

OFCCP Chat with Pat Shiu

1.7.2011

Friday January 7, 2011

1:21

DOL Moderator:

Good afternoon, everyone! You can start entering your questions at any time, but they'll only show up in the chat window when they are answered. There is no audio or video for this; it is text only.

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1:30

Patricia Shiu:

Good afternoon. My name is Patricia Shiu and I am the Director of the Office of Federal Contract Compliance Programs, also known as OFCCP. It is a pleasure for me to be with you on this web chat today to highlight OFCCP's Fall 2010 regulatory agenda.

OFCCP is one of the leading civil rights agencies in the federal government. For the past 45 years, we have been on the front lines of protecting the civil rights of those who seek employment with or are currently employed by federal contractors and subcontractors. We ensure that workers are not subject to discrimination, harassment, retaliation or termination because of their gender, race, national origin, religion, disability or status as a protected veteran. Getting a contract from the federal government is a privilege, not a right. And with that privilege comes a fair and reasonable obligation to comply with affirmative action requirements and anti-discrimination laws.

As we at OFCCP strive for excellence in our efforts to protect workers, promote diversity and enforce the law, we are also taking a hard look at the laws we enforce. That effort is advanced in the U.S. Department of Labor's *Fall 2010 Regulatory Agenda*. This semiannual publication reflects Secretary of Labor Hilda Solis's commitment to ensuring that workplaces are safe, secure and equitable and that businesses comply with all labor and employment laws. We call this approach "Plan, Prevent and Protect."

OFCCP's four entries in DOL's *Fall 2010 Regulatory Agenda* are titled:

1. Non Discrimination in Compensation: Compensation Data Collection Tool;
2. Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Evaluation of Recruitment and Placement Results Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA);
3. Construction Contractor Affirmative Action Requirements; and
4. Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors: Evaluation of Recruitment and Placement Results Under Section 503 of the Rehabilitation Act of 1973.

Collectively, OFCCP's plans for regulatory reform seek to strengthen affirmative action requirements of nearly 200,000 federal contractors and subcontractors who profit from taxpayer dollars, particularly with regard to veterans, individual with disabilities, and women

and minorities in the construction trades. We are also seeking public comment on how we collect wage data. This data will be critical to realizing President Obama's goal of ending, once and for all, the persisting gap in pay between men and women.

I hope that you will think about how we can achieve these goals because we are counting on your comments and feedback. So, let's get started with your questions.

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1:31

[Comment From Norma Wall]
How soon will the new census data become available?

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1:31

OFCCP Staff:
Norma--Thanks for your question. The census data is published by the US Department of Commerce. They've already released state counts and we expect full 2010 Census data to come out in the next few months.

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1:31

[Comment From Julia]
Is there an update regarding your evaluation of the continued use of FAAPs?

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1:31

OFCCP Staff:
Yes, we anticipate releasing new guidance on the Function Affirmative Action Program in the very near future.

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1:31

[Comment From Beth Scott]
Has OFCCP performed any analysis of the likely or expected impact of the changes on the rate or outcomes of compensation investigations?

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1:31

OFCCP Staff:
Because we are still at the ANPRM stage, we are still soliciting input as to the impact of the changes on rate of outcomes. We will welcome input from the public on this topic.

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1:32

[Comment From AAPGuy]
I heard there was a new FCCM in the works. When is it expected to be published?

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1:33

OFCCP Staff:
Thanks AAPGuy, we anticipate completion of the FCCM in the near future – hopefully within the next 60 days.

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1:34

[Comment From Pat Schaeffer-EEOIMPACT]
There are lots of rumors that OFCCP will bring back the "DuBray" pay grade analysis....any truth to this?

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1:34 OFCCP Staff:

Yes, this is a rumor. As we explained in the Federal Register notice regarding the rescission of the compensation standards, OFCCP will continue to follow Title VII principles in investigating and analyzing compensation discrimination. OFCCP will develop and issue compensation investigation procedures in the same manner as procedures for investigating other forms of discrimination, for example through the OFCCP directives and other staff guidance materials. OFCCP is well aware of the "DuBray" method and its limitations.

1:36

[Comment From Nita Beecher]

I am interested in what OFCCP will be using to determine whether federal contractors are in compliance with 11246 now that the 2006 compensation guidance has been rescinded?

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1:36

[Comment From Angelia]

The Compensation guidelines are being rescinded. Will OFCCP be providing contractors with new compensation guidelines in 2011?

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1:36 OFCCP Staff:

Nita/Angelia--OFCCP has traditionally established procedures for investigating compensation discrimination, as well as other forms of discrimination, through instructions for its compliance officers contained in the OFCCP Federal Contract Compliance Manual, directives and other staff guidance material. OFCCP will continue to follow Title VII principles to determine whether contractors are in compliance with the non-discrimination requirements of Executive Order 11246.

1:37

[Comment From Nita Beecher]

Will OFCCP and EEOC be working together to develop a compensation collection tool?

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1:37 OFCCP Staff:

Hi, Nita, thanks for your question. OFCCP is working very closely with our colleagues at EEOC and the Dept. of Justice to improve collaboration among our three agencies. As part of OFCCP's work on the National Equal Pay Taskforce, we are taking a hard look at compensation discrimination. The ANPRM for the new data tool is an important step in getting input on how we can better collect wage data to improve enforcement. We look forward to your comments on the ANPRM.

1:40

[Comment From Carol]

Our company uses an internet based staffing system that posts our jobs to a third party compliance board company. The third party maintains the contact info for all states and forwards our jobs as appropriate. During a recent audit, we had some varied opinions on whether sending notices to state offices was enough, or whether we had to ensure that they posted them to their state website. Does the OFCCP anticipate providing guidance on whether it is required that contractors jobs be

posted on state internet boards, or whether submitting to the local office is sufficient? Thank you.

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1:40

[Comment From Charu]

In the interim, how is OFCCP going to analyze compensation data in compliance reviews.

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1:40 **OFCCP Staff:**

Thanks for your question. We are aware that there is some confusion on this issue and we are considering how to best address it as part of our proposed regulatory agenda items involving VEVRAA, Section 503 and the construction industry. You may also consult the FAQ section of OFCCP's website which addresses the broad issue you raised.

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1:41

[Comment From Angelash]

Could you please provide insight for Companies on the appropriate method for them to use for conducting compensation reviews now that the prior guidelines have been rescinded

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1:41 **OFCCP Staff:**

Charu & Angela, we will be analyzing compensation data using Title VII principles.

1:43

[Comment From Don]

A number of sources are reporting that OFCCP will change their method of analyzing data. What is the new method or tools?

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1:43 **OFCCP Staff:**

OFCCP is continuing to review all existing analytical tools. This may result in future changes to our data analysis.

1:44

[Comment From Glenn Barlett]

Will the OFCCP ever amend the regulations regarding race and ethnic categories so they match with the EEOC's categories?

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1:44 **OFCCP Staff:**

We have no current plans to change race / ethnic categories.

1:44

[Comment From Ann]

Can you elaborate on the agency's efforts regarding quantifying analysis of veterans outreach?

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1:44

[Comment From Shannon]

Will the proposed regulatory changes include goal-setting for covered veterans and individuals with disabilities? If so, what will be recommended as sources of "availability" data? How soon do you expect to publish the NPRM for Section 503 and VEVRAA?

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1:44 [Comment From Nita Beecher]
how soon do you expect to issue proposed regulations under Section 503?

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1:44 **OFCCP Staff:**

Ann, Shannon and Nita B: Because the proposed rule is still under development, it is premature to discuss what will and will not be included in the proposal. Upon completion, the proposed rule will be available for all to review in the Federal Register. In addition, OFCCP will receive comments following the publication of the proposed rule and all are invited to provide comments

1:44 [Comment From Stephannie Dubose]

I attended a teleconference recently where an attendee, after much discussion on how to improve the lack of diversity in employment on construction project, that despite recourse there is no way to force the contractors to hire anyone, that in the end they hire who they choose. I guess my question is, having felt the truth of that statement for over a decade, has the OFCCP found a way around that codicil, and where exactly is that codicil in writing?

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1:44 **OFCCP Staff:**

In hiring, federal contractors must not discriminate in their selection decisions and are required to practice affirmative action. If a decision is based on a prohibited factor, it can be investigated through the complaint process. If you feel this is the case, please contact a district office. You can find your local office from our OFCCP web page, please select your state: <http://www.dol.gov/ofccp/>

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1:45 [Comment From Houston WorkplaceExaminer]

Can you please outline the construction contractor AC requirement. How do you intend to prevent misclassification of workers as independent contractors. Does the department have any NPRM for other industries in this fall agenda

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1:45 **OFCCP Staff:**

Thank you for your question. If you mean AA or Affirmative Action, instead of AC, you can find guidance in the OFCCP Construction Contractor Technical Assistance Guide on the OFCCP website. Construction contractors are required to monitor their employment practices, provide outreach and recruitment according to the 16 steps outlined in the Construction AA Regulations.

OFCCP is a key partner in a joint Department of Treasury/DOL initiative to detect and deter the misclassification of employees as independent contractors and to strengthen and coordinate federal and state efforts to enforce labor law violations arising from misclassification.

Other proposed regulations relate to individuals with disabilities and protected veterans who apply for work or are employed by covered by federal contractors or subcontractors, regardless of industry.

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- 1:45 [Comment From Nita Beecher]
EEOC has indicated that the Census information may not be available until 2012.
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- 1:45 [Comment From Debra Gardner]
I read that the EEO file for the 2010 census will not be published until 2014.
Which is correct?
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- 1:45 [Comment From Glenn Barlett]
The EEOC states that the Census Data will not be available until the fall of 2012.
What is your information based on?
Friday January 7, 2011
- 1:45 **OFCCP Staff:**
Census data is published by the Department of Commerce. We have no additional information about when they plan to publish the 2010 census results.
- 1:45 [Comment From Christina Weaver]
What are the key things the OFCCP will be focusing on in 2011?
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- 1:45 **OFCCP Staff:**
Thanks Christina, OFCCP's focus is on strengthening the existing affirmative action provisions of the regulations, improving effectiveness, compliance, communication, and enforcement as well as developing new ways to meet the goal of Good Jobs for Everyone.
- 1:46 [Comment From Brenda]
When will new AAP requirements for veterans be released.
Friday January 7, 2011
- 1:46 **OFCCP Staff:**
OFCCP's Notice of Proposed Rulemaking revising the veterans' regulations is projected for publication in the Federal Register January 2011.
- 1:46 [Comment From Newby]
What is the FCCM?
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- 1:46 **OFCCP Staff:**
Newby--Thanks for your question. The FCCM is 'Federal Contractor Compliance Manual,' which is available on the agency's website. It provides general guidance on OFCCP's procedures in conducting compliance audits.
- 1:48 [Comment From Chris]
If it helps, the census bureau published an email stating that the EEO file is expected in the fall of 2012
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- 1:48 **OFCCP Staff:**
Thank you Chris!

1:49 [Comment From Michael]
I have heard that the EEO Survey will return. Can you confirm and if so when will the first report be due?

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1:49 OFCCP Staff:
Michael--Thanks for the question. We are not reissuing the old EO Survey, but we are in the process of developing a new compensation data collection tool.

1:49 [Comment From Alex]
Will you be updating your regional outreach sources in the near future?

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1:49 OFCCP Staff:
Alex, thank you for your question. Linkages with organizations committed to advancing equal employment opportunity are very important to OFCCP. Consequently, it is in our 2011 operating plan to update the resource directory available at the OFCCP website.
<http://www.dol.gov/ofccp/ERRD/errsrvs.htm>

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1:49 DOL Moderator:
We've received a few questions about a transcript for this chat. It will be available immediately after the chat ends on this same page. You can also use the "static page" link at the top of this page to see a more text-friendly version of the chat now and after the chat ends.

1:50 [Comment From NOC]
Do you anticipate a change in the scheduling letter? Specifically, where compensation is concerned.

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1:50 OFCCP Staff:
Thanks NOC there may be changes to the scheduling letter in the future based on what we hear back from the ANPRM on the compensation data tool. However there are no changes at this time.

1:53 [Comment From Margaret]
If there are numerical goals for veterans in the future, how will those be established or calculated?

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1:53 OFCCP Staff:
Because the proposed rule is still under development, it is premature to discuss what will and will not be included in the proposal. Upon completion, the proposed rule will be available for all to review in the Federal Register. In addition, OFCCP will receive comments following the publication of the proposed rule and all are invited to provide comments.

1:53 [Comment From Terry]
There seems to exist a great disparity with OFCCPs enforcement of municipalities and states when compared to the private sector. Will this ever change? Will municipals and states be held to the same bar as the private sector in enforcement and audit activity?

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1:53 OFCCP Staff:

Terry--Thank you for the question. Generally speaking DOJ, not OFCCP, has jurisdiction over municipalities.

1:53 [Comment From 503 gal]

Why did you choose to publish your disability proposal as an ANPRM rather than an NPRM and how will that affect the timing of getting final regs out?

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1:53 OFCCP Staff:

Thank you for your question, we published the ANPRM because we wanted to hear from stakeholders about strengthening affirmative action and possibly establishing goals for disability to inform development of the NPRM. We are working as expeditiously as possible to develop the proposed regulation.

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1:53 [Comment From DedeAAP]

Do you plan to issue changes to 503 in the near future?

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1:53 OFCCP Staff:

OFCCP's Section 503 NPRM would strengthen the affirmative action requirements for federal contractors and subcontractors. The NPRM is projected for publication in the Federal Register August 2011.

1:55 [Comment From LB]

Do you have a list of current mega construction projects that is available to public?

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1:55 OFCCP Staff:

Not at this time, however we are working to develop a comprehensive list of ongoing federal construction mega-projects.

1:55 [Comment From Peggy]

Is the EO survey going to be resurrected? If so, will it be the same format or will there be changes made? If there are changes, can you shed some light as to what they may be?

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1:55 OFCCP Staff:

Thanks Peggy, we will not be reissuing the EO Survey, but are developing the new compensation data collection tool.

1:55 [Comment From michelleg66]

I represent a company that assists contractors with compliance. In the past it was within compliance to just distribute jobs to state employment offices across the US. There was never an obligation to "post" these jobs to the state run job boards. Most state boards do not accept an automated feed and require employers to manually log in and post jobs. For high volume companies this is not a realistic task. The question is will devliery of job data/openings info continue to be

sufficient, or is there now a requirement for employers to be sure jobs are actually posted?

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1:55 OFCCP Staff:

OFCCP has posted FAQs on its website concerning the Mandatory Job Listing Requirement and how contractors can post with the state workforce agency job bank. The contractors must list job openings with states in the manner required by the state to list jobs.

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1:55 [Comment From KAAP]
Please define ANRPM what is this acronym?

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1:55 DOL Moderator:

Hi, KAAP. ANPRM = Advanced Notice of Proposed Rulemaking

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1:56 [Comment From Leticia Silvestry]
What is the current focus in data analysis: is it by job title, job grade, job family?

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1:56 [Comment From Guest]
Please tell us more about the Compensation Collection Tool

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1:56 [Comment From Debra Gardner]
In the spirit of transparency, is the OFCCP ever going to communicate to contractors how it conducts its compensation analyses?

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1:57 OFCCP Staff:

Leticia and Debra-OFCCP is intending to hold stakeholder meetings to gather information regarding ways to analyze compensation. We welcome any input you would have on this.

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1:58 [Comment From Kay]
Will you be sending out Corporate Scheduling Letters in 2011?

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1:58 [Comment From Mike]
It seems that the semi-annual 'potential scheduling' letters were reluctantly sent out this time...can you commit that they will indeed be continued to be sent out in the future.

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1:58 [Comment From Nina]
Do you plan to continue sending the CSALs? If so, do you anticipate another "round" being sent in for FY '11?

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1:58 [Comment From Gabriella]
Does the OFCCP intend to continue to utilize the practice of sending out CSALs and when will the next round be released?

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1:58 OFCCP Staff:
Corporate Scheduling Announcement Letters are a courtesy OFCCP provides to companies with two or more establishments on our neutral scheduling list. Yes, we plan to continue sending the CSAL letters during FY 2011. The next round of CSAL letters will be sent in the Spring.

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1:59 [Comment From Jim]
My company is fairly new to the Federal contracts game, and I am reluctant to let the OFCCP know about our Federally funded contracts, because we're not ready to be on the audit schedule. Is it better to wait until we're ready, or notify the OFCCP and deal with the results of a not so stellar audit?

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2:00 OFCCP Staff:
Thanks Jim, if your company is not yet a federal contractor you can still contact the nearest regional or district office for technical assistance. Staff will be able to advise you on the preparation of an affirmative action program after you become a covered contractor, which will only be due 120 days after the federal contract is effective.

2:00 [Comment From Nita Beecher]
Will you be issuing a ANPRM for Section 503?

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2:00 OFCCP Staff:
The ANPRM for Section 503 was open from July through September 2010. OFCCP is currently developing a notice of proposed rulemaking. Upon completion, around August 2011, the proposed rule will be available for all to review in the Federal Register. In addition, OFCCP will receive comments following the publication of the proposed rule and the public is invited to provide comments.

2:01 [Comment From Beau Scott]
How does the OFCCP intend to strengthen AA for Construction Contractors?

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2:01 OFCCP Staff:
Thanks for your question. OFCCP's is seriously considering strengthening and enhancing the effectiveness of the affirmative action requirements for federal and federally-assisted construction contractors and subcontractors, particularly in the area of recruitment and job training. Public input is crucial to determining how we accomplish this goal.

2:02 [Comment From BCG]
Could you summarize your proposed release dates for the various NPRMs? We have seen January and August so far.

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2:02 OFCCP Staff:

Currently we anticipate publishing the VEVRAA NPRM this month, the Construction Contractor NPRM in July 2011, and the Section 503 NPRM in August 2011.

2:03 [Comment From Judy Hirsch]

How often will letters advising employers of possible compliance reviews be sent out? To whom are these letters sent? To signators of EEO-1 Reports?

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2:03 OFCCP Staff:

Thanks Judy, the corporate schedule announcement letters are generally sent twice a year to the CEO. If you have any questions please contact the OFCCP helpdesk at OFCCP-Public@dol.gov.

2:03 [Comment From Guest]

The unemployment rate of people with disabilities is dismal -- what specifically is the OFCCP going to be doing to ensure the right to competitive employment is one that can be achieved by people with disabilities? Alice

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2:03 [Comment From Judy]

Recently listened to a JAN webinar about customized employment. How does the OFCCP view customized employment as it relates to the AA regulations on posting every position... this seems like a great program but also one that government contractors are prohibited from participating according to current regulations. Will the OFCCP be buidling customized employment in to the revised regs?

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2:03 OFCCP Staff:

NPRM will purpose strengthening and enhancing the effectiveness of the affirmative action efforts of the Federal contractors and subcontractors on behalf of job applicants and employees with disabilities. The proposal will be designed to increase employment opportunities of individuals with disabilities with Federal contractors and subcontractors. The NPRM will propose that Federal contractors and subcontractors increase linkages and conduct more substantive analyses of recruitment and placement actions taken under Section 503. We encourage comments and suggestions to strengthen the regulations

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2:03 [Comment From Guest]

I just received a scheduling letter yesterday stating that I-9s will be subject to review. I also heard OFCCP has indicated they will not be conducting these audits. Can you pls clarify.

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2:04 OFCCP Staff:

OFCCP issued a directive on November 16, 2010 announcing that we will no longer be verifying I-9's as part of our compliance reviews. You may disregard the portion of the scheduling letter you received related to I-9 reviews.

2:05 [Comment From Carol]
Citing the Title VII principles is very broad; can you provide 2-3 examples of how you plan to look at compensation, e.g. parameters, differentials?

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2:05 [Comment From Chris]
Could you please expand what you mean by Title VII principles for analyzing compensation?

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2:05 [Comment From Eileen Terry]
"intending to hold stakeholder meetings to gather information regarding ways to analyze compensation." - so I am understanding the guidelines for discrimination in compensation are not yet set for this Data Collection Tool? What expert advice will the OFCCP be getting and from whom?

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2:05 **OFCCP Staff:**
Carol/Chris--Investigations of systemic compensation discrimination are complex and nuanced. OFCCP has traditionally focused on identifying compensation discrimination through the development of a variety of investigative and analytical tools. The use of a particular tool, or combination of tools, depends on the facts of a specific case and includes consulting with labor economists and other experts as appropriate. OFCCP will be publishing an ANPRM requesting public comments about developing a new compensation data collection tool. We will be having town hall meetings to gather public input.

2:06 [Comment From Glenn Barlett]
Why does OFCCP staff continue to send what is basically a form letter requesting additional data on all employees based on "explained differences" and refuse to say what those differences are?

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2:06 **OFCCP Staff:**
Thanks Glenn, generally, compliance data submitted to OFCCP for initial audit is broad-based or global in nature. In these instances OFCCP will request individual employee-wide or specific job title data to ensure that the contractor's employment practices are in compliance throughout the its workforce.

2:07 [Comment From Chuck Hosmer-TVA]
When applying for federal jobs, veterans receive a preference of 5 points on the civil service exam. Is such a preference anticipated in the new rules for federal contractors?

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2:07 **OFCCP Staff:**
The 5-point veterans preference applies to employment with the federal government. Protected veterans who apply for federal contractor jobs have priority REFERRALS to job openings with federal contractors (not preference) from State Workforce Agency Job Banks and local One Stop Centers. The new proposed regulations under VEVRAA aim to strengthen affirmative action for protected veterans.

2:08 [Comment From Amanda]
Where can we find the ANPRM regarding wage data and the new data tool

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2:08 **OFCCP Staff:**
Using the Internet, go to <http://www.regulations.gov/search/regs/home.html#home>; to a search on the above RIN number 1250-AA03.

2:08 [Comment From Erin]
Could you provide more information on the CSAL's? What are they, what information do they share and should my company be expecting one?

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2:08 **OFCCP Staff:**
Please see our answer provided at 1:58.

2:09 [Comment From Terry]
Cities and States are government contractors, so why would their oversight be left to DOJ as opposed to OFCCP? Especially when they are subject to being investigated by the EEOC? Does a statute exist that bars OFCCP from investigating cities and states - who are probably among the largest recipients of federal contracts and have high volume compliance issues in taht regard. Please advise --

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2:09 **OFCCP Staff:**
Terry, sorry for the confusion. Yes, certain states and municipalities can fall under OFCCP's jurisdiction if they're covered federal contractors subject to certain exemptions set forth in the law.

2:09 [Comment From AAPGuy]
Will the "16 steps" for Construction Contractors compliance model be changing based on the upcoming NPRM?

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2:09 **OFCCP Staff:**
AAPGuy--Because the proposed rule is still under development, it is premature to discuss the details of what will be included in the proposed construction contractor regulations as it relates to the Sixteen Steps. However, you will have an opportunity to comment on the proposed NPRM during the public comment period following publication in the federal register.

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2:09 [Comment From Fatima Goss Graves]
Is OFCCP soliciting public input now on strengthening AA requirements for construction contractors or will there be a notice. If so, when do you expect it?

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2:09 **OFCCP Staff:**
Fatima, thanks for your question. Yes, the NPRM on Construction is scheduled to be published in July 2011.

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2:09 DOL Moderator:

There have been some questions about rulemaking and acronyms. Please see our page at <http://www.dol.gov/regulations/participate.htm> for information about how to comment on regulations. The bottom of the page explains some frequently used regulations acronyms.

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2:10 [Comment From Judy Hirsch]

To whom are CSAL's and scheduling letters addressed? Our CEO is located in another country and I worry where these will go. We're hoping they can be sent to the signators on the EEO-1s.

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2:10 [Comment From Nita Beecher]

Are you willing to meet with employer groups to discuss their input?

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2:10 OFCCP Staff:

CSAL's are addressed to the CEO of a company and the director of human resources.

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2:10 [Comment From Guest]

Will there be any upcoming town hall meetings?

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2:10 OFCCP Staff:

Thanks Nita. Yes we will continue to hold stakeholder meetings, as we have over the last year. Notice of the meetings can be found on our DOL webpage.

2:11 [Comment From Debra Milstein Gardner]

If someone is a temp to hire placement, does the contractor have to post the job with the state job service? The same question for a rehire.

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2:11 OFCCP Staff:

If the temporary position is for three days or less, the position is not required to be posted as part of the mandatory job listing requirement.

2:12 [Comment From AAPGuy]

How will OFCCP be involved with the new Offices of Women and Minority Inclusion that were part of the Dodd-Frank financial reform bill?

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2:12 OFCCP Staff:

Thanks AAPGuy, the DOL Deputy Secretary sent a letter to his counterparts at all of the covered federal financial agencies inviting them to partner with DOL OFCCP as they go about establishing their agency's OMWI. OFCCP has held introductory meetings with several of these agencies and anticipate ongoing communication, coordination, and collaboration to ensure consistency in approaches and avoid duplication of efforts.

2:12 [Comment From Judy]

Will there be a conflict with HIPAA if the new 503 regs require collection of disability information?

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2:12 OFCCP Staff:

Judy, OFCCP has taken HIPAA restrictions into account in the prospective revisions to our disability regulations and do not anticipate any conflicts. However, OFCCP invites you to share your views on this issue.

2:13 [Comment From YR]

Will CSAL letters be issued during spring 2011, as a follow up to the letters mailed in Dec 2010?

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2:13 OFCCP Staff:

YR, generally we issue CSAL letters twice a year and anticipate doing so in the Spring.

2:15 [Comment From Bill]

How is the current lack of a federal budget for FY 2011 affecting your agency's ability to hire and train new employees, and how is it affecting your efforts to move forward your regulatory agenda?

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2:15 OFCCP Staff:

Bill--Thanks for your question. As you may know, under President Obama's leadership, OFCCP's budget has increased by 25% and our staff has grown by 35%. For the first time in more than a decade, we have hosted uniform, national, high-quality training for more than 200 newly hired compliance officers. All of this is part of OFCCP's renewed commitment to protecting workers, promoting diversity and enforcing the law. We look forward to continuing our efforts through trainings and increased enforcement activities in the coming year and we will make that case to the Members of Congress.

2:15 [Comment From Nita Beecher]

Will OFCCP considering revamping its 11246 regulations even though that is not on the regulatory agenda for 2011?

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2:15 OFCCP Staff:

OFCCP will be proposing to amend the executive order construction contractor affirmative action regulations. OFCCP also will be publishing an ANPRM requesting public input on development of a new compensation data collection tool to help the agency better investigate contractors' compliance with compensation nondiscrimination requirements under the executive order.

2:16 [Comment From clark]

your link to the [regulations.gov](http://www.regulations.gov) site shown above doesn't work

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2:16 DOL Moderator:

If that doesn't work, the correct link is <http://www.regulations.gov/>.

2:16 [Comment From Guest]

Has the OFCCP made any progress in determining whether businesses should to "track" employees with disabilities? Meg

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2:16 OFCCP Staff:
We are seriously considering whether self-identificaiton can be better used to assist businesses in strengthening their AAPs. We welcome your input on the NPRM once it is published.

2:17 [Comment From Glenn Barlett]
Will the OFCCP's compensation investigation procedures be made public?

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2:17 OFCCP Staff:
OFCCP's interpretive standards and voluntary guidelines rescission was published in the Federal Register January 3, 2011. Comments regarding the rescission must be received by March 4, 2011. OFCCP will review the comments and establish procedures for investigating compensation discrimination, as well as other forms of discrimination through instructions for its compliance officers contained in the OFCCP Federal Contract Compliance Manual, Directives and other staff guidance materials.

2:17 [Comment From Guest]
Recruitment and job training hasn't been an issue. There are dozens of programs, federally funded no less, addressing those areas. What steps are the OFCCP taking to address retention and long term economic stability for minorities in the construction trades?

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2:17 OFCCP Staff:
Thanks Guest, NPRM will propose strengthening and enhancing the effectiveness of the affirmative action program requirements for federal and federally-assisted construction contractors and subcontractors, particularly in the area of recruitment and job training.

The proposal will be designed to ensure the federal tax dollars spent on construction are not used to discriminate and that all job applicants and employees, including women and minorities, receive an equal opportunity to benefit from the employment opportunities created by the federal and federally-assisted construction projects.

2:17 [Comment From Louise]
Will OFCCP continue to use the FCSS to select offices for a compliance review and if not, what tool will the agency use?

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2:17 OFCCP Staff:
Yes, we will continue to use the FCSS to schedule compliance evaluations.

2:18 [Comment From Jim]
Does an AAP need to collect data on expats here on L1 temporary visa's, when they are hired out side of the USA and placed at client sites?

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2:18 OFCCP Staff:
No, not if the individual was hired outside of the United States.

2:19 [Comment From Nita Beecher]
Who is the point person at OFCCP on Dodd-Frank issues?

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2:19 **OFCCP Staff:**
Thanks Nita, the point person is Claudia Gordon (gordon.claudia@dol.gov)

2:19 [Comment From Jolene]
In what way, specifically, will "the new proposed regulations under VEVRAA aim to strengthen affirmative action for protected veterans." What will be required of employers?

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2:19 **OFCCP Staff:**
Because the proposed rule is still under development, it is premature to discuss what will and will not be included in the proposal. Upon completion, the proposed rule will be available for all to review in the Federal Register. In addition, OFCCP will receive comments following the publication of the proposed rule and all are invited to provide comments.

2:19 [Comment From Chris]
Are there certain industries that are of particular interest to the OFCCP? Relative to news we hear there seems to be.

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2:19 **OFCCP Staff:**
Not sure of what news you are referring to, but OFCCP is interested in all industries that have federal contractors.

2:20 [Comment From na]
Is another application like AJB being created?

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2:20 **OFCCP Staff:**
Not that we know of at this time.

2:21 [Comment From Alex]
Will OFCCP provide guidance on forming race comparison for adverse impact analysis?

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2:21 **OFCCP Staff:**
Thanks Alex, OFCCP follows the Uniform Guidelines. Contractors are encouraged to seek technical assistance with analysis from their local OFCCP office.

2:23 [Comment From Ellen]
Would you consider allowing for a public comment period at the NILG conference this summer to all direct live feedback from contractors on the proposed changes on all areas being discussed here today?

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2:23 **OFCCP Staff:**
When an NPRM is published in the federal register, it provides the public an opportunity to participate in the rulemaking process by submitting written comments as part of the

formal process in order to be considered by the agency in developing a final rule. Any feedback to the proposed rules should be submitted in accordance with this process.

2:23 [Comment From Trainer]
Would the OFCCP consider changing the name "Affirmative Action Plans" to de-politicize these programs and perhaps improve training reception for these important programs?

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2:23 **OFCCP Staff:**
Trainer--OFCCP regulations refer to AAP.

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2:24 [Comment From Celestia Johnson]
What is FCSS?

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2:24 **DOL Moderator:**
FCSS = Federal Contractor Selection System. See more about this at <http://www.dol.gov/ofccp/regs/compliance/faqs/fcssfaqs.htm>

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2:24 [Comment From Debra Milstein Gardner]
When will the ANPRM and town hall meetings to gather input into compensation tools take place?

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2:24 [Comment From AAPGuy]
What is the publication date in the Federal Register for the ANPRM for the new compensation data collection tool?

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2:25 [Comment From Analyst]
Are the town hall meetings scheduled? Will any be in Atlanta?

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2:25 **OFCCP Staff:**
The ANPRM is in the process of being developed and will be published next month. We welcome input and comments from the public. OFCCP will host town hall meetings to gather input and comments. These town hall meetings will occur in the near future, decisions will be made soon in terms of location, and they will be posted on our website: <http://www.dol.gov/ofccp/>

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2:25 [Comment From Audits]
Should we include our temporary/seasonal employees in our AAP?

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2:25 **OFCCP Staff:**
Thanks Audits, yes temporary and seasonal employees should be tracked in your

personnel activity logs. When developing your AAP, if they are in your workforce on the day of the snapshot they should be included there as well.

2:26 [Comment From Julia]
Could you elaborate on this financial tool you refer to above?

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2:26 OFCCP Staff:
Julia--I think you're referring to the compensation data tool. This is a proposed new tool to help OFCCP better collect data about wages. We will be publishing an Advanced Notice of Proposed Rulemaking (ANPRM) next month to get input on what this tool would look like. We look forward to your feedback.

2:26 [Comment From Guest]
What changes is OFCCP considering for federal construction contractors?

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2:26 OFCCP Staff:
OFCCP is seriously considering amending the construction regulations to remove outdated regulatory provisions and propose new methods for establishing affirmative action goals that reflect the realities of the labor market and employment practices in the construction industry today.

2:27 [Comment From Judy]
Currently many employees have 'hidden' disabilities and are not comfortable being identified as a person with a disability. Under the upcoming regs, how will contractors be able to ensure that they are acknowledging and counting all with a disability.

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2:27 OFCCP Staff:
Judy, we are seriously considering whether self-identification can be used to help identify those with hidden disabilities for affirmative action purposes. We welcome your input once the NPRM is published.

2:28 [Comment From Jason]
With the rescinding of the two of the Agency's compensation-related guidelines, what will the Agency be considering as "significant" differences in pay? Is there a standard that is being used consistently across the various OFCCP's jurisdictional regions?

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2:28 [Comment From Nita Beecher]
As a followup to Pat Schaeffer's question do you have a timeframe for issuing such procedure for compensation investigations?

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2:28 [Comment From Stephanie R. Thomas]
In the event that the Voluntary Guidelines for Self Evaluation of Compensation are rescinded, what kinds of replacement guidance will the OFCCP be providing for the contracting community?

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2:28 OFCCP Staff:

If the voluntary guidelines are rescinded, contractors will still be obliged to conduct self-evaluations of compensation practices. OFCCP will continue to provide any needed compliance assistance through various means, including Webinars, Web site distribution of FAQs as appropriate rather than through the issuance of a Federal Register notice.

If the compensation standards are rescinded, OFCCP will establish investigation procedures in the same manner of the investigations of other types of discrimination. e.g compliance manual directives.

OFCCP will use Title VII principles when conducting investigations of compensation discrimination.

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2:28

[Comment From Denise]

Was the feedback re FAAPs elicited during the last National ILG conference considered in the development of the soon to be released FAAP guidelines?

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2:28 OFCCP Staff:

OFCCP considered all comments and feedback provided at the last National ILG conference in the development of the new FAAP guidelines that are being finalized for issuance in the near future.

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2:29

[Comment From Debra Milstein Gardner]

If OFCCP is considering having the contractor request self-identification of veteran/disabilities status for applicants, how will it deal with the ADA?

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2:29 OFCCP Staff:

Debra, asking individuals to self-identify for affirmative action purposes in accordance with Section 503 is permissible under the ADA.

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2:29

[Comment From AAPGuy]

The regulations that canceled the EO Survey mentioned that it failed to be a good indicator of potential compensation discrimination. Is it expected that the new compensation data collection tool will differ from the EO Survey in a significant way?

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2:29 OFCCP Staff:

We will be soliciting input on the collection tool and welcome any input you have.

2:31 [Comment From na]
we recently underwent an audit and the auditor was asking for screenshots of jobs being posted to the state board. Is this going to be a new requirement for future audits?

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2:31 **OFCCP Staff:**
Contractors must be able to document their compliance with the mandatory job listing requirement. A screen shot is an example of how a contractor may demonstrate compliance

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2:31 [Comment From Robye]
Will Section 503 include web accessibility requirements and guidance, similar to Section 508?

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2:31 [Comment From James]
Will there be any technical assistance or resources made available to federal contractors once the new 503 guidelines are issued?

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2:31 **OFCCP Staff:**
Robye/James-OFCCP is considering a range of methods for improving employment opportunities for people with disabilities, including the effect of technology on employment opportunities for people with disabilities. After the regulation is published technical assistance will be provided.

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2:31 [Comment From Glenn Barlett]
Will the OFCCP change the language of Item 11 of the Itemized Listing attached to the Scheduling Letter?

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2:31 **OFCCP Staff:**
Thank you for your question. Depending on the response from the ANPRM there may be some changes to the language of Item 11 of the itemized listing.

2:31 [Comment From Beth Scott]
Once the proposed guidelines are adopted, what priority will OFCCP give compensation investigations compared to other investigations?

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2:32 **OFCCP Staff:**
Beth, as you may know, OFCCP looks at discrimination in all aspects of employment, whether it be hiring, compensation, promotion, harassment, retaliation or termination. Under the Obama administration, we are taking a much stronger approach to enforcement on compensation discrimination, as part of our effort to, once and for all, end the wage gap between men and women.

2:32 Patricia Shiu: I want to thank everyone for participating in this web chat. I am very excited to be a part of these initiatives in pursuit of Secretary Solis's vision of "Good Jobs for Everyone." OFCCP has hosted numerous web chats and town hall meetings across the country and plans to dramatically increase our outreach to workers and community-based organizations in the coming year. If you would like to be added to our mailing list, you may sign up for alerts on our web site at www.dol.gov/ofccp. You can also contact us directly through our hotline at (800) 397-6251 or by sending an e-mail to OFCCP-Public@dol.gov.

If you work for a federal contractor or subcontractor and think you have been subjected to discrimination at your workplace, please contact us immediately. If you believe you did not get a job from a contractor because of a discriminatory reason, please let us know. We have six regional offices and 45 District and Area offices across the country where compliance officers are ready, willing and eager to assist you. For more information on how to contact our field offices, please check out our web site at www.dol.gov/ofccp.

Once again, I appreciate your interest in our work and look forward to hearing further comments and questions from you as we move ahead.

Thank you.

Friday January 7, 2011 2:32 Patricia Shiu

2:32