE THE DIFFERENT TYPES OF REGULATORY REVIEWS COMPLIANCE CHECKS FOCUSED REVIEWS IN A NUMBER OF DIFFERENT SETTINGS. SO THIS WILL ALLOW OFCCP TO CONDUCT CONSTRUCTION COMPLIANCE CHECKS JUST TO LET YOU KNOW IN THE OFFING THERE IS ALSO WE'RE WORKING INTERNALLY ON A ICR PACKAGE FOR CONSTRUCTION REVIEWS MORE GENERALLY. THE IDEA BEING THAT CONSTRUCTION REVIEWS WOULD BE SCHEDULED IN A MANNER THAT'S MUCH MORE SIMILAR TO HOW SUPPLY AND SERVICE REVIEWS ARE SCHEDULED DONE SO NATIONALLY AT THE NATIONAL OFFICE IN THAT MANNER. SO IT WOULD BE MORE SIMILAR TO HOW SUPPLY AND SERVICES IS DONE. NEXT SLIDE PLEASE.

I LEFT THIS SLIDE AS KIND OF A PLACE HOLDER IN CASE ANYTHING HAPPENED BETWEEN WHEN I HAD TO FINISH THE SLIDES. AND I HAD TO TALK TO YOU, WHICH FREQUENTLY IS THE CASE. IT'S NOT THE CASE TODAY. LUCKILY NOTHING -- I THINK THERE HAS BEEN ONE THING THAT HAS BEEN PUBLISHED SINCE THEN A SET OF FAQs

ON PARENTAL LEAVE THOSE WERE PUT UP EITHER BEGINNING OF THIS WEEK OR END OF LAST WEEK. THAT IS ONE NEW THING. I WILL JUST FLAG A COUPLE OF THINGS HERE. OPINION LETTERS ARE MENTIONED HERE. OFCCP HAS NOT ISSUED ANY OPINION LETTERS SUPER RECENTLY, BUT THEY ARE THERE ARE STILL QUITE A FEW UNDER -- THAT WE'RE WORKING ON WITHIN OUR OFFICE. AND SOME MORE THAT WILL BE COMING. AND IF THERE ARE REQUESTS FOR OPINIONS OF LETTERS, I KNOW OFCCP IS VERY INTERESTED IN PROVIDING MORE GUIDANCE IN THIS WAY. SO IF YOU HAVE ISSUES THAT YOU BELIEVE WOULD BE WELL SUITED TO AN OPINION LETTER, WE CERTAINLY ENCOURAGE CONTRACTORS TO REQUEST THAT. A COUPLE OTHER THINGS I WILL MENTION IS BEV MENTIONED THE OFCCP'S FEDERAL CONTRACTOR COMPLIANCE MANUAL WAS RECENTLY UPDATED AND PUBLISHED ON ITS WEBSITE. IT'S HOPEFULLY IN A MORE ACCESSIBLE FORMAT. IT'S IN PDF AND HTML. I THINK IT ALLOWS FOR SLIGHTLY EASIER NAVIGATION. FOR THOSE OF YOU WHO HAVE NOT CHECKED THAT OUT WE ENCOURAGE YOU TO DO SO. IN ADDITION OFCCP'S HELP DESK HAS BEEN MODERNIZED AND NOW, ALLOWS CONTRACTORS TO SUBMIT QUESTIONS AND THERE TO BE SORT OF AN ONLINE REPOSITORY OF THE ANSWERS THAT OFCCP HAS PROVIDED TO QUESTIONS THAT HAVE COME IN THROUGH THAT HELP DESK. SO IT'S HOPEFULLY BECOMING A MUCH MORE DYNAMIC AND USEFUL RESOURCE FOR CONTRACTORS. IF YOU HAVE A QUESTION ABOUT SOMETHING OFCCP RELATED CERTAINLY SUGGEST THAT YOU GO THERE FIRST BECAUSE A LOT OF CERTAINLY A LOT OF THE MORE BASIC QUESTIONS ARE ANSWERED THERE, BUT ALSO A LOT OF FAIRLY COMPLEX AND NOVEL ISSUES ARE ALSO ADDRESSED THERE AS WELL. SO WE CERTAINLY WOULD ENCOURAGE YOU TO LOOK AT THAT RESOURCE.

>> NEXT SLIDE.

I WILL FINISH BY TALKING ABOUT THIS BIT OF LITIGATION THAT WAS INCLUDED RECENTLY, BUT IS NOW ON APPEAL.



THIS IS A -- THIS CAME FROM A FOIA REQUEST THAT OFCCP RECEIVED FOR THE EEO ONE TYPE TWO DATA OF A NUMBER OF DIFFERENT FEDERAL CONTRACTORS. OFCCP ULTIMATELY OPTED NOT TO DISCLOSE THE TYPE TWO DATA IN QUESTION BECAUSE IT FELT THAT IT WAS COMMERCIAL CONFIDENTIAL INFORMATION THAT COULD BE WITHHELD UNDER FOIA EXEMPTION FOUR. THAT CASE WENT TO LITIGATION. IT WAS LITIGATED IN THE CENTRAL DISTRICT OF CALIFORNIA ULTIMATELY ON SUMMARY JUDGMENT THE DISTRICT COURT MAGISTRATE COURT JUDGE I SHOULD SAY HELD THAT EEO ONE TYPE TWO CONSOLIDATED DATA AT LEAST THE DATA THAT WAS AT ISSUE IN THIS CASE, WAS NOT COMMERCIAL IN THE FIRST INSTANCE. AND THUS IF IT WASN'T COMMERCIAL DATA THEN EXEMPTION FOUR DID NOT APPLY. THE GOVERNMENT DID NOT APPEAL IN THIS CASE, BUT ONE OF THE SUBMITTERS OF THESE TYPE TWO REPORTS HAS MOVED TO INTERVENE. THAT MOTION WAS GRANTED RECENTLY AND THE CASE IS STILL ONGOING ON APPEAL. THAT IS SOMETHING WHILE WE'RE JUST KIND OF WATCHING THAT LITIGATION RIGHT NOW TO SEE HOW IT PLAYS OUT, BUT I THINK IT IS IMPORTANT FOR CONTRACTORS TO KNOW THAT LITIGATION IS GOING FORWARD AND THAT THERE IS AT LEAST ONE COURT CASE OUT THERE HOLDING THAT AT LEAST EEO ONE TYPE TWO, WHICH IS THE CONSOLIDATED DATA, NOT THE INDIVIDUAL FACILITY DATA, OFCCP WOULD TAKE CERTAINLY A DIFFERENT POSITION ON THAT, BUT THERE IS AT LEAST ONE COURT DECISION OUT THERE HOLDING THE TYPE TWO DATA IS NOT SOMETHING THAT OFCCP WOULD BE ABLE TO HOLDER FOIA EXEMPTION FOUR. I THINK THAT BRINGS ME TO THE END OF MY PRESENTATION. I WILL HAND IT OVER NOW TO JEFF TO TALK ABOUT OFCCP ENFORCEMENT.

>>JEFFREY LUPARDO: THANKS, KIER. IF I CAN GET THE NEXT SLIDE PLEASE.  
OKAY. GREAT THANKS. SO THERE IS A LITTLE BIT OF

WHAT I'M GOING TO PRESENT. AS BEV MENTIONED I DEAL WITH THE OFCCP ENFORCEMENT WORLD WHICH OFTEN ENTAILS COLLABORATION AND CLOSE PARTNERING WITH THE REGIONAL SOLICITOR'S OFFICE AS WELL AS SOME OF THE DISTRICT AND REGIONAL OFCCP OFFICES THROUGHOUT THE COUNTRY TO MAKE SURE WE HAVE CONSISTENT POLICIES IN PLACE, CONSISTENT POSITIONS TAKEN. AND SO WHAT I'M GOING TO PRESENT ON FIRST IS AT LEAST PROVIDE TO THE EXTENT FOLKS ARE NOT ALL AWARE OF THIS SORT OF THE ONGOING OR LIVE DOCKET WE HAVE NOW OF WHAT IS BEFORE -- WHAT IS PENDING FIRST BEFORE THE ARB THEN WHAT WE HAVE PENDING FOR THE OALJ AND THEN THE ONE OFCCP DEFENSIVE LITIGATION, THE LAWSUIT THAT WE'RE DEFENDING AGAINST DOJ DEFENDING THE DEPARTMENT OF LABOR IN THE DISTRICT COURT. SO THAT WILL BE THE SORT OF THE CATEGORIES OF CASES AND ENFORCEMENT MATTERS I WILL HIT. NEXT SLIDE PLEASE.

THANKS.

THE FIRST CASE, THESE ARE THE CASES PENDING BEFORE THE ARB. WHAT THAT MEANS IS BEV HAD MENTIONED IS THAT FIRST WE HAVE TYPICALLY THE REGIONAL SOLICITOR'S OFFICE WILL HANDLE THE TRIAL LITIGATION OF AN OFCCP ADMINISTRATIVE COMPLIANCE REVIEWS COMPLAINT ALLEGING VIOLATIONS OF THE EXECUTIVE ORDER FIVE '03, VEVRAA. SO WITH ENTERPRISE, THIS CASE WAS DECIDED THE JUDGE ISSUED ALJ RECOMMENDED DECISION BACK IN JULY OF 2019. THE DECISION WAS FAVORABLE FOR OFCCP. FINDING THAT ENTERPRISE HAD SYSTEMICALLY DISCRIMINATED AGAINST AFRICAN AMERICAN APPLICANTS FOR CERTAIN MANAGER TRAINEE POSITIONS OVER A TEN-YEAR PERIOD. THE RECOMMENDED -- THE ALJ RECOMMENDED ORDER REQUIRED ENTERPRISE PAY APPROXIMATELY \$6.6 MILLION IN LOST EARNINGS AS WELL AS INCLUDING INTEREST. AS WELL AS REQUIRED THAT ENTERPRISE EXTEND 182 JOB OFFERS TO THESE CLASS MEMBERS.

ENTERPRISE HAS APPEALED THIS DECISION. SO I CAN'T TALK TOO MUCH ABOUT IT. ALL I CAN SAY IS THAT ENTERPRISE FILED AN APPEAL WITH OUR ADMINISTRATIVE REVIEW BOARD. THE ARB BY FILING EXCEPTIONS. OFCCP OR CRLM ON BEHALF OF OFCCP FILED ITS RESPONSE SUPPORTING THAT THE -- IN SUPPORT OF THE ALJ'S RECOMMENDED DECISION. THIS WAS FULLY BRIEFED IN DECEMBER OF 2019. SO IT IS NOW FULLY BRIEFED AND WITH THE ARB FOR A FINAL AGENCY DECISION. THEN ALSO BEV HAD REFERENCED EARLIER THE WAY OUR PROGRAM WORKS IS THE ARB'S DECISION BECOMES ULTIMATELY A FINAL AGENCY DECISION AND THAT WOULD POTENTIALLY BE SUBJECT TO APA REVIEW. SO THERE IS SOME POTENTIAL LITIGATION STILL TO GO THERE WITH ENTERPRISE.

NEXT SLIDE PLEASE.

ANOTHER CASE VERY RECENT CASE THAT IS ALSO NOW PENDING BEFORE THE ARB IS OFCCP VERSUS WMS. THIS IS A CONSTRUCTION CONTRACTOR. THIS CASE WAS -- THIS ALJ ISSUED A RECOMMENDED ORDER IN MAY OF THIS YEAR, 2020. THE ORDER WAS FAVORABLE FOR OFCCP IN THAT IT FOUND THAT WMS COMMITTED BOTH SYSTEMIC HIRING DISCRIMINATION AS WELL AS SYSTEMIC COMPENSATION DISCRIMINATION. SEPARATING THOSE TWO OUT THE ALJ AWARDED APPROXIMATELY 781,000 IN BACK PAY AND INTEREST FOR THE HIRING VIOLATION. AND THEN AN ADDITIONAL APPROXIMATELY 180,000 IN BACK PAY AND INTEREST FOR THE COMPENSATION DISCRIMINATION.

THERE ALSO WAS A HOSTILE WORK ENVIRONMENT CLAIM THAT THE ALJ ALSO ACCEPTED IN HIS RECOMMENDED DECISION AND ORDER. AS WITH ENTERPRISE, THESE ARE RECOMMENDED DECISIONS. SO OBVIOUSLY, BOTH OFCCP AS WELL AS THE CONTRACTOR HAS THE ABILITY TO TAKE EXCEPTION TO APPEAL AND RIGHT NOW WE HAVE THE PARTIES BOTH WORKING ON BRIEFING SCHEDULES AND I THINK THEY HAVE JUST BEEN SCHEDULED THE ARB HAS ADOPTED THEM. BRIEFS WILL BE FILED AND COMPLETED BY NOVEMBER OF 2020.

SO WE'LL HAVE AGAIN THAT WHOLE THING SETTLED SET BEFORE AN ARB FOR A FINAL DECISION IN THE NEXT FEW MONTHS OR SO.

I CAN TAKE NEXT SLIDE PLEASE ARE YOU ABLE TO IDENTIFY ALJ AND ARB.

>> I'M SORRY.

>> ALJ OR OALJ AS YOU SEE ON THE NEXT SLIDE THAT'S THE OFFICE OF THE ADMINISTRATIVE LAW JUDGES. AS BEV SAID, WE LITIGATE THESE IN THE ADMINISTRATIVE FORUM. MOST OF OUR TRIAL LITIGATION THAT'S HANDLED BY RSOL THE REGIONAL SOLICITOR'S OFFICE IS TRIED BEFORE ADMINISTRATIVE LAW JUDGES WHO ISSUE RECOMMENDED DECISIONS AND ORDERS. THOSE RECOMMENDED DECISIONS AND ORDERS WORK THEIR WAY UP TO THE NEXT SORT OF APPELLATE BODY FINAL BODY WITHIN THE DEPARTMENT OF LABOR, WHICH IS CALLED THE ADMINISTRATIVE REVIEW BOARD. THOSE ARE THE APPELLATE JUDGES THAT HEAR THE CASE AND ULTIMATELY ISSUE WHAT IS DEEMED THE FINAL AGENCY DECISION. AS I SAID, AT THAT POINT ONCE THAT'S OCCURRED YOU THEN AS A CONTRACTOR YOU WOULD HAVE THE OPPORTUNITY -- YOU WOULD HAVE THE RIGHT -- IT'S A FEDERAL COURT UNDER THE ADMINISTRATIVE PROCEDURE ACT, TO CHALLENGE THE FINAL AGENCY DECISION. THAT'S SORT OF THE PROCESS THAT WE GO THROUGH IN THE ADMINISTRATIVE FORUM.

SORRY ABOUT THAT.

NOW LIKE I SAID THOSE FIRST TWO CASES BOTH ENTERPRISE AND WMS ARE AT THE ARB NOW. ENTERPRISE IS FULLY BRIEFED AWAITING A FINAL DECISION AND WMS IS IN THE PROCESS OF BEING BRIEFED AWAITING A FINAL DECISION. THESE CASES ARE BEFORE THE OALJ ADMINISTRATIVE LAW JUDGES. AT THE TRIAL LEVEL WHATEVER COMES OUT OF THESE WILL BE RECOMMENDED DECISIONS AND ORDERS WHICH WILL STILL BE SUBJECT TO APPEAL AND REVIEW BY THE ADMINISTRATIVE REVIEW BOARD. THE FIRST ONE I HAVE

UP THERE IS OFCCP VERSUS POTOMAC ABATEMENT. THIS IS ALSO A CONSTRUCTION CONTRACTOR. OFCCP'S ALLEGED BOTH SYSTEMIC HIRING AND COMP DISCRIMINATION AS WELL AS RECORDKEEPING VIOLATIONS IN THIS CASE. THIS CASE HAS BEEN GOING ON FOR A WHILE. ALL THIS I WILL SAY AS A CAVEAT IT'S ALL ON GOING LITIGATION. PRETTY MUCH WHAT I HAVE HAD HERE ON IN THE SLIDES ARE VERY VAGUE AND NOT A LOT OF DETAIL. THAT'S BECAUSE THESE ARE ALL CASES OPEN IN LITIGATION. I THOUGHT IT WOULD BE HELPFUL FOR YOU ALL TO SEE WHAT CASES ARE OUT THERE AND WHAT THE GENERAL CLAIMS BEING BROUGHT ARE. BUT UNFORTUNATELY I CAN'T GO INTO TOO MUCH DETAIL AS TO THE NITTY GRITTY OF ALL THESE CASES AND WHAT HAS BEEN GOING ON BECAUSE AS I SAID, THEY ARE ALL STILL IN OPEN LITIGATION RIGHT NOW. THE NEXT CASE I HAVE DOWN THERE IS OFCCP VERSUS JP MORGAN. THIS ALSO IS BEFORE AN ALJ. THIS CASE OFCCP HAS ALLEGED SYSTEMIC COMPENSATION DISCRIMINATION AGAINST FEMALE EMPLOYEES IN CERTAIN JOB GROUPS. THE FIRST CASE THERE AT POTOMAC YOU HAVE HIRING AND COMP. JP MORGAN IS ONLY A COMP CASE. THE THIRD BULLET POINT THERE IS OFCCP VERSUS ORACLE. THIS IS A CASE THAT HAS GOTTEN A LOT OF ATTENTION. IT'S BEING LITIGATED RIGHT NOW BEFORE THE ALJ. INTERESTINGLY NOT ALL OF OUR CASES PROCEED IN THIS MANNER OR PRECEDE IN THIS MANNER, BUT WHAT HAPPENED IN THIS CASE WAS THE JUDGE ORDERED A BY IF YOUR OCCASION. WHAT THAT MEANS IS THEY ARE GOING TO BE ABLE TO -- THEY ARE FIRST GOING TO DECIDE LIABILITY. RATHER THAN DECIDING THE WHOLE CASE IN ONE SHOT ASSUMING OFCCP WERE TO PREVAIL ON OUR CLAIM, WHICH IS A SYSTEMIC COMPENSATION CLAIM, ALL THAT WE'RE GOING TO DEAL WITH AT THIS POINT THE TRIAL OCCURRED IN DECEMBER ALL THE POST HEARING BRIEFS HAVE BEEN FILED. IT'S SITTING WITH THE OALJ. AT THIS POINT IT'S JUST GOING TO BE A LIABILITY DECISION THAT WILL COME OUT OF THE J'S

OFFICE. AT THAT POINT ASSUMING THERE IS SOME LIABILITY FOUND, THEN WE WOULD GO ON TO THE NEXT STAGE. THE BY IF YOUR OCCASION TO THE REMEDY STATE DAMAGES STAGE. WE HAD AN OLDER CASE YEARS AGO BANK OF AMERICA WHICH ALSO FOLLOWED THIS PATTERN WHERE WE HAD FIRST A LIABILITY HEARING TRIAL AND THEN WE CAME BACK TO THE JUDGE AND DID A NEW TRIAL JUST BASED ON WHAT THE DAMAGES SHOULD BE BASED ON THE LIABILITY FINDING. SO IT'S NOT UNHEARD OF. IT'S NOT ALWAYS THE CASE, BUT JUST SO FOLKS DO KNOW ABOUT ORACLE WHATEVER COMES OUT THIS FIRST ROUND WILL ONLY RELATE TO A FINDING OF WHETHER THERE IS SOME FORM OR SOME LEVEL OF DISCRIMINATION, NOT THE ULTIMATE DAMAGES THAT MAY OR MAY NOT BE OWED. AS I SAID, THAT, ONE IS FULLY BRIEFED AS OF JUNE OF THIS YEAR. SO THAT'S NOW WITH THE ALJ AWAITING A DECISION.

CAN WE MOVE TO THE NEXT SLIDE PLEASE.

THESE NEXT TWO OFCCP VERSUS CONCENTRIX.

CONCENTRIX. THIS IS AN OLD CASE. HAS BEEN WITH US FOR A LONG TIME. I SHOULD SAY BECAUSE I DO SEE A COUPLE QUESTIONS AT LEAST ONE QUESTION POPPED UP ABOUT THE JP MORGAN CASE AND HOW LONG THAT CASE HAS BEEN GOING WHEN IT BEGAN. YOU COULD ASK THE SAME QUESTION ABOUT IN VERG I E S NOW KNOWN AS CONCENTRIX. UNFORTUNATELY FOR US I GUESS BOTH OF THESE CASES WERE SUBJECT TO THE SUPREME COURT'S DECISION IN LU CIA. WITHOUT GETTING INTO TOO MUCH DETAIL, THIS WOULD TAKE US WAY OFF TRACK, THAT DEALT WITH AN APPOINTMENTS CLAUSE CHALLENGE AND WHETHER THE DOL'S OFFICE -- ALJS WERE PROPERLY APPOINTED.

THE LONG AND SHORT OF IT IS THAT MULTIPLE A FEW OF OUR CASES PENDING BEFORE ALJs AT THE TIME LU CIA WAS ISSUED BY THE SUPREME COURT REQUIRED US TO ESSENTIALLY VACATE ALL THAT HAD BEEN GOING ON UP TO THAT POINT IN THOSE CASES AND RESTART THE CLOCK AND PROVIDING NEW PROCEEDINGS UNDER A

PROPERLY APPOINTED ALJ.  
SO SECRETARY ACOSTA AT THE TIME REAPPOINTED  
THESE JUDGES PURSUANT TO THE APPOINTMENTS  
CLAUSE REQUIREMENTS AND WHAT THAT LED TO WAS  
SORT OF A RESHUFFLING WHERE A NEW ALJ NOW WAS  
GIVEN JP MORGAN, A NEW ALJ WAS GIVEN CONCENTRIX  
AND ACTUALLY A NEW ONE WAS GIVEN ORACLE AS WELL.  
BECAUSE THAT ALSO WAS CAUGHT UP IN THIS. THAT  
WAS TO PRESERVE THE CONTRACTORS APPOINTMENTS  
CLAUSE. THAT IS A LARGE PART WHY MANY OF THESE  
CASES THAT I AM TALKING ABOUT NOW HAVE BEEN ON  
THE DOCKET FOR QUITE SOME TIME BECAUSE IT IS AN -- I  
SEE JUST TO BE SPECIFIC THE COMPLAINT FILED  
AGAINST JP MORGAN WAS IN 2017. SO IT HAS BEEN A  
WHILE, BUT LIKE I SAID A LOT OF THIS IS BECAUSE OF THE  
RESHUFFLING OF ALJs AND SORT OF STARTING  
EVERYTHING FROM BEGINNING.

CONCENTRIX IS AN INTERESTING CASE FOR US BECAUSE  
OF ALL THE CASES I MENTIONED HERE ON OUR DOCKET  
IT'S THE ONLY DENIAL OF ACCESS CASE WE HAVE GOING  
ON RIGHT NOW. FOR THOSE NOT TOO FAMILIAR, THE  
DENIAL OF ACCESS CASES, WHAT THAT MEANS IS THERE  
IS NOT AN ALLEGATION OF DISCRIMINATION AT THIS  
POINT. IT'S ONLY A LAWSUIT ADMINISTRATIVE  
COMPLAINT THAT WE'RE BRINGING TO SEEK ACCESS TO  
RECORDS. IN THIS CASE, THIS IS OFCCP SENT ITS  
STANDARD SCHEDULING LETTER AND VERG I E S HAS  
NOT COMPLIED WITH THE SCHEDULING LETTER ITSELF BY  
RESPONDING TO IT AT ALL. AND SO WE'RE IN THIS  
PROCESS OF LITIGATING THE FOURTH AMENDMENT. IT'S  
LIKE A FOURTH AMENDMENT CASE ABOUT WHETHER  
OFCCP'S SCHEDULING LETTER, THE REQUEST WITHIN  
SATISFY THE FOURTH AMENDMENT. THAT IS A LITTLE  
DIFFERENT THAN SOME OF OUR OTHER CASES WHICH  
OBVIOUSLY, TYPICALLY TITLE VII TYPE SYSTEMIC  
COMPENSATION SYSTEMIC HIRING CASES, THIS IS  
REALLY JUST A FOURTH AMENDMENT ACCESS CASE. WE  
HAVE DONE A LOT OF THEM. WE HAVEN'T HAD TOO  
MANY MORE RECENTLY. THIS IS THE ONLY ONE ON THE

DOCKET RIGHT NOW.

MOVING TO THE FINAL ONE HERE. OFCCP VERSUS TIAA, THIS WAS A COMPLAINT FILED ALLEGING SYSTEMIC COMPENSATION DISCRIMINATION AGAINST FEMALE AND AFRICAN AMERICAN EMPLOYEES IN CERTAIN JOB GROUPS. I'M HAPPY TO SAY JUST AS OF THIS MORNING, I COULD NOT FIT IT INTO THE SLIDES, BUT AS OF THIS MORNING THE PARTIES HAVE FILED AND THE JUDGE HAS SIGNED OFF ON A FINAL CONSENT DECREE IN THAT CASE. SO WE CAN TAKE THAT ONE OFF OUR DOCKET.

I JUST HAVE SOME BASIC PROVISIONS OR ASPECTS OF THIS AGREEMENT, BUT THERE WERE 63 -- THE CLASS WAS 63 FEMALE EMPLOYEES THAT WERE SUBJECT TO THIS. THE CONCEPT DECREE CALLS FOR TIAA TO PAY \$1 MILLION BOTH IN BACK PAY AND INTEREST TO THESE EMPLOYEES AS WELL AS SET ASIDE ESSENTIALLY A POOL OF \$500,000 SO THAT WHEN AS PART OF THIS CONSENT DECREE TIAA WILL DO ANNUAL COMPENSATION ANALYSES SPECIFICALLY OF THESE PARTICULAR JOB GROUPS AND BRING IN A THIRD PARTY CONSULTANT TO DO THESE. AND AS THEY ARE DOING THESE YEARLY COMPENSATION ANALYSES, IF THEY ARE FINDING THAT THERE IS STILL PROBLEMS THAT FOLKS ARE STILL BEING UNDER PAID AND THERE IS NO LEGITIMATE REASON TO EXPLAIN WHY THEY ARE BEING UNDER PAID, THEN THIS \$500,000 POOL THIS SORT OF LUMP SUM OUT THERE WOULD BE USED TO MAKE ADJUSTMENTS TO THOSE INDIVIDUALS SALARIES GOING FORWARD.

WE'RE HAPPY WITH THAT I THINK IT'S A REALLY GOOD RESULT FOR EVERYBODY FOR THE VICTIMS FOR THE COMPANY AS WELL AS OFCCP AND SOL WHO HAVE ALL BEEN INVOLVED IN IT AND I'M HAPPY TO REPORT THAT HAS NOW GONE FINAL AS OF THIS MORNING.

ONE THING I WILL SAY ABOUT ALL OF THIS. THIS ENTIRE DOCKET HERE. IS THAT IT KIND OF NEEDS TO BE TAKEN WITH A BIT OF A GRAIN OF SALT BECAUSE WHAT I'M SHOWING YOU IS WHAT IS ACTIVELY PENDING BEFORE OUR ADMINISTRATIVE FORUMS.

WHAT ARE YOU NOT SEEING HERE IS THE ROBUST



MEDIATION PROGRAM AND RESULTS THAT OFCCP IN CONJUNCTION WITH SOL HAS BEEN ABLE TO ACCOMPLISH.

AND A LOT OF THAT GOES TO THE CONTRACTOR COMMUNITY AS WELL. I THINK IT'S IN -- MOST OF US COULD AGREE THAT IT'S IN ALL THE PARTY'S INTEREST TO RESOLVE EARLY AND AVOID COSTLY LENGTHY LITIGATION AND IT DOES SEEM THAT THERE HAS BECOME A LOT OF TRACTION FRANKLY, AS FAR AS GETTING MEDIATIONS SCHEDULED AND THEN BEING SUCCESSFUL. BOTH OFCCP AS WELL AS THE SOLICITOR'S OFFICE AS WELL AS THE CONTRACTOR THE REPRESENTATIVE AND THE MEDIATOR GETTING INVOLVED AND REALLY COMING TO RESOLUTIONS THAT EVERYONE CAN LIVE WITH AND FEEL GOOD ABOUT. SO THAT IS ONE REASON I WOULD SAY WHY THE DOCKET IS NOT QUITE -- THERE IS NOT A LOT OUT THERE RIGHT NOW AND SOME OF THESE CASES QUESTIONS I HAVE SEEN THEY ARE OLDER CASES AND THEY HAVE BEEN THERE FOR A BIT OF A TIME. BUT SOME OF THAT IS BECAUSE NEW CASES ARE BEING MEDIATED SUCCESSFULLY PRIOR TO US EVEN HAVING TO FILE AN ADMINISTRATIVE COMPLAINT.

AND BEFORE I MOVE ON TO THE NEXT CASE, WHICH IS A DEFENSIVE CASE I WILL ALSO ANSWER ANOTHER QUESTION THAT I SAW CAME IN I THINK WHILE KEIR WAS SPEAKING ABOUT EXPERTS. THAT IS A GREAT QUESTION. SOMEBODY ASKED WHO PICKS EXPERTS. HOW DO WE AT LEAST ON OUR SIDE THE GOVERNMENT SIDE DO OUR EXPERT SEARCHES AND PICKS.

AS BEV SAID BECAUSE OFCCP CASES ARE TRIED BY THE REGIONAL SOLICITOR'S OFFICE, THEY ARE IN LARGE PART RESPONSIBLE FOR INTERVIEWING SEEKING OUT AND DETERMINING SORT OF WHO THEIR EXPERTS WILL BE. I SAY THAT WITH A BIT OF A CAVEAT THAT LOOK THEY RUN THOSE DECISIONS PAST US AND CIVIL RIGHTS LABOR MANAGEMENT BOTH MERE KEIR BEV I THINK IT'S A GROUP DECISION WHERE MANY OF US WILL WEIGH IN ON POTENTIAL EXPERTS. ALSO IT'S A REALLY COLLABORATIVE COLLEGIAL GROUP OF PEOPLE IN THE

SOLICITOR'S OFFICE. SO IF FOR EXAMPLE, THE PHILADELPHIA REGIONAL OFFICE HAS JUST WORKED ON A CASE AND NOW, ATLANTA OR DALLAS OR ANOTHER RSOL WANTS TO BRING IN, WE HAVE REGULAR CALLS WHERE WE'RE ALL GETTING TOGETHER AND TALKING ABOUT HOW THESE TRIALS ARE GOING HOW THE EXPERTS ARE DOING. A LOT OF IT ALSO IS BASED ON WORD OF MOUTH AND JUST SORT OF THE COLLEAGUES SHARING INFORMATION ABOUT WHO THEY HAVE USED IN THE PAST AND WHO HAS BEEN SUCCESSFUL.

ULTIMATELY WE DO OBVIOUSLY, PRESENT THIS TO OFCCP LEADERSHIP TO TALK ABOUT THE CASE ITSELF, TO TALK ABOUT THE MERITS OF THE CASE, THE STRATEGY OF THE CASE. AND THE EXPERT WHO WE WOULD LIKE TO BRING ON. AND THE EXPERTS THEORIES OF HOW THIS CASE WOULD BE LITIGATED AND HOW WE WOULD WHAT WE NEED TO.

I HOPE THAT ANSWERS THE QUESTION. IT'S SORT OF A LITTLE BIT OF EVERYONE, BUT I WOULD SAY ULTIMATELY WHEN IT COMES DOWN TO IT IT'S THE TRIAL ATTORNEYS. THEY NEED TO BE VERY COMFORTABLE WITH THE PERSON THEY ARE GOING TO BE RELYING ON AS THEIR TESTIFYING EXPERT IN THESE CASES WHICH WE KNOW COME DOWN TO EXPERT VERSUS EXPERT. IT'S OBVIOUSLY, A CRITICAL CRUCIAL DECISION THAT NEEDS TO BE MADE.

CAN I GET THE NEXT SLIDE PLEASE.

ORACLE VERSUS OFCCP. AS I MENTIONED WE HAVE ONE DEFENSIVE SUIT OUT THERE. THIS WAS FILED IN THE DC DISTRICT COURT. IN THESE CASES, THE DEPARTMENT OF JUSTICE REPRESENTS LABOR. THEY ARE THE FIRST CHAIR. WE WORK HAND IN HAND WITH THEM I HAVE TO SAY. IT'S A VERY COLLABORATIVE RELATIONSHIP. SO THE TWO AGENCIES DOL AND DOJ SORT OF WORK AS I SAID, AS A TEAM LITIGATING THESE CASES, BUT DOJ IS THE PARTY. THEY ARE THE LEAD COUNSEL. IT'S A DEFENSIVE SUIT. IT'S ESSENTIALLY -- WHAT IT COMES DOWN TO -- SUPER SIMPLISTIC. I GET THAT. FOR MANY REASONS. AS I SAID, THIS IS ONGOING LITIGATION. I

CAN'T SAY MUCH ABOUT IT. TWO, THERE IS A LOT THAT'S ALREADY BEEN PUBLICLY AVAILABLE OUT THERE WITH ALL THESE FILINGS. I DON'T WANT TO DO IT IN JUSTICE BY TRYING TO GIVE TOO MUCH DETAIL HERE. BUT THE LONG AND SHORT OF THIS IS ORACLE FILED A SUIT WHICH CHALLENGES THE VALIDITY OF OUR ADMINISTRATIVE ENFORCEMENT SCHEME UNDER THE EXECUTIVE ORDER IN THE IMPLEMENTING REGULATIONS AND THEY ARE CHALLENGING IT BOTH UNDER US CONSTITUTION AS WELL AS US ADMINISTRATIVE PROCEDURE ACT. IN ESSENCE THEY ARE NOT -- THE CASE IS NOT THAT THE EXECUTIVE ORDER FOR EXAMPLE, IS ILLEGAL UNCONSTITUTIONAL, INVALID, IT'S MORE NUANCED THAN THAT. IT'S THAT THERE IS A -- THE PROBLEM IS THE ADMINISTRATIVE ENFORCEMENT SCHEME THAT HAS DEVELOPED OUT OF THE EXECUTIVE ORDER AND THE IMPLEMENTING REGULATIONS. REALLY THAT'S WHERE THE RUBBER MEETS THE ROAD AND THAT'S WHAT THE LITIGATION IS REALLY ABOUT. AS I SAID, DOJ IS REPRESENTING US HERE. AND THE PARTIES WHERE WE ARE ON THIS IS THE PARTIES HAVE BEEN BRIEFING. WE FILED CROSS MOTIONS FOR SUMMARY JUDGMENT. WE THINK THIS IS BASICALLY A LEGAL QUESTION THAT COURT NEEDS TO DECIDE. BOTH PARTIES HAVE FILED CROSS MOTIONS FOR SUMMARY JUDGMENT. AND THE CURRENT SCHEDULE THAT'S BEEN ACCEPTED ADOPTED BY THE COURT IS THAT ALL THE BRIEFS WILL CONCLUDE BY THE END OF SEPTEMBER. AND SO AT THAT POINT BOTH SUMMARY JUDGMENT MOTIONS WILL BE FULLY BRIEFED AND PENDING BEFORE THE DISTRICT OF DC JUDGE WHO IS OVERSEEING THE CASE.

I THINK THAT IS ALL I HAVE. WE CAN GO TO THE NEXT SLIDE. I THINK IT'S JUST FOR US TO LOOK AT SOME QUESTIONS.

>>KEIR BICKERSTAFFE: I THINK THE FIRST FEW QUESTIONS THAT CAME IN HAVE TO DO WITH MY PRESENTATION. I WILL TRY TO GO THROUGH AND

ANSWER AS MANY AS I CAN.

ONE QUESTION WAS IS SOL INVOLVED IN REVIEWING THE RESPONSES ON THE CONTRACTOR HELP DESK PORTAL. WE ARE FOR MANY OF THEM. FOR SOME OF THE MORE ROUTINE ONES THAT OFCCP GETS REGULARLY THEY ALREADY HAVE STOCK ANSWERS FOR WE DON'T GET INVOLVED. IF IT'S SOMETHING THAT IS NEW IN ANY WAY, THOUGH OR PRESENTS SOMETHING NOVEL THAT THEY HAVEN'T EXACTLY ANSWERED BEFORE, THEN THEY WILL BRING US IN.

THEY WILL BRING US IN TO REVIEW THE RESPONSES AND OCCASIONALLY SOMETIMES TO DRAFT THE RESPONSES. ANOTHER QUESTION WAS CAN A CONTRACTOR BE CITED FOR NOT FOLLOWING A DIRECTIVE?

NO.

CONTRACTORS CAN'T BE - WHEN OFCCP ISSUES A PDN OR NOTICE OF VIOLATION, IF IT'S A CITING A VIOLATION IT'S CITING A VIOLATION OF THE REGULATIONS OR OF THE UNDERLYING LAWS THEMSELVES. THE DIRECTIVES ON THEIR FACE THEY STATE THAT THEY ARE NONBINDING CAN'T CREATE ANY LEGAL OBLIGATIONS ON THE PART OF THE CONTRACTOR. THEY ARE REALLY THERE TO EXPLAIN HOW OFCCP LOOKS AT THE UNDERLYING REGULATORY OBLIGATIONS. IF A CONTRACTOR IS GOING TO BE CITED IT'S GOING TO BE CITED FOR -- THE NOTICE OF VIOLATIONS WILL SITE A SPECIFIC REGULATION THAT'S BEING VIOLATED.

>> ANOTHER QUESTION WAS CAN A RULE BE PROMULGATED NOW OR IS THE RULE TOO LATE SINCE THE ADMINISTRATION IS IN AN ELECTION YEAR.

I GUESS I WILL ANSWER THAT WITH THE ENTIRE RULE MAKING PROCESS ASSUMING THAT THERE IS AN NPRM FIRST THAT GOES OUT FOR PUBLIC COMMENT AND THEN A FINAL RULE THEREAFTER, THAT TAKES -- THAT NATURALLY HAS TO TAKE SOME TIME. THERE IS THE DRAFT THING ON OUR PART FOR BOTH THE NPRM AND THE FINAL RULE. THERE IS THE COMMON PERIOD THAT NEEDS TO BE AT LEAST 30 DAYS. THERE IS PERIODS BUILT IN FOR OMB REVIEW AS WELL AS

INTERAGENCY - CLEARANCE.

THE PROCESS DOES TAKE A LONG TIME. FOR INSTANCE, IF AN N PRN WAS ISSUED WITHIN THE NEXT FEW DAYS COULD A FINAL RULE BE DONE BY ELECTION DAY, THAT WOULD BE TIGHT. BUT I SUPPOSE NOT IMPOSSIBLE.

ANOTHER ISSUE THAT - THIS MAY OR MAY NOT BE LOOKING AT IS THAT REGULATIONS THAT ARE ENACTED WITHIN A CERTAIN NUMBER OF CALENDAR DAYS BEFORE THE END OF A CONGRESSIONAL SESSION COULD BE REVIEWED UNDER THE CONGRESSIONAL REVIEW ACT UNDER THE FOLLOWING SESSION. SO THAT'S ONE OF THE THINGS THAT IS CONSIDERED WITHIN THE DEPARTMENT. SO THERE IS A NUMBER OF DIFFERENT WAYS TO LOOK AT THAT. BUT THE OVERALL ANSWER IS A BIG FAT, IT DEPENDS. THE LAWYERS FAVORITE ANSWER.

>> BEVERLY DANKOWITZ: I WILL SAY ONE THING AT THE VERY BEGINNING OF EACH ADMINISTRATION GENERALLY THERE IS A HOLD PUT ON PROMULGATING NEW RULES TO GIVE THE NEW ADMINISTRATION A CHANCE TO TAKE A LOOK AT WHAT IS PENDING AND SEE IF THEY WANT TO CHANGE COURSE.

SHOULD THAT HAPPEN, THERE IS GOING TO BE BIT OF A PAUSE IN RULE MAKING.

>>KEIR BICKERSTAFFE: JUST A COUPLE MORE QUESTIONS THAT I SAW THAT KIND OF GO MORE TO ME. SOMEONE ASKED WHAT ICR STANDS FOR. I APOLOGIZE GOVERNMENT ATTORNEYS ARE NOT QUITE SO GOOD AT DEACRONYMING. INFORMATION COLLECTION REQUEST. ESSENTIALLY ANY TIME THAT THE FEDERAL GOVERNMENT IS REQUESTING INFORMATION IN A STANDARD WAY FOR MORE THAN TEN INDIVIDUALS AT A TIME NEEDS TO GET OMB APPROVAL. THE WAY WE GET THAT IS TO SOMETHING CALLED AN INFORMATION COLLECTION REQUEST PACKAGE FOR OMB TO REVIEW. AND THEN THE OTHER I THINK I GOT A COUPLE OTHER QUESTIONS THAT ARE JUST UNFORTUNATELY THINGS THAT I CAN'T ANSWER RIGHT NOW. I THINK ONE ASKED ME TO DEFINE NOT ME PERSONALLY, BUT ON BEHALF OF

THE DEPARTMENT HOW WE DEFINE HELD BELIEFS IN THE CONTEXT OF RELIGIOUS EXEMPTION RULE MAKING AGAIN BECAUSE THAT RULE MAKING IS STILL IN PROGRESS, THAT'S ONE OF THE ISSUES THAT IS BEING ADDRESSED IN THE RULE, THAT'S NOT SOMETHING I CAN TALK TO RIGHT NOW.

JEFF AND BEV I DON'T KNOW IF YOU SAW ANY OTHER QUESTIONS THAT ARE MORE SPECIFIC TO YOU. THOSE ARE THE ONES I SAW THAT WERE KIND OF POLICY QUESTIONS.

>>BEVERLY DANKOWITZ: SO SOMEBODY ASKED HOW HAS COVID IMPACTED YOUR OFFICE OPERATIONS AND CASE PROGRESS. AND ARE HEARINGS BEING HELD, WHICH IS, OBVIOUSLY, A GREAT TIMELY QUESTION. IN TERMS OF OUR OWN OFFICE OPERATIONS, RIGHT NOW WE'RE ON 100 PERCENT TELEWORK. WE ALL HAVEN'T BEEN WORKING IN THE OFFICE FOR A NUMBER OF MONTHS. BUT HONESTLY IT HASN'T AFFECTED OUR EFFECTIVENESS OR EFFICIENCIES AT ALL. WE'RE GETTING ALL OF OUR WORK DONE. WE HAVE A LOT OF -- WE HAVE A NUMBER OF PLATFORMS NOW THAT WE USE TO LET US STAY IN TOUCH. WE USE SKYPE. WE HAVE MICROSOFT TEAMS. WE ACTUALLY DO GET TO SEE EACH OTHER ON THE SCREEN WHEN WE TALK ABOUT THINGS. IT'S CERTAINLY NOT THE SAME AS BEING IN THE SAME ROOM WITH EACH OTHER, BUT THE WORK MOVES. WE'RE GETTING EVERYTHING DONE. ARE HEARINGS BEING HELD. OUR UNDERSTANDING IS THAT THERE ARE NO IN PERSON HEARINGS BEING HELD NOW. CERTAINLY IN THE ADMINISTRATIVE LAW JUDGE'S OFFICE. HEARINGS TO THE EXTENT THEY ARE HAPPENING -- WE HAVE NO HEARINGS HAPPENING RIGHT NOW, BUT TO THE EXTENT THERE ARE FOR EXAMPLE, ARGUMENTS ON MOTIONS OR STATUS CONFERENCES OR THINGS LIKE THAT, THEY ARE ALL BEING CONDUCTED REMOTELY. AGAIN CONFERENCE CALLS OR SOME OF THESE OTHER VIDEO PLATFORMS CAREER CAREER WITH REGARD TO THE EFFICIENCY DIRECTIVE. WHO DO YOU IF IT'S MORE THAN 12 MONTHS OLD. THE DIRECTIVE STATES THAT

THE PETITION REQUEST MUST BE SENT I SHOULD SAY TO THE DIRECTOR WITH A COPY TO THE OMBUDSMAN, BUT ALSO NOTE PREREQUISITE THIS ISSUE SHOULD HAVE BEEN RAISED THE QUESTION WITH THE REGIONAL DIRECTOR. THERE IS SOME ACCOUNTING FOR THE FACT THAT WE WANT CONTRACTORS TO KIND OF GO THROUGH THE NORMAL COURSE AND TALK TO THE CO AND TO THE REGIONAL DIRECTOR WHERE THE CASE IS FIRST TO SEE IF THERE CAN BE MATTERS RESOLVED. BUT IF THE CASE REMAINS PENDING AND THERE ARE QUESTIONS ABOUT THE FILING THEN THE PETITION REQUEST CAN GO TO THE DIRECTOR AND TO THE OMBUDSMAN.

>>BEVERLY DANKOWITZ: ANOTHER QUESTION ABOUT A DIFFERENT TAKE ON TIMELINESS. FROM A TIME AUDIT IS REFERRED TO SOL TO THE TIME IT'S LITIGATED BEFORE OALJ, ARE THERE TIME LIMITS LIKE OFCCP DOES WITH AGE CASES.

THERE ARE NOT FORMAL TIME LIMITS. WE HAVE SOME INTERNAL TIMELINES WITHIN SOL. FOR EXAMPLE, HOW LONG IT SHOULD TAKE US FROM THE TIME WE GET A COMPLETE INVESTIGATIVE FILE TO DO A LEGAL ANALYSIS OF AN ACCESS CASE, OF A SMALLER DISCRIMINATION AND THEN OF A LARGER SYSTEMIC DISCRIMINATION CASE WITH OBVIOUSLY, MORE TIME ALLOWED INAUDIBLE. FOR CASE. BUT AGAIN THOSE ARE GUIDELINES BECAUSE THINGS COME UP IN EACH CASE THAT MAY IMPACT THE TIMELINES, BUT WE DO A REALLY GOOD JOB OF STICKING GENERALLY TO THEM BECAUSE IT'S TO EVERYBODY'S ADVANTAGE THAT THESE CASES MOVE ALONG QUICKLY. SO WE DEFINITELY UNDERSTAND THAT.

THERE WAS A QUESTION ABOUT LESSONS LEARNED FROM THE LITIGATION TAKEAWAYS ASKING IF WE'RE SEEING TRENDS. AND JEFF JUMP IN WHEN I'M DONE. I THINK ONE OF THE THINGS WE'RE SEEING NOW THAT WE CERTAINLY WEREN'T SEEING IN THE EARLIER DAYS OF OFCCP WERE DIFFERENT PROTECTED GROUPS ARE FAVORED AND UNFAVORED GROUPS WE DON'T REALLY SEE ANYMORE YOU KNOW JUST A BLACK VERSUS WHITE

CASE. WE'LL SEE A CASE WHERE FOR EXAMPLE, HISPANICS ARE FAVORED AND BLACKS ARE THE DISFAVORED GROUP OR ONE GROUP IS FAVORED IN HIRING, BUT THEN THEY ARE DISFAVORED IN COMPENSATION. SO I THINK THE FACT PATTERNS ARE MORE COMPLEX NOW IN TERMS OF WHICH PROTECTED GROUPS ARE AFFECTED AND WHICH COMPONENTS OF THE CASE. I MEAN IT MIGHT BE DIFFERENT -- WE HAVE SEEN A NUMBER OF CASES WHERE ONE PROTECTED GROUP IS FAVORED IN HIRING, BUT THEN THEY ARE PAID LESS. AND SO WE HAVE TO KEEP ACCOUNT OF THAT. ANOTHER THING I THINK WE'RE LEARNING FROM THE LITIGATION AS WE SEE THE CASES COME OUT IS, AND THIS IS CREDIT TO OFCCP INVESTIGATIONS NOW, HOW IMPORTANT IT IS TO DEVELOP ANECDOTAL EVIDENCE AS WELL, WE'RE SEEING IN THESE DECISIONS THAT CAME OUT RECENTLY SO ENTERPRISE AND WMS, THE TWO CASES THAT JEFF MENTIONED WHERE WE PREVAILED BEFORE THE ALJ OBVIOUSLY, OUR STATISTICS WERE STRONG AND THE STATISTICS INAUDIBLE. BUT BOLSTERING THE STATISTICS IN BOTH CASES WAS TESTIMONY BY AFFECTED INDIVIDUALS FOR EXAMPLE, QUALIFIED INDIVIDUALS WHO WEREN'T HIRED, OTHER ANECDOTAL EVIDENCE. FOR EXAMPLE, IN WMS AN ISSUE WHETHER HAVING A LICENSE FOR ASBESTOS REMOVAL SHOULD BE INCLUDED IN OFCCP STATISTICS AS A VARIABLE THAT STUDY OFCCP ARGUED THAT IT SHOULDN'T BECAUSE INAUDIBLE SOMETHING THAT WORKERS CAN GET ONCE THEY ARE HIRED. IT'S NOT A PREREQUISITE TO BEING HIRED. AND SO WE IN OFCCP WERE ABLE TO GATHER EVIDENCE PROVING THAT THIS WAS, IN FACT, SOMETHING WORKERS WERE TRAINED ON ONCE THEY CAME TO THE COMPANY. IN FACT, THERE WAS AN ON-SITE TRAINING FACILITY TO PROVIDE THEM WITH THIS LICENSE ONCE THEY WERE HIRED. SO I THINK THAT'S AN EXAMPLE OF HOW WE IN OFCCP WERE ABLE TO USE THIS ANECDOTAL EVIDENCE TO BOLSTER THE STATISTICS AND SUPPORT THE STATISTICAL METHODOLOGY THAT WE USED.



>>KEIR BICKERSTAFFE: I THINK WE HAVE ONE LAST QUESTION THAT CAME IN. DO YOU SEE A NEED TO UPDATE THE UNIFORM GUIDELINES TO COME INTO ALIGNMENT WITH CURRENT TECHNOLOGY. DOL IS ONLY ONE SIGNATORY TO THESE. THAT'S ONE OF THE ISSUES OBVIOUSLY, THERE ARE MANY ISSUES THAT WOULD COME WITH HAVING TO UPDATE THE PROCEDURES. YES CLEARLY THEY WERE PROMULGATED IN 78. A LOT OF THINGS HAVE CHANGED SINCE THEN. I DON'T HAVE ANY -- I WON'T EXPRESS ANY PERSONAL OPINIONS HERE, BUT I'M JUST NOTING THAT YES THE PROCEDURES HAVE BEEN THERE FOR QUITE A LONG TIME AND THAT THEY WERE INITIALLY PROMULGATED JOINTLY WITH eeoc, DOJ IT WOULD TAKE A GROUP EFFORT TO REVISIT THAT. I DON'T KNOW IF YOU HAVE ANYTHING TO ADD TO THAT BEV.

>>BEVERLY DANKOWITZ: NO. THERE WERE FOUR AGENCIES PROMULGATED. SO IT WAS US, THE JUSTICE DEPARTMENT, EEOC AND BACK THEN THE CIVIL SERVICE COMMISSION NOW OPM. AND GETTING ALL FOUR OF THOSE AGENCIES TOGETHER TO COME UP WITH REVISIONS JUST SEEMS A BIT DAUNTING.

>> I THINK YOU ANSWERED ALL THE QUESTIONS. THERE ARE SOME QUESTIONS THAT CAME THROUGH THEY CAN'T ANSWER DUE TO ONGOING LITIGATION.

I WANT TO THANK THEM VERY MUCH FOR JOINING US. I KNOW WE ALL REALLY APPRECIATE PARTNERSHIP AMONG THE NILG OFCCP AND DOL. THESE SESSIONTION HELP US SO MUCH TO FULLY UNDERSTAND WHAT OUR OBLIGATIONS ARE AND HOW TO ENSURE WE STAY IN COMPLIANCE. THANK YOU VERY MUCH.

WE ALSO HOPE WE'LL BE ABLE TO SEE YOU ALL IN PERSON IN NASHVILLE TENNESSEE AUGUST 1ST THROUGH FOURTH AT THE 2021 NILG. A SLIDE DECK WILL PROVIDE YOU WITH THE LINKS WITH MORE INFORMATION ABOUT THAT CONFERENCE AND HOW TO REGISTER. ALSO IF YOU AREN'T ALREADY A MEMBER OF

YOUR LOCAL ILG THE NILG WEBSITE WILL GIVE YOU CONTACT INFORMATION AND THE LOCAL ILGs ARE FABULOUS. THEY PARTNER WITH THE LOCAL OFCCP AND EEOC OFFICES AND QUITE A LOT OF INFORMATION. FINALLY ANOTHER THANKS FOR OUR FABULOUS SPONSORS FOR HELP MAKING THESE WEBINARS POSSIBLE. THANK YOU ALL SO MUCH AND I HOPE TO SEE YOU IN A WEBINAR IN THE FUTURE. GOOD-BYE.

>> THANK YOU.

>> THANKS.