

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**ORACLE AMERICA, INC.'S POSITION  
STATEMENT REGARDING 41 CFR  
§ 60-2.17(b)(3)**

**ORACLE'S POSITION STATEMENT REGARDING 41 CFR § 60-2.17(b)(3)**

CASE NO. 2017-OFC-00006

4146-2402-7167.3

**Exhibit P-287**

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Pursuant to the Court's September 19, 2019 Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Oracle's Compensation Analyses, Defendant Oracle America, Inc. ("Oracle") submits the following statement regarding what 41 C.F.R. § 60-2.17(b)(3) ("Section 2.17") requires and how Oracle met those requirements.

**I. INTRODUCTION**

Oracle complies with Section 2.17 pursuant to OFCCP's guidance that contractors are "free to choose the assessment method that best fits with their workforces and compensation practices to accomplish the self-evaluation of compensation systems required by paragraph 60-2.17(b)(3)." 81 Fed. Reg. 115, 39,126 n.116.

Here, given the complex, varied, and diverse nature of the jobs that make up Oracle's workforce, combined with Oracle's decentralized process for making compensation decisions, Oracle evaluates its compensation system for compliance with Section 2.17 on an ongoing basis, each time a compensation decision is made. Specifically, individual managers consider pay equity among peers when making compensation decisions, and (if warranted) make pay adjustments to ensure employees are paid fairly and equitably based on their work, their performance, and their overall contribution to Oracle. Oracle empowers first- and second-line managers, who are most familiar with their reports' skills, duties, experience, and performance, to determine starting compensation, salary increases, bonuses, and equity grants. As part of this process, managers can (and often do) provide written justifications for their pay decisions, take into account Oracle's salary ranges, and consider pay equity among team members. Managers also can (and often do) enlist HR to assist in making equitable pay decisions, and, if appropriate, consult with a compensation consultant. More senior Oracle managers and executives review these pay decisions, for purposes of a high-level "sanity check," or to ensure they are within budget. Oracle's approach facilitates fair and equitable compensation decision-making while allowing Oracle to remain competitive in a fast-paced and ever-changing high-tech labor market.

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OFCCP may take issue with Oracle's method of compliance. As OFCCP has explained, however, Section 2.17 does not require any specific method of evaluation. Contractors are not required to, for example, use a particular form of statistical analysis, or even a statistical analysis at all. Oracle has adopted a mode of compliance that best suits its workforce and practices. Additionally, as described in detail below, Oracle already has produced to OFCCP the data and documentation that exist confirming Oracle's compliance.

## **II. ORACLE'S COMPLIANCE WITH SECTION 2.17 IS TAILORED TO ITS COMPENSATION SYSTEM AND PRACTICES**

Oracle evaluates its compensation systems for purposes of Section 2.17 by empowering and relying upon its managers to assess and consider pay equity when making compensation decisions, including among employees of different races, genders, and ethnicities. This approach works for Oracle because of its wide variability of jobs. These first-line managers know the work, performance, and contributions of their employees better than anyone. Other companies with more homogenous workforces in terms of duties or skills may find that statistics or other methods are more practicable. But that is not the case at Oracle.

### **A. Section 2.17 Allows Contractors To Choose The Most Appropriate Methodology For Evaluating Their Compensation Systems**

Before detailing Oracle's compliance, it bears noting what Section 2.17 requires. 41 C.F.R. § 60-2.17(b)(3) provides:

In addition to the elements required by § 60-2.10 through § 60-2.16, an acceptable affirmative action program must include the following:

\* \* \*

(b) Identification of problem areas. The contractor must perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. At a minimum the contractor must evaluate:

\* \* \*

(3) Compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities[.]

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As the language indicates, this regulation is broad and unspecific as to what “evaluat[ion]” of Oracle’s “[c]ompensation system(s),” are required. OFCCP agrees. It has explained that this breadth and lack of specificity is intentional, stating that because Section 2.17 “does not specify any particular analysis method that contractors must follow to comply with this regulation, contractors have substantial discretion to decide how to evaluate their compensation systems.” 81 Fed. Reg. 115, 39,125-126.

Indeed, when OFCCP proposed new regulations, commenters were concerned that new 41 C.F.R. § 60-20.4, which provides that compensation may not be based on gender and contains a non-exhaustive list of examples of factors employers may use to determine whether employees are similarly situated for purposes of evaluating compensation differences, would “establish new, mandatory assessment techniques for the self-evaluation of compensation” under Section 2.17. *Id.* at 39,125. OFCCP responded to these concerns by explaining that, contrary to the commentators’ worries, “§ 60–20.4 does not create any new obligations with regard to the self-evaluation of compensation systems required by paragraph 60–2.17(b)(3).” *Id.* at 39,126. OFCCP emphasized that “[e]ach contractor may continue to choose the assessment method that best fits with its workforce and compensation practices.” *Id.*

## **B. Oracle’s Decentralized Compensation Practices**

As both Section 2.17 and OFCCP recognize, employers are in the best position to determine the type of “evaluation” that best fits their workforce and compensation practices. Oracle’s workforce and compensation practices – and therefore its Section 2.17 evaluations – reflect the fact that Oracle offers hundreds of products and services that are developed and supported by thousands of employees who have widely varying duties and skills.

### **1. Oracle Employees Work on a Diverse Suite of Software And Hardware Products Using a Diverse Set Of Skills and Duties**

Oracle currently employs more than 137,000 employees globally, and more than 48,000 employees nationwide. Additionally, Oracle markets more than 800 active products that cover a

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broad spectrum of technology needs, including cloud computing, industry-specific software, hardware, network solutions, and more. These products vary widely by target industry, customer type, and technology. Even within a single product, different programs and components vary according to how often upgrades are released and the coding on which they are built.

The employees who work on Oracle's wide array of products and services have a correspondingly wide array of skills, duties, and responsibilities. Different technologies require employees to master different skills and responsibilities to develop, enhance, modify, support, or service those technologies. In addition, not all products and services have the same value or profitability to Oracle, so the value of the skills, duties, and responsibilities may differ from product to product, and those values may also shift over time.

**2. Oracle Is Organized Into Lines Of Business Structured Around Its Business Operations And Products And Services**

Oracle is organized into lines of business ("LOBs"). LOBs are organizations within Oracle focused on a distinct part of Oracle's business or operations. Individual executives oversee different LOBs and are responsible for delivering results for the products and services within their LOB. These broad LOBs are further divided into organizations and teams that reflect increasingly specialized areas of the company. Each LOB has a reporting hierarchy that ultimately ends with first-level (or direct) managers who directly supervise individual contributors. Budgeting decisions and allocations for bonuses and salary raises are made within the framework of this LOB hierarchical structure.

**3. Oracle Broadly Describes Its Employees' Jobs By Reference To Job Function And System Job Title**

In addition to structuring its business by LOB, Oracle categorizes its employees by job functions. Job functions describe, at a very high level, the general type of work performed by employees within the function. Because of their breadth, job functions sweep in huge numbers of employees with vastly different skills duties, and responsibilities.

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Employees are further sub-divided within job function into job families (*e.g.*, applications developers) and then into system job titles that correspond to a numeric job code. System job titles generally reflect a progression of development within a job family (*e.g.*, Applications Developer 1, Applications Developer 2, and so on). Job functions, job families, and system job titles are broad and describe the work an employee performs at a high level of abstraction.

While a system job title reflects the general type of work an employee performs and her career level, it does not convey or account for, for example, the specific skills or programming languages an employee uses, the number of hours the employee works, the percentage of time the employee spends on various tasks, the complexity of the product the employee is working on, or the trainings the employee will be expected to attend and master. As a result, even employees with the same job title and job code can have very different skills, duties, and experience.

4. **Oracle Managers Make Compensation Decisions Based On Employees' Individual Skills And Contributions**

Oracle faces intense competition in all aspects of its business, including for highly-skilled product development, technical, and other personnel. To attract and retain talent, Oracle uses various compensation tools, including base salary, bonuses, and equity awards.

Oracle's compensation framework aims to achieve the overarching goals of equity within teams and recognition of each employee's particular knowledge, skills, abilities, performance, experience, and contributions. To that end, individual managers who know individual employees' work and how that work compares to others' drive decision-making in Oracle's highly-decentralized process.

An employee's direct manager typically plays the most significant role in setting that employee's compensation. First-line managers, for example, determine the starting compensation to offer to new hires. Once a candidate is selected and the manager determines the starting pay to offer, the manager is responsible for entering the starting salary and corresponding justification into Oracle's workflow system.

Direct managers also determine salary increases. The majority of salary increases occur during “focal” reviews, which are company-wide review processes undertaken periodically as Oracle’s business performance permits. During these focal reviews, LOB heads receive a budget which they allocate in their discretion to lower-level managers within their organizations. Managers within an LOB make further decisions about how to “cascade” budget down through the organization. The manager who is the last recipient of an allocation in the compensation tool determines how to distribute the budget allocated to them as compensation to individual employees. In making these determinations, the managers responsible for recording those decisions in the compensation tool may exercise their own judgment, or consult other managers if they do not directly supervise the employees at issue. Although salary increases are subject to an approval process by more senior management to ensure alignment with budget, senior managers defer to and rarely change the decisions of the lower-level managers.

Bonuses, too, are determined and distributed from within each LOB, with first- and second-line managers usually playing a primary role in making the decision. Bonuses are discretionary and designed to reward employees for assisting the company in meeting key strategic company goals and objectives, including profitability. Direct managers also award equity to employees. Bonus and equity budgets are allocated in a similar fashion as salary increases to eligible employees.

Direct managers also decide certain off-cycle decisions to increase base salary (*e.g.*, for some promotions or transfers). These decisions are reviewed to ensure that the salary increase is not out of alignment with the applicable salary range (discussed below) for the position. When making an off-cycle pay increase, managers submit a business justification that includes the employee’s value to the business, whether the increase is necessary to retain the employee, and facts justifying the pay decision that account for internal pay equity, the employee’s performance, and a comparison to the employee’s peers.

5. **Oracle Managers Consider Many Factors When Determining Compensation**

Rather than follow strict rules, managers are instructed to consider a set of general principles when making compensation decisions. These principles include considering how an employee's compensation compares to her peers, accounting for each employee's relevant knowledge, skills, abilities, and experience, balancing external and internal equity considerations, and differentiating rewards by performance. Managers also consider the employee's importance to the company (such as whether a pay increase allows Oracle to retain the employee). These guiding principles ensure that compensation decisions are made on a "case-by-case" basis rather than a "one size fits all" solution. These factors are not exclusive. Managers may award greater compensation to employees working on products that are particularly complex, or for which the labor market is particularly competitive. Oracle also encourages individual managers to assess internal pay equity among employees on their particular teams when making pay decisions, including when awarding bonuses and increases through the focal review process. Managers are expressly instructed that pay differences need to be based on fair, justifiable and non-discriminatory criteria. Further, managers can partner with HR business partners and compensation consultants to assist them in making decisions that are equitable to the individual employees and make sense for the business as a whole.

6. **Salary Ranges Assist Managers In Making Compensation Decisions, But Compensation Ultimately Turns On Individual Factors**

Oracle assigns a salary range to each system job title and associated job code. These ranges assist managers in setting initial compensation and awarding pay increases. Oracle uses external third-party market survey data to assist it in setting salary ranges competitive with its peers. These salary ranges are broad by design, allowing managers to account for differences in experience, skills, competencies and performance of candidates and incumbents. Thus, while the ranges represent a broad band of possible compensation that is competitive for the labor market, individualized factors drive the determination of each employee's salary within that range.

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### **III. ORACLE HAS EXPLAINED ITS SECTION 2.17 COMPLIANCE TO OFCCP**

Oracle has already explained to OFCCP what it does to comply with Section 2.17. Given its data requests during the audit, however, combined with arguments it has made in litigation, OFCCP appears to take the position that Section 2.17 requires Oracle to conduct some type of statistical analysis. This is inconsistent with the language of Section 2.17, as well as with explanations OFCCP has given of Section 2.17 in different contexts that confirm the contractor may determine how best to evaluate its compensation systems. *See, e.g.,* Section II.A., *supra*.

#### **A. Oracle's Responses to Request for Production Nos. 71, 148, and 174 Are Consistent With Its Explanation of Its Section 2.17 Compliance**

In its September 19, 2019 Order, the Court overruled Oracle's objections to OFCCP's Request for Production Nos. 71, 148 and 174.<sup>1</sup> With respect to Request for Production No. 71, as the Court observed, Oracle informed OFCCP on August 16, 2017 that no responsive documents exist because Section 2.17 does not require "pay equity analyses," and Oracle's compliance with Section 2.17 does not take the form of "pay equity analyses" as Oracle understands OFCCP to be using that term. (OFCCP did not define "pay equity analyses" in its document requests. Oracle understood OFCCP to be referring to some type of formal statistical analyses.) As explained above, Oracle's managers consider pay equity among their team members when determining compensation. But there are no discrete "pay equity analyses" conducted pursuant to Section 2.17 of the kind OFCCP apparently believes should exist. For the avoidance of doubt, Oracle confirms here that it is not withholding responsive documents based on its objections.

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<sup>1</sup> RFP 71: Produce YOUR internal pay equity analyses conducted pursuant to 41 C.F.R. § 60-2.17 for the RELEVANT TIME PERIOD, including the date of analysis and dataset(s) used for the analysis.

RFP 148: Produce all DOCUMENTS RELATED TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-2.17(b) for YOUR Information Technology, Product Development AND Support Job Functions OR PT1 Job Group, including, but not limited to, all DOCUMENTS RELATING TO action-oriented programs identified in 41 C.F.R. § 60-2.17(c).

RFP 174: Produce all DOCUMENTS RELATED TO any actions YOU took during the RELEVANT TIME PERIOD in response to any ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-2.12 for YOUR Information Technology, Product Development AND Support Job Functions OR YOUR PT1 Job Group.

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With respect to Request for Production No. 148, Oracle is not withholding any documents based on a claim of privilege. As Oracle has explained, its privileged compensation analyses were not conducted pursuant to 41 C.F.R. § 60-2.17(b) and are not responsive. And, as described below, Oracle already produced the documents and data reflecting its compliance.

With respect to Request for Production No. 174, Oracle confirms no actions were taken in response to “analyses” conducted pursuant to 41 C.F.R. § 60-2.12 (which Oracle notes relates to job analyses for AAP purposes, not evaluations of compensation systems), and therefore no responsive documents exist that are being withheld on a claim of privilege or otherwise.

**B. Oracle’s Other Responses Are Consistent With Its Section 2.17 Compliance**

During the compliance review and this litigation, Oracle has *produced* to OFCCP the database and documents that are responsive and sufficient to demonstrate and reflect Oracle’s Section 2.17 evaluation of its compensation systems, which include the pay decisions, comparisons, and justifications described above. *See* Connell Decl., ¶ 4. Oracle has been consistent that these data and documents constitute Oracle’s compliance with Section 2.17. For example, during the audit Oracle’s Senior Director Diversity Compliance Shauna Holman-Harries referred OFCCP to earlier interviews that OFCCP conducted of Oracle on January 9 and 13, 2015 that discussed “the role of HR or Compensation, and/or a manager, in reviewing where a new hire’s pay falls relative to incumbent cohorts”; “the Company’s compensation policies and training materials we previously provided to OFCCP”; and “the process of focal reviews as another tool to assess relative pay.” *See* Declaration of Erin Connell in support of Oracle’s Position Statement (“Connell Decl.”), Ex. A (June 2, 2015 S. Holman-Harries email to H. Atkins).

Likewise, in response to an interrogatory asking Oracle to “DESCRIBE IN DETAIL all ANALYSES YOU conducted pursuant to 41 C.F.R. § 60-2.17(b)”, Oracle explained:

Oracle utilizes a decentralized compensation system in which employees’ managers are the primary decisionmakers, with assistance from HR and/or Oracle’s compensation team if requested. Individual managers making compensation

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decisions take a comprehensive view, and are encouraged to consider (and do consider) the relative pay among employees on their particular teams in order to account for pay equity and fairness, while still accounting for other relevant factors influencing pay. Oracle's compensation guidelines and training expressly instruct managers that differences in pay need to be based on fair, justifiable and non-discriminatory criteria, and Oracle further trains and instructs managers to make all employment decisions, including compensation decisions, without regard to employees' gender, race or any other protected characteristic. Managers also are periodically allocated pay increase budgets they can use, among other reasons, to better align employee pay on their teams and to address any perceived pay equity problems they encounter. Managers may also make off-cycle pay increases for the same or similar reasons. Thus, when individual managers consider pay equity as part of their evaluation and compensation decisions, and/or make pay changes to better align within their teams and/or address any perceived pay equity problems, such consideration and actions occur in real-time and, in many cases, may not be documented. Nevertheless, Oracle has produced substantial data, documents, and information — in response to other discovery requests— that captures manager compensation decisions and the rationale for those decisions, including but not limited to manager workflow justifications and off-cycle pay increase justifications.

*Id.*, Ex. B (Oracle's May 13, 2019 response to OFCCP Interrogatory No. 15). Thus, OFCCP already has the information, data, and documents containing Oracle's Section 2.17 compliance.

Respectfully submitted,

October 3, 2019

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