

»» : At report number of help desk inquiries by the way will probably be exceeded this year. In the career 2020, thus far has been an extraordinary year. The year will be remembered most I believe for two things the pandemic and the protests of 2020 I'd like to talk about those two topics and how they impact us in OFCCP and the contract for community. First the pandemic. The Coronavirus virus pandemic has impacted all of us in many years, at OFCCP the decision was made for our agency to go to 100% telework status become in March. However, OFCCP remained committed to continue all of our activities because enforceability of civil rights in the workplace is to important. I want to say thank you to all of my OFCCP colleagues because urn waveringly they've been continually committed to this mission of our agency throughout this

very difficult time even during the telework process.

We've been able to conduct all of our enforcement activities and continue to offer compliance assistance.

So UNICOE wanted to say thank you to everyone for continuing to do this very important work during this very difficult time. During the pandemic, OFCCP also continued to roll out numerous policy initiatives and directives and continued to work on the rulemaking process. We continued to develop as Director Lee mentioned earlier our assert principles of certainty, efficiency and transparency, we will soon issue the certainty directive. I want to personally thank many of you two provided valuable feedback to me and to this agency regarding this directive so we can create a directive which best serves the community, and serves the public with consistently as we continue to enforce the civil rights laws of America throughout the

regions of the United States. The certainty directive will be the fourth and final directive issued by OFCCP to implement the four CERT principles that director Lee has been discussing.

Now a word about the protests. The recent civil rights protests in America have helped emphasize the importance of our work at OFFCP to eliminate systemic discrimination in the workplace. As some of you know from hearing me speak in the past, I've gotten to know many of you over the past year since in first conference in Milwaukee, I appreciate getting to know all of you. I often like to use movie quotes when I speak. In honor of the upcoming baseball season which I think many of us are looking forward to once it begins it like to cite a line from the movie "field of dreams" this was delivered by the late Burt Lancaster said, "we just don't recognize life's great moments while

they're happening." I think that's very apropos to what's going on in the world right now. Clearly the pandemic and the protests of 2020 are some of our life's most significant moments. These events have profoundly changed the world in which we live.

In particular, the civil rights protests of 2020 have brought the issue of as you say stemmatic discrimination to the front page of the news in America this year. As director Lee noted the work that we do at OFCCP have always been very important, and perhaps it is more important now than ever before. We've greatly value our partnership with NILG and appreciate the opportunity to work with each of you every die to ensure equal employment opportunity in the workplace to all Americans.

Finally, as someone noted at the beginning of the program the President has nominated director Glian to be the

inspector general of the Office of Personnel manager, and someone just talked about that. Craig lean been a great inspector general of OPM just like he has been a great tech or of OFCFF. He has done a extraordinary job in in my opinion, it would be very difficult to fill director lean's large shoes by OFCCP has a fantastic leader ship team in place to the that. We look forward to the year ahead as we will continue with all of the policies put in place during director lean's tenure, the policies assisting people with disabilities. We look forward very much to celebrating the 30th anniversary of the Americans with Disabilities Act, later this month, specifically the anniversary date of July 26, 2020.

All of us at OFCCP will continue to work with the members of NILG to make a difference in the civil rights enforcement of America. It is my great pleasure now to introduce my

colleague and one of the best administrators in the federal government to say a few words, I would like to welcome Patty Davidson as Craig and I lewded to earlier he's a deputy director at OFCCP. I'll turn it over to Patty now. Thank you again for the opportunity to speak today. Patty?

Patty: Thank you, Bob. And thank you director Lean for a very impassioned word. My name is Patty Davidson, I joined in February. I have been a career administrator in the Department of Labor since 2009 here in the national office.

I co. To OFCCP from the wage and hour division. I've been with the Department of Labor for 32 years in an enforcement capacity, starting out as a field investigator, working in a district office, a regional office and eventually here in Washington, D.C.

I am incredibly proud to be apart of the Office of Federal

Contract Compliance Programs. As you heard from my colleagues from our Director Lee and from my colleague Bob Galiano it's an incredibly patient organization with an incredibly important mission. Thank you to Paul and Anthony for hosting this presentation today for allowing us time to talk about what we do, and how we hope we can help you comply with those requirements in the best way possible. You've heard a lot of discussion today about our principles, transparency, certainty, efficiency and recognition. We have done an incredible job I also want to thank my colleagues on the phone, the compliance officers, managers and administrators here in OFCCP for doing an amazing job through unprecedented times as Bob spoke to passionately about.

We have been 100% telework for several months.

Something that I don't think any of us thought a possibility

much less a reality a few short months ago. But OFCCP has managed to do that without missing a beat. Director Lean talked about some of the incredible efficiencies that we've gained through this experience, focused reviews which was on our agenda from 2019-2020, but we've had some really positive experiences with that as well as virtual doing our work virtually. We've had some best practices, unexpectedly that we plan to carry on through 2021. We will continue to work with all of you and with contractors as they get back return back to business in person. You know, we don't say back to work here since we've been working 100% telework, but we do say back to the office. That's at some point in our future. But we've been doing a pretty good job teleworking and continuing our outreach to all of our stakeholders is top of the list and a high priority for us.

We have an amazing group of folks here in the national office and across the country in our regional district and area offices. And we're here to help you in anyway that we can. Our help desk hits to our help the desk have increased over the last several months exponentially. And we're getting those responses out. So we do think that we'll probably have another record-setting user in our compliance assistance. We also hope to continue getting our cases resolved through the early resolution program and other processes and getting recoveries out to contract employees as well. So its a pleasure to be on this call today. I don't want to take anymore time because I know you have questions for Craig. But thank you again to Paul and I'll turn it back over to Craig or to Anthony, however we're going to do the Q&A. And it's been my pleasure to be here today. Thank you.

»» : Thank you, Patty. Before I go to Tony, I just wanted to mention about Patty. I've been very blessed at the the agency to have tremendous career deputy, Tom Daud, Craig, and now Patty David song, I've been so fortunate. Patty is doing phenomenal work. We're very lucky to have her. She was very successful at the wage and hour division. They had record years there. A lot of that was because of her. And now we have her here. So you can know for a fact that a lot of these things that we're doing will be continued through her. Because they make a lot of sense. We're doing -- we're achieving at the highest possible way in my view, you know, we're doing things quicker. Efficiently, doing more of them. We're helping people. We're openminded and we're engaging with contractors always trying to improve what we're doing.

So I just think, I'm so happy to have Patty here.

Because -- call her. If you ever have a question you're really concerned you didn't want to go to the ombudsman or you don't want to go to me, you don't want to go to Bob. Go to Patty. Patty is a natural problem solver. I've seen her do it. My life has gotten much easier with Patty Davidson. So Patty, thank you.

»» : Patty speak you're welcome thank you.

»» : Tony, how do you want me to proceed, I'll answer questions as long as we have.

»» : We don't have any softball questions for you, so I'm sorry about that. Maybe we do. We have one. I'm give you that one first.

»» : That's fine, anything you'd like, I'll answer any question.

»» : Can you link the disability survey that you're talking about to the OCPP website so it's easy to access.

»» : Yes, I believe it is. But let me make that clear for everyone. One thing you can do is you can go on our website, there's a place where you can see all our bulletins, the stakeholder emails we sent. We sent a recent one on that, by the way sign up for our emails. We have a lot of stakeholder emails that are really useful. But I think we have always linked to it elsewhere.

So Tina Williams I know is on the line. And we will make sure to let the NLGI to know where it so that can be printed to everybody. We really want you to look at that survey. I spent two hours speaking and I didn't get to everything on that survey. There is like, you'll find 10 or 11 different findings or statistical answers which are troubling. And you'll think, wow, this number should be higher. So all I can ask is that each company on the call you take a look at it make sure that you can answer all those

yes. You know, that's all you can do. I'm going to keep bringing attention to this survey.

»» : Okay, so now we'll go into some statistic questions. OFCCP statistic questions.

»» : Sure.

»» : First one is what's the current head count of OFCCP personal are personnel?

»» : A little less than 450. I think.

»» : Is OFCCP hiring externally to add to the head count?

»» : Yes. That is our goal, is to add to the head count.

»» : Is that going to happen this year?

»» : I don't fully control that, because there's also departmental issues and administration issues. But, yes, happens COVID and there's a number of issues tied to that.

But, yes, that is the goal. We do intend to increase our head count.

»» : All right. How many audits have enclosed -- have been closed from the beginning of this fiscal year to now approximately?

»» : I'm not certain. I didn't have that -- I have a bunch of stats with me, I don't have that specific one, but we'll get you that stat, I'll second it over to Paul and Tony.

»» : You were talking about settlements. How much in settlements do you think you've had so far this year?

»» : That I do know more about. The total settlement case value thus far for FY20 is \$24, 543, 344,000 the settlement value to effected class is \$10, 715, 935,000. One is the back pay measurement and one is includes salary adjustments and other forward-looking benefits. So in

terms of the -- last year for example the number that we really focused on there's one that's easier to compare with prior years and people are used to that number is the 40 million-dollar number. But our actual total case value number was over one hundred million dollars last year. So what I think -- one other thing I've seen at OFCCP typically our fourth quarter is very -- the most successful quarter.

So looking at this number, and thinking about all the settlements that we have coming up, I would think there's a good chance this will be our second highest year ever.

»» : Okay, are these settlements coming primarily through the IRPS and HIRPS.?

»» : Both, I believe we have more settlements generally, but yes, there is going to be a lot of the big settlements in particular if larger ones involve IRCAs, as I mentioned earlier, the goal is to have, we believe we'll

have about 30 IRCAs by the end of the year.

»» : Okay. All right. So now let's switch over a little bit. Is there going to be another CSAL this year?

»» : We haven't made the final decision yet. But there's still a chance there will be. We're getting -- here's the thing, with we had a very large list last time, 3500, then we added 500 that were about the start, that's 4,000. We thought with all of those it might end up being toward the end of this calendar year that we would issue at list. But during the pandemic period we've been getting through them quicker. So it is possible you will see one before the end of the fiscal year.

»» : It is possible, okay.

»» : Yep. And also, I'm speaking at supply and service. And the next supply and service list the current vision, remember this is just me speaking, I am the agency

head, but a lot of this stuff needs to be approved too. But I've been very public about this. The next the idea for the next list is that it will include promotions focused reviewed and accommodations focused reviews. We'll continue to include compliance checks. Then there will be significant amount of compliance or general compliance reviews. And then likewise, separate from that is our construction scheduling list. We have right now we have an approved compliance check letter, construction compliance check. So I'm looking to issue a list of those to start. Because it's been awhile since we've done construction because, we had the IG review. We finally got the report. So we're taking action based on that. Two, we had had the Baker decision which we had to adjust our processes for. Then third we're also updating our CMS system, our case management system. And we're still

working on the construction component of that.

But soon that should all be in place. And my hope is that we're going to issue a construction list this fiscal year. That's the goal. Of at least compliance checks. And then once we get the construction compliance review letter approved we would likely do one with compliance reviews.

»» : Okay. So we've got two questions that are similar. Will OFCCP issue the acceptability of unknown race or gender in the workforce data, and will nonbinary gender ID be available? And the other question is very similar, what plan does OFCCP to allow companies to report employees who identify as nonbinary or who don't want to report gender?

»» : First let me talk about self identification. Tina and I have talked about this, we recently published

a he response on our down tractor -- a response on our contractor assistance portal. Take a look at that. It answers that. A general synopsis, we're very respectful of individual's right to self identify, both in terms of their race and gender. In this particularly as the demographics in this country change. As we become more multiracial, and multiethnic, you're going to see in the area of race and ethnicity people wanting to identify in different ways, checking more than one box, or not checking a box. You know, so we're very respectful of that. Because that can be a form of discrimination if you force someone into a box that they don't choose.

Having said that, there are still regulations that require you to seek self identification do a good job doing that, act in good faith so we can get the data and be able to do reviews. There's still going to be a effort to try

the get self identification. But in terms of the individual who wants to self identify in a certain way, or not identify, we're going to be respectful of that. Likewise with depend and gender identity the same thing. In our response, nonbinary is perfectly appropriate. Someone can identify as knowledge binary. And it would be in my opinion discriminatory to force them into a selection that they don't support. Remember, one thing that OFCCP does is we protect against discrimination based on gender identity. So you as the contractor need to be respectful of that.

»» : Okay. All right. Let's go onto question about promotions, the promotion review. The question is, have you thought about how OFCCP will review for evaluation process? It appears that Facebook is in the news right now on the questions -- one of the questions is the peer review

process at Facebook. What do you think the OFCCP approach or advice to contractors should be?

»» : Can you ask that one more time? I'm sorry.

»» : Okay, we have the promotion focused reviews coming up. The question is, how will OFCCP view employee evaluations? Currently we have the Facebook case that just came in the news talking about peer reviews and performance and such. What kind of advice or what kind of expectation will OFCCP have with employee evaluation?

»» : I understand. I can't address specifically an ongoing case even if it doesn't involve us. But I can address evaluations. And, OFCCP expects that agencies are reviewing their evaluation process to the extent possible, base it on objective measures. Similarly like in the federal government you have performance standards, they're holding people to those performance standards. You're

evaluating your evaluation process to make sure that there's not adverse impact against a particular group, because if there is you need to figure out why that's happening. And to the extent it's discriminatory you need to eliminate it.

So, we're mostly interested in making sure that its not overly subjective. One thing we've seen is when you have overly subjective evaluation processes, is that it can lead to disparate treatment disparate impact among particular groups. I will tell you, I think people on the know this, Bob the director of enforcement and I see eye to eye on this, we do try to include every single factor a company uses to set pay or higher as long as it's not discriminatory. That's what we've said that we do in our competition directive, that's what we should do. Because we're not substituting our judgment for companies.

This is a market economy. We understand that we need to be respectful of companies and how they identify different merit factors to determine how they pay and advance people. But they need to have objective factors, they can't be discriminatory. Then there's a problem. And that's when we get involved.

»» : Let's ask a quick follow up. Are you going to expect, since employee evaluations are assessments, for them to be validated?

»» : Well, I mean, that's interesting. Question, if you're using a special sort of way of doing this that's different, typically you should be validating any sort of policy or practice that causes an adverse impact. On the other hand we're not saying that you can't evaluate people. I would expect a company to evaluate people. In fact if you did no evaluations, that would be problematic for other

things, because it would demonstrate that you're not interested in merit advancement.

So, generally companies should be doing evaluations, I just ask that you look at your -- try to make it as objective as possible.

»» : Okay. Going onto the issue with you're talking about COVID-19 and the issues dealing with that. It talks about minorities. Minorities will be impacted by lay offs and furloughs because they are more likely hired last. As you know, the African American and the Hispanic hiring rate is at some of the highest before COVID-19 kind of put a stop to the economy.

So how do you handle this type of situation? Or how would you view this situation in a review, maybe not this year, but it will show up next year where there might be adverse impact or statistical significance simply because

of the COVID-19 issues?

»» : Well, Tony, I don't want to overgeneralize. But what I can say is that we're going to control for legitimate fact tours. So if what you're saying is you had ten people and, it happened to be that a higher proportion of those that were hired more recently were minorities or women, and we're still going to control for their tenure at the company. We're going to consider that. You should be -- you know, companies need to have objective factors they're using in determining whether to lay off someone. It's just important that that not be -- whatever policy I don't say you choose, one, you need to make sure -- whatever policies you choose, one, yo you need to make sure it's not facially discriminatory, and two if it has an adverse impact it should be validated.

Not having been there for as long as someone else, seems

to be something consistent with business necessity. And that's not really the focus, although I'm not giving you my final opinion, it only depends on the facts of the case. But the bigger issue for us is, what we want to know is if companies are following like a last-in/first-out principle, that's at least a principle. That may have a disparate impact. We'll take a look at that. It needs to be validated then.

But the bigger issue that we're concerned about is companies that don't have a principle. And that are potentially laying off people because they think they can get away with it. Or because of other problems that demonstrate adverse impact to minorities, to women, to people with disabilities, to communities that have historically been discriminated against.

»» : Okay. I'm going to ask you a softball question.

Here's another one for you. I found one for you. Just to give you a break. We've had an audit where an OFCCP compliance officer shared a list of the HBCUs in southeast, does OFCCP has a list on their website of all the HBCUs, the Hispanic and tribal universities as well as contact information for the coordinators there to help assist organizations build pipelines recruiting pipelines?

»» : Yes, we are working on that. You will see that soon. The idea -- right now we're in the process of reaching out to every HBCU, and establishing contact. You will see eventually a list with contact -- a contact person for every HBCU in the country as well as every HACU and TCU. We'll try to get that soon. Because, I do want companies, now that I've put this out there, I did it because this is when the speech was, I would have liked to have that up already. But we will have that up. We'll have that up

soon.

»» : Okay. You talk about mediation. If a company goes into mediation, cannot come to any settlement, what happens next? And then, Part II of that question is what if a company does not want to go into mediation, how will the agency approach the audit?

»» : Okay, first of all, the mediation is not meant to be a replacement for conciliation. So most audits will go the same way they do now. We'll Heather reach a early resolution, -- firstly we might close the audit. Most of our audits close without a finding. For discrimination findings, which is about my recollection is we're making technical findings around a quarter of the time. We're making discrimination findings maybe around 1 in 20 time December spending on the audit. That number is varied from about 2% to 5% over the course of years and across

administrations. So for one of those cases that's in the 2-5%, what we would do is, hopefully we would explore an IRCA with you. If we couldn't agree on one we should such a PBN. You would get your pre response. We would then -- your response, we would make a determination whether to issue the NLV or adjust the NLV. Let's assume we issued the NLV. At that point we go into the conciliation phase per regulation. And even though under the case law, including the MOC mining standard, the obligation on the agency is pretty low in terms of conciliation. I as a matter of policy, and I believe this is a best practice for the agency too, have committed the agency into doing much more than that. But it's just a matter of policy not a matter of law. But in my view, the agency should be earn gauging, sharing all the -- engaging, sharing all the information, trying to come up with a

resolution, because that's what's best for equal employment opportunity, that gets a quick remedy. I've asked them to try to the that within a six-month period, that's the goal we have. Get that done within six months, typically the RDs told me they can do it in one or two months, we have some that go a long time, so I try to put a 6 month limit on it. At that point we issue the "show cause" notice, we typically won't issue a show cause nose, I don't want to issue them to move a case along. We need to have a very high likelihood that we would refer the matter. President at that point we're looking at the referral to SOL. And we're putting that together. And that's when we would offer companies the pre-referral mediation.

So the pre requisite for pre-referral mediation is that we've decided to refer the case. So we make that decision.

We're going to refer it. Typically what we would do is I would sign something, it would go over to the labor, they would then review it. The regional solicitor would review it and make a recommendation to the solicitor. And they sort of would take over the case at that point.

So right at the moment we're about to do that, we now offer -- generally we'll offer pre-referral mediation to the company. It's completely voluntary. They don't have to do it. If they don't do it it gets referred. If they do it, if they agree to the mediation, there's some procedures that we laid out. Our goal is to try to use the federal medication service, FMCS, but, -- or ombudsman, Marcus Stergio or somebody picked by the contractor if it's acceptable to OFCCP. At that point we would go back and forth to the company, hopefully agree on a mediator, go forward with the mediation which will be virtual,

particularly during the pandemic. So far every -- I don't want to get specifically into mediation, but so far they've been successful.

So it's been successful mediation. I can't recall mediation where we've done that I've been involved in at the administrative level that we haven't been able to resolve the matter. So I think it's going to be a successful program.

»» : How many mediations have been there so far?

»» : I've been involved if like 3 or 4, I'd say like 3 or 4 at some level. I may be confusing a conciliation with a mediation too. Because someone they just brought this the matters, sometimes the solicitors handling those, I'm talking about the ones at the agency level. So far I haven't had one that I couldn't resolve through mediation if a company was interested. And so we reach out to the

company for mediation. If we don't resolve it, after giving it a good try and involving our ombudsman and myself or whoever is in my role, because the director is involved directly in the mediation. Align with the head career official for the agency, which is Patty Davidson.

It shows that it's to show that OFCCP as an agency has made this decision at the highest level, everyone knows about it. We're going forward. So if we can't reach a resolution, then it's based on -- we refer it because. The whole idea of the mediation. If we do the mediation you can't resolve it, it gets referred. It's supposed to be automatic. Because the decision has already been made. We're always openminded. The idea is that typically it would be referred. The decision has already been made referred we're staying the referral to try one last time with the agency to resolve the matter.

»» : When you talk about referral, referral means going to to solicitor's office, is that correct?

»» : Yes, at the that point the solicitor reviews it and makes a -- the solicitor reviews it and makes a decision to file a claim or not. Consultants or lawyers will reach out to the solicitor directly. I will tell you that we are generally trying to solve the solicitor earlier, which is not only good for the agency, but good for workers and good for the company because we want to make sure whatever we're doing is consistent with law at every stage. So we've been involving the RSARS earlier. So generally the idea -- generally when we do the pre-referral mediation, there will be a RSOL there, regional solicitor. Oh hopefully the region solicitor, even maybe someone in the front Office of The solicitor, but it's still a agency mediation, the agency has a final decision. Once it's

referred then the solicitor's office has the final decision.

»» : And with the solicitor's office, a question came in, do you have a time period? Like you have 24 months for an audit before we come of age. Do you have the same type of expectation with the solicitor's office.?

»» : We don't the we don't have a specific number, but, yes, we do. We have been -- I've been engaged with Kate O'Scannlain with her leadership team, we've been trying to get the review process by the solicitor to be within a certain time frame, to be quicker, particularly for access cases. In particular. Because an access case we're not able to proceed with the matter, it could delay a case significantly, those are supposed to be expedited anyway by regulation. Those they've committed to reviewing were done quickly. The discrimination cases they want to make

sure they're bringing a case that deserves the full support of the U.S. Government and the Department of Labor. Even though they've been involved at our level. They're going to take their own independent look at it which is what I would do if I was the solicitor of Labor too.

But my hope is that typically they would support it, because we've involved them earlier, we're following their principles. I'm not interesting in pursuing cases that are not good cases, we're just using the weight of our position to get companies to agree to us even if they're not a good case, I'm not interested in that at all. I'm only interested in good, good cases that would be brought.

»» : Okay. So next we're going to move oh over to accessibility. This is two questions about the same thing. Number one, in the regulations and in the prior administration, for an accessible application process, it

was required and still is required for contractors to put an accessibility statement on the career site to direct people who have difficulty applying to call into organizations.

»» : Yes.

»» : To the organization, to an actual person, to an actual number is that something that is appropriate or can you provide a description of what OFCCP would now consider a model for accessible application crosses?

»» : That's a very good question. I like that a lot. Yes. We would work on that. I would like to be only to show a model of what a accessible were site would be, at least a best practice, we always have to be careful, if it's true guidance it might have to go through a very long process. So, I mean generally we state the legal requirement and give an example of a best practice, which

I'm open to doing, I think that's a good idea. But yes, the general idea is that, I have a lot of experience with accessible websites, it's not legal advice, I'm telling you from the agency's perspective what we're looking for. We would like to see it easily seen from when you access the web page for example. It should be clear where to go to apply accessibility. It would be fully accessible, in the sense that someone who is deaf or hard of hearing, or someone who is blind or low vision, or for a host of our disabilities, whereas a general practice, you provide accessibility features. Those people need to be provided. And then there should be a general statement of, if this doesn't work, how do you let us know? So you can engage with someone directly, typically like you said, a person, like a phone number, oh are a way to directly provide that information to someone who's going to immediately respond

so that they can be able to apply.. You know functionally, the main thing -- I'm not going to get into the specifics because I know there are different standards that applied, industry standards. The main functionality we're looking at is could somebody with a disability, generally be able to apply easily. It's not a barrier to employment, if it's a big challenge or it's unwelcoming, or hard to find, it's going to often lead to someone not applying. And also think thinking that this company is not very open to individuals with disabilities and I may not want to work here. We think federal contractors should be -- because you also have an affirmative action obligation, should be doing outreach to individuals with disabilities. You should have a model page, I often talk about when I would go on cruises, I used to go on cruises sometimes. I would look, because I take my daughter.

And we would look to see if they have an Autism at sea program. And what do they have on their website that shows that they care about people with Autism for example, or people with disabilities generally?

And that's where we went. I mean, the sad thing is that also limits your options because you're going -- you're going to want to go somewhere where you feel welcome. But hopefully one day everyone would have that program, an Autism at sea program for example.

»» : Yes, Craig, I think the question is being asked in part because, there's a cost involved that they have to change for example the applicant tracking system, or other processes. And for larger companies it may take longer. For smaller companies it may be easier depending on the systems and the processes. So if you can give any kind of guidance as to what you consider that would be very helpful.

Craig: Good point. I agree with you. First of all, I recommend you ask that to Jennifer Sheehy, I'll let her know that she's likely to get asked that. Two, we will work with ODEP to try to give some examples.

»» : Another question on disability, can you clarify if an Employee Resource Group is required under Section 503?

»» : That's a tough question, because no, it's not specifically required. But in the affirmative action obligation, the good faith efforts to have a 7 percent utilization rate and to remove barriers of employment to people with disabilities and to support them, an ERG or attentive group is helpful. And the best companies have them. An attentive group is helpful. The best companies have them. We put them as a best practice because we recognize there's costs to them sometimes. I'm not sure

it's a significant cost to a Employee Resource Group. But we understand that there are costs to some of these.

And we're not requiring it as a matter of law, what's required is that you do outreach and affirmative action to people with disabilities and make good faith effort to reach the 7% utilization rate and not discriminating of employment against people with disabilities.

»» : This goes back to a question that came back when the NIHG met with you when we were able to be live and you were discussing it. Are there going to be letters of compliance with distinction? Is that part of your plan?

And what does that mean?

Craig: Typically it's companies that respond promptly, have even everything in place. The area of a 5023 have some of the best practice d -- the area of 5034 have some of the best practices of disability program, or disability

inclusion program. We'll be must be liking more on that, we've had internal guidance, but we're going to be publishing he can terms guidance on that. So stay tuned. But that's generally what it means.

»» : Okay, last question on the disability side, do you support the customized employment model by ODEP?

Craig: First of all, I support anything that ODEP does, basically. Just so you know. (Laughter). I love ODEP. And they've been a real partner of ours. And so, what do you mean specifically by the customized employment model?

»» : Well that's the question. Do you recommend that as a best practice for organizations and would that be counting towards any kind of review in terms of best practices?

Craig: Wait one second. Give me one second on that. I want to check if we've taken a position on that. Do you

have another one, give me a second on that one.

»» : I have another one. We're going to religion question. This happens more often than not. If there's work available based on schedule and the applicant agrees to work a certain schedule prior to hire, and then after hire they have issues with the schedule because of religion. Is there any additional obligation to allow for a change to schedule if that day is critical based on workflow for religious accommodation.

Craig: Generally, yes. You're supposed to -- it's interesting we had a case with -- I understand it's in a different area, disability accommodation. But where I remember I got called someone told me well this company seem to think that they just have to make the accommodation right at the beginning, and once they make the accommodation, they never have to reconsideration that. I was like, how

can they think that? What if something happens and the person has another accommodation they need? Or what if the disability impacts their employment more? Or something happens to them that caused them to have an additional disability, you've always got to be open to requests for modifications of accommodation requests.

So that's true for religious accommodations too.

Having said that, there are generally federal contractors should be granting accommodation to the schedule, under the hypothetical you've given me, if this job can only be done you need someone on that day, you only have one person on this job, thus otherwise you will not be able to meet a requirement of the job, you've basically defined a example of when you don't have to grant an accommodation I would hope that the company would try to find a way to still grant that accommodation if possible. But at that point, it's

not unlawful. We recognize that even with either disability or religious accommodations, a company doesn't have to grant everyone. Sometimes they can be modified.

We understand the undue hardship law portion of that. But I will tell you, I've met a lot of companies that tell me -- sometimes it depends on their size too. I understand that. But tell me that they generally grant every request for accommodation as a matter of course. That's obviously the best practice to grant them.

I'm assuming here of course they're made in good faith the accommodation request. Any legal requirement to document them is present. Although I'll tell you, even there, typically the best practicing companies don't require you to come forward with documentation. They'll typically take your word for it. And usually it's only if it's a very expensive accommodation that they will might

require more. That's because most accommodation requests benefit the worker. So the increase of their productivity. No matter what, even if they're not required by law.

»» : Okay, Craig. If you take the question, I'm rereading the question. If we ask the question twice, if an applicant says I can do the job on the schedule you say, after they get hired says I can't do the schedule on the day based on my religion, and basically, the applicant has lied at the application process, how should -- how would you recommend employer deal with that situation?

Craig: Well, with the last scenario, I was assuming it was the only employee based on the way you said it, I thought. You can't meet a requirement. Of the job which is the basis for not granting an accommodation, the person, it's the only person, they need to work on that day, they

were hired to work on that. And you have no one else who can replace them. I understand that. That's a very unique situation. Now the situation you're raising which is that, because typically let's say you put aside the lie part. I would say you have to grant the accommodation.

Assuming you're able to fill it with someone else.

That's generally your duty as a federal contractor, as long as it's a reasonable request, doesn't cause an undue hardship. You should grant it as a matter of course. But, this idea about lying, I mean I don't know. How do you know they're like?

»» : Oh, that happens a lot more frequently with applications than applicants these days. So just something to keep in mind.

Craig: If there's fraud, that's the basis of not to grant someone something. But it's just -- I'm hoping that

most of our rules are like the accommodation focus reviews is for like the 99% that aren't that, you know. So we're trying to just establish best practices. What I would do though if you're going to deny that for fraud or some reason like that or because they can't meet the minimum requirements of the job, although typically it's can't meet the minimum requirements of the job with an accommodation. But you've given a situation where it's the only person, and even then I would still consult a lawyer if I were you. I'm not giving legal advice. You should document the reason. That's very important. We're looking for that. Don't just deny it or say he lied. I mean, you should document the reason and explain what was told to you, why you hired the person, why its necessary for the job and so then when we come looking, and we ask you why did you deny this, it seemed pretty reasonable. You would explain to

us, show us that you documented it. And also it would be helpful to see that generally you granted those, except for in the case of fraud.

»» : Okay. So, we'll go onto the very last question. Before I ask that, did you find out whether --

Craig: I do, we accept ODEP in that. We support customized employment. That's something that you should raise in 503. We may even add that as a best practice. We support them in that. But it's not required by law.

»» : Okay. So the last question, this goes back to 2019 and this goes into a session that was talking about the compensation analysis and the fraud SSEG -- the broad SSEG that was raised in there that was very broadly scoped from administrative assistant all the way to the VP. Because that approach tends to bring in -- I'm just reading the question. Because that approach tends to show

statistical significance, has OFCCP taken a more standard approach of looking at more focused SSEGs or some of those situated employee groups when conducting compensation analysis, as opposed to the broad spectrum approach that was discussed in the 2019 NILG conference?

»» : I was at the 2019 NILG conference I thought that I had said we are seeking to do more limited analysis groups focused on similarly situated employees. So to the extent that was confusing or not said that way, that is our approach. The general, I'll tell you basically the principles. One, when we create a pay analysis group we're seeking to include similarly situated employees. That means we won't run broader diagnostic test. Maybe that's where you're talking about where we'll look at the worse force more generally to see if there's pattern and practice discrimination, but when you do that you have to be very

careful to control for every legit. Factor, nondiscriminatory, you also have to include interaction terms to make sure that you're really, you're not just assessing the general wage gap, because there's a general wage gap in this country that's significant, for example between men and women, the wage gap itself is not illegal, although it's something companies should be cognizant of and acting to try to mitigate, you know, in terms of it's impact. For example, like looking at prior pay. You know, we know based on the wage gap that that tends to hurt women more than men. Well, companies should be paying people based on the job that the person gets.

So you should be mindful of that and the best practice, and maybe even required by law, depending on where you are, is to -- because some jurisdictions have required this, no the to look at prior pay. But you should be paying people

based on the job and not just what they're last salary was.

So that's an example.

But anyhow, so if you control for all of the legitimate factors though that go to set pay, such as experience and other things, at that point, and you do the analysis, and you still see a three darned deviation gap between men and women generally at a company. A three standard deviation gap. That's pretty good information, that is something we may want to know. That maybe a descriptive statistic that's useful to support our case. But ultimately if we make a finding on a particular job title of job group, we need to use the smaller pay analysis group that's focused on similarly situated employees.

Or we need to use a cohort analysis or some other measure that's comparing similarly situated employees, that's where we can make a finding. So, you know, the main thing

I would say to everyone listening is, I'm fine with triaging. I'm fine with looking -- I support looking at companies to see do we have an issue here at all? Most companies by the way, we don't. So we'll look at it and say no, this is good. There's nothing here. But like if we're seeing some indicators either broad or narrow, ultimately, we may want to look at a particular pay analysis group or two or three and if we find a problem, then we're going to let the contractor know.

So, it's interesting because, one of our missions is to identify pattern practice discrimination, so me I'm more interested -- I mean I'm interested in anything, we are interested in a finding, but in terms of our mission, we're very interested if we find two or three pay in office groups across company that show a pattern and practice of discrimination instead of an anomaly, just one. Because

that is more indicative of a problem that requires the federal government's resources to address to fix. So, you know, that's one reason I like the IRCA program. Because it takes a broader view of the company. It looks at broader issues that we're seeing which is a company commits to addressing. Do you have any follow ups, Tony, I note that this is an issue of significance important?

»» : We'll be having a session on the compensation roundtable, and I think this will be part of the discussion. I know that Michael Aamodt will be presenting as well on compensation, I know that Bob LeJeunesse is also presenting on the special services he may go into that. So I don't think we need to go any further. I do appreciate it.

I wanted to say thank you very much, Craig. And I also wanted to say thank you, Bob and Patty for being here and presenting today. We really appreciate it. And I want to

thank the audience who stayed on this long to listen to these questions. I just want to remind you of a couple of things.

»» : Craig: Tony can I say one concluding remark? Do you mind before you close? I just want everyone to know we're very cognizant of the company with compensation discrimination, how it's looked at. Our goal is to get it right. Our goal is not to go in there and look at everyone then look at one person and look at everyone in company, and then find discrimination that doesn't exist. That is not our goal. Our goal is to use -- to establish in advance a general approach that's rigorous. Go in there, look at the company in a way that is reasonably predictable so a company can in advance, try to eliminate discrimination in the workforce, because that's ultimately our goal. To come in a way that's rigorous and consistent with title 7

principles, it's not just to do five different regression analysis and say ah-ha, on the fifth one we found something, it's to come in in a rigorous way, identify a problem, and then drill down to figure out where that specific discrimination is and remedy it.

I mean that's really our goal. I understand that's a lot of words and principles. And everyone's interested in well how does it actually happen on the ground? But I think you can see over the past year based on our results and our early resolutions that we've been successful in that regard. And I stand by my record on that. Lastly I want to tell everybody a quote I wanted to give because it's so important to me as the director with the first quote I ever told my colleagues here at OFCCP, let me pull it up. It applies to everyone on the call, I believe, its from Dr. Martin Luther king junior -- make a career of humanity,

commit yourself to the noble the struggle for equal rights
you'll make a better person of yourself, a greater nation
of your country and a finer world to live in" he said this
at the march for integrated schools April 18, 1959 it on
the MLK memorial, I did that, I go there and look at it.
I want to thank those that remained on the call in OFCCP
and the contractor community who have committed themselves
to have very important career. This quote defines that
mission. So thank you everybody, thank you, Tony. It's
always a pleasure working with you.

Tony: I really appreciate it. I will remind everybody
that next year 2021 when you able the travel and able to
be with people, we hope to see you in Nashville, August 1-4
at the Omni hotel in Nashville, it's going to be a great
conference. And then lastly, if my slide moves, I want to
thank all our sponsors. We had 14 sponsors this year to

help us support this free webinar series for you all. So
thank you very, very much. We do appreciate you all. And
with that, we will end the webinar. Thank you. (End of
webinar).

»» : Thanks everybody.