

**NWX-DOL ESA OFCCP (US)**

**Moderator: Brenda Stewart  
September 11, 2015  
1:00 pm CT**

Coordinator: Welcome and thank you for standing by. I would like to inform all parties that your lines will be on listen-only for the duration of today's conference. This call is being recorded. If you have any objection you may disconnect at this time.

It is now my pleasure to turn the call over to Ms. Brenda Stewart. Thank you ma'am you may begin.

Brenda Stewart: Thank you Operator and welcome everyone. Again my name is Brenda Stewart and I'll be your moderator for today's webinar, and our focus is the new rule prohibiting pay secrecy.

Throughout this webinar we encourage you to submit your questions or comments through the WebEx chat box and we will address those questions at the end of the presentation. So don't wait until the end to submit your questions. As things come up go ahead and submit them through the chat box.

I'd like to introduce a few of the people that are in the room with me today. Margaret Kraak and Chris Seely are from the Policy Division in OFCCP, and

we also have staff from the solicitor's office and assisting me as well is Sherry West helping me with the Webinar.

Just so you know the questions that come in we will try to get to as many as we can but we may not be able to answer all of them but please refer to our Frequently Asked Questions on our web site that's where we publicize the questions that we can't get to during the webinars.

And we also put other resources on that page and you'll see on our last page of the slide the link for our landing page for the Pay Secrecy Final Rule. And you'll notice that closed captioning is at the bottom right hand side of your screen and on the lower left hand side you can expand your viewing area if you'd like.

And I will send a chat message with the spelling of our presenters but you'll also see that on our next slide where I will introduce our presenters Jessica Larkin and Jennifer Frey.

Jessica is a regulatory analyst with OFCCP's Division of Policy and Program Development. While at OFCCP Ms. Larkin assisted with the regulatory process for Executive Order 13665 on Pay Transparency and OFCCP's Sex Discrimination guideline which included drafting portions of the final rule.

In addition to drafting final rules Jessica assisted with the implementation of several Executive Orders and provides technical assistance related to OFCCP's laws and regulations.

Prior to joining OFCCP Jessica was a Policy Specialist for the Department of Civil Rights Center where she conducted compliance reviews, negotiated

conciliation agreements and provide compliance assistance to state officials on civil rights issues.

Ms. Larkin received her Bachelor's Degree from Vanderbilt University and her Juris Doctor from Fordham University School of Law. Welcome Jessica.

We also have Jennifer Frey who is an attorney with the Civil Rights and Labor Management Division of the Office of the Solicitor of Labor. She's advised on the drafting and implementation of this final rule.

Ms. Frey has spent her first two years at the department serving in the Honors Attorney Program. Since joining the Civil Rights and Labor Management Division Jennifer has worked on various OFCCP matter including rule making and enforcement projects.

She has also provided legal services to the Office of Labor Management Standards, the Civil Rights Center, the Office of Disability Employment Policy and the Office of Apprenticeship.

Ms. Frey received her Bachelor's degree from Colgate University and her Juris Doctor from the George Washington University School of Law. I will now turn the presentation over to Jessica.

Jessica Larkin: Thank you Brenda. Good afternoon and thank you for joining us today. On April 8, 2014 President Obama signed Executive Order 13665 to prohibit federal contractors from discriminating against workers for disclosure of their compensation information.

In the Executive Order the President ordered the Department of Labor to undergo rule-making to implement the new prohibition. The final rule that

was published today September 11, 2015 explains new contractor obligations resulting from the new worker protection ordered by President Obama.

Our objective in today's webinar is to give you an overview of the final rule and its requirements and highlight how to operationalize the requirements. The webinar will then conclude with a number of scenarios to help you better understand the definitions and defenses discussed during this presentation.

This Webinar is intended to be an overview of the final rule. While we may not address every question that you have today OFCCP will provide FAQ's, a fact sheet and other helpful resources on our web site so please check that out when you have a chance.

Executive Order 13665 adds a prohibition to the current list of protective bases and Executive Order (11346) which covers race, color, religion, sex, sexual orientation, gender identity and national origin.

Now in addition to those groups current federal contractors and subcontractors are generally prohibited from discriminating against employees and applicants because the employer or applicant had discussed, inquired about or disclosed their own compensation or the compensation of others.

The basic protection afforded by Executive Order 11246 apply to applicants, employees of federal contractors, subcontractors and federally assisted construction contractors and subcontractors who hold over \$10,000 in government contracts in one year.

Contractors must comply with the provisions of this final rule when they enter into or modify contract and subcontracts on or after the rules January 11, 2016 effective date.

So why does OFCCP need this amendment to protect workers? Despite the existence, laws protecting workers from gender based compensation discrimination pay gap between men and women persists.

Average annual 2013 wage data from the U.S. Census and Bureau of Labor Statistics show that women make between 70 and 82 cents for every dollar men make.

The pay gap between white workers and minorities also persists. Twenty fourteen data from the Bureau of Labor Statistics show that African American men earning 76% of median weekly earnings of white men and African American women early only 68% of median weekly earnings of white men.

By prohibiting discrimination against workers who discuss, inquire about or disclose conversation this final rule will help prevent workers from being disciplined or fired for trying to learn if they are victims to compensation discrimination.

With the final rule in Section (7E) of the National Labor Relations Act prohibit covered employers from discriminating against employees and job applicants who discuss or disclose their own conversation or that of others.

However, the final rule extends those protections to supervisor, managers, agricultural workers and employees of rail and air carriers are covered employees.

Executive Order 13665 ordered the Department of Labor to write regulations to implement the order. OFCCP published and noted the proposed rulemaking on September 17, 2014.

OFCCP conducted listening sessions with individuals from the contractor community, civil rights groups and other interested parties to understand their perspectives on the scope and intent of Executive Order 13665.

We received over 6000 copies, comments some of which were from letter writing campaigns. After considering and reviewing comments OFCCEP has prepared the final rule that we're talking about today.

Now I'll pass it over to Jennifer who will discuss the final rules regulatory changes.

Jennifer Frey: The final rules make specific changes to the regulations implementing Executive Order 11246 in 41CSR Part 60. In 41CSR 60-1.3 the definition section the final rule adds definitions for compensation, compensation information and a central job option.

In 41CSR 60-1.4 the final rule inserts a new paragraph in the equal opportunity clause to include a new non-discrimination provision mandated by the admitted Executive Order.

The final rule also changes the EO Clause's outdated reference to the Assistant Secretary to the Director of OFCCP. Finally the final rule adds Section 60-1.35 which not only describes potential defenses for contractors but also requires contractors to notify employees and job applicants of the non-discrimination protection.

Now we will go into more detail about each of these sections. OFCCP made only a few changes to the rule we proposed last year after reviewing the public comments.

In the final rule OFCCP clarifies how the established defenses work when analyzing claims brought pursuant to the rule. The key defenses, the essential job functions defense and the general or workplace rule defense both of which we will discuss and provide examples of later on, were approached differently in the Executive Order and the rule clarifies these differences.

The Executive Order said that its protections shall not apply when an employee has access to compensation information as part of the diverse essential job function and discloses that information to individuals who otherwise do not have access.

This defense is incorporated directly into the EO clause included in contracts, subcontracts and purchase orders. Thus in this circumstance the employer would have a complete defense to liability.

Conversely with regard to the general or workplace rule defense the Executive Order states that it does not prohibit an employer from pursuing such a defense but this is not included in the EO clause and does not include the clear shall not apply language.

As such OFCCP will analyze this defense if raised within the appropriate analytical framework. If the defense is shown to be protectorial or the employers actions were motivated by discrimination notwithstanding the defense the employer may still be at least partially liable for the adverse action.

We will talk more about the framework for analyzing claims under this rule later in the presentation and provide example scenarios of when these defenses might be raised.

The final rule also modified the definitions of compensation information and essential job functions. Jessica will begin our discussion of the definitions contained in the final rule on the next slide.

Jessica Larkin: Thank you Jennifer. OFCCP enforces Executive Order 11246 which protects workers from compensation discrimination based on the protected categories.

Enforcing this protection involves factual investigations, data and a legal analysis which allow OFCCP to identify and remedy any unlawful discrimination.

To ensure consistency in implementing all of OFCCP's non-discrimination provisions the final rule defines a term compensation, compensation information and essential job functions which are terms involved in uncovering compensation discrimination.

The final rule defines compensation as payments made or offered as a remuneration for employment including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commission, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing and retirement.

It should be noted that this list of compensation types was not meant to be exhaustive. Also although the wording of the compensation definition in Directive 201303 does not include allowances or insurance. OFCCP interprets the directive to be consistent with the final rule.

The rule also defines compensation information. It defines it as the amount and types of compensation provided to employees or offered to applicants

including but not limited to the desire of the contractor to attract and retain a particular employee for the value the employee is perceived to add to the contractors profit and productivity.

The availability an employee with like skills in the marketplace the market research about the worth of similar jobs in the marketplace, job analysis, descriptions and evaluations, salary and pay structures, salary surveys, labor union agreements and contractor decisions, statements and policies related to setting or altering employee compensation.

As mentioned before this final rule is different from the definition provided in the proposed rule. OFCCP modified the proposed rule by providing several examples of compensation information to get contractors, employees and applicants' guidance on what constitutes compensation information as well as to address concerns about attorney client privilege.

Next Jennifer will explain the essential job function defense.

Jennifer Frey: As we mentioned earlier OFCCP has revised the definition of essential job functions. Now instead of the proposed rule's three-prong approach used by the Americans with Disabilities the final rule sets forth a two-prong approach that examines whether one, the access to compensation information is necessary in order to perform that function or other routinely assigned business tasks or two, the function or duties of the position includes protecting and maintaining the privacy of employee personal records including compensation information.

OFCCP adopts this modified definition primarily because it relies more on whether employees are required to have access to confidential compensation information in the performance of their job duties rather than on whether the

employee's position description is related to handling compensation information.

The definition is relevant to the essential job function defense which we will discuss in more detail later on. But briefly the defense states that adverse action taken by a contractor will not be deemed discriminatory if the employee has access to the compensation information of other employees or applicants as part of such employee's essential job function and discloses the compensation of such other employee's or applicants to individuals who do not otherwise have access to such information.

The definition of essential job function adopted in the final rule provides adequate protection to employers in preserving the confidentiality of compensation and personnel data but limits the scope of the exception to those positions that require access to the information to perform their job functions and tasks.

Now I'm going to turn it back over to Jessica to discuss the changes we made to the EO clause.

Jessica Larkin: Thank you. In addition to adding definitions the final rule amends the EO clause the federal contract and subcontracts and for federally assisted contracts and subcontracts by inserting a new paragraph which explicitly states the new non-discrimination provision mandated by Executive Order 11246 as amended.

As a result the EO clause now prohibits covered federal and federally assisted contractors and subcontractors from discharging or in any manner discriminating against an employer applicant because they inquired about, discussed or disclosed their compensation or the compensation of others.

As stated earlier the amended EO clause will apply to covered contracts and subcontracts entered into or modified on or after the January 11, 2016 final rule effective date.

In addition to amending the EO clause covered federal contractors must one, incorporate the non-discrimination provision into existing manuals or handbooks and two, disseminated to employees and job applicants using prescribed language that's prescribed by the director of OFCCP.

The prescribed language is available on OFCCP's Web site and will make clear that covered federal contractors are prohibited from discriminating against applicants or employees for asking about or disclosing their compensation information or that of another employee or applicant.

Also to be clear the requirement to post the prescribed language is separate from the requirement to post the EO is the Law Poster.

Next we'll move on to discussing how we'll operationalize the final rule. During the compliance evaluation OFCCP will verify that the new EO clause is included in subcontracts and will ask to see the prescribed non-discrimination policies in employee manuals and handbooks.

OFCCP will also be expected to determine whether a contractor posts the prescribed non-discrimination policies electronically or in hard copy for all job applicants and employees to access.

Also during compliance evaluation OFCCP will interview a contracted employee to determine if there is possible discrimination attributed to a worker's inquiries, discussions or disclosures of compensation.

If we uncover potential discrimination the OFCCP will investigate further which may include interviewing job applicants. While compliance evaluations are generally the primary way that OFCCP enforces Executive Order 11246 we also accept complaints alleging discrimination.

Employees and applicants for employment would cover federal contractors may file complaints of discrimination if a contractor took adverse action against them for discussing, inquiring or disclosing a compensation of an employee or applicant.

OFCCP will investigate both individual and group complaints that alleged such discrimination.

OFCCP expects to update the complaint forms to include this new protective basis along with sexual orientation and gender identity by 2017 when the current OMB approved form expires.

In the meantime if you wish to file a complaint you may write in pay secrecy or pay transparency and the section that asks why you think your employer discriminated against you and you can explain the reasons why you think you're discriminated against in a narrative portion of the complaint form.

Additional information about filing complaints is found on our web site. And now Jennifer will discuss the relief available for complainants under Executive Order 11246.

Jennifer Frey: OFCCP's remedies are designed to make the discrimination victims whole to be sent reasonably possible. In fashioning remedies OFCCP attempts to obtain a complete remedy.

It is important to note that the types of make whole relief listed here wouldn't necessarily be appropriate in every case and there may be other forms of make whole relief that are appropriate given the facts of the case.

As the flag indicates make whole relief could include a job offer, back pay and front pay if appropriate. Back pay is designed to restore the monetary value of wages, salary and benefits lost by the victim due to discrimination.

Front pay is designed to avoid the loss of future wages, salary and benefits where placement in a job or range statement is not feasible. Additionally when they pursue injunctive type relief or corrective remedies to stop the violation, secure the effects of the violation and to prevent the violation from occurring.

Other types of corrective remedies include training, monitoring and reporting requirements. OFCCP may not however seek compensatory or punitive damages.

If OFCCP is unable to resolve a violation it will refer the violation it will refer the violation to the Solicitor of Labor for further administrative enforcement proceedings.

These proceedings may result in remedies that include debarring the contractor from receiving future contracts or modifications or extensions of existing contracts.

Now we'll move onto a discussion of the analytical framework that OFCCP will use to analyze claims under the final rule.

In the (NTRM) OFCCP stated that the Executive Order 13665 as establishing a new prohibition against discrimination against any employee or applicant.

And announced this intent to use the burdensome standards or proof applicable to Title 7 discrimination claims including the use of a motivating factor framework for analyzing causation.

This means that if discrimination motivated the employer's actions even in part the employer can still be at least partially liable for the actions it took. This is in contrast to the but for or determinative factor framework that generally applies to Title 7 retaliation claims where unless the plaintiff can show that but for discrimination they would not have been treated adversely the employer prevails.

We received a number of thoughtful and help comments on this issue and took into account the developing law on the issue. We concluded and set forth in the final rule that a motivating factor framework can be used to analyze claims under the Executive Order. There were a number of reasons for this.

First the protection afforded by Executive Order 13665 is different from the traditional Title 7 retaliation framework. While Title 7 retaliation claims currently require either opposition to an unlawful employment practice or participation in a formal investigation.

The protection in Executive Order 13665 protects any compensation, inquiries, discussions or disclosures. A question from coworker to coworker about the annual bonus she received or an employee's inadvertent disclosure of a difference in pay between herself and a colleague could form the basis for a claim under Executive Order 13665.

On the other hand the protections in Executive Order 13665 are inherently and uniquely connected to discrimination claims. The orders protections are geared not only to safeguard the integrity of existing pay discrimination laws

but to also allow workers to discover discrimination that would otherwise be (hidden).

This protection is also interrelated with contractors existing and ongoing affirmative action obligations to evaluate and report on their compensation system for the existence of potentially discriminatory disparities.

While the motivating factor framework is a permissible approach for claims right under the Executive Order it is not the only approach OFCCP may use to provide discrimination.

Recent Title 7 court decisions have held that despite the availability of the motivating factor analysis. The plaintiff may also proceed under the determinative factor framework.

Which approach makes more sense will depend upon the specific facts of the case as they are developed in the investigation and in discovery. For instance in true mixed motive cases where for example the employer can show that it fired an employee for taking excessive breaks but when there is also evidence that the employer fired the employee in part for discussing compensation the motivating factor approach would be appropriate.

Conversely where the evidence appears clear that discrimination was the only motive OFCCP may opt to proceed under the more traditional pretext approach.

OFCCP may also opt to prove its case by a bulk framework arguing for instance that discrimination was the determinative factor in an employer's adverse action but in the alternative that it was at least a motivating factor.

The Supreme Court and multiple Circuit Courts have recognized this approach as permissible under Title 7. It is important to note that the liability of the employer is different under these two approaches.

Under the motivating factor approach if OFCCP is able to demonstrate the discrimination personally motivated the employer's actions but the employer can demonstrate that there were other lawful reasons for the adverse employment action and that the employer would have taken the same action even absent the discrimination.

Then the employer could be held liable but the remedy for example back pay would be limited and perhaps eliminated completely depending on various factors.

Under the determinative factor approach however if liability is established there is no similar limitation on monetary relief. These considerations will also inform which approach OFCCP may use in a given case.

Next we will discuss the defenses available to employers under the final rule and we'll provide some examples to illustrate how these differences might come up.

As we mentioned Executive Order 13665 and the final rule incorporate two defenses that are available to contractors. The first defense is the general or workplace rule defense.

This defense provides that a contractor may pursue a defense to an alleged violation of the non-discrimination provision as long as the defense is not based on a rule or policy that prohibits employers or applicants from

discussing or disclosing their compensation or the compensation of other employees or applicants.

A contractor may pursue this defense by demonstrating for example that it disciplines the employee for violation of the consistently and uniformly applied policy or workplace rule.

Although a contractor may not discipline all employees in an identical way under the workplace rule it must show that it did not discipline the employee or applicant in question more severely under the rule because of the employee's or applicants protected activity.

The (line) on a workplace rule may not serve as a complete defense under the motivating factor and analytical framework. While a contractor may limit the scope of an adverse or medial order if it can show that it would have taken the same action against the employee or applicant in the absence of any discriminatory motive it cannot escape all liability within the motivating factor framework if OFCCP can show that discrimination motivated the contractor even in part to discipline an employee or applicant.

The Executive Order sought to root out all forms of discriminatory actions even if they are combined with some lawful motivation. To the extent that a desire to perpetuate unlawful pay secrecy policies motivated a contractor's action OFCCP will seek to enjoin such practices.

Jessica Larkin: So now let me offer an example scenario of how the workplace rule defense might come up. Let's look a scenario 1A. A contractor has a workplace rule requiring all employees to take only 30 minutes for lunch.

Linda, Susan and Carol have never been late coming back from lunch. On Monday Carol came back late and was suspended for a week. On Wednesday Linda and Susan also came back late who were both fired.

Linda and Susan were comparing their pay and discussing the contractor's unfair practices or pay practices while they were at lunch that day they were fired.

Assuming the contractor knows that both Linda and Susan were comparing pay and discussing unfair practices does this mean the contractor can fire Linda and Susan?

Jennifer Frey: The answer here is that it depends on whether the contractor can successfully assert a workplace rule defense. The first step is to decide whether the contractor relied on a legitimate workplace rule in firing Linda and Susan.

Here the answer is yes as a contractor can generally discipline employees for returning late from lunch. This rule does not prohibit employees from discussing their pay.

The next step is to figure out whether the workplace rule was applied consistently in this case. The answer to this question may depend on how late each employee was coming back from lunch.

But given that Carol only received a suspension while Linda and Susan were both fired this might be evidence that can undermine the contractor's defense.

Jessica Larkin: If OFCCP can show in firing Linda and Susan the contractor was at least partially motivated by a desire to discriminate against them for discussing their pay but the contractor can show that it still would have fired both women

pursuant to the rule of prohibiting lateness. Should Linda and Susan be reinstated?

Jennifer Frey: The answer here is no. Although the contractor is still liable because it was partially motivated by discrimination in deciding to fire Linda and Susan the contractor has successfully prevented OFCCP from seeking reinstatement or back pay.

This slide illustrates how the general workplace rule defense may come into play without serving as a complete defense to liability. Here the contractor is shown that it would have fired Linda and Susan pursuant to the lateness rule.

So absent any discrimination Linda and Susan still would have been fired. This is why OFCCP would not be able to seek reinstatement as a remedy here but because there was still some discriminatory animus present in the contractor's actions OFCCP would want to prevent that contractor from having discrimination motivated actions in the future.

OFCCP would seek to do this if declaratory and injunctive relief. This type of relief could include things such as a declaration by the court acknowledging that the contractor engaged in discrimination, in validating a discriminatory practice or rule or requirement that the contractor implement further EEO training.

Now we'll move on to a discussion of the essential job functions defense and provide some more examples. The second defense provided for in the final rule is the essential job functions defense.

Under the essential job functions defense a contractor can defend against a claim of discrimination by showing that it took adverse action against an

employee because the employee A, had access to the compensation information of other employees or applicants as part of his or her essential job duties and B, disclosed such information to individuals who did not otherwise have access to it.

The defense does not apply however if the employee discloses this information in response to a formal complaint or charge. In furtherance of an investigation proceeding, hearing or action including an investigation conducted by the employers or if the disclosure is consistent with the contractor's legal duty to provide information.

Employees may also disclose information regarding their own compensation and may discuss possible pay disparities involving other employees with a contractor's management official or while using the contractor's internal complaint process.

Again as we discussed earlier essential job function for purposes of the defense may include those where one, access to compensation information is necessary in order to perform that function for other routinely assigned business task or two, the function or duties of the position include protecting and maintaining the privacy of employee personnel records including compensation information.

In contrast to the general or workplace defense the essential job functions defense will serve as a complete event. This means that if a contractor can show that it took adverse action against an employee for reviewing information that he or she obtained in the course of performing their essential job functions and the disclosure did not fall within one of these sanctions then the contractor can avoid all liability and OFCCP will not be able to pursue the limited remedies available under the motivating factor framework.

Jessica Larkin: Now a few scenarios to illustrate how the essential job functions defense might arise. Let's look at scenario 2. In this scenario Jane administrator works for a contractor as a Payroll Administrator.

She accesses and processes compensation data as part of her essential job function. Jane's coworkers Mary Driver and John Driver are both Driver's.

While processing this month's payroll Jane administrator notices that Mary Driver's pay is less than John Driver's pay. Jane reveals this to Mary who would otherwise not have known about the pay difference.

Can the contractor lawfully discipline Jane administrator?

Jennifer Frey: Yes the contractor can lawfully discipline Jane administrator in this case because she revealed compensation information that she obtained pursuant to performing her essential functions.

Communicating information obtained in this way is not protected under the Executive Order and the contractor is allowed to base this adverse action on Jane's behavior.

Jessica Larkin: Let's review our next essential job function scenario. Over lunch John Driver tells Jane administrator how he makes. Later that day Mary Driver also tells Jane how much she makes.

Jane mentions to Mary that John is getting paid more than Mary. Can the contractor lawfully discipline Jane administrator based on this disclosure?

Jennifer Frey: Here the answer is no. This constitutes protected activities because Jane administrator did not learn about John and Mary's pay disparity through her essential job function.

John and Mary could have told anyone about their pay. Jane did not mean to be in a trusted confidential position to learn this information.

Jessica Larkin: Now let's review a defense exemption scenario. Mary Driver filed a claim with OFCCP alleging that her male coworkers are paid more than she is for the same work.

During the investigation a Compliance Officer asked Jane administrator to list the salary for all Driver's including Mary and John. Jane provides this information.

Can the contractor lawfully discipline Jane administrator based on this disclosure?

Jennifer Frey: Again the answer is no. Although Jane administrator obtained this information as part of her essential job functions providing this information in response to a formal complaint or investigation is one of the exemptions to the defense.

Jessica Larkin: We'll now look at another essential job functions defense scenario. Joe works as a janitor for a federal contractor. One day as he is emptying the trash he sees a document with pay data on Sally and Ted who both work as engineers.

The next day Joe tells Sally that she is being paid \$10,000 less in salary than Ted. Can the contractor lawfully discipline Joe based on this disclosure?

Jennifer Frey: No, even though Joe uncovered pay data while he was emptying the trash access to compensation information is not necessary for him to empty the trash.

Also the functions and duties of the janitor position do not include protecting and maintaining the privacy of employee personnel records.

Jessica Larkin: Now we'll go over our last essential job functions defense scenario. Peter is an IT professional at a federal contractor and one of his weekly tasks is to ensure that personnel data including individualized pay data was not hacked.

When running his weekly security check Peter noticed that Sally made less than Ted and he went and told Sally of this disparity. Can the contractor lawfully discipline Peter?

Jennifer Frey: Here the answer is yes. The contractor can lawfully discipline Peter in this case because he revealed pay information that he discovered performing one of his essential job functions.

In this case Peter should not have disclosed the pay disparity to Sally because access to the employee's pay data is necessary to one of Peter's routinely assigned tasks.

Also Peter's tasks involve protecting the privacy of personnel information. Now that we've gone through all the examples Jessica will summarize the key points that we covered.

Jessica Larkin: Thank you. I want to go over a few key points before we move on to the question and answer portion of the webinar. Executive Order 13665 which amends Executive Order 11246 generally prohibits covered federal

contractors and subcontractors from discriminating against employees and applicants because they have discussed, inquired about or disclosed their compensation or the compensation of others.

The final rule that implements Executive Order 13665 will be published today; it was published today September 11. Contractors must comply with the provisions of this final rule when they enter into or modify contracts and subcontracts on or after the final rule January 11, 2016 effective date.

In addition to amending the EO clause federal contractors must incorporate the non-discrimination provision and its existing manual and handbooks. Contractors must also disseminate the non-discrimination provision to employee and job applicants by electronic posting or by posting it in a conspicuous place.

Lastly the rule provides contractors with two defenses between allegations of discrimination. There is a general defense also known as the workplace rule defense and the essential job functions defense.

That last point brings us to the end of this portion of the webinar.

Brenda Stewart: Okay, thank you Jessica and Jennifer. As Jessica mentioned we are at the Q&A part and many of you have already been submitting your questions and we appreciate that.

If you have not done so please submit them quickly. We will take a short 3 minute break so that we can begin to go through the questions and prepare responses for discussion right after the break.

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