



December 8, 2014

VIA ELECTRONIC UPLOAD
FEDERAL eRULEMAKING PORTAL

Ms. Debra A. Carr
Director, Division of Policy and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
200 Constitution Ave, NW
Washington, DC 20210

Re: OFCCP NPRM: Government Contractors, Requirement to Report Summary Data on Employee Compensation (RIN 1250-AA03)

Dear Ms. Carr:

The OFCCP Institute (“The Institute”) submits the following Comment in response to the U.S. Department of Labor’s Office of Federal Contract Compliance Programs’ (“OFCCP” or the “Agency”) Notice of Proposed Rulemaking (“NPRM”) to invite comments on the amendment to 41 C.F.R. § 60-1.7 adding a requirement that certain Federal contractors and subcontractors submit a new “Equal Pay Report” (“EPR”), RIN 1250-AA03, published in the Federal Register on August 8, 2014.¹

Background on The Institute and The Consortium

The Institute is a national not-for-profit corporation that trains and educates Federal contractors and subcontractors (collectively “contractors”) in understanding and complying with their affirmative action and equal employment obligations.² The Institute helps contractors understand and effectively respond to and comply with the new complex and technology-based affirmative action and non-discrimination compliance obligations through training and education.

The Institute is submitting this Comment on behalf of a consortium of contractor

¹ Government Contractors, Requirement To Report Summary Data on Employee Compensation, 79 Fed. Reg. 46562 (proposed August 8, 2014).

² The OFCCP Institute is not affiliated with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs.

organizations that are representative of eight diverse industries, over 539,300 employees, almost \$280 billion in annual revenue and a total of 5,529 separate establishments (the “Consortium”).³

The Institute recognizes the responsibility of all employers, including contractors, to compensate employees in a nondiscriminatory manner and to eradicate compensation discrimination where it exists. We applaud all efforts to make the workplace free from all forms of discrimination and The Institute and its Consortium members support and practice nondiscrimination in compensation and in other terms and conditions of employment. To that end, we agree that the OFCCP has a proper role in well-designed and effective enforcement efforts that focus on compensation.

General Criteria Governing the NPRM

The Institute and the Consortium member companies have a long standing commitment to eliminating unlawful compensation discrimination in the workplace. Although The Institute recognizes that earlier this year the OFCCP was directed by the President to issue a proposed regulation on compensation data collection with specific requirements that must be met,⁴ The Institute respectfully questions the approaches and policy judgments reached by the Agency in the NPRM.

In 2013, the OFCCP rescinded the 2006 compensation standards⁵ and issued sub-regulatory guidance on Federal contractor compensation systems and practices.⁶ In this 2013 rescission, the OFCCP recognized that, for compensation, a “one-size-fits-all approach lacks analytic rigor and legal foundation. [The one-size-fits-all approach is] unlikely to be effective at distinguishing between contractors who are in compliance with [Executive Order 11246] and those who are not.”⁷ The Agency further remarked that:

[B]ecause there is so much variation in pay practices across industries, employers and types of jobs, investigating compensation discrimination requires considering evidence and data in context, which is the approach that federal courts have embraced when interpreting Title VII. It is not possible to specify in advance a single test, model or framework that accurately and fairly identifies discriminatory pay differences in every case.⁸

The OFCCP now has directly contradicted its own conclusions, and issued an NPRM that proposes a single measurement, or framework, to identify contractors who may not be in

³ See Consortium Survey Results, App. A.

⁴ Advancing Pay Equality Through Compensation Data Collection, Memorandum for the Secretary of Labor, 79 Fed. Reg. 20751 (Apr. 11, 2014).

⁵ Interpreting Nondiscrimination Requirements of Exec. Order 11246 with Respect to Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Exec. Order 11246 with Respect to Systemic Compensation Discrimination, 78 Fed. Reg. 13508 (Feb. 28, 2013).

⁶ OFCCP, *Directive 2013-03* available at http://www.dol.gov/ofccp/regs/compliance/directives/Dir307_508c.pdf.

⁷ 78 Fed. Reg. 13508, 13517 (Feb. 28, 2013).

⁸ 78 Fed. Reg. 13508 (Feb. 28, 2013).

compliance with Executive Order 11246 from those who are. Indeed, the “one-size-fits-all” approach included in the NPRM is directly contrary to the OFCCP’s fundamental conclusion that “[i]t is not possible to specify in advance a single test.”⁹ The OFCCP should remain consistent with its earlier assessments and follow the principle that “flexibility is critical because discrimination may be difficult to identify . . . [i]nvestigating and addressing compensation discrimination requires a rigorous fact-based assessment of a broad array of pay practices.”¹⁰ The contradictory approach of employing a single test for assessing compensation on which the NPRM is grounded is neither factually nor legally justified, nor is any attempt made to address this fundamental contradiction from the earlier conclusions.

This dichotomy is troubling. The issuance of a new requirement for contractors to submit summary data on compensation and to use that data to direct enforcement activities and encourage greater voluntary compliance must not inherently conflict with the Agency’s own historic approach to eliminating compensation discrimination. The current NPRM does just that.

The Presidential Memorandum of April 8, 2014,¹¹ in response to which the NPRM was issued, does not require the Agency to implement an enforcement and deterrence scheme in a “one-size-fits-all” manner. Rather, the Presidential Memorandum mandates only three considerations in developing the NPRM. First, to “maximize efficiency and effectiveness by enabling DOL to direct its enforcement resources toward entities for which reported data suggest potential discrepancies in worker compensation, and not toward entities for which there is no evidence of potential pay violations.”¹² Second, to “minimize, to the extent feasible, the burden on Federal contractors and subcontractors and in particular small entities, including small businesses and small nonprofit organizations.”¹³ Third, to “use the data to encourage greater voluntary compliance by employers with Federal pay laws and to identify and analyze industry trends.”¹⁴ In addition, OFCCP was directed to “avoid new record-keeping requirements and rely on existing reporting frameworks to collect the summary data,” and to “consider independent studies regarding the collection of compensation data.”¹⁵

One such independent study is the detailed and recently-issued National Academy of Sciences (“NAS”) report,¹⁶ which was requested by the EEOC, on the government’s collection of compensation data and the pursuit of enforcement actions. The NAS report’s recommendations included a pilot program and the enhancement of the government’s ability to retain highly confidential data.

⁹ *Id.*

¹⁰ 78 Fed. Reg. 13508 (Feb. 28, 2013).

¹¹ Advancing Pay Equality Through Compensation Data Collection, Memorandum for the Secretary of Labor, 79 Fed. Reg. 20751 (Apr. 11, 2014).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS. COMM. ON NAT’L STATISTICS, *Collecting Compensation Data from Employers* (2013), available at http://www.nap.edu/catalog.php?record_id=13496.

Further, the maximization of effectiveness and efficiency outlined in the Presidential Memorandum is also required by Executive Order 13563,¹⁷ which specifically mandates that federal regulations “promote predictability and reduce uncertainty . . . identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. [Regulations] must take into account benefits and costs, both quantitative and qualitative.”¹⁸ Executive Order 13563 also directs the OFCCP to consider integration in developing regulations and recognizes that “[g]reater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization.”¹⁹ Meeting these obligations promotes efficiency and facilitates sound compliance by contractors and is a critical concern to The Institute and the Consortium.

These are the criteria the OFCCP must meet in issuing these new regulations. The Agency has recognized that compensation is varied and that it is not possible to specify, in advance, a single framework that accurately and fairly identifies discriminatory pay differences. The Agency has also been directed to maximize efficiency and effectiveness, minimize burdens, encourage greater voluntary compliance, consider independent studies, and coordinate across agencies.

The Institute’s Comment identifies discrete alternatives and recommendations with respect to the NPRM that will enable the OFCCP to meet its obligations in implementing new compensation data collection procedures. As identified more fully below, these recommendations include using base pay instead of W-2 earnings in the EPR, calls for more definitive steps to protect confidential pay data received through the EPR, implementation of a safe-harbor provision or pilot program, and readjustments to the burden projections to reflect more realistic estimates for affected establishments and to provide a more reasonable time period to implement the EPR.

Comments on Specific Provisions of the NPRM

The NPRM Seeks a Result Beyond the Scope of the OFCCP’s Authority and Undermines the Integrity of the OFCCP’s Compliance Evaluations

1. Equal Pay Is Not the OFCCP’s Responsibility

The OFCCP enforces Executive Order 11246 in accordance with Title VII principles. The OFCCP does not enforce nor does it have authority to enforce the Equal Pay Act of 1963.²⁰ The intent and purpose of the NPRM is apparent from the start, in the very name of the report at issue: “Equal Pay Report.” The difficulty here is that “equal pay” is not part of the mission of the OFCCP or within its authority to enforce Executive Order 11246.

¹⁷ 76 Fed. Reg. 3821 (Jan. 18, 2011).

¹⁸ *Id.* § 1(a).

¹⁹ *Id.* § 3.

²⁰ 29 U.S.C. § Sec. 206 (1963).

The Mission Statement of the Agency is clear:

The purpose of the Office of Federal Contract Compliance Programs is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.²¹

This is derived from the text of Executive Order 11246, which provides the legal basis for the very existence of the OFCCP and its enforcement powers, and requires that contractors “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to . . . rates of pay or other forms of compensation.”²²

In these foundational documents, and in its enforcement practices for nearly 50 years, the OFCCP has demonstrated that its authority is limited to ensuring equal employment *opportunity*, not to creating equal *outcomes*. The OFCCP’s jurisdiction with respect to “pay” is narrowly constrained to remedying pay *discrimination*, using Title VII principles, and not in imposing an external notion of “equal pay”. As the pay disparities recently disclosed among the White House staff demonstrate, differences in pay may have nothing to do with illicit discrimination.²³ Experience, education, performance, and the multiple, varied factors and intangibles every employer rewards, and every supervisor can identify—ability, talent, follow through—contribute to the complicated matrix of components that are used to determine “pay.” The idea that the OFCCP will initiate audits and evaluations in the name of “equal pay” is profoundly contrary to the realities of the marketplace and to the limits of its own authority.

Furthermore, the goal of “equal pay” is not merely the product of the OFCCP’s named report; it is intrinsic to every element of the NPRM. The explicit assumption of the NPRM is that differences of pay between groups of employees and among employers are indicative of discrimination in compensation.²⁴ We do not believe that this is a complete or accurate understanding of compensation differentials.

This flawed assumption is the genesis of many difficulties that follow the proposed EPR. With the NPRM, the OFCCP seeks (i) to arrive at a compensation standard for each industry; (ii) to define a standard pay differential for each protected group within each industry; (iii) to publish lists showing the standards and making it possible to calculate pay differentials of contractors within each industry; and (iv) on the basis of the existence of pay differentials within and between groups of employees, to initiate compliance evaluations of contractors “with pay gaps

²¹ U.S. DEP’T OF LABOR, *OFCCP Mission Statement*, <http://www.dol.gov/ofccp/>. (last visited Nov. 25, 2014).

²² Exec. Order No. 11246, as amended, 30 Fed. Reg. 12319 (Sept. 24, 1965).

²³ See Mark J. Perry, *February 20 is “White House Equal Pay Day”*: *The date in 2014 women must work to earn what men earned in 2013*, AEI IDEAS (Feb. 19, 2014) <http://www.aei-ideas.org/2014/02/february-20-is-white-house-equal-pay-day-the-date-in-2014-women-must-work-to-earn-what-men-earned-in-2013/>; *White House Daily Press Briefing by Press Secretary Jay Carney* (Apr. 7, 2014), <http://www.whitehouse.gov/the-press-office/2014/04/07/daily-press-briefing-press-secretary-jay-carney-040714>.

²⁴ See 79 Fed. Reg. 46562 *passim* (Aug. 8, 2014).

that are greater than the [industry] standard.”²⁵ We will discuss how and why the EPR and the data on which it is based are inherently inaccurate; at this early point, nonetheless, it is crucial to understand that as it is presented by the OFCCP, the NPRM creates a profound dilemma for contractors. Even the most compliant contractors who wish to be spared the expense and disruption of an audit, despite knowing that neither the data nor the inferences drawn from the data begins to simulate their compensation systems, will find that there is but one way out: meet a pay gap “standard” that is artificial, inaccurate and unrepresentative. As a practical matter, under the NPRM’s approach, contractors will be compelled to make unwarranted adjustments to achieve “equal” pay in order to minimize the likelihood that they will be subjected to the burdens and costs resulting from an unjustified compensation audit by the OFCCP. Such results far exceed the OFCCP’s jurisdiction and its legitimate role in addressing discrimination and affirmative action by attempting to override the legitimate market factors that contractors follow to determine compensation in the U.S. labor market.

As noted, The Institute and the Consortium members do not tolerate employment discrimination in any form. The members of this Consortium have devoted tens of millions of dollars and thousands of hours to meeting and exceeding the goals of Executive Order 11246 and will continue to do so. However, each understands and deals with the countless variables needed to design and administer a compensation system that is nondiscriminatory and responsive to internal needs and market realities.

The idea that the “standard” to be created by the inherently-flawed data and results identified by the NPRM and the “gaps” derived from that misleading data will form the basis of OFCCP audits is troubling. In what follows, we will address with great particularity how the NPRM fails to recognize the legitimate complexity and variability of the many factors that comprise the complex and varied compensation systems of the thousands of contractors affected by the NPRM. But at the root of all our concerns is this: the OFCCP has no authority to impose equal pay on contractors or to infer discrimination from mere differences in pay.²⁶

2. *The Purposes to Be Served by the EPR Undermine the Integrity of OFCCP Audits*

a. “Deterrence” is an unjustified and amorphous misuse of the EPR

The first purpose for the EPR identified in the NPRM is its “deterrent effect.”²⁷ However, the means of achieving this purpose are not worth the costs to the Agency.

First, it is important to understand just what is to be deterred—and why. The OFCCP’s only licit purpose is to deter violations. But the NPRM is explicit in stating that a pay gap is *not* a violation and may not even be indicative of a violation.²⁸ As that is the case,

²⁵ *Id.* at 46571.

²⁶ The fact that the OFCCP does not enforce the Equal Pay Act of 1963, 29 U.S.C. § 206, is perhaps the most obvious indication as to why the OFCCP’s efforts are outside the scope of its authority. Further, as noted, the EEOC has announced its intent to act in this sphere. Thus, the NPRM not only exceeds the OFCCP’s authority they also pose the real threat of needless, duplicative regulation in violation of Executive Order 13563.

²⁷ 79 Fed. Reg. 46562 (Aug. 8, 2014).

²⁸ *Id.* at 46572 (“That a contractor departs from the metric or has an absolute pay gap of a particular size is not sufficient evidence to find a pay discrimination violation.”).

and in light of the inherent and unavoidable flaws in the data, in the standard to be derived, and in the gap that will be generated, there are serious concerns that the main purpose of the NPRM will not be achieved.

b. The EPR Will Not Reveal a Valid Basis for Audits

Although the OFCCP advocates public disclosure of pay gap data as a means to “deter” such gaps, the real incentive to compel contractors to change their compensation systems to achieve the Agency’s version of “equal pay” is the threat of an audit.²⁹ As stated in the NPRM, “[t]hose contractors and subcontractors who report patterns with the greatest deviation from the applicable standard would have the highest likelihood of selection for further investigation.”³⁰ However, the OFCCP itself has repeatedly stated in the NPRM that the EPR is not a substitute for a valid analysis.³¹ More specifically, the NPRM states “OFCCP will collect and analyze contractor summary compensation data to establish objective industry standards for identifying *potential* discrimination in employee compensation.”³²

Unlike using a valid analysis, extreme caution must be taken in interpreting these EPR compensation ratios as they do not control for such factors as job title; salary plan, grade, or step; employee experience and performance; or market value.

If a contractor establishment has a lower salary ratio than another, this does not imply that the contractor establishment is doing something worse than another contractor, much less that unlawful discrimination in pay has occurred. To demonstrate this point, imagine that there are two engineering contractors, each with nine employees in the “Professionals” level EEO-1 job category. Contractor A has six engineers and three customer service analysts whereas Contractor B has two engineers and seven customer service analysts. Consistent with the market, all engineers receive a salary of \$100,000 and all customer service analysts receive a salary of \$60,000. Hypothetically, assume further that the OFCCP has published an engineering industry gap of 90% for EEO-1 job category 2 “Professionals”.

As shown in Table 1 below, although every engineer and every customer service analyst is paid the same, Contractor A has a lower salary ratio for sex than Contractor B because Contractor A employs more engineers than Contractor B. Further, engineers are both paid more and have a higher percentage of males than do customer service analysts, both for the contractors and for the nation as a whole. Thus, the difference in the two hypothetical salary ratios is a reflection of the types of jobs in each EEO-1 job category rather than a reflection of discriminatory pay policies.

²⁹ *See id.*

³⁰ *Id.*

³¹ *See, e.g.,* discussions at *id.* at 46574.

³² *Id.* at 46563 (footnote omitted) (emphasis added).

Table 1. Example of Two Hypothetical Departments with Different Salary Ratios for Sex

Contractor A		Contractor B	
Engineer (male, \$100,000)		Engineer (male, \$100,000)	
Engineer (male, \$100,000)		Engineer (female, \$100,000)	
Engineer (male, \$100,000)		Customer Service Analyst (male, \$60,000)	
Engineer (male, \$100,000)		Customer Service Analyst (male, \$60,000)	
Engineer (male, \$100,000)		Customer Service Analyst (male, \$60,000)	
Engineer (female, \$100,000)		Customer Service Analyst (female, \$60,000)	
Customer Service Analyst (male, \$60,000)		Customer Service Analyst (female, \$60,000)	
Customer Service Analyst (female, \$60,000)		Customer Service Analyst (female, \$60,000)	
Customer Service Analyst (female, \$60,000)		Customer Service Analyst (female, \$60,000)	
Male Average Salary	\$93,333	Male Average Salary	\$70,000
Female Average Salary	\$73,333	Female Average Salary	\$68,000
Salary Ratio	78.6%	Salary Ratio	97.1%

In this scenario, in order to avoid scrutiny by the OFCCP and an inevitable compliance evaluation, Contractor A would be forced to “close the gap.” The only way to achieve this objective would be to disregard all established pay practices and applicable market rates and arbitrarily increase the salaries of the two female Customer Service Analysts. This would not only be counterproductive and inconsistent with the contractor’s objective pay policies, but also in fact could put them in violation of Executive Order 11246, Title VII by making unjustified adjustments.³³ Clearly, in this scenario, there is absolutely no basis to make any sort of adjustment or remedy, yet the contractor is effectively compelled to make such adjustments to avoid the significant costs and burdens of an audit and scrutiny by the Agency.³⁴

c. Targeted Evaluations Undermine the Integrity of the Audit Process

It is not disputed that most of the audits undertaken by the OFCCP using its current, neutral method of selecting audit subjects uncover very few pay violations. In fact, in FY 2013—the latest year for which OFCCP’s enforcement data are known—the OFCCP conducted approximately 4,000 compliance evaluations and found pay violations in less than 1% of all audits.³⁵ More specifically, the OFCCP identified a total of three women in the entire United States whom the Agency determined to be “underpaid.”³⁶ However, rather than drawing the obvious conclusion that contractor compliance is widespread and violations rare, the Agency is convinced that collecting flawed data will reveal a trove of discrimination.

³³See *Ricci v. Destefano*, 557 U.S. 557 (2009). See also Consortium Survey Results, App. A. 100% of Consortium survey respondents reported that if they made salary adjustments based solely upon the results of the Equal Pay Report, they felt they could run the risk of a Title VII claim, including a reverse discrimination claim.

³⁴ See Consortium Survey Results, App. A. 85% of the Consortium survey respondents reported anticipation that it will face outside pressure to make salary adjustments based upon the differential between its company’s results and the published industry standard (if published).

³⁵ “Update on Contemporary OFCCP Enforcement: A View from 2013 Settlement Data,” Presentation by David Cohen, President, DCI Consulting Group, Inc., App. B.

³⁶ *Id.*

Even leaving aside the fact that the data to be collected provides an inaccurate picture of a contractor's compensation system, the idea of using this data to target audits threatens the integrity of the entire audit process and will ultimately lead the OFCCP to conduct unnecessary and burdensome audits.

Throughout the years, the OFCCP repeatedly has been accused of "targeting" particular contractors and the OFCCP's consistent defense is that its selection system was "neutral."³⁷ Despite the suspicions of many contractors, this neutrality has been the principle means of providing integrity to the audit system. This neutrality is now being abandoned and there will be an inevitable loss of integrity to the audit system.

As cited above, the OFCCP states that those contractors with the "greatest deviation from the applicable standard" would be the most likely to be audited based upon OFCCP's assumption that a greater deviation is correlated with a violation. Will the Agency conduct a validation study and share the results that will support this assertion? If it does not, and the OFCCP's refusal to disclose its criteria for audits in the past offers little hope of disclosure, then the doubts among the contractor community will persist, the fear of reprisals for challenging agency enforcement will expand, and the integrity of the audit system will be subverted. In this atmosphere, voluntary compliance, which has been the treasured hallmark of affirmative action, will itself be threatened.

We question whether any possible gains from targeted audits have been balanced against the inevitable losses. We are deeply concerned by the full range of costs of using inaccurate data in the name of an unauthorized purpose to seek an illusory goal of identifying discrimination. In pursuing this goal, we ask if the Agency has properly measured the burden on the contractor community and also the loss of the OFCCP's neutrality. We propose that the EPR should not have a determinative role in initiating audits that it has been given in the NPRM.

The Use of W-2 Earnings and the Definition and Calculation of Hours Worked

1. Annualized Base Pay, rather than W-2 Earnings, Should Be Used

a. W-2 Earnings Are Over-Broad and Will Yield Inaccurate Results

The proposed EPR mandates that contractors report W-2 earnings rather than annualized base pay. The stated goal of the NPRM is to aggregate the data with peer employers by industry to construct objective industry standards.³⁸ However, the use of W-2 earnings will create completely meaningless and uninterpretable results.

The creation of industry standards requires that the data subject to aggregation be comparable data. For a meaningful analysis in which "pay" is being compared among different

³⁷See, e.g., *United States v. Entergy Corp.*, No. 14-01644 (E.D. La. 7/17/14); U.S. DEP'T OF JUSTICE, *Justice Dep't Files Lawsuit Alleging Violations of Federal Law and E.O. by Fed. Contractor* (July 17, 2014), available at <http://www.justice.gov/opa/pr/justice-department-files-lawsuit-alleging-violations-federal-law-and-executive-order-federal>.

³⁸ 79 Fed. Reg. 46562, 46571 (Aug. 8, 2014).

entities, the data must be standardized so that a comparison is made of “apples to apples.” Simply put, the analysis of W-2 earnings as proposed will not work because the underlying assumption, that W-2 earnings represent all forms of compensation and will therefore provide an equal analysis, is flawed.

The definition of “compensation” used by the IRS, which defines the funds included in W-2 earnings, is extremely broad, and the types of earnings reported in W-2 data vary significantly from employer to employer based on benefit programs and compensation structures. Many of the items listed in W-2 earnings have nothing to do with “pay” as normally construed by the OFCCP. By way of illustration, the following is a partial list of earnings included in the IRS definition of compensation:

- Base pay
- Over-time
- Allowances and reimbursements - (including travel, transportation, moving or other business expense allowances or reimbursements)
- Advance commissions
- Signing bonuses
- Retention bonuses
- Performance bonuses
- Equity adjustments
- Back pay awards
- Employee achievement awards
- Differential wage payments
- Government cost-of-living allowances
- Nonqualified deferred compensation plans
- Notes received for services
- Severance pay
- Profit-sharing
- Accrued leave payment
- Outplacement services
- Sick pay
- Educational Assistance (if applicable)
- Group-term life insurance³⁹

Many of the items listed in W-2 earnings are solely a function of employee choice with no employer involvement, are solely a function of employer largesse, are unique to a particular circumstance and will not be repeated in subsequent years and are variable by definition (awards, bonuses). Consider the following scenarios that would not be accounted for in the EPR because of its reliance on W-2 earnings:

- The use of W-2 earnings does not account for and differentiate between those employees who are eligible for certain types of compensation from those that are not eligible. For example, within a broad EEO category you may have some jobs that receive commission or are bonus-eligible and others that are not.
- The use of W-2 earnings does not account for those employees who voluntarily choose to participate in certain types of incentive pay:
 - Some employers may offer tuition reimbursement or profit-sharing, and some other employers may not.

³⁹ U.S. INTERNAL REVENUE SERV., *5. Wages, Salaries and Other Earnings*, <http://www.irs.gov/publications/p17/ch05.html> (last visited Dec. 1, 2014).

- One employee may choose to take advantage of an offered tuition reimbursement program while another does not.
 - Some employees may be more willing to accept night overtime and therefore receive more compensation.
 - Employees may be provided with an option of additional compensation if they opt out of the company benefit plan because they have coverage through another source.
- The use of W-2 earnings does not take account of geographic differentials. Both the EPR and Affirmative Action Programs (“AAPs”) are establishment based. The OFCCP regulations require that an employee be included in the AAP for the establishment for which he or she reports.⁴⁰ Therefore, there will be situations where employees who work in locations across the United States would be included in the same EPR because of internal company reporting requirements. Two people doing the same job where one works in New York City while the other works in a rural community typically would be paid differently due to geographic differentials. The EPR would not account for this.

Finally, as can be seen from the variety of elements that constitute W-2 income, there is no likelihood that any two contractors provide the same elements of income for their employees. Therefore, W-2 income offers no opportunity to compare “apples to apples.” Thus, an aggregate of annual W-2 earnings would necessarily yield results that are invalid and will not achieve the purposes identified in the NPRM. The above are only a handful of the hundreds of additional scenarios that demonstrate that W-2 earnings are not a valid data point of comparison for the purposes of constructing objective industry standards. In fact, we have conducted numerous data simulations based upon the arguments addressed herein that come to this same conclusion.⁴¹

Due to the instability of the data discussed in the previous examples, the EPR would create erroneous results, which is the reason why NAS and other professional organizations use base pay as the basis of comparison for determining wage gaps.⁴² Base pay offers a common comparator among all contractors, which is something that W-2 earnings cannot achieve. Base pay is the only standardized data point that can provide meaningful calculations for what is envisioned in the NPRM. Consistent with other types of similar reports and analyses, we strongly recommend and urge the OFCCP to modify the NPRM to require the reporting of annualized base pay as the standardized compensation data point.

b. Base Pay Is Less Burdensome on Contractors

In addition to creating a more accurate data analysis tool, utilization of annualized base pay will also be significantly less burdensome on contractors. As discussed in other portions of this Comment,⁴³ using W-2 earning requires integration of contractors’ HRIS and payroll systems, which will cost contractors significant burden hours because it will require contractors

⁴⁰ 41 C.F.R § 60-2.1(d) (Nov. 13, 2000).

⁴¹ See Data Simulations and Conclusions, App. C.

⁴² See NAT’L RESEARCH COUNCIL OF THE NAT’L ACADS. COMM. ON NAT’L STATISTICS, *Collecting Compensation Data from Employers* (2013), available at http://www.nap.edu/catalog.php?record_id=13496.

⁴³ See *Infra* Section Three “EEO-1 Roster Snapshot and W-2 Earnings.”

to match year-end W-2 data with EEO-1 snapshot data; two data elements that are not identical and housed in separate systems.⁴⁴ In contrast, employees' annualized base pay can be reported out of contractors' HRIS, and 100% of the Consortium survey respondents reported that annualized base pay is housed in HRIS and would be easier to generate than W-2 earnings.⁴⁵ The use of annualized base pay will allow for the point-in-time report pulled for EEO-1 purposes to also include the employees' annualized base pay. Accordingly, the use of annualized base pay solves the IT integration issues as well as the host of issues related to the timing of the reports—both of which are explored in this Comment.

c. Use of Base Pay Does Not Preclude Review of All Forms of Compensation During Compliance Reviews

We recognize that base pay is not the sole form of compensation paid to employees and that a proper review of a contractor's compensation system may require the review and analysis of all forms of a contractor's compensation. However, that is separate and distinct from the purpose of the EPR. The EPR is not intended to be a comprehensive compensation audit tool.

Once an establishment is selected for audit, the OFCCP will be able to issue data and document requests to gain information regarding a contractor's other forms of compensation if justified by the audit results. In fact, the OFCCP recently released and has begun to implement its new Itemized Listing, which asks contractors to submit other forms of compensation above and beyond base pay.⁴⁶

2. *The Proposed Method for Calculating Hours Worked for Exempt Employees Will Yield Inaccurate Results*

The use of W-2 earnings also creates the need to include the total hours worked by an employee in the EPR so that, in theory, the W-2 earnings can be divided to determine a standardized rate. The OFCCP has stated the following as it relates to hours for exempt level employees: "For salaried workers, contractors should provide actual hours of work if the contractor records actual hours. This is required for nonexempt employees but is not required for exempt employees. If contractors do not have actual hours worked data, they may default to 2080 for full-time and 1040 for part-time."⁴⁷ This language provides only three options for contractors to report the hours worked for their exempt employees: 1) actual hours; 2) 2080 for full-time; or 3) 1040 for part-time. If not using actual hours, the NPRM provides employers with the additional option to adjust the 2080/1040 figures for partial year employment based on date of hire or dates of absences (*e.g.*, vacation or leave).⁴⁸ Although adjustments for partial years are permitted, the adjustments are made from the same flawed starting point of either 2080 or 1040 hours, as discussed below.

⁴⁴ See Consortium Survey Results, App. A.

⁴⁵ See *id.*

⁴⁶ See OFFICE OF INFO. AND REGULATORY AFFAIRS, OFFICE OF MGMT. AND BUDGET, *OFCCP Recordkeeping and Reporting Requirements – Supply and Service*, http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201104-1250-001&icID=13735 (last visited Dec.1, 2014).

⁴⁷ 79 Fed. Reg. 46562, 46578 (Aug. 8, 2014).

⁴⁸ *Id.* at 46579.

Using actual hours is not a realistic option for most contractors because they do not have complete and accurate records of all hours worked by exempt employees. Further, using either 2080 or 1040 hours for exempt employees fails to take into consideration the vast array of compensation structures and alternative work schedules available in the modern workplace. All the options fail because of the common flawed assumption that exempt employees work a fixed or limited number of hours in *any* period. As a result, each of the proposed options creates significant false reports of wage gaps. Furthermore, the existence of multiple modes of calculating “hours worked” necessarily means that the data sets will not be comparable, which totally undermines their usefulness for determining industry-wide standards.

a. The Vast Majority of Federal Contractors Do Not Maintain Actual Hours

The OFCCP wrongly believes that “many contractors will be able to provide actual hours worked even for exempt employees.”⁴⁹ This assumption is based on the obligations imposed on employers under the Affordable Care Act (“ACA”), which mandates that employers use one of three methods of calculating the hours worked by an exempt employee by: (a) using actual hours worked; (b) using a days-worked equivalency whereby the employee is credited with eight hours of service for each day for which the employee works; or (c) using a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee works.⁵⁰ The OFCCP’s “belief” that most contractors will record actual hours under the ACA requirements ignores the fact that actual hours is only one of three permissible calculations.

In stark contrast to the OFCCP’s belief, the survey conducted of the Consortium members—which includes contractors employing a total of more than 539,300 employees—shows that only 15% of survey respondents track the hours of exempt employees.⁵¹ For example, the billable hours of certain exempt employees may be tracked but the non-billable hours are not recorded. Accordingly, the vast majority of contractors will not have records of the actual hours worked for exempt employees and, therefore, the NPRM must provide a meaningful method for estimating the total hours worked for exempt employees who work part-time.

Lastly, there is absolutely no correlation between a W-2 earning and hours worked for exempt level employees. Determining the standardized hourly rate and wage gap using hours worked as the denominator is of little probative value.

b. Reporting 2080/1040 Hours is Not an Accurate Estimate for Exempt Workers

The fundamental problem with the estimated work hours as proposed in the NPRM is the assumption that exempt employees work a fixed number of hours. This is particularly demonstrable when dealing with exempt part-time employees.

The use of 1040 hours for all part-time workers assumes that all part-time employees work half-time, and in fact, well over the majority of the Consortium survey respondents

⁴⁹ *Id.*

⁵⁰ *Id.* (citing 26 C.F.R. § 54.4980H-3). Notably, while the OFCCP cites to the ACA calculation options in support of its belief that most contractors will record actual hours worked, the OFCCP failed to adopt the ACA calculation options.

⁵¹ Consortium Survey Results, App. A.

reported that 1040 hours is not indicative of part-time work at their organization.⁵² This assumption ignores the vast array of alternative work schedules that may be provided to employees. Importantly, using a single hours estimate for all part-time employees fails to account for salary adjustments based on a percentage of the reduction of work and, thus, does not accurately reflect the hours worked or compensation levels. This will create false wage discrepancies.

For example: Employee A and Employee B work in the same position earning \$100,000 per year. Employee A chooses to work part-time working four days per week, so Employee A’s salary is pro-rated to \$80,000 per year. Employee B chooses to work part-time working three days per week, so Employee B’s salary is pro-rated to \$60,000. As illustrated in the table below, using the blanket assumption of 1040 hours for all part-time exempt employees does not provide a meaningful analysis. Although both Employee A and Employee B are paid equivalent salaries based on the percentage of reduction in their work schedules, using an estimate of 1040 hours shows a significant discrepancy in the hourly equivalent of their wage rates.

Table 2: Comparison of Part-Time Employee Compensation Without Hours Controlled

	W2 - Earnings	NPRM Estimate	Hourly Rate
Employee A	\$80,000	1040	\$76.92
Employee B	\$60,000	1040	\$57.69

As illustrated above, if a contractor adopts this NPRM option, it must report 1040 hours for all part-time employees. This will, inevitably, provide the OFCCP with meaningless data that cannot be relied upon to produce the desired objective industry standards. In light of the various Federal and state laws that mandate flexibility in the workforce as a reasonable accommodation, it is illogical for the OFCCP to state a blanket assertion that all part-time employees work the same schedule.

Consider another situation; this one where there are only two full-time exempt/salaried employees, both of whom are in the same job title, in EEO-1 category 2 “Professionals.” The male employee has been employed for the entire calendar year while the female employee is hired on the date of the snapshot and then *voluntarily leaves* the company after one month of service. As shown in Table 3 below, using *base pay* information yields the true wage gap of 1.00. In other words, the two employees are *equally* compensated.

⁵² Consortium Survey Results, App. A.

Table 3: Actual Pay Gap

Employee	Sex	Title	FLSA Status	Annual Salary
Employee A	Female	HR Generalist	Full-Time	\$50,000
Employee B	Male	HR Generalist	Full-Time	\$50,000

Pay Gap = 1.00 (that is, no differential)

However, the EPR instruction manual gives employers the option of defaulting the full-time salaried level employees hours to 2080. Considering the same example as above, Table 4 demonstrates how the EPR using pay adjusted for actual hours worked would yield an inaccurate and thoroughly misleading pay gap of .07.

Table 4: EPR Pay Gap

Employee	Days Worked	Actual Hours Worked	W-2	EPR Reported Hours	EPR Calculation	EPR Hourly Rate
Employee A	1 Month	160	\$3,844.80	2080	\$3,844.80/2080	\$1.85
Employee B	Full Year	2080	\$50,000.00	2080	\$50,000/2080	\$24.04

EPR Pay Gap = .07

As demonstrated above, utilizing W-2 earnings and assuming that all employees work for the entire calendar year may be an inaccurate assumption that leads to erroneous EPR results. The use of base pay avoids this error and would provide a more appropriate outcome for analyses.

Finally, although the NPRM allows for adjustments related to partial year employment, the same error as demonstrated in the examples is embedded in the partial year option. The misleading results that occur with the above examples would occur using any fixed number of hours for any period (*e.g.*, 800 hours for 20 weeks; 1400 hours for 35 weeks, etc.). Furthermore, since contractors would have to calculate individual data sets for each partial year employee with no increase in the resulting accuracy of the calculation, it is highly unlikely that any contractor would use the partial year option, which will cause further inaccuracies in the data. This leads to continued data ambiguity.

By failing to provide uniform and accurate hours reporting requirements, the EPR will fail to provide standardized data that can properly be used to construct objective industry standards.

c. Use of Annualized Base Pay Will Eliminate Hours Estimate Issues

The sole purpose of requiring the hours worked to be reported on the EPR is to be able to determine an estimated hourly rate for comparison purposes. Adding to the value of the

recommendation that annualized base pay be used instead of W-2 earnings is this: the use of annualized base pay will eliminate the need to include “hours worked” as part of the EPR.

d. Using Base Pay Will Achieve the Goals of the Presidential Memorandum.

An additional reason for using base pay rather than W-2 earnings in the EPR is that doing so would more readily achieve the goals set out in the Presidential Memorandum.⁵³

In summary fashion, those goals are to maximize the efficiency and effectiveness of the Agency’s enforcement efforts, to “minimize, to the extent feasible, the burden on Federal contractors and subcontractors,” and “to encourage greater voluntary compliance by employers.”⁵⁴ We suggest that by substituting base pay for W-2 earnings each of these goals will be advanced.

With respect to efficiency and effectiveness, we are certain that the examples shown above demonstrate that not only will base pay provide a common database, it will also reduce or eliminate the variety of errors inherent in the W-2 earnings information. There is no better definition of efficiency or effectiveness. With respect to burden, by simply using an easily available data set, one familiar both to the contractor and the OFCCP, the numerous burdens on the contractor community will be significantly reduced. A community with an established record of compliance needs little additional incentive; nonetheless, adopting a simpler, clearer, more accurate mode of response cannot but assist contractors, in and out of this Consortium, to comply with alacrity.

3. *EEO-1 Roster Snapshot and W-2 Earnings*

The NPRM would require a contractor to maintain the exact snapshot used to develop the annual EEO-1 report for the EPR.⁵⁵ This snapshot would then be maintained to ultimately match those employees who were included in the EEO-1 report filing with their corresponding W-2 earnings.⁵⁶ Therefore, those employees on a payroll during any other point during the year (*e.g.*, an employee hired on the day after the snapshot) and receiving a W-2 would not be included in the final EPR database. There are multiple issues with this approach that have not been considered and incorporated into the NPRM.

First, the EEO-1 data is a snapshot in time and captures the job that an employee is performing at a single point in time. However, this use of a snapshot assumes that a workforce is static and would not include the normal movements that occur during the year. Such movements may include any number of personnel changes including promotions, demotions, transfers and reassignments. These types of movements can have a significant impact on the results of the data included within an EPR. As evidenced by the Consortium survey, 92% of contractors surveyed indicated it was common to have employees promoted, demoted or transferred from

⁵³ Advancing Pay Equality Through Compensation Data Collection, Memorandum for the Secretary of Labor, 79 Fed. Reg. 20751 (Apr. 11, 2014).

⁵⁴ *Id.*

⁵⁵ 79 Fed. Reg. 46562, 46570 (Aug. 8, 2014).

⁵⁶ *Id.*

one job category to another during the course of a year.⁵⁷ In other words, survey respondents indicated internal movements and promotions to management positions from within the organization were a common occurrence.

Consider the scenario where an individual employee is making \$40,000 a year as an administrative assistant as of the date of the EEO-1 snapshot. However, this employee subsequently gets promoted into a sales position the day after the snapshot, and is now eligible for a commission. During the fourth quarter of the year, the employee closes a major contract and is awarded a \$100,000 commission. As proposed in the NPRM, this employee's W-2 earning would be \$140,000 and would be counted and compared against non-commissioned employees in the "Office and Clerical" EEO-1 job category. Clearly, this would lead to erroneous results in the contractor's EPR and is not accounted for in the NPRM.

The other issue not accounted for by the OFCCP is the complexity and cost associated with the "matching" of the EEO-1 employee snapshot during the 3rd quarter and the W-2 date compiled in the first quarter of the following year. In order to match the exact employees in the EEO-1 snapshot with the W-2 earnings contractors will be required to create a new data system to conduct the "match". For a majority of contractors, the EEO-1 employee snapshot comes from the HRIS, whereas the W-2 data comes from the payroll system.⁵⁸ Accurately matching the two databases would require a new software system that would be able to match an employee from the EEO-1 employee snapshot to an employee in the W-2.⁵⁹ This added burden and requirement is not accounted for in the burden estimates and will require a significant amount of time and money during the first and subsequent years to accurately create a database for the annual population of the EPR.

To avoid these data issues and unnecessary additional burdens that have not been accounted for in the NPRM, the OFCCP should consider using the EEO-1 snapshot but only require the reporting of base/hourly pay.

The Use of EEO-1 Categories

In the NPRM, the OFCCP briefly discussed the history of the now rescinded Equal Opportunity ("EO") Survey (2000-2006).⁶⁰ The EO Survey was originally envisioned as a tool that would assist the OFCCP in identifying contractors that were likely to be out of compliance and included a section requiring contractors to report summarized compensation data by either AAP job group or EEO-1 job category.⁶¹ Ultimately, the EO Survey was rescinded, presumably because it failed to provide utility in identifying contractors who were not in compliance.⁶²

In its September 8, 2006 final rule rescinding the EO Survey requirement, the OFCCP

⁵⁷ Consortium Survey Results, App. A.

⁵⁸ See Consortium Survey Results, App. A.

⁵⁹ See *id.* 85% of the Consortium survey respondents reported that EEO-1 Report data and W-2 data come from two different systems and that W-2 data cannot be automatically pulled into the EEO-1 snapshot data fields, requiring them to develop new software to match the two files.

⁶⁰ 79 Fed. Reg. 46562, 46575 (Aug. 8, 2014).

⁶¹ 65 Fed. Reg. 26088 (May 4, 2000).

⁶² 71 Fed. Reg. 53032 (Sept. 8, 2006).

stated that it wanted to “more effectively focus enforcement resources and eliminate a regulatory requirement that fails to provide value to either OFCCP enforcement or contractor compliance”⁶³ and “better direct its resources for the benefit of victims of discrimination, the government, contractors, and taxpayers.”⁶⁴ The Agency concluded that the EO Survey “failed to provide the utility anticipated when the regulation was promulgated in 2000 . . . and is no longer of value to accomplish the objectives it was designed to address.”⁶⁵

One of the primary weaknesses of the EO Survey was the format for reporting compensation information, which was not conducive to a meaningful analysis. Accordingly, the OFCCP noted in the final rule rescinding the EO Survey that EEO-1 job categories are too broad to evaluate compensation data for similarly-situated employees.⁶⁶ Thus, the data collected through the EO Survey utilizing EEO-1 job categories could not be used to meaningfully assess potential discrimination. However, by using EEO-1 categories for the EPR, the NPRM replicates the problems of the rescinded EO Survey.

The 10 major EEO-1 job categories are “primarily based on the average skill level, knowledge and responsibility involved in each occupation.”⁶⁷ For the most part, these job categories are only used by contractors for filing annual EEO-1 reports, VETS-100 and VETS-100A reports, and in some cases, AAP development. EEO-1 job categories group together various job titles that are *not* used by contractors to establish compensation structure or policy.

For instance, the “First/Mid Level Officials and Managers” EEO-1 job category may include jobs such as “Marketing Managers,” “Human Resources Managers,” and “Computer and Information Systems Managers.” It is reasonable to assume that the market would establish different pay rates for these jobs because the vastly differing skills, knowledge, and abilities required for these jobs are valued differently in the marketplace and in different industries. Although it may be appropriate to group these three jobs together for EEO-1 report filing purposes, combining all three jobs for compensation comparison purposes is inappropriate by standards in the modern American workplace. In fact, the Consortium’s survey indicated that 100% of contractor respondents indicated they did *not* believe the proposed EPR would provide utility or meaningful conclusions about their compensation systems.⁶⁸

Further, it is inevitable that the use of EEO-1 job categories will inappropriately group and compare exempt and non-exempt employees together for comparison. For instance, the “Professionals” job category often includes both exempt and non-exempt level positions, such as “Aerospace Engineer” (often exempt), “Lawyers” (often exempt), “Recreation and Fitness Study Teachers” (sometimes non-exempt), “Human Resources Specialists” (sometimes non-exempt), and “Tax Preparers” (sometimes non-exempt). Given there is likely a mixture of exempt and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 53041.

⁶⁶ *Id.* at 53039.

⁶⁷ EQUAL EMPLOYMENT OPPORTUNITY COMM’N, *Equal Employment Opportunity Standard Form 100, REV. January 2006, Employer Information Report EEO-1 Instruction Booklet*, available at <http://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>.

⁶⁸ Consortium Survey Results, App. A.

non-exempt jobs within the same job category, conclusions about compensation within a company or industry may be tainted and unreliable.

EEO-1 job categories do not reflect the compensation groupings or practices of the contractor community. Therefore, it is reasonable to assume that providing summary compensation data by EEO-1 job category provides little utility to identifying possible discrimination in compensation. Moreover, historical evidence of the limited usefulness of the EO Survey, combined with the responses provided by contractors in the Consortium survey, indicate that using EEO-1 job categories are not an appropriate grouping methodology to draw inferences regarding compensation at an organization.

The Definition of Employee

The Institute and the Consortium appreciate the OFCCP's adoption of the EEO-1 definition of an "employee" for purposes of the EPR.⁶⁹ The Institute and the Consortium, however, find other OFCCP guidance on the definition of an employee for the purposes of developing an AAP to be inconsistent with the definition of an employee in the NPRM. As a result, we suggest, for the benefit of the contractor community and to bring the Agency's guidance into conformance, that the OFCCP remove its current Frequently Asked Question ("FAQ") addressing the definition of an employee.⁷⁰

Specifically, the OFCCP's current FAQ can be read to say that an employee who provides services on a casual basis for a specified time or for the duration of a specified job should be included in an employer's AAP. The definition of an employee for the purposes of the EPR says specifically that the term employee "shall not" include persons hired for these purposes. One individual within a contractor's workforce could appear within an AAP for a single establishment, but not on the EPR. This contradiction is confusing and creates an additional burden on contractors by requiring them to manage the inconsistency between the two definitions. As a result, we request that the OFCCP conform its FAQ definition of "employee" to that in the EPR.

The OFCCP Should Take More Definitive Steps to Protect the Highly Confidential Pay Data Collected in the EPR

The Institute and the Consortium support the OFCCP's efforts to identify and address compensation discrimination. However, we are concerned that the NPRM does not do enough to protect the sensitive and confidential compensation data collected by the EPR, which could lead to the unwanted and damaging disclosure of confidential and proprietary information.

Contractors consider pay information highly confidential and proprietary due to the competitive advantage that may be gleaned by a competitor from the unfettered review of a particular contractor's pay information. In addition, although contractors understand and respect

⁶⁹ 79 Fed. Reg. 46562, 46570, n. 70 (Aug. 8, 2014) (citing *EEOC, Equal Employment Opportunity Standard Form 100, Employee Information Report EEO-1, Instruction Booklet*).

⁷⁰ OFCCP, *Frequently Asked Questions Employer–Employee Relationship*, http://www.dol.gov/ofccp/regs/compliance/faqs/Employer-Employee_Relationship.html (last visited Dec.1, 2014).

an individual employee's option to freely discuss his or her compensation—that is a decision to be left to the employee. Otherwise, contractors have an obligation to protect the unwanted dissemination of this information. As such, we believe that the OFCCP needs to do more to ensure that there are appropriate protections in place for the data collected in the EPR.

The NPRM offers insufficient protection to employers with small employee samples and single-industry employers within a geographic area. For example, employers with few employees within specific EEO-1 categories will be compelled to reveal confidential, individualized pay by submitting the EPR due to their inability to aggregate employees within such EEO-1 categories. In fact, 100% of the Consortium survey respondents reported that at least one or more of their individual establishments that file an EEO-1 report have EEO-1 job categories with fewer than five individuals.⁷¹ Further, a single employer within a defined geographic area may also reveal proprietary, company-specific pay data by submitting the EPR due to the OFCCP's inability to aggregate the employer's compensation data with other local employers in the same industry.

Although the NPRM conveys the OFCCP's commitment to protecting the confidentiality of this pay information, those protections are not sufficient to protect the release of this proprietary information under the Freedom of Information Act ("FOIA"). The NPRM discusses that Exemption 4 of the FOIA may protect certain information disclosed in the EPR.⁷² However, Exemption 4 places the burden on employers to object to the production of confidential "trade secrets and commercial or financial information."⁷³ Employers should not bear the burden of ensuring the confidentiality of the compensation data collected for the EPR. Accordingly, to enhance the protection of the collected confidential compensation information and reduce the burden on employers, the OFCCP should adopt limitations and penalties comparable to those imposed on the EEOC by Section 709(e) of Title VII.⁷⁴ Section 709(e) specifically prohibits the EEOC's public disclosure of individual EEO-1 report data and information obtained by the EEOC in the course of investigating charges of unlawful employment practices under Title VII, and further provides criminal penalties for a violation of that section.

In addition to concern with protocols and protections to prevent the release of detailed compensation information externally, contractors are likewise concerned about the internal security of collected compensation data. We understand that the OFCCP intends to coordinate with the EEOC regarding the collection of compensation information; however, there is needed clarification as to what information, including the format, the OFCCP may choose to share with other federal and state agencies, including the EEOC.⁷⁵ In addition, the federal contractor

⁷¹ Consortium Survey Results, App. A.

⁷² 79 Fed. Reg. 46562, 46582-46583 (Aug. 8, 2014).

⁷³ 5 U.S.C. § 552(b)(4) (1997).

⁷⁴ 42 U.S.C. § 2000e-8(e) (1972) ("(e) Prohibited disclosures; penalties. It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.")

⁷⁵ In addition, we seek clarification from the OFCCP regarding *how*, exactly, the OFCCP would coordinate with the EEOC on compensation data collection.

community needs to have a better understanding of the measures the OFCCP will have in place to ensure the security and confidentiality of reported compensation information.

Reporting Frequency and Applicability to Small Establishments

1. Establishments Less Than 50

As proposed, the NPRM would require multi-establishment contractors to complete and submit a separate EPR for each of its establishments, *regardless* of the establishment's size.⁷⁶ This requirement is not consistent with the current EEO-1 and AAP reporting requirements. As specified in the EEO-1 reporting instructions, multi-establishment employers must submit a separate report for *each* establishment employing 50 or more employees and a separate report (Type 8) for each establishment employing fewer than 50 employees, *or* an Establishment List (Type 6 record), showing the name, address, and total employment for each establishment employing fewer than 50 persons.⁷⁷

The OFCCP regulations implementing Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 require that covered contractors with 50 or more employees develop a written AAP for each establishment and establishments with less than 50 employees may be included in other AAP at other locations.⁷⁸

Therefore, we request that the OFCCP exempt all establishments with fewer than 50 employees from submitting an EPR. This exemption will significantly reduce the burden on small establishments while at the same time provide more meaningful results for the OFCCP. With small sample sizes, the industry standards that would be published would be so unstable and unreliable that the OFCCP would have erroneous conclusions in regard to the industry. For example, an EPR for an establishment of five employees in five different EEO-1 categories could not yield meaningful results. In addition, the OFCCP should not report on certain industries within a region if that information could lead to the easy identification of the specific contractors within the region.

2. Alternative Reporting Requirement—Every Other Year

Due to the complexity and burden associated with the development and submittal of the EPR, we recommend that the OFCCP consider requiring contractors to only submit the EPR every other year. The percent of workforce change (*e.g.*, hires, terminations) in most contractors' establishments should not yield significantly different results from one year to the next. Therefore, a bi-annual report would provide the OFCCP with the information it needs while reducing the burden on contractors.

⁷⁶ 79 Fed. Reg. 46562, 46569 (Aug. 8, 2014). We note that the NPRM was clearly designed to be establishment based, therefore, Functional Affirmative Action Programs ("FAAP") should be exempt from the EPR requirement.

⁷⁷ *Id.* See also EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *Equal Employment Opportunity Standard Form 100, REV. January 2006, Employer Information Report EEO-1 Instruction Booklet*, available at <http://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>.

⁷⁸ 41 C.F.R. §§ 60-2.1(b)(2);(d)(2) (Nov. 13, 2000); see also 41 C.F.R. § 60-300.40(a); 41 C.F.R. § 60-741.40(b)(1).

Burden Estimates

1. Covered Contractor Establishments

Based upon the vastly different estimates in the OFCCP’s *other* recently finalized regulations and those in the NPRM, it does not appear that the Agency has a firm grasp on the number of covered contractors and subcontractors and the corresponding establishments that are covered by its regulations, as a result, the Agency’s cost estimates are grossly understated and misleading. For example, in the recently publicized Executive Order 13672 Final Rule, OFCCP assumes 500,000 contractor companies, which would yield an even greater number of contractor establishments.⁷⁹ More specifically, the OFCCP’s final Section 503 of the Rehabilitation Act of 1973 and Vietnam Era Veterans’ Readjustment Assistance Act of 1974 implementing regulations estimated that there were up to 251,300⁸⁰ contractor establishments, whereas the current NPRM estimates that there are over 116,000 contractor establishments, with only 67,578 establishments estimated to have to file an EPR.⁸¹ It is not possible that the number of contractor establishments decreased so greatly in such a short time. Table 5, below, summarizes and compares the OFCCP’s statements and estimates based upon the most recent final regulations and the current NPRM.

Table 5: The OFCCP’s Estimated Number of Covered Contractor Establishments

NPRM – EPR	VEVRAA Final Rule	Section 503 Final Rule
<p>The agency estimates that, based solely on 2012 EEO-1 Report data, more than 116,000 establishments are subject to its jurisdiction because they have at least 50 employees and a contract or subcontract in the amount of \$50,000 or more.⁸²</p> <p>“OFCCP believes that the proposed new provisions may affect 21,251 Federal contractors. This estimate includes 21,224 contractor companies or 67,578 contractor establishments that filed EEO-1 reports.”⁸³</p>	<p>“We received comments on the estimated number of contractor establishments as well, including recommending an establishment count of 285,390 using the ... [VETS] annual report. While OFCCP declines to exclusively rely on the VETS report number, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.”⁸⁴</p>	<p>“OFCCP received comments on the estimated number of contractor establishments, including a recommendation to accept a count of 285,390 using the ... [VETS] annual report. While OFCCP declines to exclusively rely on the VETS report, we present an estimated high end for the range of the cost of the rule based on a contractor establishment number of 251,300. This number is based on 2010 VETS data from their pending Information Collection Request.”⁸⁵</p>

⁷⁹ U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors*, available at http://www.ofr.gov/OFRUpload/OFRData/2014-28501_PI.pdf (last visited December 5, 2014).

⁸⁰ 78 Fed. Reg. 58614, 58618 (Sept. 24, 2013); 78 Fed. Reg. 58682, 58714 (Sept. 24, 2013).

⁸¹ 79 Fed. Reg. 46562, 46562; 46585 (Aug. 8, 2014).

⁸² *Id.* at 46562 (emphasis added).

⁸³ *Id.* at 46585 (emphasis added).

⁸⁴ 78 Fed. Reg. 58614, 58618 (Sept. 24, 2013) (emphasis added).

⁸⁵ 78 Fed. Reg. 58682, 58714 (Sept. 24, 2013) (emphasis added).

It is important to note that the EPR Instruction Booklet, but not the NPRM, requires contractors with more than 100 employees and a covered contract or subcontract of \$50,000 or more with a duration of more than 30 days *that is in effect on December 31 of the reporting year* to file an annual EPR.⁸⁶ If a contractor meets the \$50,000 and 100 employee thresholds, it would be required to submit an EPR for *all* of its establishments, not just those that have over 50 employees. As explained below, it is not possible that the OFCCP's estimate of 67,578 annual EPR reports could be accurate. We believe that this grossly underestimates the number of annual EPR reports that would be submitted to the OFCCP. If the number of establishments is grossly underestimated, then, so too is the OFCCP's burden estimate.

To accurately determine the number of covered contractor establishments that would be required to prepare and submit an annual EPR, we reviewed the 2013 VETS-100A database.⁸⁷ There are two reasons why the VETS-100A provides a reasonable estimate of the correct number of contractor establishments. First, only covered contractors are required to submit a VETS-100A report, whereas all companies with over 100 employees regardless of contractor status are required to submit an EEO-1 report.⁸⁸ Second, if anything, the VETS-100A database would underestimate the number of establishments covered by the NPRM because only contractors with contracts of \$100,000 or more, as opposed to the \$50,000 Executive Order 11246 contract threshold,⁸⁹ are required to submit a VETS-100A report.⁹⁰

After conducting a review of the FY 2013 VETS-100A database, we have identified the following contractor totals:

- Database Total = 297,843 VETS-100A Reports⁹¹ filed

⁸⁶ OFCCP, *Equal Pay Report Instruction Booklet*, 2 (Aug. 8, 2014) (emphasis added), available at <http://www.regulations.gov/#!documentDetail;D=OFCCP-2014-0004-0005>. The Institute requests that the OFCCP offer clarifying guidance as to the statement in the Instruction Booklet regarding a “covered contract or subcontract with a duration of more than 30 days that is in effect on December 31st of the reporting year” and how that coverage limitation would be implemented.

⁸⁷ FY 2013 VETS-100A database supplied to The Institute from the U.S. Dep’t of Labor’s Veterans’ Employ’t and Training Service (“VETS”), available at <http://catalog.data.gov/dataset/vets-100a> (last visited Dec. 1, 2014) (as provided in 79 Fed. Reg. 57464 (Sept. 25, 2014)).

⁸⁸ 41 C.F.R. § 61-300.1 (2008); EQUAL EMPLOY’T OPPORTUNITY COMM’N, *Equal Employment Opportunity Standard Form 100, REV. January 2006, Employer Information Report EEO-1 Instruction Booklet*, available at <http://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>.

⁸⁹ See 41 C.F.R. § 60-2.1(b) (Nov. 13, 2000).

⁹⁰ 41 C.F.R. § 61-300.1 (2008).

⁹¹ See Appendix A to 41 C.F.R. Part 61-300. “Single-establishment employers must file one completed VETS-100A report. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one VETS-100A Report covering the principal or headquarters office; (B) a separate VETS-100A Report for each hiring location employing 50 or more persons; and (C) EITHER, (i) a separate VETS-100A Report for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees.”

- Multi-Establishment – Headquarters Reports – 6,558
- Multi-Establishment – Hiring Locations – 276,176
- Multi- Establishment – State Consolidated – 7,296⁹²
- Single Establishment – 7,813

To accurately estimate the number of covered EPR establishments, we used the following data analysis protocol:

Step 1: Removed records for locations in Puerto Rico, Guam, the U.S. Virgin Islands, and any other location outside the EEO-1 scope of 50 states plus Washington DC.

Step 2: Ran pivot tables to get a unique CoName:

- The sum of total numbers of employees, to determine the list of companies with at least 100 total employees
- The count of records, which equals total number of reports filed
- The count of State Consolidated records and the sum of the MSC Locations for those records.

Step 3: To get the total number of required reporting establishments, we used the following formula for each unique CoName with at least 100 total employees and added them up.

- Total Reports – State Consolidated Reports + MSC Locations = Required Reporting Locations.

Based upon our review of the 2013 VETS-100A database, we estimate that the total number of establishments that would be required to file an EPR each year would be approximately 384,425. Therefore, at a minimum, the OFCCP should amend its burden estimates from its estimated 67,578 establishments subject to an annual EPR to a more accurate estimate of 384,425 establishments.⁹³

In addition, the OFCCP overestimated the total number of covered contractors. The OFCCP estimated that there are 21,251 covered contractors⁹⁴ whereas the VETS-100A database only has 8,508 unique contractors with at least 100 employees.⁹⁵

⁹² Pursuant to Appendix A of 41 C.F.R. Part 61-300, contractors that have locations with fewer than 50 employees have the option of consolidating all establishments in the state with fewer than 50 employees. Therefore, state consolidated reports would most likely have multiple establishments included in the report.

⁹³ The understatement of the number of establishments is material and significant. To correct the OFCCP's understatement, the number of establishments must be multiplied by over 550 % (384,425 divided by 67,578 = 5.7), and the projected costs and compliance burdens also must be increased by the same multiplier (5.7) resulting in the initial costs and burden projections being materially understated and inaccurate.

⁹⁴ 79 Fed. Reg. 46562, 46585 (Aug. 8, 2014).

⁹⁵ FY 2013 VETS-100A database supplied to The Institute from the U.S. Dep't of Labor's Veterans' Employ't and Training Service ("VETS"), available at <http://catalog.data.gov/dataset/vets-100a> (last visited Dec. 1, 2014) (as provided in 79 Fed. Reg. 57464 (Sept. 25, 2014)).

Furthermore, the actual burden hours and the estimates made by the OFCCP related to familiarization, initial start-up, and other components of the process it will take to get a contractor into compliance with new EPR requirements were grossly underestimated in the NPRM.

2. Familiarization

The OFCCP estimated that it would take contractors one hour to familiarize themselves with the new EPR regulation.⁹⁶ Ninety-two percent (92%) of the consortium survey responders disagreed with the OFCCP's estimate that the regulatory familiarization phase would only require one hour. In fact, consortium survey responders anticipated that it would take, on average, approximately 31 hours per establishment in order to familiarize themselves with the new regulation.⁹⁷ Table 6 below summarizes the OFCCP's estimated cost for familiarization versus The Institute's data driven and objective estimate. The OFCCP used a blended hourly rate of \$52 per establishment with an estimated number of contractor establishments at 67,605⁹⁸ which The Institute calculates to a total cost of \$3,515,460. The Institute's estimates are based upon the same blended hourly rate of \$52, 31 hours of familiarization and 384,425 contractor establishments. Due to the fact that the OFCCP underestimated both the total number of contractor establishments and the hours needed for familiarization, the NPRM underestimated the first year cost by \$616,177,640.

Table 6: First Year Familiarization Cost

	# of Establishments	Cost per establishment	Total Cost
OFCCP	67,605	\$52	\$3,515,460
The Institute	384,425	\$1,612(31*\$52)	\$619,693,100

3. First Year Software Development

The OFCCP did not account for the fact that the employment rosters used for the EEO-1 report and the W-2 data are typically housed in two different systems. More specifically, the EEO-1 data is typically housed in the HRIS whereas the W-2 data is housed in the payroll system.⁹⁹ In fact, over 80% of the consortium survey responders reported that EEO-1 report data and W-2 data come from two different systems and that W-2 data cannot be automatically pulled into the EEO-1 snapshot data fields.¹⁰⁰ Over 80% of the Consortium survey responders would be required to develop a new software system to "match" the two files, and the average anticipated total initial estimated burden to create a new software system to *match the data files* was 974 hours and \$84,720, respectively.¹⁰¹ Conversely, the OFCCP estimated the first year software development cost at \$1,417 per contractor.¹⁰² Table 7 below summarizes the differences in the first year software development cost between the OFCCP and The Institute. As can be seen

⁹⁶ 79 Fed. Reg. 46562, 46586 (Aug. 8, 2014).

⁹⁷ Consortium Survey Results, App. A.

⁹⁸ 79 Fed. Reg. 46562, 46586 (Aug. 8, 2014).

⁹⁹ Consortium Survey Results, App. A.

¹⁰⁰ *See id.*

¹⁰¹ *Id.* As reported by Consortium Survey respondents.

¹⁰² 79 Fed. Reg. 46562, 46588 (Aug. 8, 2014).

below, the OFCCP underestimated the cost for first year software development by \$690,685,093.

Table 7: First Year Software Development

	# of Contractors	Cost per contractor	Total Cost
OFCCP	21,251	\$1,417	\$30,112,667 ¹⁰³
The Institute	8,508	\$84,720	\$720,797,760

4. Ongoing Annual Burden

After the new system is developed, Consortium survey respondents reported that the estimated total annual number of hours and cost to maintain the software system would be, on average, 752 hours and \$67,322, respectively.¹⁰⁴ The OFCCP did not account for any ongoing software development and maintenance costs, underestimating the annual cost by \$572,775,576. Table 8 below summarizes the costs for the ongoing software development and maintenance costs.

Table 8: Annual Software Development and Maintenance

	# of Contractors	Cost per contractor	Total Annual Cost
OFCCP	21,251	\$0	\$0
The Institute	8,508	\$67,322	\$572,775,576

The estimated annual total number of hours after the first year of producing the EPR to prepare and submit the report is, on average, approximately 450 hours.¹⁰⁵ Using the OFCCP's conservative cost to prepare and submit the EPR of \$187¹⁰⁶ per establishment and relying upon the more accurate number of 384,425 establishments results in an annual cost to file the EPR of \$71,887,475. Table 9 below summarizes the annual filing and demonstrates that the OFCCP underestimated this annual cost by \$59,245,340.

Table 9: Annual EPR Filing Cost

	# of Establishments	Cost per contractor	Total Annual Cost
OFCCP	67,605	\$187	\$12,642,135 ¹⁰⁷
The Institute	384,425	\$187	\$71,887,475

¹⁰³ Based on The Institute's calculations using the OFCCP's stated number of contractors and stated cost per contractor.

¹⁰⁴ Consortium Survey Results, App. A. As reported by Consortium Survey respondents.

¹⁰⁵ Consortium Survey Results, App. A.. As reported by Consortium Survey respondents.

¹⁰⁶ 79 Fed. Reg. 46562, 46586 (Aug. 8, 2014).

¹⁰⁷ Based on The Institute's calculations using the OFCCP's stated number of establishments and stated cost per contractor.

5. Summary of Costs

It is clear that the OFCCP must update the burden estimates to more accurately reflect the total number of hours and costs associated with implementing the EPR based on the accurate number of reporting establishments. Table 10 below summarizes the total costs for first year familiarization and software development and ongoing annual costs. The OFCCP has underestimated the first year cost by \$1,306,862,733 and the ongoing annual cost by \$632,020,916.

Table 10: Summary of Total Costs

	OFCCP	The Institute	Difference
First Year Costs	\$33,628,127	\$1,340,490,860	\$1,306,862,733
Annual Costs	\$12,642,135	\$644,663,051	\$632,020,916

Other Comments, Alternatives and Recommendations to the NPRM

1. Safe Harbor Provisions

The Institute and the Consortium recommend that the OFCCP provide protection to contractors from liability related to voluntary changes made to compensation as a result of contractor internal assessments of compensation based on the data published as part of the EPR.¹⁰⁸ Properly designed safe harbor provisions promote greater compliance by the contractor community and assist the Agency in targeting its audit and enforcement resources on those contractor establishments that are more likely to be in violation of the nondiscrimination obligations for compensation. Such a safe harbor provision could include protection from the Agency against liability for violations of Executive Order 11246 related to compensation discrimination. The protections should also include a guarantee of support from the OFCCP in private plaintiffs' cases alleging "reverse" discrimination against a contractor arising from adjustments in compensation stemming from voluntary compensation corrections. Of course, in order to secure this safe harbor provision, contractors would conduct voluntary internal audits of compensation data and make necessary compensation adjustments identified by the internal audit and certify to the Agency that the same has occurred.

¹⁰⁸ 79 Fed. Reg. 46562, 46572-46573 (Aug. 8, 2014) ("OFCCP plans to share information on industry standards publicly annually, as soon as practicable. OFCCP would post the standards on the agency's Web site. Training courses and technical assistance materials will be available in the form of technical assistance guides, web-based training courses, frequently asked questions ("FAQs"), directives and other policy statements, and through OFCCP's Customer Service Unit responding to telephone and email questions and general inquiries. These courses and materials would explain the industry standards and how contractors could use them for self-assessment purposes. By providing access to this policy and technical assistance information, OFCCP is educating contractors and, thereby, likely deterring future violations. These tools should allow contractors to determine if a 'deeper dive' is needed into their pay practices, and if problems are identified, to voluntarily correct them.").

In this way, the OFCCP is achieving the purpose of both the NPRM and the Presidential Memorandum. Instances of compensation discrimination would be eradicated without the cost and expense of a government-initiated compliance evaluation. At the same time, contractors would be securing assurances that their voluntary actions in compensation adjustments will not be found to be in violation of the OFCCP's implementing regulations.

As another alternative, The Institute and Consortium recommend that the OFCCP provide an exemption from the requirements of the EPR for contractors who conduct regular internal audits of compensation data and make necessary compensation adjustments identified by the internal audit. Again, this exemption would be provided only after certification to the Agency that the voluntary internal audit and compensation adjustments occurred within a specified timeframe. Certainly, with such a certification from a contractor, the OFCCP can be assured that the purpose of the NPRM is being carried out and is operating as a deterrent against compensation discrimination by virtue of this built-in exemption. In addition, contractors would be relieved of the obligation and burden of filing an EPR rendered unnecessary by their having taken voluntary compliance efforts.

Tellingly, 85% of Consortium members stated that they would be willing, in order to be exempt from the requirements of the NPRM, and to reduce potential liability under applicable laws and regulations, to conduct regular internal audits of compensation data, including making compensation adjustments identified.¹⁰⁹

2. *Pilot Program*

The OFCCP has asked for public comment on the advantages and disadvantages of piloting the EPR¹¹⁰ but seems to have already decided that the cost and burden of piloting the EPR will outweigh the value in gaining insight into the effectiveness and potential improvements to what has been proposed in the NPRM.

The recommendations of the NAS report can still be met; the OFCCP can pilot a program on compensation data collection, meet the Presidential Memorandum requirement to "consider independent studies regarding the collection of compensation data,"¹¹¹ and take the time to learn and understand how compensation data collection can be achieved in an efficient and effective way.

In addition, by proposing a regulatory scheme where employers will be subject to significant and repeated costs in situations where contractors are required to submit compensation data to both the EEOC and the OFCCP, the OFCCP fails to coordinate with the EEOC and circumvents the effort to promote the required coordination, simplification and

¹⁰⁹ Consortium Survey Results, App. A.

¹¹⁰ 79 Fed. Reg. 46562, 46576 (Aug. 8, 2014) ("While conducting a pilot would provide information regarding the Equal Pay Report's effectiveness, and identify ways to improve the collection, the cost and burden of conducting a pilot may well outweigh any potential benefit.").

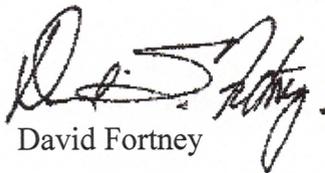
¹¹¹ Advancing Pay Equality Through Compensation Data Collection, Memorandum for the Secretary of Labor, 79 Fed. Reg. 20751 (Apr. 11, 2014).

harmonization for employers in meeting their regulatory obligations as is required by Executive Order 13563.

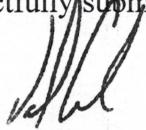
Conclusion

The Institute and the Consortium members appreciate the opportunity to submit this Comment and would be pleased to provide the OFCCP with any additional information or clarification it may require or request. We look forward to continuing to partner with the OFCCP to effectuate the successful promulgation of regulations that are reasonable, enforceable and efficient for both the Agency and the Federal contractor community, and achieve the goal of eliminating all forms of unlawful discrimination where it may exist.

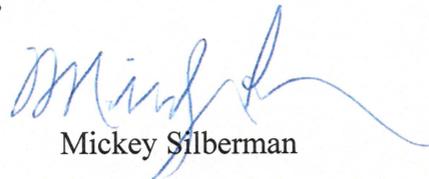
Respectfully submitted,



David Fortney



David Cohen



Mickey Silberman

The OFCCP Institute
On behalf of the Consortium

APPENDIX

APPENDIX

A

Summary of Survey Results Submitted by The Consortium

In order to best understand how the NPRM may impact Federal contractors, The Institute has requested its Consortium of Federal contractors to respond to a set of survey questions. Key highlights of the survey results are shown below:

- **Company Data**
 - **Industry** – The Institute’s Consortium of Federal contractor survey respondents represents a diverse set of industries, including:
 - Agriculture, Forestry, Fishing and Hunting
 - Utilities
 - Manufacturing
 - Transportation and Warehousing
 - Professional, Scientific, and Technical Services
 - Management of Companies and Enterprises
 - Accommodation and Food Services
 - Other Services (except Public Administration)
 - **Annual revenue** – Collectively, the Consortium survey respondents’ annual revenues make up approximately \$279 billion.
 - **Employee data** – The total number of employees represented by Consortium survey respondents is over 539,300.
 - **Establishment data** – The number of establishments represented by the Consortium survey respondents is 5,529.
 - **Affirmative Action Plans:**
 - The consortium survey respondents collectively have 2,184 affirmative action plans.
 - Approximately 77% of the Consortium survey respondents develop establishment based affirmative action plans.
 - Approximately 8% of the Consortium survey respondents develop functional affirmative action plans.
 - Approximately 15% of the Consortium survey respondents develop both functional and establishment based affirmative action plans.
- **Data Systems**
 - **EEO-1 report data:**
 - Approximately **77%** of the Consortium survey respondents reported that HRIS houses and reports their EEO-1 report data.
 - Approximately **23%** of the Consortium survey respondents reported that other systems house and reports their EEO-1 report data.
 - **W-2 report data:**
 - Approximately **54%** of the Consortium survey respondents reported that Payroll houses and reports their W-2 report data.

- Approximately **8%** of the Consortium survey respondents reported that HRIS houses and reports their W-2 report data.
 - Approximately **39%** of the Consortium survey respondents reported that other systems houses and reports their W-2 report data.
 - **Hours tracked:**
 - Approximately **85%** of the Consortium survey respondents reported that they do not track the number of hours for exempt employees.
 - **100%** of the Consortium survey respondents reported that annualized base pay is currently housed in their HRIS.
 - **100%** of the Consortium survey respondents reported that annualized base pay, rather than W-2 earnings, would be easier to generate within the EEO-1 snapshot.
- **Report Preparation**
 - **Burden estimates regarding creating a new software system due to W-2 and EEO-1 report data incompatibility:**
 - Approximately **85%** of the Consortium survey respondents reported that EEO-1 Report data and W-2 data come from two different systems and that W-2 data cannot be automatically pulled into the EEO-1 snapshot data fields.
 - Approximately **85%** of the Consortium survey respondents would be required to develop a new software system to match the two files.
 - The Consortium survey respondents reported that the anticipated initial estimated burden to create a new software system is, on average, approximately **974 hours** and **\$84,720**, respectively.
 - After the new system is developed, the Consortium survey respondents reported that the estimated total annual number of hours and cost to maintain the software system is, on average, approximately **752 hours** and **\$67,322**, respectively.
 - **Burden estimates regarding producing the Equal Pay Report:**
 - During the first year of producing the Equal Pay Report, the Consortium survey respondents reported that the estimated total number of hours and cost in developing a system in order to create the Equal Pay Report is, on average, approximately **845 hours** and **\$62,690**, respectively.
 - The Consortium survey respondents reported that the estimated annual total number of hours after the first year of producing the Equal Pay Report to prepare and submit the report is, on average, approximately **450** hours.
- **Burden estimates regarding familiarization of and compliance with the proposed regulation:**
 - **92%** of the Consortium survey respondents disagreed with the OFCCP's estimation that during the regulatory familiarization phase, it would require 1 hour for a management professional at each establishment to familiarize the facility

with the new reporting requirements by either reading OFCCP's compliance assistance materials or participating in an OFCCP webinar to learn more about the new requirements.

- Consortium survey respondents estimated that that it would take, on average, approximately **31 hours** per establishment in order to familiarize themselves with the new regulation.
- **The lack of utility of the Equal Pay Report:**
 - **None** of the Consortium survey respondents reported that Equal Pay Report will draw meaningful conclusion about the compensation systems in its organizations.
 - **None** of the Consortium survey respondents reported that they will make pay adjustments based on the results of the Equal Pay Report.
 - Approximately **92%** of the Consortium survey respondents reported that they anticipated that their companies will receive outside pressure to publicly release your Equal Pay Reports.
 - **None** of the Consortium survey respondents reported that making adjustments based upon the published industry standard is a valid reason for making salary adjustment.
 - However, approximately **85%** of the Consortium survey respondents reported anticipation that it will face outside pressure to make salary adjustments based upon the differential between its company's results and the published industry standard (if published).
 - **100%** of the Consortium survey respondents reported that if they made salary adjustments based solely upon the results of the Equal Pay Report, they felt they could run the risk of a Title VII claim, including a reverse discrimination claim.
- **Potential Safe Harbor—the need for safe harbor provisions:**
 - Approximately **85%** of the Consortium survey respondents reported that it would be willing to conduct regular internal audits of its compensation data, including making any necessary compensation adjustments identified by the audit, in order to be exempt from the Equal Pay Report and to reduce potential liability under applicable laws and regulations.
- **Hours Worked: The need to reevaluate the definition and calculation of hours worked**
 - Approximately **62%** of the Consortium survey respondents reported that 1040 hours is not indicative of part time work at its organization.
- **EEO-1 job category—not an appropriate grouping methodology to draw inferences about compensation:**
 - Approximately **92%** of the Consortium survey respondents reported that it was common within its organization to have employees that are promoted, demoted, or transferred from one EEO-1 job category to another during the course of a year.

- **100%** of the Consortium survey respondents reported at least one or more individual establishments that file an EEO-1 report that have EEO-1 job categories with fewer than five individuals.
- **The need for the OFCCP to take more definitive steps to protect the highly confidential pay data collected in the Equal Pay Report:**
 - Approximately **92%** of the Consortium survey respondents stated concerns that their data will not remain confidential due to the size of the employee population in the EEO-1 category.

APPENDIX

B

CELEBRATING **50** YEARS OF CIVIL RIGHTS



Learning from the Legacy, Focused on the Future

Update on Contemporary OFCCP Enforcement: A View From 2013 Settlement Data

David Cohen

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About DCI

- www.dciconsult.com
- DCI is a risk management/human resource management consulting firm strategically located in Washington, D.C.
- Primary focus on EEO/Affirmative Action compliance statistical analyses, and validation research
- Developed proprietary software for AA Planning/Adverse Impact Analyses and Compensation Analysis.
- Diverse client base of fortune 500 and smaller organizations developed primarily through company/attorney referral.
- Consulting services include:
 - Affirmative Action Plan Development
 - Statistical Analyses of Systemic Discrimination Allegations (e.g., hiring, promotion, compensation, etc.)
 - Selection Procedure Validation
 - Proactive EEO Audits
 - Litigation and OFCCP Audit Consulting

Dave's Top 5 OFCCP Enforcement Priorities

Dave Says...

1

4

2

5

3

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Denial of Access

- Audit Selection
- Scheduling Letter
- Off-Site Records
- On-Site Records

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DOL's Public Enforcement Database

www.ogesdw.dol.gov

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Enforcement Over Time

Fiscal Year	Closure Letter ³		Notice of Violation						Total Compliance Evaluations
			Conciliation Agreement		Consent Decree		Financial Remedy		
	#	%	#	%	#	%	#	%	#
2004	4,938	93.63%	277	5.25%	0	0.00%	59	1.12%	5,274
2005	1,921	90.61%	146	6.89%	0	0.00%	53	2.50%	2,120
2006	3,559	88.64%	383	9.54%	0	0.00%	73	1.82%	4,015
2007	4,390	89.17%	471	9.57%	0	0.00%	62	1.26%	4,923
2008	3,701	85.57%	539	12.46%	5	0.12%	80	1.85%	4,325
2009	3,204	82.01%	618	15.82%	9	0.23%	76	1.95%	3,907
2010	4,019	81.32%	839	16.98%	3	0.06%	81	1.64%	4,942
2011	2,898	72.32%	999	24.93%	9	0.22%	101	2.52%	4,007
2012	2,676	66.78%	1199	29.92%	6	0.15%	126	3.14%	4,007
2013	2,965	72.32%	1037	25.29%	2	0.05%	96	2.34%	4,100
2014	2,385	86.00%	346	12.47%	2	0.08%	40	1.44%	2,773*
Total	36,656	82.49%	6854	15.51	36	0.08%	847	1.92%	44,393

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2013 Enforcement by Region

Region	Notice of compliance		Conciliation Agreement		Consent Decree		Financial Remedy		Grand Total	
	#	%	#	%	#	%	#	%	#	%
PA	472	64.48	245	33.47	0	0.00	15	2.05	732	17.85
NE	312	65.68	148	31.16	1	0.21	14	2.95	475	11.59
SE	548	67.82	224	27.72	1	0.12	35	4.33	808	17.85
MA	363	67.85	164	30.65	0	0.00	8	1.50	535	13.05
MW	746	79.03	185	19.60	0	0.00	13	1.38	944	23.02
SW	524	86.47	71	11.72	0	0.00	11	1.82	606	14.78
Grand Total	2965	72.32	1037	25.29	2	0.05	96	2.34	4100	100.00

CELEBRATING 50 YEARS OF CIVIL RIGHTS



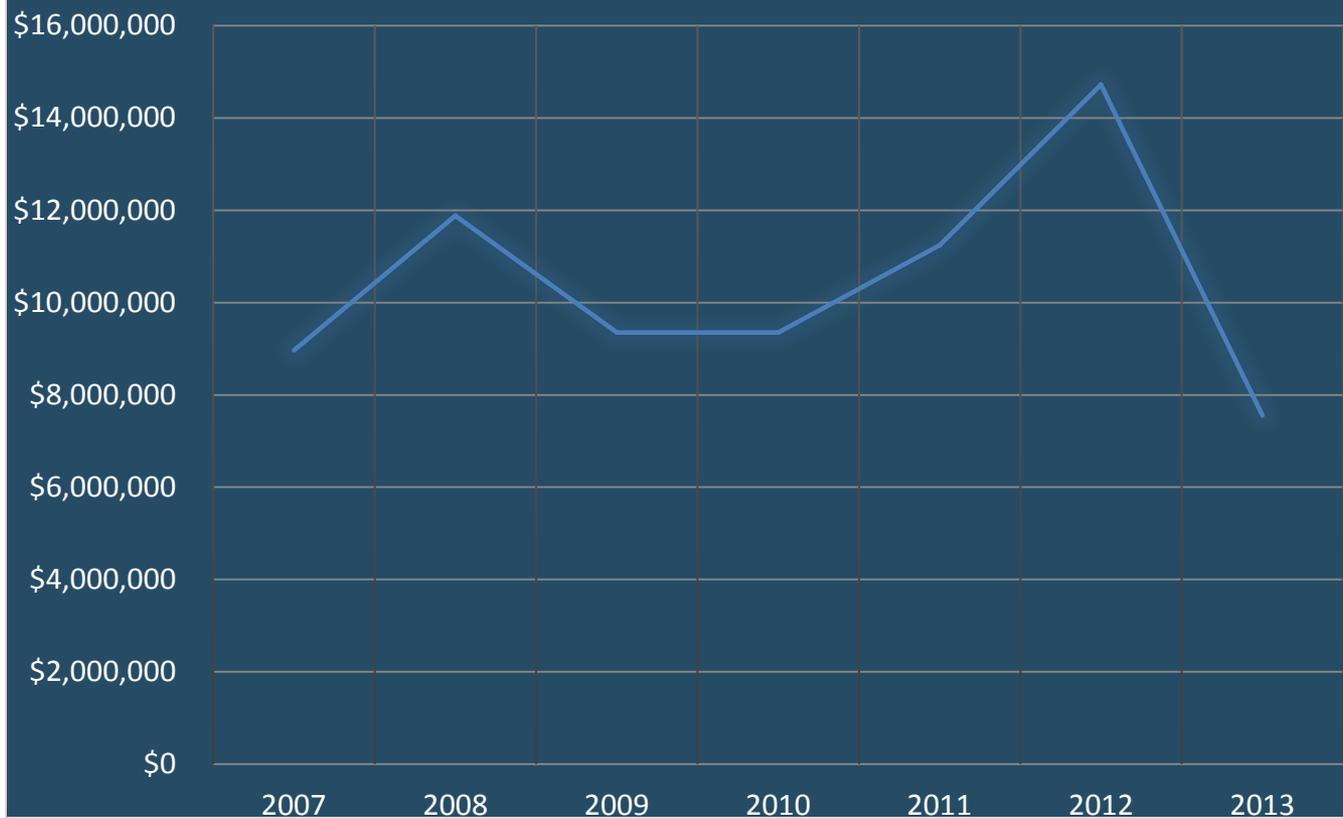
Findings of Discrimination

FY	Hiring		Promotion		Termination		Selection		Salary		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
2004	50	87.72%	0	0.00%	1	1.75%	1	1.75%	5	8.77%	57	100%
2005	41	80.39%	0	0.00%	0	0.00%	1	1.96%	9	17.65%	51	100%
2006	61	87.14%	0	0.00%	0	0.00%	3	4.29%	6	8.57%	70	100%
2007	57	86.36%	0	0.00%	0	0.00%	5	7.58%	4	6.06%	66	100%
2008	68	82.93%	1	1.22%	1	1.22%	6	7.32%	6	7.32%	82	100%
2009	65	84.42%	0	0.00%	0	0.00%	8	10.39%	4	5.19%	77	100%
2010	55	73.33%	2	2.67%	1	1.33%	2	2.67%	15	20.00%	75	100%
2011	54	60.67%	2	2.25%	0	0.00%	6	6.74%	27	30.34%	89	100%
2012	55	59.14%	1	1.08%	0	0.00%	6	6.45%	31	33.33%	93	100%
2013	41	60.29%	2	2.94%	1	1.47%	5	7.35%	19	27.94%	68	100%
2014	24	70.58%	0	0.00%	0	0.00%	3	8.82%	7	20.58%	34	100%
Total	571	74.93%	8	1.04%	4	0.52%	46	6.03%	133	17.45%	762	100%

CELEBRATING 50 YEARS OF CIVIL RIGHTS



Total Settlements from 2007-2013



CELEBRATING 50 YEARS OF CIVIL RIGHTS



**FY 2013
Conciliation Agreements and
Consent Decrees Received Via
FOIA Request**

FY 2013

**65 Total Cases -
\$7,553,819**

Hiring – 42

Compensation – 13

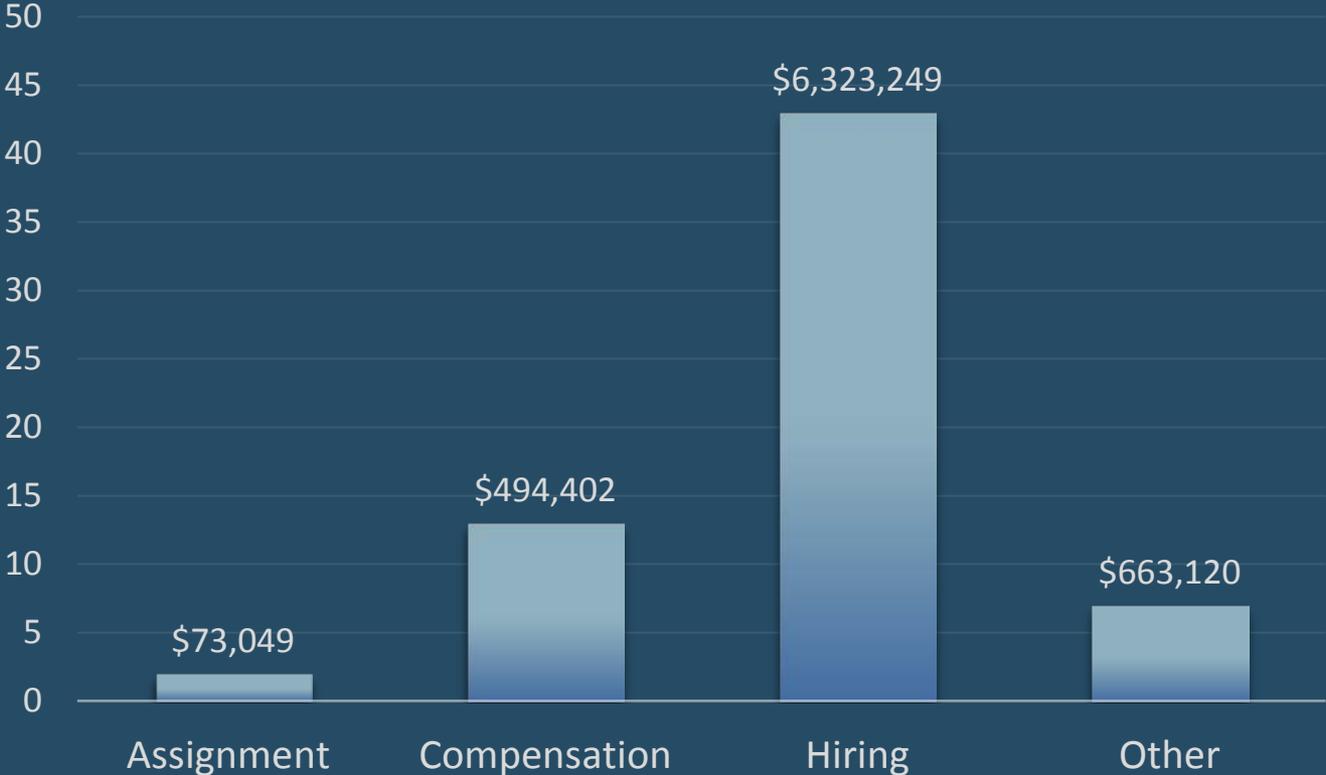
Assignment – 2

Other (e.g Retaliation) – 8

CELEBRATING 50 YEARS OF CIVIL RIGHTS



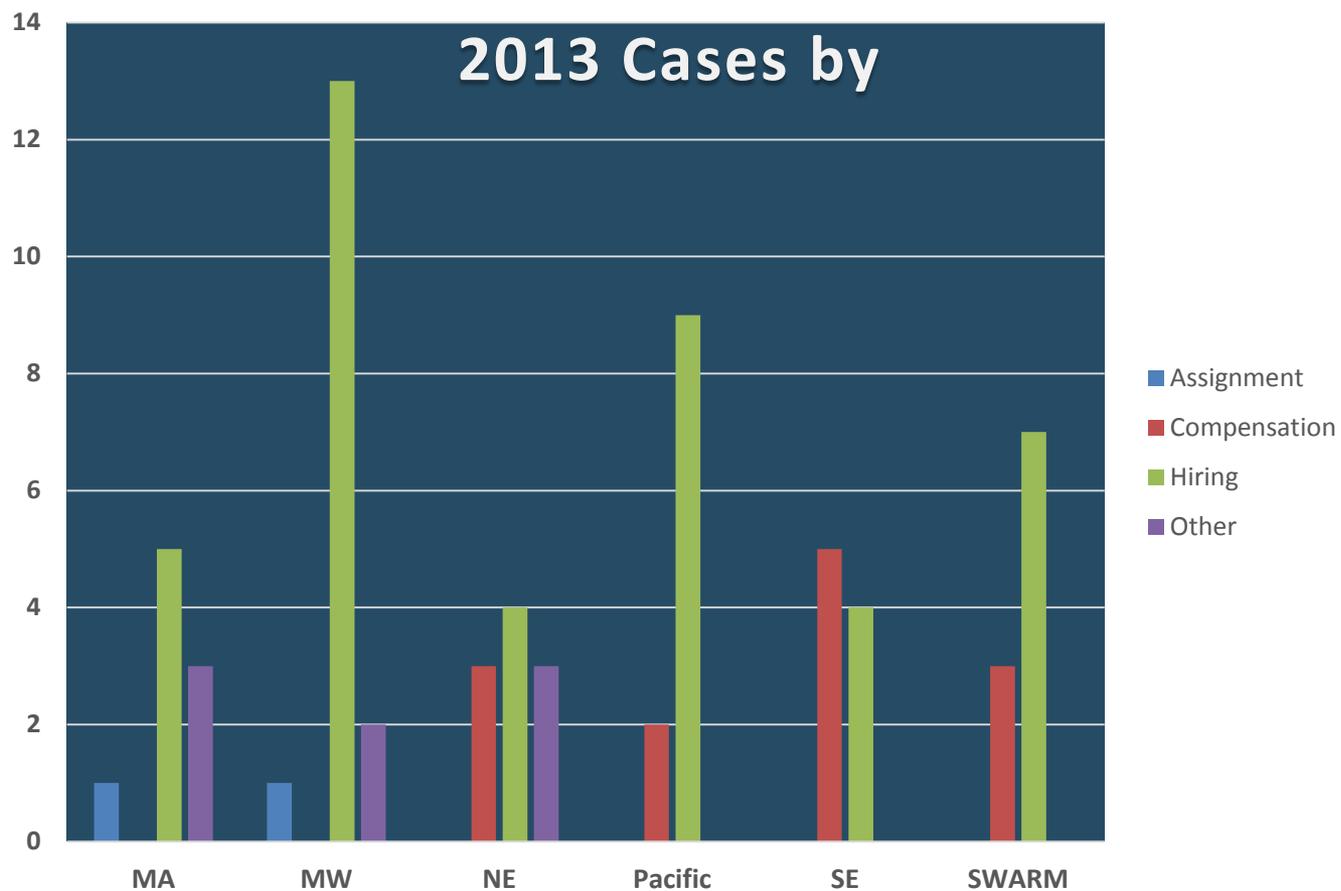
Total Cases of 2013



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Breakdown by Region



CELEBRATING 50 YEARS OF CIVIL RIGHTS



ILG NATIONAL CONFERENCE

FY 2013 Hiring Cases

25 Race/Ethnicity

21 Sex (4 cases with
both Sex and
Race/Ethnicity)

42 Hiring Cases
\$6,323,247.08

Average length of
closure:
2.74

Median length of
closure: 2.63

CELEBRATING 50 YEARS OF CIVIL RIGHTS



FY 2013 Compensation Cases

13 Compensation Cases

\$494,402.03

- 10 Race/Ethnicity
- 3 Sex
- Average length to closure: 1.73
- Median length to closure: 1.14
- Grouping
 - 13 Job Title
- Systemic
 - 1 using regression

CELEBRATING 50 YEARS OF CIVIL RIGHTS



Number of People Compensated, Cont.

Conciliation Agreements

12 Cases (25 People)

- 3 Females
- 5 Blacks
- 2 Hispanics
- 8 Minorities

Consent Decree

1 Case

- 78 Hispanics

CELEBRATING 50 YEARS OF CIVIL RIGHTS



FY 2013 Assignment Cases

2 Assignment Cases

\$73,049.00

- 1 Race/Ethnicity
- 1 Sex (1 case with both Sex and Race/Ethnicity)
- 1 Disability
- Average length to closure 0.95
- Median length to closure 0.95

CELEBRATING 50 YEARS OF CIVIL RIGHTS



FY 2013 Other Cases

8 Other Cases

\$\$663,120.89

- 1 Race/Ethnicity
- 3 Sex
- 3 Disability
- 1 Employee Tracking System
 - Sexual Harassment
 - 1 Layoff
 - 1 Retaliation
 - 1 Parking Lot
 - 3 Systems
- Average length to closure: 1.80
- Median length to closure: 1.63

CELEBRATING 50 YEARS OF CIVIL RIGHTS



Questions



CELEBRATING 50 YEARS OF CIVIL RIGHTS



APPENDIX

C

Overview

The data analytic scenarios that follow present a series of problems with analyzing data produced by OFCCP's proposed NPRM. As we show in the series of simple data simulations below, OFCCP's proposed practice of analyzing W-2 earnings data by EEO-1 category to identify federal contractors most likely to have unlawful pay practices has little practical value. In fact, analyzing the data as OFCCP has proposed is most likely to result in a preponderance of (1) Type I (false positive) inferential errors in which the OFCCP marshals investigations of federal contractors who have standardized, legitimate pay practices and (2) Type II (false negative) inferential errors in which the OFCCP fails to investigate federal contractors with illegal pay practices. If the OFCCP is going to place such a burden on federal contractors, it would be just as good to flip a coin to decide who to investigate because the result will approximate the result of using data from the NPRM to target a contractor for a compliance evaluation.

We address five primary confounds in our simulations, separated by exempt and non-exempt workforces where illustrative:

- Range and dissimilarity of jobs in EEO-1 categories
- Full-time and part-time status
- Promotions
- Less than one year of tenure
- Compensation other than base pay

The confounds, all but certain to be present in the summary data specified by OFCCP in the NPRM, severely limit the usefulness of analyses conducted on the data.

Moreover, and in closing, we are wary of any procedure for establishing likely discriminatory pay practices that relies on summary compensation data in broad groupings. In fact, OFCCP's recent justification for requesting individualized data in the recently revised Itemized Listing was that compensation data in the aggregate is not useful. This justification for individualized data during the desk audit undermines any argument that any data required to be provided under the EPR would be informative.

However, if summary data must be utilized as specified in the Presidential Memorandum, analysis of base pay will provide much more meaningful results than an analysis of W-2 earnings for reasons outlined in the following pages.

Issue 1: Grouping by EEO-1 Category

Scenario 1:

Issue: Grouping jobs by EEO-1 category and evaluating summary information by protected class subgroup may result in a false positive determination of potential discrimination when a job-based evaluation makes it clear that there are no differences between protected class subgroups.

Example: In this example, there are 14 men and 14 women distributed across four *Professional* jobs. On average, Computer Hardware Engineers are paid \$30,000 more than individuals in any of the other three jobs. Individuals in the other three jobs are paid approximately the same, on average.

Conclusion: There is no wage gap within each of the jobs; however, because there are more men in the Computer Hardware Engineer job, the EEO-1 category comparison indicates that women earn approximately \$0.90 for each dollar that men earn.

Title	EEO-category	Sex	FT/PT Status	Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$90,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,040	\$120,040
Computer Hardware Engineer	Professionals	W	FT	2080	\$120,090	\$120,090
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,080	\$120,080
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,090	\$120,090
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,050	\$120,050
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,050	\$120,050
Computer Hardware Engineer	Professionals	M	FT	2080	\$120,040	\$120,040

	Average Salary (Hourly)	# Women	Women Avg. Salary (Hourly)	# Men	Men Avg. Salary (Hourly)	Pay gap
Database Administrators	\$90,014.29 (\$43.28)	4	\$90,017.50 (\$43.28)	3	\$90,010.00 (\$43.27)	1.00
Computer Systems Analysts	\$90,027.14 (\$43.28)	3	\$90,026.67 (\$43.28)	4	\$90,027.50 (\$43.28)	1.00
Software Quality Assurance Engineers	\$90,067.14 (\$43.30)	6	\$90,071.67 (\$43.30)	1	\$90,040.00 (\$43.29)	1.00
Computer Hardware Engineers	\$120,062.86 (\$57.72)	1	\$120,090.00 (\$57.74)	6	\$120,058.33 (\$57.72)	1.00
Overall	\$97,542.86 (\$46.90)	14	\$92,190.71 (\$44.32)	14	\$102,895.00 (\$49.47)	0.90

Issue 2: Part-Time/Full-Time Differences for Exempt Employees

Scenario 2a (Exempt):

Issue: Grouping Exempt part-time and full-time jobs to evaluate summary information by protected class subgroups may result in a false positive determination of potential discrimination when men and women working part-time have base pay based on a different number of hours assigned.

Example: In this example, there are 14 men and 14 women distributed across three *Professional* jobs from Scenario 1 and a new job (Information Security Analysts) that has been substituted for the higher paid Computer Hardware Engineers. In this scenario, there are four men working part-time at 20 hours a week and nine women working part-time at 15 hours a week, per employees' hour requests. Within and across the jobs, the hourly rate for everybody is approximately the same.

Conclusion: If actual hours assigned is accounted for, the results show that women have the same hourly rate as men; however, the results indicated that there is a wage gap if the 2080/1040 standard¹ is used to determine hourly wages. Specifically, the analysis indicates that women earn \$0.88 for each dollar that men earn, on average. However,

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Actual Hours	Base Pay	W-2
Database administrators	Professionals	W	PT	1040	780	\$33,760	\$33,760
Database administrators	Professionals	W	PT	1040	780	\$33,750	\$33,750
Database administrators	Professionals	W	PT	1040	780	\$33,760	\$33,760
Database administrators	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Database administrators	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Database administrators	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Database administrators	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Computer systems analysts	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	W	PT	1040	780	\$33,760	\$33,760
Computer systems analysts	Professionals	W	PT	1040	780	\$33,770	\$33,770
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,050	\$90,050
Software quality assurance engineers	Professionals	M	FT	2080	2080	\$90,040	\$90,040
Software quality assurance engineers	Professionals	W	FT	2080	2080	\$90,090	\$90,090
Software quality assurance engineers	Professionals	W	FT	2080	2080	\$90,040	\$90,040
Software quality assurance engineers	Professionals	W	PT	1040	780	\$33,780	\$33,780
Software quality assurance engineers	Professionals	W	PT	1040	780	\$33,765	\$33,765
Software quality assurance engineers	Professionals	W	PT	1040	780	\$33,790	\$33,790
Software quality assurance engineers	Professionals	W	PT	1040	780	\$33,780	\$33,780
Information Security Analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030

¹ According to the Equal Pay Report Instruction Booklet, for salaried workers, if the actual hours worked are not available, the contractor can assume 2,080 hours for full-time employees and 1,040 for part-time employees.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Actual Hours	Base Pay	W-2
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,025	\$45,025
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,015	\$45,015
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,000	\$45,000
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,025	\$45,025

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Assuming 1040 hours for part-time employees	\$41.02	\$38.16	14	\$43.28	14	0.88
Accounting for actual hours assigned for part-time employees	\$43.28	\$43.29	14	\$43.28	14	1.00

Scenario 2b (Exempt):

Issue: Grouping Exempt part-time and full-time jobs to evaluate summary information by protected class subgroups may result in a false negative determination of potential discrimination when men and women working part-time have base pay based on a different number of hours assigned.

Example: This example is identical to the prior example, with the exception that three part-time women in the database administrator job and four part-time women in the software quality assurance job receive a higher hourly salary compared to the full-time male and female employees in those positions.

Conclusion: If actual hours assigned are accounted for, the results show that women earn \$1.15 for every dollar earned by men; however, if part time hours are assumed to be equal to 1040, the analysis indicates that women have a nearly identical hourly wage as men.

Title	EEO-Category	Sex	FT/PT Status	OFCCP Hours	Actual Hours	Base Pay	W-2
Database administrators	Professionals	W	PT	1040	780	\$50,040	\$50,040
Database administrators	Professionals	W	PT	1040	780	\$50,020	\$50,020
Database administrators	Professionals	W	PT	1040	780	\$50,050	\$50,050
Database administrators	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Database administrators	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Database administrators	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Database administrators	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Computer systems analysts	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	W	PT	1040	780	\$33,760	\$33,760
Computer systems analysts	Professionals	W	PT	1040	780	\$33,770	\$33,770
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,000	\$90,000
Computer systems analysts	Professionals	M	FT	2080	2080	\$90,050	\$90,050
Software quality assurance engineers	Professionals	M	FT	2080	2080	\$90,040	\$90,040
Software quality assurance engineers	Professionals	W	FT	2080	2080	\$90,090	\$90,090
Software quality assurance engineers	Professionals	W	FT	2080	2080	\$90,040	\$90,040
Software quality assurance engineers	Professionals	W	PT	1040	780	\$50,040	\$50,040
Software quality assurance engineers	Professionals	W	PT	1040	780	\$50,020	\$50,020
Software quality assurance engineers	Professionals	W	PT	1040	780	\$50,050	\$50,050
Software quality assurance engineers	Professionals	W	PT	1040	780	\$50,040	\$50,040
Information Security Analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,025	\$45,025
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,015	\$45,015
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,000	\$45,000
Information Security Analysts	Professionals	M	PT	1040	1040	\$45,025	\$45,025

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Assuming 1040 hours for part-time employees	\$43.56	\$43.92	14	\$43.28	14	1.01
Accounting for actual hours assigned for part-time employees	\$45.97	\$49.82	14	\$43.28	14	1.15

Issue 3: Part-Time/Full-Time Differences for Non-Exempt Employees

Scenario 3a: In this scenario, we switch to a non-exempt group of jobs, but the same issues outlined would apply to exempt jobs as well. There are two jobs in the EEO-1 category: Cook and Grounds Attendant.

Issue: Using a snapshot of employees grouped together as of September 1st but analyzing W-2 earnings may result in a false positive determination of potential discrimination.

Example: In this example, there are 14 men and 14 women distributed across two *Service Worker* jobs with an average salary of \$30,000 per year. On September 2nd (1 day after the snapshot), five grounds attendants (4 men and 1 woman) were promoted into roles with substantially expanded responsibility. These five individuals had a new salary of approximately \$70,000 for the last four months of the year. Thus, the W-2 earnings for the promoted individuals is approximately \$13,300 ($[\$70,000 - \$30,000]/3$) more than the other individuals with whom they are grouped.

Conclusion: Analyzing the hourly rate of pay at the time of the data snapshot indicates no difference between the average hourly rate between men and women; however, an analysis of W-2 earnings indicates that women earn \$0.92 for every dollar earned by men.

Title	EEO-category	Sex	FT/PT Status	Hours	Hourly Rate as of Snapshot	W-2	Hourly Rate computed at end-of-year
Cook	Service Workers	M	FT	2080	\$14.45	\$30,056	\$14.45
Cook	Service Workers	M	FT	2080	\$14.45	\$30,056	\$14.45
Cook	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	M	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	M	FT	2080	\$14.43	\$30,014	\$14.43
Cook	Service Workers	M	FT	2080	\$14.44	\$30,035	\$14.44
Grounds Attendant	Service Workers	M	FT	2080	\$14.44	\$30,035	\$14.44
Grounds Attendant	Service Workers	M	FT	2080	\$14.41	\$43,273	\$20.80
Grounds Attendant	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Grounds Attendant	Service Workers	M	FT	2080	\$14.44	\$43,335	\$20.83
Grounds Attendant	Service Workers	M	FT	2080	\$14.41	\$43,273	\$20.80
Grounds Attendant	Service Workers	M	FT	2080	\$14.40	\$43,252	\$20.79
Grounds Attendant	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	W	FT	2080	\$14.44	\$30,035	\$14.44
Cook	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Cook	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	W	FT	2080	\$14.44	\$30,045	\$14.44
Cook	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Grounds Attendant	Service Workers	W	FT	2080	\$14.41	\$43,273	\$20.80

Title	EEO-category	Sex	FT/PT Status	Hours	Hourly Rate as of Snapshot	W-2	Hourly Rate computed at end-of-year
Grounds Attendant	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Grounds Attendant	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Grounds Attendant	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40

	Average Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Hourly Rates according to W-2	\$15.56	\$14.87	14	\$16.25	14	0.92
Hourly Rates at time of EEO-1 snapshot	\$14.42	\$14.41	14	\$14.42	14	1.00

Scenario 3b: This scenario is identical to the one above with the exception that male groundskeepers have higher hourly salaries than in the previous example.

Issue: Using a snapshot of employees grouped together as of September 1st but analyzing W-2 earnings may result in a false negative determination of potential discrimination.

Example: In this example, the seven male ground attendants have hourly rates that are more than two dollars greater than the hourly rates for any of the other ground attendants or cooks. Additionally, on September 2nd (1 day after the snapshot), five grounds attendants (1 man and 4 women) were promoted into roles with substantially expanded responsibility. These five individuals had a new salary of approximately \$70,000 for the last four months of the year. Thus, the W-2 earnings for the promoted individuals is approximately \$13,300 ($[\$70,000 - \$30,000]/3$) more than the other individuals with whom they are grouped.

Conclusion: Analyzing the hourly rate of pay at the time of the data snapshot indicates that women earn \$0.92 for every dollar that men earn; however, an analysis of W-2 earnings indicates virtually no difference between the average hourly rate between men and women. Thus, analyzing W-2 earnings masks a pay disparity.

Title	EEO-category	Sex	FT/P T Status	Hours	Hourly Rate as of Snapshot	W-2	Hourly Rate computed at end-of- year
Cook	Service Workers	M	FT	2080	\$14.45	\$30,056	\$14.45
Cook	Service Workers	M	FT	2080	\$14.45	\$30,056	\$14.45
Cook	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	M	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	M	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	M	FT	2080	\$14.43	\$30,014	\$14.43
Cook	Service Workers	M	FT	2080	\$14.44	\$30,035	\$14.44
Grounds Attendant	Service Workers	M	FT	2080	\$16.84	\$35,027	\$16.84
Grounds Attendant	Service Workers	M	FT	2080	\$16.81	\$48,265	\$23.20
Grounds Attendant	Service Workers	M	FT	2080	\$16.80	\$34,944	\$16.80
Grounds Attendant	Service Workers	M	FT	2080	\$16.85	\$35,048	\$16.85
Grounds Attendant	Service Workers	M	FT	2080	\$16.81	\$34,965	\$16.81
Grounds Attendant	Service Workers	M	FT	2080	\$16.80	\$34,944	\$16.80
Grounds Attendant	Service Workers	M	FT	2080	\$16.80	\$34,944	\$16.80
Cook	Service Workers	W	FT	2080	\$14.44	\$30,035	\$14.44
Cook	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40
Cook	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Cook	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Cook	Service Workers	W	FT	2080	\$14.44	\$30,045	\$14.44
Cook	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42
Grounds Attendant	Service Workers	W	FT	2080	\$14.41	\$43,273	\$20.80
Grounds Attendant	Service Workers	W	FT	2080	\$14.42	\$29,994	\$14.42

Title	EEO-category	Sex	FT/P T Status	Hours	Hourly Rate as of Snapshot	W-2	Hourly Rate computed at end-of- year
Grounds Attendant	Service Workers	W	FT	2080	\$14.42	\$43,294	\$20.81
Grounds Attendant	Service Workers	W	FT	2080	\$14.41	\$29,973	\$14.41
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$29,952	\$14.40
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$43,252	\$20.79
Grounds Attendant	Service Workers	W	FT	2080	\$14.40	\$43,252	\$20.79

	Average Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Hourly Rates according to W-2	\$16.16	\$16.24	14	\$16.08	14	1.01
Hourly Rates at time of EEO-1 snapshot	\$15.02	\$14.41	14	\$15.62	14	0.92

Issue 4: Less than One Full Year of Tenure

Scenario 4a: In this scenario, we refer back to the group of exempt jobs from Scenario 2: Database Administrators, Computer Systems Analysts, Software Quality Assurance, and Information Security Analysts.

Issue: Analyzing W-2 earnings for a group of employees, not all of whom have had one full year of tenure, may result in a false positive determination of potential discrimination.

Example: In this example, there are 14 men and 14 women distributed across four exempt jobs listed in Scenario 2. All employees are full time; base pay values for the employees who were full-time in Scenario 2 are identical in this scenario. For the employees who were part-time in Scenario 2, they are listed as full-time in this scenario and their salaries reflect a full-time rate. There are also five individuals without a full year of tenure in this scenario:

- Two women in the Database Administrator job were not hired until the end of August (W-2 values reflect ¼ of base pay)
- One woman and one man in the Software Quality Assurance job were not hired until the beginning of April (W-2 values reflect ¾ of base pay)
- One woman in the Information Security Analysts job quit in October (W-2 values reflect ¾ of base pay)

Conclusion: Comparing the hourly rate of pay computed from base pay indicates no difference between the average hourly rate between men and women; however, comparing hourly rate from W-2 earnings without regard for tenure indicates that women earn \$0.87 for every dollar earned by men.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$22,500
Database Administrator	Professionals	W	FT	2080	\$90,020	\$22,505
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$90,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$67,530
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$67,560
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	\$90,000	\$67,500
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$90,050
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$90,050

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2 without regard for tenure	\$39.81	\$37.11	14	\$42.51	14	0.87
Analyzing base pay	\$43.29	\$43.29	14	\$43.28	14	1.00

Scenario 4b:

Issue: Analyzing W-2 earnings for a group of employees, not all of whom have had one full year of tenure, may result in a false negative determination of potential discrimination.

Example: This example is identical to the prior example, with two exceptions:

- All employees have a full year of tenure with the exception of four men hired into Information Security Analyst positions in April
- The newly hired employees have base pay values that are approximately 33% higher than all others

Conclusion: Comparing the hourly rate of pay computed from base pay indicates that women earn \$0.91 for every dollar earned by men; however, comparing hourly rate from W-2 earnings without regard for tenure indicates no difference between the average hourly rate between men and women.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$90,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$120,050	\$90,038
Information Security Analysts	Professionals	M	FT	2080	\$120,030	\$90,023
Information Security Analysts	Professionals	M	FT	2080	\$120,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$120,050	\$90,038

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2 without regard for tenure	\$43.28	\$43.29	14	\$43.28	14	1.00
Analyzing base pay	\$45.35	\$43.29	14	\$47.40	14	0.91

Issue 5: Earnings other than base pay

Scenario 5a: In all scenarios addressing Issue 5, we use the same group of exempt jobs as in Scenario 4a and 4b.

Issue: Analyzing W-2 earnings for a group of employees in which some have received relocation funds (represented as W-2 earnings) may result in a false positive determination of potential discrimination.

Example: In this example, the 14 men and 14 women have the same base pay values as in Scenario 4a. In this scenario, however, there are four male Information Security Analysts who received \$15,000 in relocation assistance.

Conclusion: Comparing the hourly rate of pay computed from base pay indicates no difference between the average hourly rate between men and women; however, comparing hourly rate from W-2 earnings indicates that women earn \$0.95 for every dollar earned by men.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$90,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$105,050
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$105,030
Information Security Analysts	Professionals	M	FT	2080	\$90,000	\$105,000

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
						0
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$105,050

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2	\$44.32	\$43.29	14	\$45.34	14	0.95
Analyzing base pay	\$43.29	\$43.29	14	\$43.28	14	1.00

Scenario 5b:

Issue: Analyzing W-2 earnings for a group of employees in which some have received relocation funds (represented as W-2 earnings) may result in a false negative determination of potential discrimination.

Example: In this example, women have a lower base pay than men in every job except Software Quality Assurance Engineer. Additionally, the four female Database Administrators received \$13,000 in relocation assistance.

Conclusion: Comparing the hourly rate of pay computed from base pay indicates that women earn \$0.94 for every dollar earned by men; however, comparing hourly rate from W-2 earnings shows virtually no difference between the average hourly rate between men and women.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$77,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$77,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$77,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$77,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$87,000	\$87,000
Computer Systems Analyst	Professionals	W	FT	2080	\$87,030	\$87,030
Computer Systems Analyst	Professionals	W	FT	2080	\$87,050	\$87,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	\$80,000	\$80,000
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$90,050
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$90,050

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2	\$42.96	\$42.64	14	\$43.28	14	0.99
Analyzing base pay	\$42.07	\$40.85	14	\$43.28	14	0.94

Scenario 5c:

Issue: Analyzing W-2 earnings for a group of employees in which some have received profit sharing (represented as W-2 earnings) may result in a false positive determination of potential discrimination.

Example: In this example, all Information Security Analysts and Computer Systems Analysts are eligible for profit sharing. Information Security Analysts are eligible for percentages up to 30% of their salary; Computer Systems Analysts are eligible for percentages up to 20% of their salary. Each employee in these job titles received profit sharing percentages, and the percentages ranged from 2% to 30%. The average W-2 earnings for men eligible for profit sharing is different from the average W-2 earnings for women eligible for profit sharing by fewer than \$400; however, there is a higher percentage of men in the profit sharing eligible jobs.

Conclusion: Comparing the hourly rate of pay computed from base pay indicates no difference between the average hourly rate between men and women; however, comparing hourly rate from W-2 earnings indicates that women earn \$0.95 for every dollar earned by men.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$91,841
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$91,840
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$93,641
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$99,045
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$99,043
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$105,340
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$103,548
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$103,545
Information Security Analysts	Professionals	W	FT	2080	\$90,000	\$117,040
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$97,242
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$99,045
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$92,741
Information Security Analysts	Professionals	M	FT	2080	\$90,000	\$102,640
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$112,553

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2	\$45.84	\$44.71	14	\$46.96	14	0.95
Analyzing base pay	\$43.29	\$43.29	14	\$43.28	14	1.00

Scenario 5d: This scenario represents complications in cases in which a job change results in different types of earnings available.

Issue: Analyzing W-2 earnings for a group of employees in which one has transferred into a commission-based job may result in a false positive determination of potential discrimination.

Example: In this example, one Information Security Analyst transferred into a commission-based sales job on September 2nd (1 day after the snapshot). He makes a large sale before the end of the year, and the \$70,000 commission check is recorded in W-2 earnings.

Conclusion: Comparing the hourly rate of pay computed from base pay indicates no difference between the average hourly rate between men and women; however, comparing hourly rate from W-2 earnings indicates that women earn \$0.95 for every dollar earned by men.

Title	EEO-category	Sex	FT/PT Status	OFCCP Hours	Base Pay	W-2
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	W	FT	2080	\$90,020	\$90,020
Database Administrator	Professionals	W	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Database Administrator	Professionals	M	FT	2080	\$90,030	\$90,030
Database Administrator	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	W	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	W	FT	2080	\$90,050	\$90,050
Computer Systems Analyst	Professionals	M	FT	2080	\$90,030	\$90,030
Computer Systems Analyst	Professionals	M	FT	2080	\$90,000	\$90,000
Computer Systems Analyst	Professionals	M	FT	2080	\$90,050	\$90,050
Software Quality Assurance Engineer	Professionals	M	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,090	\$90,090
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,040	\$90,040
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,100	\$90,100
Software Quality Assurance Engineer	Professionals	W	FT	2080	\$90,080	\$90,080
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	W	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$90,050
Information Security Analysts	Professionals	M	FT	2080	\$90,030	\$90,030
Information Security Analysts	Professionals	M	FT	2080	\$90,000	\$90,000
Information Security Analysts	Professionals	M	FT	2080	\$90,050	\$160,050

	Average Hourly Salary	Average Women's Hourly Salary	# Women	Average Men's Hourly Salary	# Men	Pay gap
Analyzing W-2	\$44.49	\$43.29	14	\$45.69	14	0.95
Analyzing base pay	\$43.29	\$43.29	14	\$43.28	14	1.00