

New Compensation Directive Promises Transparency

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Late last week [OFCCP released a new Directive](#) detailing the Agency's approach to investigating pay discrimination. [Directive 2018-05](#) applies to all OFCCP reviews scheduled on or after August 24, 2018, and to open reviews to the extent "they do not conflict with OFCCP guidance or procedures existing prior to the effective date."

Over the coming days we will break down the different components of the Directive including a review of the Directive's details as to the development of "similarly situated" pay groupings and the Agency's stated statistical methodology for analyzing compensation disparities.

Before digging into the details, we wanted to take a minute to highlight how the Directive reflects the Agency's current commitment to transparency. The "transparency" elements in the Directive are consistent with one of the [four themes](#) articulated recently by [OFCCP Acting Director Craig Leen](#).

The first stated objective of the Directive is to

further clarify **and provide additional transparency to contractors** about OFCCP's approach to conducting compensation evaluations.

In addition to providing a detailed explanation of its pay grouping and statistical methodology, the Directive requires, at the conclusion of a desk audit, that OFCCP provide the contractor with a written explanation describing the "general nature of any preliminary compensation disparities that warrant further information requests or onsite review."

More importantly, and more substantively, the Directive requires that, when discrimination findings exists, OFCCP attach to a [Pre-Determination Notice \(PDN\)](#)

the individual-level data necessary for the contractor to replicate the PAGs and regression

results.

It remains to be seen how the transparency aspect of the new Directive will be implemented in compliance reviews. For example, will OFCCP be providing information sufficient for contractors to actually replicate OFCCP's analysis (e.g. how the regression model was developed), or just provide detail around PAG development and the **results** of the regression analysis?

Per the Directive, OFCCP is committed to facilitating "transparency, consistency and resolution of discrimination findings through conciliation." Knowing whether OFCCP is "bucketing" variables or "squaring" time factors, which OFCCP disclosed may be part of their methodology, will impact contractors' ability to replicate the results of the regression analysis. A contractor's ability to actually replicate the Agency's analysis is an important piece of the conciliation process. Thus, OFCCP's level of transparency can have a material impact on the success of resolution.

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