

Rough Draft Notes July 30.

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>> My name is Amanda Bowman. I will be the speaker kicking us off today and we have a lot of great content for you. A couple of things you all know that there is a new closed captioning link if you are interested in using that it's available in the chat feature so you can find that link there. We will not be having HRCI or PVC's for this session I just want to make sure you are aware of that. If you have questions throughout the session please submit them to the go too meeting chat feature. We will be tracking them as we go. We will try to cover some of those questions. If not then we will address them afterwards with a copy of the webinar and get that posted in the next five days for you all to access. If we want to go ahead and move onto the next slide? I wanted to take a moment to recognize

and thank our wonderful NILG sponsors who help make this session possible. All right perfect and thank you so much. Go ahead and go onto the next slide.

>> So quick information disclaimer we have got a lot of folks a lot of great people that you will be chatting with today both from the office of federal compliance programs and well as a lot of external experts as well so I want to make sure you had that and you know we have got a lot of folks again for just to be expeditious I want to turn it over to Paul MCGOVERN he will help introduce the different presenters as well as give you background to get us started. Paul do you want to take it away.

>> Thank you very much Amanda. Good morning, good afternoon, good evening whatever the case maybe. Tony that's fine. I'm Paul I'm out going chair of the NILG, Tony will be moving the

slides for us today and the incoming chair of the NILG thank you Tony for picking up the chair and thank you for moving the slides. Today we are following up on round table discussions we had between the NILG and the statistical experts psychologist and labor economists in February. There's been a lot that's happened since then and that's what we are going to be focused on today but there has been a back and forth between experts and the OFCCP for further exchanged we are going to move things along quite quickly today. There's a lot of information to get through. We are not having a debate today it's really a series of lightning rounds on important topics. Tony if you would move the slide please. Okay. So who is on with us today? We are very happy to have craig LEEN director of OFCCP thank you craig for attending and Bob director of enforcement and David

GARBER OFCCP labor economist. Bob and David presented with the experts at the February round table and we thank them very much for their participation today. Our expert panel is made up of a large group of well respected experts in the field and -- will be presenting with us today. Our thanks for all the experts who contribute to this process giving a phenomenal amount of time and attention to this very important and complex area. If you move forward Tony. Okay, so that's not displaying directly for me but I don't know about anybody else there it goes thank you. Okay, so again we had the April, what is our history here? In April 2019 we have a face to face OFCC, NILG and we had our first round table one if you will and thanks to our advisory counsel members who helped us with that presentation at that time. In February of this year again we had the

discussion I eluded to a moment ago and here we are today for round table three. I would like to think that one of the focal point that is we are going to have here is a statement that the director LEEN made some time ago which is written up on that slide but I think it's also important to say that these slides are traded by the NILG. They are to facilitate the continuum dialogue that we are having on compensation and I think it's very important to note that these are not the OFCCP slides NILG's interpretation of the conversations that we have had where we are and where we are going.

>> Tony next slide?

>> You can advance if you will the slide Tony?

>> Thank you. So since the February review a director LEEN conversations has annunciated a number of statements of intentions of interests that we at

NILG have called principles director
LEEN is not calling these principles
but these are statements of important
areas of compensation. We really
appreciate the statements experts
appreciate 2 statements and we have
organized this presentation around
the those statements so we will be
following up with those through the
course of this presentation. The
point of transparency which we
understand is OFCCP's intention in the
compensation process and all stages of
it is a very important thing that
contractors will be very pleased to
see is on OFCCP's radar to be in con
standpoint come pen sayings issues is
going to help the dialogue and the
dialogue that NILG experts and OFCCP
is having with contractor S-S also
important and the anecdotal evidence
is also important. Let's move ahead
we got to keep moving on. These
slides will be provided to you after

the presentation please preview them
at the leisure we need to move quickly
Tony if you move to the next slide?
>> The okay. The OFCCP clarification
concerning privilege review and how to
keep it privileged review privileged
is very important. Contractors are
expected to do an annual review of
compensation system and do that and
produce it to the OFCCP and NILG's
understanding is if you produce that
required report the OFCCP is not
intend to ask for a privileged review.
I think that's a very important point.
There will be a lot of discussion about
aggregations and tags through PAG's
through the conversation. The
statement here about the OFCCP
alliance on these groupings is and
important statement also. The last
point here I think goes to
transparency. There will be
differences of opinions between PAG
use and job grades between experts and

OFCCP that I understand it. The idea that there's a transparent discussion about those difference S-S very important. There should be a disclaimer on this page and as I mentioned before to the effect that the slides are created by NILG to facilitate continued dialogue and not OFCCP slides. My apologies that it is not on the version that we are looking at right now. Let's move forward please.

>> Okay. I mentioned earlier statements on the course of conversation with NILG and back and forth with experts concerning director LEEN's thoughts on what is important to compensation review these are the NILG here is calling the principles again this is NILG's write up of what we heard from director LEEN in presentations and in conversations. We appreciate them and director LEEN if you would take

over here and speak to them I would appreciate it.

>> Certainly thank you Paul can everyone hear me can everyone hear me?

>> I can hear you

>> First I just want to thank you for this opportunity to speak and for this conversation round table. You have had a very had and excellent leadership period of the NILG I really appreciate the dialogue that we have had the entire time I have been here and I all the support the NILG has given to OFCCP the dialogue and support is much appreciate I always love going to NILG conferences I know in Tony you have and excellent replacement as well I know that will continue for years to come. I want to thank you both, and I also want to thank Valerie HOFFMAN is significantly involved in the round table as well. I will try to go through this fairly quickly as Paul

mentioned these are not OCCP slides I have to say that and everything we are doing here just based on the federal regulations and things like that we are not allowed to come to consensus this has to be a dialogue, a discussion and it is true a lot of these principles that you have articulated all eight of them are things that I have said and I believe. I have to be clear that these are the principles I articulated that based on feedback I received and in addition to that I do think that it is important to have this dialogue. Now, these principles are general the way they are applied you know that they are going to sometimes going to be debated. I have a feeling that you are going to hear that today among the experts. I want to be clear about that. Also, I you know I am actually quite honored and touch that you call them director leans principles it keeps says LENN's

principles I have been touched I have been nominated for another post I maybe leaving soon. I hope that I left a positive legacy here at OFCCP. Please note that these are principle that is go beyond me and it's really the idea is to ensure that OFCCP is acting in a clear and certain way so that company's know how to come into compliance in advanced that'S openly our goal. We want you to be able to do self audits and be in compliance that's going to help more people. These standards or principles are form of compliance assistance. I am very happy we can have a dialogue about these. I will go quickly through them. Adopt clear standards for grouping incumbents that's something obviously that we need to do as an agency. We need to have clear standards on how we put groups together. It needs to be something predictable. I believe we made

significant progress in this area on how we do that. I understand there's a debate over that and I am sure we are going to hear that today. Groups similarly situated incumbents. We follow title 7 I believe we follow title 7. I heard the debate. Please note that our compensation directive and our opinion letter on S SEG's and PAG's groups is committed to groupings similarly situated employees. In addition to that principle three that's reasonableness what I understand that typically OCCP will accept the PAG's used by a company assuming that I are reasonable and there's some debate I understand what is reasonable but that principle is very important we do want company's doing these analysis that is equal for you to do that in advanced we do want you to develop S SEG's and PAG's and we do want you analyzing every year as part of your compensation reviews that

you are required to do by law and we wanted to ensure that you are doing those and that if you find problems you fix them. If you think different PAG's or different S SEG you maybe less likely to find. You May say you know what they made a disagreement with us and all of that money we are going to put into these S SEG's is going to go to waste in the end they May come in and say well, what you have done as exacerbate add problem we are using different PAG's or different SSEG's I don't think investing money in the work force ever go to waste. I know they feel that if you are going to invest one or two million dollars they want to ensure that what they are doing is compliant. That's what I mean by that I do think that OFCCP should be able to provide some degree of reasonable assurance about discussing when OFCCP creates the own groupings. it's very important to me as director

and I know that Bob supports this as well he supports all of this I know he supports this. Situations where we are going to adopt different groupings we need to have a dialogue with you we can't come in with the government you know what you put years into these PAG's and lots of resources but we are going to adopt our own. We need to have a dialogue with you because ultimately the goal is to get it right and use the right PAG's and right SEG's the find out what is occurring. If we are going the deviate we need to explain that to you and justify and hopefully you will adopt those PAG's and SSEG's as well. We need to be open and humble and open to the fact that there maybe conceivably wrong that's important to have that dialogue.

Number five avoid over aggregation this is something that's discussed a lot. I want to be clear what I mean. We don't want to over aggregate that

would include nonsimilarly situated employees having said that I think David May speak to this where agency is speaking to pattern and practice discrimination we are going to want to look at broad groupings to see that there's a trend here that's a pattern in progress. If we are going to make a finding it needs to be based on a PAG or S SEG that's fully compliant with title 7 principles. We can support our statistics and that we May use broader groupings in order to as a diagnostic tool to see if we can, if we can close this case because there's really nothing here that can be a very useful diagnostic tool. Remember we committed as an agency to doing the desk audit within 45 days we have been very successful doing that and still getting large remedies we have been able to do both so that is something that is important for the agency and I believe we made progress in that

regard. Number 6 always evaluate interactions and there's going to be some discussion about this today I understand I am included to do sometimes a model if you are including every possible interaction I think sometimes call swamp the model and cause difficulties with being able to make any finding I Am going to rely on the experts here. Please know that Bob and I are both including interactions in the work that we do. Number 7 control for our variables the contractor uses this is an important principle now when we say variables we are talking about the major variable that is are used to set pay or hire people at a company. In this context we are talking about pay. It's the variables that go into pay. There are times and I think you will see if you look at some of our recent regressions that we have been including lots of variables and we are committed to

doing that. The point was that we also need the model to work and again there can be times when we are putting so many variables swamps the model the idea is they are material variables that impact pay if there's a variable that you use to set pay and if you take it out that means you make a finding. Include it we don't make a finding that's immaterial variable. Please note that we are going to test those variables under a disparate impact theory or approach. If we find that variable has adverse impact and does not support the necessity we are not going to include it. We are not going to include discriminatory variables. We will include all material variables assuming they are not discriminatory. Ensure that reviews are fair. A lot of time there is a debate over what's fair. Through transparency through ensuring that you know everything that we are doing making sure we are coming

at it with a government regulator and
we are and honest broker in everything
we do neutral perspective trying to
get it right and trying to do justice
and we spend resources they remedy and
actual working with the quickly to a
remedy of effective worker that is a
vision and we are committed to it thank
you very much Paul for this
opportunity to speak thank you very
much

>> This is Paul again. When I opened
you always forget something I forgot
two thing ins my opening the first is
this presentation this discussion
here is not truly the discussion about
title 7. Title 7 is very important in
this area we are having a statistical
discussion with statistical experts
not the legal discussion related to
title 7 that's a very important data
point. There are other discussions
to have to date limited to the
statistical side of these issues

another thing is thank you for mentioning the work that Valerie has done on this whole compensation round table process from the inception. Attorney HOFFMAN graciously decided not to participate today and she wanted to make sure the experts had the most time possible. Her work throughout this process as and instrumental and keeping the ball rolling with the ebbs pert meets known any if you move forward. We are now on the Rick if you would go off mute.

>> This is Rick HOLT I have one of easier jobs today. I'm going to talk atopic where there's been a lot of agreement and positive movement. I am going to use the first principle here into the topic not with respect to grouping but more broadly the context of compensation analysis you would have to have been living under a rock for not the realize that transparency is one of the director

LEENS most important priorities. In fact it's been a theme of his tenure most explicitly in the directives in the particular directive 2018-05 the one that focuses on compensation and guidelines and further more to hammer home the point and entire directive on the topic of transparency and directive 2018, 08. If you had and opportunity on the topic several times and I have other OFCCP officials spoken on this topic extensively. We are happy to report that there have been procedure the perspective of the contractor community substantial improvement in this area and the analysis presented by the OFCCP in the area of compensation we are seeing much more from the OFCCP and how they conduct their analysis and the assumptions they are making and the results they are getting. There are situations where at least in our opinion in some settings the OFCCP

standard that we would like to see what is that transparency community would like to see let eats see in the red box and we just think this is common sense and I suspect many people of the OFCCP would agree that it's almost impossible to have a productive clear dialogue and that moves towards a mutually agreed upon resolution without each side being able to replicate the others work? Sometimes that's possible and there's still instances where it's not that's usually buzz the OFCCP in our opinion has not been officially transparent about that data they are using and the manipulations they are making. I want to under line this guiding principle. The OFCCP the all parties involved should share adequate information and certainly in the shows potential information so that each side can replicate because that provide as bases for a discussion next

slide please.

>> So, I have used this term transparency so let me just talk a little bit about what transparency means so transparency from the perspective of the practitioners on this call 20 the statisticians or psychologists or economists it boils down to data methodology and results and so you know as people know the compensation analysis are data and methodology in terms of area of inquiry. What do we mean by the different versions of understanding the data. You can think about how the data is manipulated and what screens are applied to the data and one issue I would like to particularly harp on is different versions of data. It's not uncommon in the context of and audit especially some of the more longer running audits that the contractor may have initially provided compensations to the OFCCP

and through the con, throughout the course of the audit they discovered some data were missing or incorrect. We can often end up where they are virtually the OFCCP working with one version of the data and the contractor working with a different that's a bases for disagreement that can't be resolved. With respect to methodology of course we are talking about the statistical preferred statistical methodology or these squares or multiple regression. We generally agree that is the gold standard although there certainly opportunities to use other statistical tools which we will talk about a little bit later. When we talk about methology we talk about things that are not obvious data manipulations there's a topic of variable fusion. These are all very important details that have to be ironed out for the contractor and the

oFCCP to come to a common understanding as to what the question is then finally of course there's just the calculations themselves, and the statistical analysis that includes things like information about what the estimated so efficiencies are, and the individual control factors sample size model fit and potentially up to include sharing computer program that is are used to estimate these analysis and in an ideal world we like this kind of information sharing going on throughout the course of the audit in fact director 2018 talks about transparency at all stages in the audit process and we think that is appropriate and efficient and the best way to get to a mutually agreeable understanding. And one other thing that is often forgot about and we often focus statistical analysis if the OFCCF is there's some disparity and will often present a proposed back pay

figure. And while we have seen improvement in the transparency with the respect to statistical analysis it developed damage or back pay figures, is often quite opaque we want that to be part of the transparency discussion. I will close by saying very proud of this little box of an X on it. I offered that myself. It's a pretty simple picture no black box. We already get for this audits to resolve efficiently we should be clear to each other what methodologies would be applied to the data overall and area where there has been a lot of improvement and a lot of agreement. We applaud that so there's always room for more of that. I would like to segway from Dave from DCI to talk a little bit similarly situated employeE groups.

>> I didn't introduce this properly at the end of each expert section we are going to have time for comment and as

you will by the OFCCP or by Bob or David. I discussed that when we had a prep session before the meeting, so Bob or David if you would like to say a couple words of transparency we are getting to run behind the faster we go the better we are, but Bob or David any comments or impressions?

>> This is Bob. Thank you Rick and Paul and thank you everybody for connecting. I don't have a specific problem with the first two slides if I am able to say a few background comments that may save us time in the long run. We will miss director LEEN's leadership I don't know if anybody that can properly contextualize that list of principles as efficiently and eloquently as we just did. I promised to him I wouldn't be cantankerous. I might have to be preachy for awhile because there's a lot of things that changed in our society since we last met in

February. We all know we have a global pandemic that revealed our social dependency and the need for collective solutions and the necessary of government action and providing a protective response to those types of events. More importantly related to our work we have had this national reckoning with systemic racism even before George Fullerton deaths 65% of American's felt there was sorry systemic discrimination in our society, recently Michelle Obama stated the luxury and privilege of looking the other way no longer exists, so we need to guard against business as usual status quo and you know making sure there are work and our suggestions and the topics that we are discussing today aren't tone deaf to the modern reality and so you know I appreciate that some of the edits that I have suggested for this slide were accepted

although we are still on guard and then the last thing is changed that I have become the permanent director of enforcement. I am committed to redoubling the efforts along with Tina Williams after her policy team to guide the agency and to look deeper into these institutional mechanisms that frustrate equal opportunity for people in America. I invite the contractors and practitioners to do the same to look critically at your placements and promotions and you laboring and employees into Bona Fide orphan Tom job titles to rethink your use of starting salaries and market salaries and to investigate things you may not have thought about such as the family responsibility discrimination that might take place today as women juggle even larger role roles in society. In short contractors no longer none of us the contractors the agency just general society members we

don't have the luxury any more and
privilege of looking the other way so
when I see that's happening in this
discussion is becoming a little tone
deaf I will have my warning here that
I may employ throughout that I promise
not to use it very often but thank you.

>> Thank you Bob. There's certainly
issues that we have very good. All
right. Thank you we are moving onto
our next slide. David if you would
take it away when we get the next slide
up.

>> Sure thanks Bob and thanks director
LEEN. I think you set the stage for
really what the goal is on and look the
one comment that I would make is all
of my colleagues that were on the
expert panel, all of my -- on the OFCCP
side and everybody on this call the
reason why we are on this call and the
reason why we do this is right we are
all in agreement right that we wanted
to do these proactive studies for the

purpose of a identifying if there's a problem and if there's a problem that exists let's fix it. That's the whole goal and in order to do that right you know we are using statistics to try and run diagnostics to see if there are patterns, so I think we are all in agreement right that's the goal, let me specifically talk about you know similarly situated groupings, and I am going to do my best to yield some of my time back to my colleagues because I know we are running behind, but the thing that I will say and this is you know I have been doing this a long time and this is the hardest part of doing a pay equity study is to determining WHO is similar situated. We are not doing the study in an equal pay out context which is substantially equal that's almost easier than determining who is similar situated. And one of the points that I will make and you all probably heard me say this over and

over again and I done presentations in the past and I used fruit and I use beer, wine or other examples to show how things are different. Here's the bottom line right? We have got great colleague and great experts on this panel and but the reality is groupings similarly situated second-degree not science. You want to evaluate the compensation system and you want to figure out how the employer structures jobs and pays people to figure out who in fact is similarly situated. And that could be a title and that could be broader than a title but experts will disagree my colleagues if you gave all of us the same data set we May come to a different conclusion on groupings and that's okay. But the goal is to try and keep jobs together that are similarly situated and one of the things that I said in the expert panel is if you do that you will get a better result and a cleaner analysis

and that will avoid a lot of the issue that is we will 25UBG about later on things like interactions and variable fusion and other things like that which make the regression models more complicated. And the reason why that needs to be done and the one thing I will say is that there are differences it's not just semantics. It's a difference between a similar situated employee group and a pay analysis group. I think folks need to understand the difference that one is a grouping of similar situated employees and a PAG is multiple SSEG's put together and you are trying to control for similarly situated regression. That's where a lot of disagreement is and a lot of it is trying to get people covered in a study, so let's actually move to the next slide because I think this gets to the heart of the issue and I think this is kind of what director lean was

talking about and it's really under the certainty principle right? Is that you know it's the regulations and the intent of executive order, 11246 is that we are all proactive. We do these things proactively and I think most of the folks on the call do these analysis proactively and where we get into trouble or where we get into a contentious issues with the OFCCP is that you have a contractor who's developed SSEG's and they developed that a broad system to annually analyze that, and they make pay adjustments and then we get an audit and in OFCCP says well we professionally don't believe your groups are reasonable. So if you remember in 2006 there the OFCCP put out standards and guidelines. It was in this guideline document that OFCCP put perimeters to define what is reasonable. If you go to the current directive it also talks about

reasonableness but it doesn't operationalize what's reasonable, so we have the experts said there's got to be some sort of objective measure to determine reasonableness. We kind of went back to the 2006 standards that said if you can cover 70% of your work force that can be an establishment level under some sort of statistical analysis that would be deemed to be reasonable. Now, one caveat to that and I will say this for OFCCP. You know if OFCCP has evidence or thinks that you have structured your groupings to mask discrimination even if they meet this reasonable standard well of course they have the right to question those groupings. But after sent that is long as there was well intentioned their consistent with the compensation system and meet a certain reasonable standard of statistical coverage what our thought is that they should be accepted by the agency.

Experts May disagree and OFCCP May say we have got some recommended adjustments to that going forward and under the certainty pillar right that contractors should know that if in good faith they do this and they create groups and they run these analysis they make salary adjustments if needed and they make changes to the compensation and hopefully OFCCP will come to the same conclusion if not there will be recommendations on how to change that. In my last comment is that you know this is no different than the 40 or 50 years of AAP construction of -- remember AAP job groups are a construct that are created by the contractor for the AAP and OFCCP generally accepted those AAP job groups for a lot of EEO analysis unless the agency thinks they are too small and they are created in a way of mass discrimination well then they certainly can challenge those. Just

the next slide and I want to yield back time. Our recommendation to the contractor community if you are doing a proactive analysis under the certainty pillar you want to create job that is are similarly situated and there's good guidance in the directive on what similarly situated and try to get to at least 70% of the work force. We are going to talk about small group tests later on that can help get you know above 70% at no point you should start to group people similarly situated. To the VP of nature. Really you can't force it but take the time on the front end to put those groupings together and try to hit a reasonable standard of statistical coverage and hopefully will be deemed acceptable. I will give back time.

>> Thank you time David or Bob thoughts or comments

>> I really wanted to use my horn while David was speaking but I wasn't able

to. Two quick comments the operative term is expected to be paid the same, so as David said the grouping of similarly situated should happen before you looked at how they actually are paid, to find people expected to be paid the same and see if that actually is the fact that don't work backwards from your pay seem, and circle people in your groups. Lastly the last bullet point there is the goal should be covered under a regression analysis. We have had conversations lately as some of you may have tuned in last week on how to approach those small groups and you know it's intended for those over and above the 70-80%

>> Yeah maybe I will just this is David GARBER from OFCCP. The only point I will add is just a reminder you know a reminder beyond the regulations and what our shared goal is likely to be which is we are interested in a pattern

of hopefully good behavior and pay equity in the employers pay system. I focus on the word pattern this focus on getting the correct is part of it is part of the analysis and should it shouldn't be at the complete expense of the of whether or not there's a pattern of pay equity or employees or employers pay system it implied both perhaps you might want to say a micro and a macro approach so I think the idea of looking for a pattern is in these slides later on and always wanted to keep that in mind that focus on within the SSEG analysis of various kinds is neglecting the discovery of patterns overall patterns of good or not good behavior. Thank you. Very good all right, so in the interest of time we need to move on and Tony if you would move the slide forward JORA is up next

>> Hi I'm J.R.A can everyone hear me?

A lot of great point have been made

and I know we are over time I am going to try to be brief and hit some of the highlights here. I think everybody agrees that as David said the grouping employees correctly can be difficult and it's crucial. The employee grouping is the bases for the entire analysis as director LEEN previewed I think in an ideal world the contractor would group their aemployees proactive analysis. They would present a similarly situated or paths they have created to the agency. Contact all that, the contractor know it is business and they should be more stable should group employees that is consistent with their own compensation system and how their employees are paid. However, we know this is not always going to work when it does not what we are envisioninG that the agency and the contractor can have a dialogue pretty early on in the process before the contractors

groupings are rejected by the agency
can we go to the next slide? And so
this dialogue would give the agency
the opportunity to describe in detail
so they could explain if they think
people are grouped together, but
should not be or maybe they think
people are not grouped together or
should be or other factor that is are
missing so they can explain and then
the contractor would have the
opportunity to respond and maybe they
have additional information that
documentation and maybe they can
answer questions and fill in the
context that define groupings and
maybe the agency accepts some of that
and maybe they don't. The goal of
proceeding in this manner would be
that the agency in the contractor can
really align in and employee grouping
that accurately reflects the
contractors compensation situation.
Once the grouping is defined and I will

talk about this in a little bit the model can include key determinance just as tenure and education and job code, level and grade and so we think this approach would increase certainty because the contractors would know going into the audit and how they would be determined and hopefully they are in alignment with the groupings they have already been using for their proactive analysis. It would include transparency as both sides work together and it would increase efficiency if the contractor would not need to spend a lot of time and resources trying to figure how the agency defined the groupings they are using. Would Bob or David like to respond?

>> I

>> This is Bob I think Dr. LEEN has already mentioned some of the factors that you listed there we test those for I guess impact how it influence ifs

it's a redundant variable and the
like. We want to reserve that right
thank you

>> I think we are going to talk about
this a little bit more when we get to
key factors but thank you. I think if
that's it DK you are up next?

>> Dan: You probably want the next
slide please So while that's cueing
up hi everyone this is Dan KUANG-DK.
A fairly common thing we experience in
audit situations is cueing up. Here
we go. There we go all right. As a
group we can all agree that over
aggregation is wrong however it's our
experience in some instances that
aggressive aggregation methods have
applied in audit situation it is
question is why the agencies wants to
cover 7080% of the work force in their
investigation. 50% or more of the
employees is in small groups. Small
groups don't meet the 35 threshold.
Everyone know that is the small sample

the last week to the presentation to the NILG how is the agency dealing with these small groups? Currently the group is FCCP's approach to dealing with small groups they are not the best tool for small sample situations different jobs with small samples and assume one size fits all model to compensation. That's rarely the case when you pack together a bunch of different jobs the results are approximations at best and generally unreliable at worst. So as experts we don't feel the pay analysis group is the best for small situations next slide please. Cueing up

>> Lit get there.

>> So I am going to keep moving on just as agency noted last week there are methods specifically designed for sample situations. We need to use the right tool for the job. Here we share a handful these methods are not new. They are well recognized methods by a

federal enforcement agency. They are CODIFIED in EEOC's compensation compliance manual as part of the federal register some haven't even been applied in litigation situations it's a powerful tool. It's available that we can reach for using proper sample analyze toward the agency can achieve their goal 70 to 80% of the work force. Next slide please

>> Next slide please. I am just going to keep moving very cool thank you very much. Overall as a panel of experts we adds wise and we ask that the agency and contractors use the white tool for small sample situations specially use any of the small tool analysis that we shared in the previous slide and if a problem is identified drill down and record the analysis that's a very classic and standard approach. I don't know why we have departed from that. We kindly ask the agency to not only recognize small sample tools as

they did last week in their NILG presentation, but to also agree to use them in audit situations in those small sample analyst then the agency should accept those findings and draw down their investigation. Where we don't advise is for them to continue with aggregation and rolling up small and smaller jobs and into larger PAG's and PAG's and even further with no sudden end for contractors not only do we feel the aggregation is appropriate that's quite contrary to director LEEN principle of certainty and predictability with that I am going to end my piece and see if we can by back some time. I certainly invite OFCCP to opine.

>> This is Bob. As an enforcement agency we will trust that we will verify so when you ask us not to combine and find we are going to also ask you to not divide and hide so going back to my earlier comments I want all

contractors out there to think about seriously if those are different. If those groupings are really different and if they truly are then the agency will have to accept them as being different and we will be in the situation of having to rely on small tests alone. We always need to verify that there's not a divide and hide taking place. When I looked at the EEO reports establishments are usually clustered into one or two of those groups it's very rare to see in an establishment report that has all of the EEO groups in it. So you know that's suggesting that an establishment level both jobs are pretty similar and of course there are variations of that but in a typical audit you are sometimes already in this situation. It's a trust issue we need to get to that level again. We will trust but we will verify I don't know if David has anything to add?

>> No I don't. Thank you Bob.

>> Thank you all and I appreciate moving this along succinct. Thank you Bob for your comments and for the rhyme you put together there I like it. Okay. We are going to our next slide and to Rob speak man.

>> Thanks Bob. This next topic is a roller coaster ride. We going the start slow but build speed back.

Don't worry that's the feature of the ride and it's built in by design and we will slow down and discuss that experience and what we can take away from it. The question I will address if you can aggregate jobs under title 7 principles how do you do it correctly statistically what do you need to think about? Let's start simple.

Your account at one position. You hire only from the top two percentage and straight out of school you wonder why women are paid as much as men. The comparison is simple because they do

the same job and they have no experience. You can have the average pay that is statistically different. The statistical model is simple because we don't have anything to control because they are all the same. The employees in their jobs become differentiation trait and similar to the statistical model becomes more complicated. Let's suppose we add to those new hires for all account one in the first three years some are hired from college and some from other, there's differences in experience and prior experience and some are paid more because they live in high income areas like California and New York. We need to account for these legitimate differences between people as we compare the pay our statistical model has become complicated but it's still manageable. Let's go to the next slide. In the first bullet when it shows up you will see that I looked

at our this will be tiny job, tiny and prior experience and then what I call -- constant living difference that is will vary for employees. Any time I say variable S SEG pay determinants that's what I am talking about. The same pay determinants with variables and the determinants are expected to have the same impact. The first two are easy so let's talk about the third one. The third one needs I expect pay three percent to all local supposed someone wants to add it to a comparison. This is a different job title with slightly different responsibility requiring to increase skills but maybe the responsibility who's skills are sufficiently similar that someone thinks they can be combined under title nine principles. What do we need we need to control that. It is the effective time and job might differ by 1% and two percent for account substantiates too by

introducing interaction terms we interact job title with every variable in the model which allows time and job to have a different size effect. This is also true for time and other jobs and geo indexes this is what we mean by interaction terms here. We interact jobs with every variable. This is starting to get complicated right? If you want to aggregate you need to think about this stuff. Are there any additional variables or pay factors we need to add to them all because they are important for accountants one but not for accountant two's. Interacting in this new variable with job title go to the next slide it might also differ from account one and two assuming it pays the same from the average higher from the accountant two position combining them with object de-aggregation might make it look like all women are paid less it's wrong. It might mask the

gender pay difference for accountant two so which is also wrong and we wanted to now imagine we had account three four and five to the version. Let's imagine we did someone's head might have just blown up I won't talk about interaction terms because of time. There's more to aggregate and analysis and left out the complicated part as just testing. The roller coaster ride is coming to an end if you got confused during this discussion congratulations you are exactly where you are supposed to be you can forget everything I said to this point and remember what comes next, but hang onto that feeling of confusion here's the take away next slide.

Aggregation and pulling jobs together for pay comparison purposes is complicated, confusing and messy.

It's hard to do right? You have to do it right or your comparisons are unreliable, and they are unreliable

and meaning less and they are potential about gender and ethnicity pay differences, so there maybe concerned about the earlier called swamping the model that concern needs to be balanced with the concern for getting meaningful and accurate results. If you don't do this right you will not get meaningful and accurate results the third bullet I am going to cover brief because it takes too long to explain. What I will say there's clear draw backs in aggregating, and we have been discussing some of them up until now. It's possible that there's no actual benefit if you do this right. If you need a fully interactive model you will get the same results from them as you got from individual analysis on each job no benefit, finally you never want to go into the aggregation mode is there some way to avoid all of this complexity and confusion. There's

only one legitimate way do not aggregate with that Bob or David do you have something you want to add?

>> Thank you I appreciate you walking us through some of the complexities. It is complex I was happy to hear you say there is the possibility of masks discrimination and the director LEEN mentioned that saturation of model. The masking components we are concerned about we would try to avoid interactions with particular classes if you are interacting gender with tenure for P-L. You are really modeling any despair rate treatment of tenure by gender and we would be concerned about that unless you are doing it as a diagnostic test as you suggested you might be there's one other level or aspect of aggregation that the we really haven't discussed in any of our meetings that is the aggregation of years or pulling of years across time and so that does of

some space in the model or statistical power in a model so smaller tags and more interactions and more paid variable. I want to make sure that's still on the table in terms of you know another aggregation technique.

Thank you

>> Thank you Bob I think if we had more time for a back and forth on that there would be a hardy discussion about aggregating years of data and I know that's quite complex and maybe considered to be outside the statistical frame but is another issue that would be good to address in the future some future date. Thank you both thank you both. Quite all right moving onto JORA for discussion of variables.

>> JORA: Thanks so far we have been talking about grouping appropriately using aggregating or not and now we are going to pivot and talk about how to analyze pay once groups have been

defined and so some groups will be too small for aggression analysis that DK spoke about and there's going to be many instances where it's going to be the best way to evaluate data and determine whether they are race or gender differences in pay and so one of the key benefits that you can compare average pay after controlling for key factors impact pay tenure education and job per the directive and director being preview it had goal of the model is to mimic to contractors compensation system accounting for the major material factors used to set pay maybe not everything but certainly you want to include the major factors. In process we see this isn't the case. There's multiple reasons I am going to briefly touch on three of them the first is what is known is the 10 to one rule T. idea that there must be -- for each factor ten employees for each variable in the regression model. If

a they are most the four factor that is really matter in most instances I can think of we are going to be at least four relevant factor that is would explain why people are paid differently such as Geographic location, education tenure with the contractor and prior work experience if we are going to strictly follow this 10 to one rule. The only options are to eliminate a factor which we know is relevant in determining pay or somehow the gender difference will now be inaccurate and now to echo what I think Rob and Bob had said it can be and accurate in either direction so it could be that you find women are under paid when in fact they aren't and it could be that you find that women are not under paid when in fact they are. So we are concerned admitting key factors and we know there are limits if you have 30 people you can't have 32 control factors but our opinions is

that rule is too strong. The next rule I will touch on is the rule of five. The rule here is there must be at least five employees with each value of variables included in the regression model. If we can see the next slide. It's referred to variable fusion in some literature. I think we used that term a little bit today on the next slide hopefully we can see it there's an example supposed in our PAG we have three employees in grade 6 and one in grade 7 and two in grade 8. The three grades are very different midpoints. We would like to control for each grade. I think we are now ahead. It will be on the slide that shows the blue yellow and green perfect, so five people three in grade six and two in grade eight. However, since each grade is fewer than five employees what we seen happen is the agency is going to combine all of them together and

control only for whether a person is in the combined grades six through eight. Now we can go to the next slide so this is go to lead the person in grade six are over paid and those in grade eight are over paid because we are not controlling for grade difference in average pay and we have seen this for stuff like grade and combining small jobs and small race groups and I have seen it where it's groups all persons by locationS into a miscellaneous category which is accurate because some locations have high average pay and others May have a low average pay so the model is now not going to correctly -- the race gender difference. Transparency again this makes it very difficult to replicate the agencies resolve they can't figure out which values or variables are combined and without complete transparency the process becomes very inefficient and the

contractors spend a lot of time trying to figure out what was done we can go to the next slide. The last thing I want to touch on that's been mentioned already it's probably a topic in and of itself I just wanted to say that the simple factor, the simple factor such as performance review is correlated with gender and race does not mean it's tainted does not mean performance reviews are discriminatory. It means an average difference and how to determine empirically whether this is the problem is quite difficult. I think we all can see that. AT a minimum you need additional evidence is the fully developed factual information if you are trying to show it's taint correlation is not enough and excluding relevant factors from the model to make the estimates inaccurate and can lead to the wrong conclusions about race or gender differences in either direction. So

we support in including all relevant factors in the model and not combining together combinations of the factors to increase sample size. I will stop for comment.

>> Thank you

>> Bob? Or David?

>> This is David I will comment on a few of the points here so that was a good presentation. There were certainly points here that we whole heartedly agree with and we certainly don't want to exclude variables on the assumption they are tainted and I hope that's not what we are doing already. We might consider excluding variabilities after a thorough investigation it's revealed that the variable is taken we agree that shouldn't happen. The issue about combining variable fusion and combining levels in the manner, for example, lowest performance rating in calling it high or illogical

combinations that is based on. We also agree that should not happen, the rule applies I will say something is not a strict rule. It AES a concept there needs to be it needs to be a sufficient number of employees or using more technical terms. The process and the information that we are putting into the model, and if those employees are not there then we risk we risk very inaccurate results and so our concern is inaccurate I wouldn't some of the slides. But the inaccurate results. Our main concern will run guidelines we were trying to avoid a high likelihood of what's called type two error or false negative and the inability to detect advice or any kind of behavior when in fact reality it's happening. So that's all I will say. I will yield to the foreground. In I NILG >> I take the point about inaccuracy that's arriving that is a theme of this

whole presentation. Thank you talking about using the contractors major variables we had a version problem with this deck and the version that will go out after the presentation will relate to major variables a small data important one for the oFCCP. Thank you. Moving along our next point our next slide is going to be review by VALENTIN.

>> Thank you we are at the end of presentation. We start hearing about the principles on how he view it is way the agency should conduct this audit and we have discussed several issue that is just speaks to how complicated making comparisons could be in making a proper pay out. So I think directive was a significant improvement over the practice of the agency at the time and we came out and basically go ahead and tell us how you think about compensation and what factors do you use for purposes of

making pay comparisons recognize if OFCCP since it came out you hear the agency recognize that not all differences are worth investigating for so it's important to give credit to things that are moving in the right direction. I think the idea of giving the contractors voice in the process in terms of tell us what facts are and tell us what the pay factor is important is because it's often pulled up in the contractors care a lot about pay equity. Doing the right thing and you see numbers of people attend to be -- that are here today and contractors seek guidance and seek help even outside the OFCCP. It's important to give contractors credit especially when there must be some of them are dealing with the first time are learning from the basic how, some of them have never run a statistical analysis before. For them in many cases they are learning as they go

along with this process. So this idea of being this is also to explain to them and be transparent and the agencies findings and what a great point earlier. We want contractors to feel that they have been valued. If they decide to make changes those changes will actually be by the agency. That's why it was important that the agency when they speak to contractors reveal how they are taking the contractors data and organizing the data would have the concern about then the agency is the contractors understand that question the experts maybe disagree about setting up and analysis and which factors to include and what to include, so the issue understands that the only way they will get the information they need from contractors is by being transparent. Maybe they feel they take the time to develop back and look at the compensation system that those will be

value and will have and impact. This is just a brief reflection on the OFCCP presentation last week. I think it's encouraging that we see the agency speak about the need of viewing the statistical result in context. One potential indicator out of the potential comparisons we contract the data or maybe that tells you that there is no system or discrimination there's no need for additional review, and it was great to see the agency recognize that if you have explained disparity that the right approach is to try to understand what's behind the instead of saying there is a problem. It's not about communication and ensuring that there is a between the agency and contractors after the only way that can be accomplished is by being transparent and refer to the time and effort that contractors go to our recommendations on this page so basically the agency is needs to

understand we said it earlier. We said it earlier that we acknowledge that there's no transparency now than a couple of years ago, but we finally keep bringing this issue transparent of telling us what you did or tell us what you used that information is not enough. I want to get improvement in terms of the communication that are coming from the agency the contractors because they take the time to develop them and you have an issue with them please tell the contractor clearly this is the only way you will have fruitful communication between you and the contractors and as I said earlier if you have a good reason to aggregate. We have certainty. Significant discrimination. Contractors need to know it's understandable that maybe you want to commit to a number to our complex model and that's something they need to deal with you with the agency. The

information and the data and when there is an indicator at this point what comes next is to look closer as saying there's a problem it's more about well why are we missing here and we have these questions about your PAG and you have these questions about your pay factors help us understand what's going on and the only way that could happen and by being open with the contractors. After comment from Bob and David they are discussion thank you for your time.

>> Thank you. Bob?

>> This is Bob I am happy to hear the transparency has improved. We going to continue to improve it just need your patience some of these issues are difficult and Craig has asked us to look into certain measures but they don't and every situation is contextual and different so it's very hard and I think you general agreement that an indicator is not perfect,

discrimination it goes to the comment about our particular slide? You know I think when we say it's bad it's bad that it would trigger a further investigation a small test fail, but passing it doesn't give us a whole lot of information with those small tests because they don't have the same power as the thattist call test. In case I don't get another chance I just want to thank the NILG for this conversation. It's very useful outside the context of and audit and so the whole series of conversations has been very useful. Thank you.

>> Thank you Bob. Thank you for the attendees on this call it's important to practice as Rob said roller coaster ride there's been more than one roller coaster ride through the course of the presentation. Thank you for speaking forcefully what you believe is important in this analysis and putting it simply and clearly as this complex

subject can be put. Thank you to all participants. I want to thank the experts who are working with the experts panel world series are not able to be here today or who passed the the baton to other experts to speak. Other experts work very hard and it was too many to speak in one webinar so thank you very much for those who did contribute and sit this one out and thank you again to VAL for your very effective of shepharding of the process through every step. I appreciate also the directions outlined many of these through these round tables I think it has very important information, and I am pleased that there is points of agreement between the participants on this call today. Obviously there are differences of opinion and that is okay, and this is further forms to work out more of these issues and one thing I would like to talk to for just a second is the issue

of trust or a masking of
discrimination that Bob has raised.
I would say with my work in my
corporate and contractor capacity
with my getting to know people through
the NILG and contractors was said
earlier in the presentation take pay
equity seriously I do want to
proactively address. I hope that
there is a level of trust as a starting
point here and we be careful that we
not get into a situation of being seen
as guilty until proved innocent. The
inaccuracy and accuracy issue is well
framed and we have to work together to
make sure that the reviews we do move
the needle and do work on the systemic
discrimination issues that Bob raised
earlier in this call. I like to
appreciate OFCCP alignment to title 7
principles and standards for pay
analysis that is and excellent thing.
One data point about data across here
maybe that's and area we will have for

future discussion I think there would be a difference of opinion on that. But difference of opinion are healthy and the discussion around them is healthier still. So with that I will pass it onto director LEEN.

>> Thank you Paul. I think that this has been a very illustrative and helpful and meaningful discussion. I want you to know that it doesn't end here for us Bob our director enforcement I am asking Bob I want to set up an internal meeting with our legal advisor Sarah and with you Bob and our policy division and our deputies and I would like to talk more about what we talked about today and the feedback that they received because I want to make sure that we get as much positive out of this process as we can. I encourage the experts that the NILG has gathered today and the other experts that participate today but did participate previously

and the consultants and contractors generally because take the heart what we said about as well. Think about that there's not that large of difference between the positions as far as I heard. I know there's a lot of back after forth. A lot of things are common sense. Let me give one example expert recommendations on fairness. OFCCP should adopt contractors PAG's. That's what the con pen sayings director says then that's what we should be doing. I asked Bob and he supports this. If we are going to substitute PAG's we need to give you a written explanation we should do that prior to the PDM response it should be done before or preferably in view or at the very least when the PDN so that you can respond to it. The reason I say that is I want contractors to be adopting PAG's and doing these analysis it's worthwhile in my experience being here for the

last two and half years company's that do their work that have a culture of compliance that do the yearly reviews they are required to do by law by doing them in a best practice approach where you are really doing regressions and doing a comprehensive review of PAG's that is a best practice we want every contractor doing that and that's something that is deserving of respect because it shows your commitment to equal employment opportunity. We want to support you in doing that at the same time and I think you understand this Paul NILG. We are and enforcement agency. We do need to verify we do need to take a critical look and we do need to engage in a dialogue with the company. In my view we are doing that. I am hopeful that will continue to improve in the future because dialogue and discussion is where we will see true and lasting positive reform for OFCCP. I think we

have come such a long way in terms of transparency and dialogue and I'm very proud of OFCCP. I'm proud to be the director of it and I am proud of the relationship that we have with NILG. I think it's such an important agency it's been important for the entire existence I think people see how important systemic discrimination is and in terms of combating it and eliminating it and seeking to bring attention to it and I think it is no more it is in terms of public perception it's as relevant as it's ever been the systemic discrimination and systemic racism exists and it needs to be addressed. We are partners with you and we want you to-- considering the significant debate today that in most of our audits we find that the contractor has not discriminated. As I often told you the fact that it's a significant majority of our audits that is a good

thing. We want company's continually to comply with OFCCP regulations and we want to focus our efforts on more likely violators. I think that you will see in the next couple -- we will continue to focus more on likely violators I have a feeling that a lot of company's on this call are not likely violators pause you are committed to this and you want your professionals here talking about these important issues and that's something I really appreciate and I will ask that you continue to do that. This dialogue is key. I know there's always whenever you have the agency and the regulated community there's always going to be a back and forth. There's never going to be complete agreement. That doesn't mean that there's not understanding I think both sides understand each other. The ultimately the goal is equal employment opportunity. We are

committed to that and I put my record up against anyone. I am very proud of the work done in OCCP. I am proud of our year staff and Paul I am thankful for the relationship we have with NILG. Thank you very much for this opportunity to speak again and I wish everyone a great day it's been a true honor to be the OFCCP director.

>> I would like to say a word to thank you thank you for thanking us and a word on your possible departure and speaking for myself, and the NILG board and members. We truly appreciate your passion and openness. We appreciate the openness that you have been bringing to OFCCP to make this work that we do more collaborative or more effective because of that. We are sad that you May leave and we wish you all the best where ever you go and wish the best for your family thank you.

>> Thank you Paul.

>> Paul thank you. Very well said really thank director LEEN and thanking all of our experts this has been a really great discussion. A lot of great questions which we don't have time for it's already over. We will get those answered and posted with the recording. Quick plug. Please keep in mind that we are having a national conference next year in August in Nashville Tennessee we hope to see you there. Please look out for additional information. Of course I want to say our sponsorships one more time we wouldn't be able to be doing sessions without them. It's been a great day and I hope to see you at more sessions thank you.

>> Thank you Amanda thank you all.