

Updates on Conciliation, Mediation, and the Ombuds Service
Moderator: KEISHA BROWN
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Start of Transcript

Coordinator: Welcome, and thank you for standing by. At this time, all participants are in a listen-only mode until the question and answer session of today's conference. At that time, you may press Star 1 on your phone to ask a question. Today's conference is being recorded. If you have any objections, you may disconnect at this time. I would now like to turn the conference over to OFPCP Director, Craig Leen. Thank you. You may begin.

Craig Leen: Thank you very much. Welcome, everyone. We're so pleased to have you here today with us on our virtual roundtable event to focus on conciliation, mediation and the ombuds services and to give you some updates related to those. My hope as Director is that the agency will be doing these sort of roundtables virtually more often so that we can continue to increase the interaction that we have with the stakeholder community. And I'm really looking forward to today's agenda. I think everyone's going to enjoy it. I think you're going to find it very interesting both from a professional standpoint because this is the area you work in.

And also a lot of the items we're talking about today are really cutting edge in the area of alternative dispute resolution and I think it's educational, interesting and to looking forward to an excellent dialogue. Let me begin by giving an introduction to today's content. First, as everyone knows, OSCCP is committed to basically three aspects of equal employment opportunity in terms of its enforcement program. And the first is compliance assistance. The

agency gives a substantial amount of compliance assistance to companies across the United States. There's approximately 25,000 federal contractors and compliance assistance is a significant portion of what the agency does.

And if you come to the agency to see compliance assistance, the agency will provide it to you. And we'll work with you. And that can't be held against you in an audit. So compliance assistance in education is a significant portion of what we do and it's what we're doing today. The second portion of our enforcement program is enforcement. And enforcement and audits are the bread and butter of what OFCCP does day-to-day with our compliance officers. Where they, at this time, virtually and previously in person would review, your items review the document that you turn over via an audit would occasionally come onsite and when interview people and everyone knows how that proceeds and that enforcement and auditing activity is crucial to OFCCP's ability to be able to enforce civil rights laws, to enforce the executive order (unintelligible) in Section 503.

And as part of a regulated community, contractors understand that OFCCP has that duty to do auditing and reviews every year. And all that they ask, at least in my experience is that the agency treat them fairly and transparently and seek to get to the truth. And that's what everyone wants and that's what the agency does. And that's been my goal as Director. And then third, the third part of this which is what we're going to talk about today is what happens after we find a violation? So, you know, hopefully, through compliance assistance we've avoided a violation, but let's say when we do our review, we find one. What happens to that violation? And that's where conciliation comes in. And that's a significant component of what OFCCP does and being able to effectively conciliate will allow OFCCP to achieve its mission even better.

One thing I saw when I started as OFCDP Director, was that we had many

aged cases. Somewhere around 30percent of our cases were aged, over two years old. Remember, I remember a couple years ago talking about how we had over 100 cases that were over four years old. And how we needed to get a handle on those and try to get our cases to go quicker. And one of the areas where I found based on my review and based on my experiences as OFCCP Director, one area where I saw we were getting delayed within the conciliation process. And sometimes you would have conciliation processes which would last for several years.

And that didn't make sense to me because one thing I do know, even if there's disagreement over the findings, both OFCCP and the party being audited, the contractor want to get the review finished. We want to move onto our next review. We want to get a remedy for the impacted class members. We want to continue achieving our mission and the company would like the government to move on from the audit. And also would like to whatever remedy is going to be provided even if the contractor disagrees, they would like it to be provided sooner because the sooner the better. The sooner you take action, the quicker you can make a positive impact.

So I felt that the agency needed to focus a lot of its tension on conciliation and we have done that. And I think that's what you're going to see today is that the agency has become extraordinarily affective at making cases go quicker at doing a quicker desk audit under 45 days at having a conciliation period that is must prompter, much more engagement with the contractor. In fact, we're even starting the conciliation period now before a PDN finding through our early resolution procedures program, our (unintelligible) program and that has been quite successful.

So we're very proud of that and we want to talk more about it with the contractor community because we can always improve. We can always make

it better. So you have consolidation and we're going to focus on three aspects of conciliation today. First, will be a focus on our ombuds service. And the ombuds service comes into play right at the beginning of an audit. From the moment you get that scheduling letter, if there's something that you're uncertain about or if there's something that's causing the audit to get delayed or stuck or if there's some disagreement or misunderstanding between the contractor and the compliance officer, or the district office or regional office or even the national office, you can engage the ombudsman, Marcus Stergio and our ombuds service. And Marcus will work with you. He's got, my understanding is 97 referrals and he's resolved, I believe, 77 of them. I have the number somewhere, but I'm sure he's going to fill you in. But he's already resolved about 7/9 of the references that he's received and my understanding is he's going to resolve them all.

So he's someone that's very effective. He gets right to work trying to resolve your issues. And in addition to that, he keeps confidentiality so if you reach out to him and we've put in writing through our transparency program, we put in writing all of the requirements of our confidentiality program. But he will keep what you tell him confidentially. He's neutral. He's not working for the agency to try to get you to admit something or to do something that may not be in your interest. He's not your lawyer. He's a neutral. He's there to try to work the issue out so that we can come to a resolution that positively impacts your affected workers. And so that we can do it promptly and that we can hopefully get to the truth.

And he does that very well. And I highly encourage you to involve him. One other way we've expanded our ombuds program, you'll see is that now the ombuds program can also help with conciliation and mediation. So you don't have to wait for conciliation to bring in the ombuds. And I just want to make that very clear. You can reach out to him at any time. But let's say for

example, the ombuds service - you use the ombuds service, hopefully Marcus helped you with some of the information requests you received or getting information from the district if you didn't get what you thought you should.

And maybe you discussed early resolution with him. There's been a finding, but let's say that none of that has worked out. And you move into the conciliation period. Now with conciliation, that occurs after a notice of violation, typically. And that's what the regulations address. And you don't need to use the ombuds service as part of conciliation. Although you're welcome to. And Marcus is allowed to facilitate conciliation. But now you're in conciliation and my goal as the OFCCP director and I have full support from the agency, our regional directors and our leadership and all of our, in fact, the whole agency, our compliance officers, we want to great right to conciliation.

We want to give you the information you need to replicate all our findings, to make sure that you know exactly what we're finding, if it's a policy or practice in a disparate impact claim, we want you to know that exact policy or practice that we're concerned about. We want to work with you to correct the problem going forward and we want to come up with a reasonable, retrospective remedy, back pay, or some other similar remedy looking, that fixes the problem that occurred, that remedies it. You can't always fix it because discrimination is always wrong and it's something that needs to be corrected. But you can correct it going backward and fix it going forward.

And of course a lot of times there's a disagreement between OFCCP and the company about whether what the agency is seeing, the disparity, what's caused by discrimination or what's caused by some other factor and that's something that we discuss in conciliation to try to work that out. So let me tell you something. We find discrimination in about 2 to 5percent of all cases. I

mean I know this is rhetorical, but ask me. What percentage of cases do we conciliate successfully? And the answer would be 99percent. It is not like where people say 99percent, you know, just as a pull the number out of the air. It's actually 99percent. We actually conciliate almost every single case successfully and this agency has been fully committed to the conciliation process and that's probably one reason it's taken so long in the past. We're trying to do all that in a more abbreviated period now because there is a harm to very long conciliations as well which is that these audits are very time-consuming. They're expensive. And they take the agency's intention from doing more cases to focusing on one case for a number of years.

We want to touch as many contractors as many employees as we can. Because we believe OFCCP is making a positive impact. And I know you do too as well as EEO officials, as HR officials, as leaders of corporate America. I know that you care about it as well. So the more efficient we can make our audits the better in my view. And that's going to help more people as well.

And then lastly, mediation. The referral mediation program, let me tell you a second about that. So let's say for example the conciliation doesn't work out. We agree to disagree. There's an honest disagreement. Can't find a resolution. At that point the agency will typically issue a show-cause notice and then under our new pre-referral medication program, once the show cause notice is issued, and once the agency, let's say for example, you do not correct the issue in the 30 days that the show cause notice gives you. Once that's over, the agency needs to make a decision whether to refer the case to the solicitor's office for enforcement. And once the agency makes that decision, under the pre-referral mediation program, the agency will reach out one final time to the company to offer mediation.

And in that mediation, not only is the region involved but the national office is

as well. And we will hold the mediation. Our ombudsman, Marcus is available to be a mediator. Likewise, we can use an official from the federal mediation and conciliation service, FMCS. Or the - if those are not acceptable to the company, the company can suggest a private mediator and OCCP will do its review and determine whether to use that mediator or not.

The idea is we want mediation to be a regular part of what OFCCP does and we want to do it before the lawsuit is filed. And let me tell you why. One thing I've seen in my experience as OFCCP director is that the ALJ process, the entire administrative procedure (unintelligible) process from beginning to end takes years. It just does. It takes years. It takes years to do the hearing, to get through the hearing. It can take years sometimes to get a decision. At that point it goes to the administrative review board. That can take a couple years as well. It then goes to federal court. That can take a couple of years. We even had one case that literally went and it's been going on across the administration for 23 years that ended, that the agency ended in 2017 through a settlement. But that doesn't help anyone. A case that goes on for years doesn't help anyone.

You want a resolution promptly. You want to determine every company has a right to adjudication. We support due process and we want companies to have that right, but I can tell you it's not efficient and it's better if it's possible. It's better for everybody. It's better for the company. It's better for the agency and its use of resources and it's better for the workers who are trying to help and trying to make an impact for if they don't have to wait ten years for a remedy.

In fact, are you really helping them after ten years? And what's happened to the 10-year period that's happened where discrimination at least in the view of the agency has been occurring? That's a harm as well. And that pay doesn't full compensate for discrimination. Any time someone's opportunity is cut

short, that affects their entire life. And so you know what's best? For it not to happen. The way that it doesn't happen is through mediation, through getting together, working the problem, doing what we need to do to talk about the issues and coming to a reasonable resolution that brings the remedy and that allows OFCCP to move onto its next case.

And that allows us to touch more people. And that allows us to get more remedies. Let me tell you one final thing and then I'll stop. It's been working. It's been working. And we want more companies to participate in it. So what I'd like for you to take from my remarks today is engaged with the agency more. When I started as a director, I would have sometimes officials from different companies come up to me. And they would turn their nametag around. And this wasn't just me, by the way. This was anyone with the agency. They would turn their nametag around. It's well known. Because they were worried in my view, it was not warranted. But you know what? When someone's worried, they're worried. And you got to understand that. They were worried that if they criticized the agency or asked a question, and showed their name that it would somehow be taken against the company. The action would be taken in some way.

That is not good for anyone. We want companies to engage with us. We want you to engage and that's what I'm asking you to do and that's a legacy I would like to leave here at OFCCP. Engage with the agency right from the beginning. Seek compliance assistance. It won't be held against you. I'll say it again. We wrote it in our contractor's bill of rights, but it's true. Seek compliance assistance that helps workers. We want you to do it. Seek compliance assistance.

Two, engage with the ombuds service. That is not viewed as a negative thing. That's a positive thing and we want you to do it. Three, engage with us in

conciliation. Even if you disagree with us, let's sit down open minded and talk about the issues and try to come to a resolution. And then lastly, if nothing else works, as a last resort, please consider pre-referral mediation. We can come together. Agree to disagree and still find a resolution that helps the workers that OFCCP and still find a resolution that helps the workers that OFCCP is seeking to help and resolves an audit instead of having it go on for another decade.

That's the mission. That's the goal. So thank you all for listening to me today. I'm excited about the program and Marcus take it away.

Marcus Stergio: Thank you, Craig and Bob LaJeunesse, I believe you are up next to discuss conciliation.

Bob LaJeunesse: Thank you, Marcus. Thank you, Director Leen and thank you everybody for joining us today. I'm going to spend a few minutes just talking about conciliation and proposals that we are putting in place, slight revisions I would say. Streamlining our conciliation process. In addition to all the efficiency benefits that Craig mentioned that accrued to the agency. They accrued to the contactor and they accrue to any victims or harmed individuals. Thy agency also has a procedural duty to conciliate just like the EEOC in these cases.

And so that's incumbent upon us to engage in that conciliation and to my knowledge, well, let me just say. We've been pretty successful defending challenges to the sufficiency of that conciliation. So we are not proposing that we do anything to threaten that success; however, you know there are always room for improvement. There's always room for improvement and increases in efficiency and arguably, greater efficiency and standardization of conciliation can lead to a greater sufficiency of consolation. So that's what

we're trying to do. 'We learned a lot through the early resolution conciliation program. And so we're trying to take some of what we've learned there and streamlined all of our conciliation (unintelligible).

There's also the intent to keep our age caseload low or manageable and so we're striving for consistency and transparency in all of our conciliation processes. So although, you know, setting a limit on the number of meetings allowed would be difficult, some common standards of practice can reduce the number of cases in which an inordinate number of conciliation meetings take place. I have observed that in some cases, one or two conciliation meetings are enough and the case is resolved and other cases, you know, you'll have dozens of conciliation meetings. And you will always have that diversity, but what we're trying to do is move the dozens of cases to maybe a half dozen cases or looking for ways that we can, you know, streamline that process so generally our conciliations will be completed within six months.

So we're going to implement standards of practice around the frequency of meetings, the engagement of experts, communication of data and results, the calculation of liability and remedy estimate. And then, you know, apply these broader conciliation time goals. I emphasize they're goals, not hard and fast limits to, you know, keep the resolutions moving in a quick and efficient manner.

And then when we need to we will still rely on SOL to bring expedited access claims, you know, to keep those conciliations moving along. So generally some specifics so that we're trying to implement now. Generally, each case should have at least one in-person or virtual conciliation conference is operational (unintelligible) and, you know, other resource constraints allow. Some of our regions are bigger than others, so it's more costly and difficult. And then, you know, with the COVID-19 restrictions right now, those in-

person meetings are advisable.

But generally, we like to have some conversation and some meetings. Remind you, you know, conciliation discussions can take many forms. You know, starting with email, telephone conversations and the like. But the meetings or conferences we would like to get as much value out of those conferences as we can when we're devoting time and human resources to those meetings. We want to make sure they're progressing. So a lot of what I propose here is related to those conciliation gatherings if you will.

So when that happens, we - the agency will circulate a detailed agenda and a time estimate of how long we think those conversations should take place during those major conciliation discussions. Also, OFCCP expects the contractor to submit responsive data at least seven business days prior to any settlement meeting or conference. And where relevant, we will, the agency will furnish the analytic database needed to replicate the latest findings at least seven days prior. Also, full FCCP will share summary from BES of the completed analysis in results at least three business days prior to the meeting. And where those guidelines cannot be met, we'll encourage a rescheduling of the meeting.

This stems from my observation of participating in conciliation meetings and receiving the results the day before or the data the day before and then the gathering or the meeting and discussion is not as fruitful as it otherwise would have been. So when we get people together, we want to make sure we're making progress. We have the data and information and results ahead of time so they can be digested. Ideally, questions and discussion topics will also be shared far in advance of the meetings so that we, you know, we make better use of the time both our time and contractor's time and everybody's time.
Okay?

Also, we're in those agendas hopefully what you'll see is a slightly more formal outline, I want to call it. It's just an outline at this stage. Well consisting of stages. So the first stage would be OFCCP articulating its view of the contractor's potential liability. This will include a detailed discussion of the agency's analytic model and rebuttal analysis if that has already been, you know, communicated and there's been an exchange prior to that. You know, the lead investigator and branch of expert service will be available to answer case-specific or analytic questions during that first stage. And then the expert in the region will also represent and explain the agency's estimate of mitigated back pay and other remedies for the purposes of the conciliation.

Second stage will allow the contractor and the contractor's representatives to respond to that presentation with either their own presentation or clarifying questions. You know, as I mentioned, it's good to exchange notes ahead of time in as much detail as possible. And then the third stage will be devoted to settlement and discussions including negotiation of any monetary payments, remedies, and then any prospective relief. So if that entails an early resolution, conciliation agreement, OFCCP will draft the details of that ideally prior to that meeting. And then they can be discussed at that point.

At any stage of the conciliation, the agency will consider the following broad settlement factors. We put together some settlement factors for the regions to think about when they're negotiating or conciliating. And I'll just outline a broad outline of those categories here. It is the size and scope of the violations. The statistical considerations, thirdly the equitable and practical considerations and then lastly, evaluation of claims and defense. So that's just a broad way of saying, you know, we will consider the risks and strengths and weaknesses of the case along the way. And hopefully, through successful conciliation, we will come to a resolution. But if not, we have, as Craig,

mentioned the pre-referral mediation program with Marcus and I will discuss at this point.

So just to conclude, we're not making any major revisions or changes to our conciliation process. We're just trying to streamline them a little more, try to share a little more information prior to those conciliation meetings and gatherings. And so that more progress can be made hopefully in fewer meetings and we can continue to keep our age case load very low. So Marcus, do you want to lead us (unintelligible)?

Craig Leen:

Bob, this is Craig. I wanted to add one thing to what you said just to give everyone a little more information to take home with them. This is something that Bob and I have worked on with our policy division. I wanted to give you a few examples of each of the considerations we use when we're determining whether to do a settlement. So for example, the size and scope of violations, that's one thing that Bob and his team and our RDs and their team are going to be looking at and examples of that, just so everyone has this information is the size of the shortfall or pay difference and other measures of practical significance, the breadth of the disparities. Do they appear across multiple jobs, locations, years? Are they limited in scope? The permanency of the impact, have violations been corrected or inequities compounded into employment or salary histories?

The prospect of expansion of scope during enforcement, the discovery generally produces data for this period. So we want to think about how strong a case this would be if we were to bring it. And that's something we think about when we're determining our settlement amounts. A second area, statistical considerations with Bob mentioned. And as you all know, Bob has been the agency's head of the branch of expert services for a number of years and how he's the Director of Enforcement. So he has a lot of experience with

statistical consideration.

Those are the scale of statistical significance. The complexity and/or reliability of the analytical methods, the existence of lack of supporting non-statistical evidence which can include descriptive statistics, anecdotal evidence, et cetera. And aggregation difficulties in multi-establishment resolutions.

The next area Bob mentioned which I agree with also is equitable and practical considerations. So we're going to be looking at the contractor's willingness to commit to comprehensive perspective relief that would benefit many employees including and beyond the class members. That's something that we consider in the settlement process. And that also ties into the ERCA program.

Second, the mitigation complexities including takeover, shutdowns and other issues not considered in back pay calculators. The third is enforcement priorities which we said every year. The next is the age of the case. And you've all heard me talk about that a lot as these cases get older, it becomes more incumbent on the agency to seek to resolve it. Because we want to get a remedy to those who have been impacted. So the age of the case is something we look at a lot and it's in everyone's interest to try to get those cases resolved quickly through early resolution.

Past violations, is this a repeat violation? The amount of comparable prior settlements, we're well aware as an enforcement agency that when we enforce the law, we want to do it fairly and equitably across contractors. So we always try to, in our process internally, we're talking about well, is this fair? Are we treating this contractor fairly compared to that one? Are we treating these workers fairly compared to the workers at this other company, et cetera, based

on what we're finding? And then estimated costs and complexity of the case through trial and appeal relative to agency resources. Because the agency has limited resources and we're the stewards of that and we went to make sure that we get, we help as many people as we can for that limited amount of money. So that to the extent that we can resolve this case reasonably and move onto the next one, there's a positive aspect of that. Because we can have more people.

And then evaluation of claims and defenses which Bob mentioned. We look at jurisdiction or legal defenses. So if you have a defense we want to see it. We suggest you raise it as early as possible and at least in the PDN response. The likelihood of prevailing at trial and on appeal given current precedent. We are involved with our solicitor's office. The regional solicitor give us a lot of advice and we want to know is this a good case or not? If it's not then maybe we shouldn't pursue it or maybe it should be settled at a lower amount. Frankly, I want the agency only bringing strong cases and good cases. I want us to be 100percent committed to our cases. And I want to make sure that we have all the evidentiary support we need to have a strong case.

And you know what my experience has been? That we when our PDNs when we put all that evidence in our PDN and we show the company it, the company will typically work with us to resolve the matter often through an ERCA and that's - we are because we are being transparent. And when the companies sees that, they can see there's a problem and it needs to be corrected. And all of the people on this call, you're all committed to EEO. And if you see a real program, you want to correct it as well. And that's why this works so well because we're treating you as professionals. You're treating us as professionals and we're trying to correct a problem that everyone needs to correct and wants to correct.

And then lastly, we look at if there's been an improper data manipulation by the contractor so that, you know, by the way, we don't expect that. We assume that you're going to be straight up with us. And we're going to be straight up with you. Nevertheless, if you deny us access or provide information, you know, hide information or something like that, then that can be considered. So please don't do that. Don't do that. You're a federal contractor for a reason. You signed up for this. Give us the information we need. Let us get back to you. And then we don't have to worry about that.

And then lastly, we look at whether this overlaps with the private case or EOC action and the possibility of release of all claims. And so there, we're looking to see, you know, how big a case is this? How many people will it impact? If there's another case of EOC or private case, that may impact what we do in our case in the sense of, well it's already being addressed in some way. So we have to consider that. Our goal is to correct the disparities we find, assuming they're caused by discrimination. I understand that all of them are. But if there's disparate treatment or disparate impact discrimination, we want to correct. And we want to make sure all of those are corrected. So we're also looking at what's happening in the world around us.

So anyway, Bob, do you want to comment any at all on any of those? Or do you want to move on at this time?

Bob LaJeunesse: Yes, I think that's fine. We can move onto to pre-referral mediation. So Marcus, I think we're both listed on here, but I'll let you kick it off.

Marcus Stergio: Yes, thank you Bob. And hi, everyone. It's great to be with you all today. Those who have worked with me directly or joined other presentations that I've been a part of prior to his one, know me as the OFCCP ombudsman as Craig introduced me earlier. And I still am, of course, but today I'm going to

be contributing to this presentation by discussing only that ombuds service, but also OFCCP's pre-referral mediation program.

And so I'll start off with the mediation component and yes, Bob or anyone else, feel free to jump in and add to anything that I share. But I did want to go through the way that program has been designed to this point and some best practices that are identified in the pre-referral mediation program directive. Before I get there, I think it's important to mention that before my time with OFCCP, my background is - was primarily focused on workplace and employment mediation. I mediated workplace conflicts through the firm which employed me at the time. Many of those were coworker issues or issues between workers and their managers, franchisee, franchisor disputes.

And I also mediated as part of the EEOC's Boston District Office, the Boston District Officer had a mediator panel where they would refer discrimination cases to mediators in the greater Boston area. And so I raise all of this as a way of saying that, mediation is what brought me to ombuds work and it's my background. And so I'm passionate about it, and I'm a firm believer in mediation. And so that mediation experience is something that I'm working now to bring to the agency in addition to that more traditional ombuds role.

I think in addition to my being a firm believer in mediation though, more importantly, is that OFCCP front office and senior leadership as you just heard strongly supports the use of mediation as a mechanism for resolution. So the agency put together this pre-referral mediation directive I just referenced to serve as the announcement of the pre-referral mediation program which it hopes to utilize more frequently moving forward. So the idea is that an opportunity is now given to OFCCP in contractors after good safe efforts have been devoted to conciliation to work out remaining differences with the help of a neutral mediator.

Back one slide there. So the directive that I've referenced is Directive 2020-03 and it provides guidance on specific instances where OFCCP will be looking to refer cases to mediation in the future as well as guidance for what the process of convening mediation might look like. So instead of just assuming that you've either read it or will read that directive, after this call, I'm going to cover a few key components of the directive itself and here in the program as a whole.

So In terms of cases that might be candidates for the pre-referral mediation program, I think you want to think of these mediations as last attempts of resolution. And the directive refers to them that way as well. It's an opportunity with the help of the third-party natural, the mediator to decide upon appropriate agreement conditions while avoiding the delay in expense of litigation.

And the directive refers to these as last attempts to suggest that cases are candidates for mediation as Craig mentioned earlier, if and only if, good faith efforts have already been made through that conciliation process. And this makes sense when you think about the general intention of mediation as an ADR procedure as a dispute resolution as a dispute resolution procedure. There's often debate in the ADR world about when mediation is appropriate. At what point does it typically make sense to attempt mediation and I would argue that among other factors, the most appropriate time for mediation is when parties to a dispute are invested in the process of achieving resolution.

And ideally, they are mutually or at least similarly invested but when you attempt mediation too early, you might find that it takes longer than expected to gain some momentum because you don't yet have that necessary buy-in from everyone involved. When you attempt mediation too late, you know, that's

when conflicts have been allowed to escalate for a long time. Potentially they plateau without very much progress having been achieved and people are indeed invested but yet they're invested in their positions and not in resolution.

So, you know, don't get me wrong. A good mediator will work with those positions and uncover what lies beneath them and help the parties move forward either way. But there is in fact such a thing as a case being ripe for mediation and in putting together this mediation program, OFCCP has attempted to locate that stage in the process where, in fact, it would be most beneficial. That would be the directive identifies that as being after good faith efforts have been made to conciliate and following the issuance of a show-cause notice citing violations of discrimination but prior to referral for enforcement.

I think it's also important to point out that the directive states that OFCCP reserves the right to mediate at any stage regardless of what I just said about identifying the proper stage and may, indeed, offer mediation to contractors at other stages but yes, again, this - the stage that the agency has identified for the most frequent use in this pre-referral mediation program following the issuance of a show-cause notice and prior to referral.

The directive also mentioned two types of cases where the agency might bypass mediation. OFCCP might not attempt pre-referral mediation following the issuance of an access show-cause notice. And it also might not offer mediation in the very rare case where it proceeds directly to an enforcement recommendation without issuing a show-cause notice based on exceptional circumstances. Again, that's taken right from the directive. And this was intended to serve just a quick overview of those cases that are or may not be candidates for mediation.

The directive also seeks to establish a process for selecting mediators. As with all cases that go to mediation this is within an outside of OFCCP. It can sometimes be difficult to agree upon and select the appropriate mediator. So the directive establishes a framework for doing so. Craig mentioned earlier the federal mediation and conciliation service, FMCS. I and others at OFCCP have coordinated with FMCS to basically figure out what the referral process to an FMCS would look like and we've done that. FMCS has put together a roster of ten of its own mediators who have experience in workplace mediation with the specific focus on the resolution of discrimination cases.

So those mediators are going to be available for contractors in OFCCP to refer one of these pre-referral mediation matters too. Prior to ever being referred a contractor OFCCP matter, those FMCS mediators will be given at least a brief orientation that provides them with the foundational knowledge I guess you could say about OFCCP operations, regulations, terminology, those that would be helpful for them to understand before mediating. I raise this because I also wanted to address something else that I think is important to mention here. This is something that is widely debated in the ADR world. And that's the issue of subject matter expertise. Should a mediator have sufficient matter expertise? Some people feel strongly yes. Others feel strongly no. I would argue that it's helpful to have a foundational understanding.

Sometimes it might be better that people aren't subject matter experts because the focus of the mediator should really be on helping parties find a mutually satisfactory resolution. We're not talking about arbitrators. You know, the mediator is not determining who's right or wrong. The mediator is a neutral facilitator and their background, therefore, should be in successfully assisting others to come up with mutually satisfactory agreements. So the idea here is that FMCS if ever referred to mediation by OFCCP in a contractor, they will indeed be just that, neutral and experienced facilitators with enough of an

understanding of OFCCP policies, procedures and terminology to be helpful facilitators.

The directive also mentions that OFCCP next preference in a mediator as Craig mentioned earlier would be the ombuds, the current ombuds which as of right now is me. So yes I too am available to mediate these cases when a contractor on OFCCP agree to that. But there's a third option. If a contractor, you know, prefers a private mediator, someone who's not FMCS or the current ombuds, they are able to raise that. And OFCCP will entertain that while keeping in mind that OFCCP's first preference is FMCS or the ombuds, but if that happens, the directive also establishes a framework for figuring out who the mediator will be through a mediator ranking process. So essentially both sides would propose three mediator names. We have a total of six. Both sides rank order each of those six mediator names and the highest combined ranking would be the mediator referred to mediation pending their availability and, of course, their interest.

So again, just wanted to quickly highlight some of the directives, best practices in terms of selecting a mediator. Now a couple other things that the directive focuses on that I wanted to review briefly. And one is mediation attendees. As for OFCCP mediation attendees, what you'll find is that the director of enforcement, the applicable regional directors will attend mediations having been heavily involved in the consideration process already, along with the regional solicitor serving as legal counsel for OFCCP. And the OFCCP director maintaining final settlement authority. The director striving to attend at least some portion of mediation pending availability to do so. And at the very least being available by phone, if necessary, to grant final settlement authority, you know, when agreements are pending. And to discuss with the director of enforcement the RDs and SOL settlement strategies give the current state of the discussion whatever they might be in that particular

mediation.

And I think the advice is for contractors to do something similar in terms of attendees. Having access to the highest possible authority with decision-making authorization and by that I mean either in person or easily accessible by phone. And in terms of other attendees, someone with the necessary subject matter expertise, counsel who can readily participate in conversations which pertain to the law.

Now something that's not in the directive but I thought I would propose as, you know, from the perspective of the mediator, is that selection of mediation attendees is strategic. You don't want a situation where you have too many people involved. Yet you want the right people. You want all of the people who are going to be instrumental to internal conversations and also for those conversations with the mediator and the other party. You want those who will best represent your respective organizations. But you don't want to just create a list of every person who might have ever briefly touched an email conversation about the dispute. You know, having 20 people in the same room representing OFCCP, 20 people in the same room representing a contractor, it sort of creates a negotiation within a negotiation. You have so many different people, you introduce so many different interests. You know, keep things simple. Select the people who are most necessary to have a productive dialogue internally and with the other party is my suggested advice regarding mediation attendees.

Bob LaJeunesse: Marcus, this is Bob. Thank you for mentioning that. I just want to state that the agency is also, you know, evolving and trying to find the right balance in terms of size of the team versus the expertise that's needed in the room. And so, you know, we may have parties that were too numerous but we're trying to assess that and achieve the right balance. So thank you.

Marcus Stergio: Sure. So now in terms of preparing for mediation, some thoughts on that as well. You know, it's always helpful in advance of physically attending a mediation to have a phone or a video conference premeditation session with the mediator. And these typically occur privately. So the mediator may wish to have a private premeditation conversation with those participating in mediation from the contractor and a separate private pre-mediation conversation with those participating from OFFCP. Some mediators may not hold them although that would be surprising pre-mediation as common practice of mediators. And other mediators might suggest a few remediation sessions.

You know, I think it's going to vary from mediator to mediator. The objective regardless is to cover not only basic logistics and the process the mediator might employ when all parties meet with she or he, but to share their own best practices, set expectations for the parties and for the mediator to better understand the issues from the parties perspective.

It's also best use of everyone's time in preparation for mediation to distribute mediation submissions which is something the directive also touches upon. So some mediator requests a public submission and by public I don't literally mean shared with the press, but a submission that will be shared with and reviewed by everyone scheduled to attend and participate in a mediation. And the thinking behind doing so is to promote transparency. Promote the sharing of information that would be helpful for everyone participating to have reviewed and understood prior to attending. And oftentimes that helps with the efficiency of the process once it gets underway.

Other mediators only require confidential submissions. Which are not to be shared with the other party and instead of the mediator only. Some mediators

do a combination of both, requesting both public and private confidential mediation submission. So, you know, this again is really going to depend on the practices of the specific mediator assigned. But I'm cover it because I think it's important to have a head's up as to the different possibilities in terms of the way that submissions might be handled.

What is pretty universal from mediator to mediator is the goal of having the parties agree upon a submission's due date as early on as possible that date is saved, everyone can work towards it and distribute their submissions by that date. And it's important that submissions be distributed with enough time prior to a mediation to allow everyone attending to sufficiently review them and prepare accordingly. I can't tell you how many times I've been involved in mediations where with good intentions, to submit them by the selected date people run over that date and need extensions. And now we're talking a few days out from the mediation. And that becomes problematic. You know, it gives people less and less time and you find that when people sit down at the mediation table, they're less prepared.

The other thing here to is that some mediators may like to have another premeditation session after the distribution of submissions because submissions might raise certain questions or might raise certain things the mediator would like to discuss with the parties. So, you know, the advice here is pick a date as far out as possible that still allows you a sufficient enough time, amount of time to prepare these submissions. And in terms of the length of them, you know, you oftentimes get questions about how long should a submission be the mediator. I would frequently tell people, please don't approach this as a legal brief. No one attending the mediation wants to review a 200-page submission. That wouldn't be efficient, right, both in terms of your time and resources putting it together or the other parties' time and resources reviewing it.

But just like the mediation attendees, decide what needs - what's most important. Decide what needs to be conveyed. Are there documents that others attending might want or need to review to understand your position? Or so as not to be shocked by introduction of certain information during a mediation, if so, include that. But think of this as something concise and informative is the recommendation. Before I move on, any other thoughts on submissions?

Okay, so while we are on the topic of mediation preparation, just some other quick logistics that I think are important to mention and one is the location of the mediation. The directive does point to the location of the mediation and specifically says that mediation will be held at a mutually agreed upon and neutral location. which is important. The follow-up questions sometimes is well what's a neutral location? If I were to answer that, I think the most neutral location you could come up with is the office space of a mediator if that mediator has their own office space.

If they do not, another option is FMCS for instance. They have area offices all over the country and they've graciously offered those spaces when necessary and pending their availability. Absent those two options, things sometimes get tricky. Things become less and less neutral when a mediation is held, let's say, at an OFCCP office. Or the law firm of an attorney representing a contractor. And some people might wonder why that is problematic and I'm not necessarily suggesting it is. What I'm highlighting is that it might be problematic to some people involved with certain mediations. I've mediated plenty of cases in locations that didn't feel completely neutral on the surface, but the parties insisted it was fine by them so no issues from me.

I think the important piece here is that the location should be as neutral as

possible to prevent the perception of partiality and most relevant is that both sides agree to that location. Now, all of this, of course, assumes that we're operating in more normal times without a global pandemic and, you know, I keep talking about mediation attendees and I keep using the terms in-person mediation. So it's fair if you're wondering how any of that could occur in the current climate, but the answer is yes, it can. And it's because of virtual mediation. So virtual mediation is not only a thing, but there are fortunately a number of virtual platforms which can ensure privacy, the integrity of the process. And also serve as a replacement for what might otherwise be lost by that lack of a physical presence and face-to-face interactions.

So there are platforms such as ring central and WebEx and Microsoft Teams, among others of course. But some that I've had experience using in this capacity. That allow for breakout rooms. They allow for waiting rooms. They allow for locked meetings which, again, helps to address issues of security that otherwise aren't a concern if you're meeting in person and you have your own separate rooms that a mediator is shuffling back and forth between. So there are ways of replicating that.

And at the very least, if people don't feel the need for that face-to-face interaction, you know, I've mediated many cases just by traditional conference call, using the old-fashioned phone, having a larger group conversation may be to begin the mediation to replicate that joint session, you'd get the morning of the first day of mediation, but then a smaller, a series of smaller phone conversations with each respective party as it becomes time to speak with people individually in private sessions. So you know, in short, it's possible there are a variety of platforms for doing it.

I mentioned earlier, FMCS, you know, is OFCCP's preferred source of mediators for this program. And just through coordinating with some of their

senior leaders in kind of figuring out what the logistics of referring them cases might look like, I learned that FMCS has actually conducted, I believe, and it may be more now, but I believe it's over 1,500 virtual meditations since the beginning of the pandemic and they're prepared to continue doing so. So the point here is that virtual mediation is not only possible but there are plenty of folks of out there capable of doing it effectively.

Bob LaJeunesse: Marcus this is Bob. I'll just interject with the observation that the agency also conducted a virtual mediation last week. And it was rather seamless, I'm not aware of any security risks that took place. And as Marcus suggested, there are some benefits to that type of interaction. We did have breakout rooms and, you know, you, some of us were at the comfort of our own home and didn't have to worry about the metro closing and so we could continue when we needed to. So there definitely are some benefits. The agency, as I said, has conducted one and we have others scheduled this month. So it hasn't slowed us down and we envision utilizing virtual mediation into the future as long as we need to. And probably after the pandemic if, you know, the situation requires that. Thank you.

Marcus Stergio: Yes, I agree with you, Bob. It's not just a temporary, you know, fix. It's actually there are platforms that allow for an efficient mediation process to be conducted. So we're able to do this in the short term is the point here.

Just a quick few other logistics for best practices that I think are helpful to cover. And one is mediation timeframe. To be most expeditious the pre-referral mediation should be convened and attempted within 30 calendar days of the assignment of the mediator. And that language comes from the directive itself and I think it's a realistic goal as long as everyone approaches mediation in good faith with the objective of truly resolving the matter in question. OFCCP I know isn't viewing this program as something that will stall or

further delay action. I mean the goal here is efficiency.

So the recommendation is to strive for selecting a mediation date or dates about a month out from when the mediation is select - from when the mediator is selected, excuse me. And as for the actual mediation session, most mediations will probably be scheduled for either one or two days. And the advice regardless is to reserve that entire block on your calendar, that entire day or those entire two days to maximize the ability for resolution to be reached. You know, you don't want a situation where people say they've reserved the time and then have other meetings and aren't available. The one tricky thing about virtual mediation is that you can do other work, yes, as you know, the mediator isn't speaking with you or you aren't working with your respective parties. But you want to make sure that you're available for whenever the next phase in that mediation is sort of ready to go. You also want to be ready to go.

Just one last thing and that's in terms of agreements, and more specifically agreement forms that are utilized during meditation. So at the outset of the mediation session, the mediator is going to request that all attendees sign a confidentiality agreement or some mediators call it an agreement to mediate which is essentially the same thing. An agreement to mediate usually has broader provisions. It might also cover a mediator's fee structure and things of that nature in addition to confidentiality. But either way, the mediator you work with is going to use one of those two and most mediators make sure the parties have this far before the actual mediation so that everyone can review it, make sure they're comfortable with the language within it because it's crucial that everyone participating sign that confidentiality or agreement to mediate before the mediation begins.

In terms of settlement agreements, you know it isn't always practical to walk

away from the mediation table with a signed settlement agreement. Sometimes it is. That could be the goal, should be the goal perhaps if possible, but is isn't always possible. So then what do we do? Most mediations I think you'll find will conclude with verbal agreements which should then be memorialized through a terms sheet or sometimes referred to by mediators as a Memorandum of Understanding. And either way whatever terminology you use, that basically serves as a temporary acknowledgment of all of those verbal agreements that have been reached at the mediation table. and what the parties are intending to formalize into a final settlement agreement. Then the goal would be to sign a final agreement as soon as possible after the mediation is concluded.

So again, just to give you an idea as to what the actual settlement process and utilization of forms might look like. So not only have I reached the end of our slides on meditation, I've thrown a lot at you already in terms of logistics and best practices. So I'm going to wrap up our mediation conversation by just saying, you know, a couple last things. One, I think, you know, let's clarify that everything I discussed about mediation is intended to serve as a guide only. You know, informal guidance to assist contractors in OFCCP with identifying proper cases, convening mediations as well as other logistics. And a lot of this is taken from the directive, the pre-referral mediation directive. Still though, I think you're going to find each individual mediator may have their own unique practices and so my advice is to agree to those as closely as possible. I think you want to assume that the mediator mutually agreed to by the parties has the background and mediation experience to convene the process however they see fit.

And you, of course, should be prepared to express your own preferences when you have them but treat the mediator as the facilitation expert if you will. And use what I've just given you as only a head's up for what you might expect as

you engage in pre-referral mediation. I guess one last disclaimer is just that what's been discussed may indeed be further developed. You know, this is a new directive. It is - it was released, I think, in April of this year. And the process, you know, may evolve as we send more cases to mediation. But this is what it looks like for now, at least. So I don't want to assume that others from OFCCP who have heavily involved in this don't have anything else to add either, Bob I know you have a few points. But Bob, Craid anybody else that you want to add relevance to the pre-referral mediation process or mediation generally?

Craig Leen: Yes, Marcus, I just want to thank you Marcus for what you've done for the agency. You are a great ambassador for our agency and I really encourage everyone to please reach out to Marcus, if you have anything you think could be improved about any of these programs, we would welcome. The goal is for them to be effective. It helps us and it helps you to be able to resolve these matters quicker. And get a remedy faster. And so it's something that we all have an interested in and we want these to be, when I say effective, it's very important that everyone coming into the mediation or conciliation is open-minded, that we respect each other, treat each other as professionals, and you know, often there's going to be competing evidence. There may be experts on both sides. My goal as OFCCP director has been to ensure that when we issue a preliminary determination, that it's backed by comprehensive evidence, statistics, anecdotal evidence, non-statistical evidence (unintelligible) statistics that we're identifying where the discrimination is so that you can correct it and that we try to resolve it quicker through early resolution.

So any ideas you have, send them to Marcus. He'll work with you. That's sort of advice or even criticism is welcomed, most welcomed.

Bob Gaglione: Marcus, this is Bob Gaglione. If I could just say a word or two here. I first

wanted to say it's great to speak with everyone day and I hope everyone is safe and healthy out there. And on the topic of mediation, I came to this agency a little over a year ago with over three decades of experience in civil litigation. And while I love doing trials, it's just a very tedious time consuming and expensive process. So I'm delighted that our agency has implemented a mediation program under Dir. Leen. I think it's time has come. It's long overdue. And so far we've seen good success in our early mediation.

So we're really looking forward to working with everyone with this in the future. And the people I've spoken to about the mediation program are very excited about it. You know, a lot of people around the country in various industry groups have commented on it. We've heard positive feedback. Everyone's very excited about it.

I did have one question that came in, if I could. Just to let everyone know, at the end of this program after Marcus has concluded his ombuds service presentation, we're going to take questions and I'll be reading some of them. If you have any questions, you can tape them in the chat box. And we'll get that toward the end of the program. But one person asks, he says, I am a trained FMCS mediator. How do I get OFCCP to use my services? And I guess a broader question would be for those people that are mediators out there that might want to do these types of cases in the future, how do they go about doing this type of work? How do they prepare themselves for it?

Marcus Stergio: Hi, Bob. This is Marcus. You know, I think for an FMCS mediator, that's great. You know we have sort of already discussed logistics with the director of mediation at FMCS. And the Director of mediation at FMCS and so I think expressing an interest internally would be a great place to start. I know that FMCS has sort of identified a small group of mediators who they think based on the cases they normally are referred through FMCS have the experience to

do these. But you know, I haven't seen a list of names yet. So I think you should, you know, inquire internally as a starting point.

And then as for others, you know, I think one thing the directive really focuses on but feel free to jump in and correct me if I'm wrong if anybody disagrees, is that the OFCCP starting point is always going to be FMCS or the current ombud. Contractors have certainly the right to proposed a private mediator if they don't want to go either of those routes. So I think for someone who's not an FMCS mediator, but has an extensive mediation background who's interested in doing these cases, it might be a matter of figure out, you know, are there contractor networks or stakeholder groups who I can show my mediation experience to who then might kind of keep my name in the hat so to speak. You know when they know of contractors who might be going through mediation with OFCCP.

Craig Leen: Yes, Marcus that is 1005 the approach of the agency. We're not going to be selecting private mediators. Although we will welcome private mediator if that's what the company would like and we, you know, of course we'll review that person as well to make sure that we're happy with them and content with that selection. But the goal of this program is not to add additional expense to the contractor or to OFCCP because we know typically we split the cost of the mediation. And mediator, private mediators can be very expensive. So we want companies to never think that cost might somehow prevent a mediation. And, you know, for larger contracts that goes without - larger contractors that goes without saying. I'm sure for larger contractors sometimes, who the mediator is more important to them than the cost.

But there could be middle-sized or smaller contractors where that's a significant expense particularly if the mediation goes for a couple days. And so we're 100percent committed to using either Marcus and I would put

Marcus up against any mediator. So you should really think long and hard about using Marcus. But it's your option not to and you can use FMCS and FMCS, those are federal mediators. They're neutral. They're not directly associated with OFCCP other than how the federal government is associated among itself. But you know, they're neutral just like federal judges are neutral.

So use FMCS. But if you want a private mediator, we'll support that. Our goal is for this to work. So we want the company to sit down at the table with us or virtually which is what we've been doing, of course of late.

Marcus Stergio: Thanks, Craig. And Bob, any other mediation-related questions you wanted us to take now or?

Bob Gaglione: Yes, sure. I'll ask one other one and that is so far we have had some success in the mediation as I mentioned earlier. They've been primarily larger cases. What's the agency's position on mediation for smaller cases, smaller disputes, you know, for the contractor community out there that may be a smaller company? Maybe the amount in dispute isn't that large. What do you think about that?

Marcus Stergio: Craig, I'll let you fill in again if you'd like to. But I think I'll just add. I think it actually speaks to what Craig just mentioned. You know, FMCS is much more cost-effective avenue for assigning a mediator that, you know, what you find with a lot of private mediators. So, you know, I think as long as it's been identified by OFCCP as a case that's sort of sits in the proper stage of what this directive has identified as being a pre-referral mediation, then small or large, you know, I think what you're going to find is that the costs associated with utilizing FMCS is one where, you know, mediation should not be overlooked because of the amount of a dispute. I think you might see a variety of amounts in dispute being referred to mediation.

Craig Leen: Yes, I agree 100 percent. This is available for large or small disputes. And it's just, you know, I keep hearing. I've been encouraging companies to consider FMCS. Because we really would like, you know, this program to be sustainable and FMCS is fair for everyone. Everyone can use FMCS. It's available. But sometimes I hear in return oh, well there with the federal government. As if we're coordinating with them or something. We don't. They're completely neutral just like federal judges are, federal magistrates, we don't coordinate with them. They're a pure neutral just like if you went out and hired a private one. They're well-trained. And obviously, to become an FMCS mediator, you have to be quite a good mediator. You applied for that and everything.

So I hope more companies will consider FMCS because I do think in the long term that's the most sustainable program.

Bob Gaglione: Marcus, there is one other question in the chat box, if I may. And this may be better to Bob LaJeunesse to answer. The question is how are you promoting the mediation process to those companies that are in the current pipeline? But anyone that wants to comment on that, I thought that might be a good question for our Director of Enforcement.

Bob LaJeunesse: Yes, thank you Bob. So in addition to the directive, you know, we tried to conciliate the cases first and foremost. But as Dir. Leen mentioned, sometimes that's very difficult. We have to issue a show-cause notice. So typically it's at that point that we would indicate then, you know, contact basically the contractor, the representatives and offer that. So, you know, we're not talking about a large number of cases, you know, ideally. We still want to conciliate early in the process and we don't want to short circuit that conciliation in the vast majority of cases. And so we need to keep this in perspective that we're

not talking about dozens. We're not envisioning dozens and dozens of cases every year.

So it's there as a tool. The directive has been issued and it's the best part of what we're doing today is making it more known. So thank you for the question.

Craig Leen: Yes, just to be clear, what the agency is committing to is when we refer a case for enforcement to solicitor, right before we do that, when we made that decision to do it, we reach out to the company to offer pre-referral mediation. So the whole concept to that mediation is look, we're about to - this is, you know, the agency has taken this case from the beginning to the end. We're at the end. We tried to resolve it. This is sort of a last chance to resolve it before we turned the case over to the solicitor of labor because once the case is turned over. The solicitor takes the lead.

They're in charge of settlement at that point. They're in charge of when and whether to bring the case. It becomes their case. So this is the last opportunity to work with the agency to try to resolve the matter. So that's why we offer that time. Now if you want to do mediation earlier, the agency will consider it. But the only time we offer it and we'll give it to you basically no matter what, assuming you want it, is right before we refer it because that's when we're giving up the case. I suspect at earlier stages companies may want to contact Marcus and ask him to serve as a settlement facilitator or mediator in a case and we would be 100 percent supportive of that. That doesn't come with the cost. Other than Marcus' time. But Marcus' time is well spent. So we want companies to be engaging with Marcus.

Marcus Stergio: Thank you, Craig. Bob, I'll go ahead and preceded to the ombud section and then we can pause again for more questions after, if that works.

Bob LaJeunesse: Absolutely, thanks.

Marcus Stergio: Okay, great. So that was Topic 1 of 2 that I was discussing. So I hope people aren't sick of me yet. The next topic is the ombud service and what you know to be my role serving as the ombudsman. So you know, just a brief recap. My tenure with OFCCP began just about a year ago, actually, August 2019 was when I first joined the agency as the ombud. And you know spent the first good amount of time really trying to study the work of the agency and the work of the contractor community. OFCCP policies and procedures, everything necessary to help develop this program. One that would meet the needs of the agency as well as external stakeholders.

And the idea for this ombud service, you know, came from variety of places, but I think those which can kind of be pointed to on paper where really a series of town halls and other avenues for feedback being provided by the contractor community to OFCCP sharing the possibilities of enhancing compliance assistance and increasing transparency, improving communication with stakeholders. And something similar was pointed out in a GAO report a few years back with sort of those same or similar recommendations. And so think of the ombud service as one of the agency's answers to those recommendations. The agency hears external stakeholder feedback and saw the ombud service as being potentially an outlet for addressing contractor owners either generally speaking or in reference to specific issues that might exist with the agency or come about with the agency.

So what I felt like I and others could kind of begin putting together some initial drafts of ombud guidance, what was drafted what is now referred to as the ombud service protocol. And that is available on OFCCP's website. There is an ombud service landing page that was created by our policy division

which includes some resources for those who either are interested in or are considering placing an ombud referral. And one of those resources on that page is this ombud service protocol which kind of serves as the guide for the standards of practice which I will utilize when I operate as ombud. The overall functionality of the ombud service, it covers a variety of topics.

I recommend if you haven't taken a look at it, check it out It has some helpful information for those who might be considering placing an ombuds referral or just looking to better understand what he ombud service can and cannot do.

So I mentioned briefly, one of the topics covered in that protocol is the standards of practice and I want to at least briefly touch on these. If you've worked with me on an ombuds referral, or if you've heard me speak about the ombud service before, you've already heard me go over these and I'm going to again at least briefly because I think they're really important to help paint the picture for how I operate as ombuds. Some of the protection and the safeguard that are in place to make sure that I'm providing all of you with a good service.

And so the first one of those standards of practice is confidentiality. And so this suggest that people I work with are able to flag form me certain aspects of our communication that they don't wish for me to share when I then go back to working with whomever they might be in a dispute with. And perhaps someone has brought forth a general concern about OFCCP that doesn't require my facilitation between them and an OFCCP employee. And in those situations, there's an additional layer of confidentiality in that their name doesn't even need to be attached to a concern.

So it can just simply be an issue to me as ombud which I would then consider how to handle internally and make sure that the agency is aware of that issue

as it's been identified by someone from the contractor community. And these different levels of confidentiality are really just intended, we'll they're intended to do a few things. One, hopefully, you can allow people a certain comfort level with utilizing the service. Two, I think it helps to protect the integrity of the ombuds process when you talk about this confidentially safeguard being in place. The fact that I'm not just relaying information to anyone and everyone else within OFCCP when I have a conversation with a contractor. I'm only sharing information with those involved in a dispute, those involved in a referral. And I'm sharing as much or as little as you're comfortable with.

And I think three, is that, you know, it helps to ensure that people have the ability to share with me anything and everything they need to in order for us to have a productive conversation for me to better understand an issue from your perspective, and then work with you in addressing it in a way that everyone's comfortable with. So that's confidentiality.

The second standard of practice is neutrality. So this speaks to really the role of any conflict resolution practitioner being nonjudgmental, not taking sides, attempting to understand the perspectives of both OFCCP and a contractor I might be working with. And then playing the role of the third-party neutral and facilitating some kind of mutually beneficial resolution. I keep using mutually beneficial resolution. The point here is it's got to work for you. I could suggest what I think might be a reasonable resolution. But what I'm really interested in is the people who are living this and I'm dealing with this on a day-to-day basis, what works for them. In doing so, in a sense, also helps to preserve neutrality.

The third standard of practice is actually intended to help preserve that neutrality. So I can tell you call day long that I'm neutral, you know, after

many years of mediating and facilitating agreements with people from all walks of life and dealing with a variety of challenging situations and we're working with people who really they, themselves take many different approaches to managing conflict. Through all of that, I personally have no doubts about my ability to remain neutral. But that only speaks to my comfort level. Equally important is the perception of neutrality. Your perception of me as a neutral third party. And so the third standard of practice is independence. Because in order for me to preserve that neutrality, I need to remain independent from other divisions within OFCCP. I am an OFCCP employee. But I'm intentionally not a part of, let's say, the policy team or the division of management and administrative programs or the division of program operations.

You know, I don't function as HR or I'm not part of the solicitors. You know, I'm part of the ombud service. And that's necessary so that independence is not jeopardized.

The fourth and last standard of practice is informality. And what this speaks to is the fact that working with the ombud service is voluntary. And then once engaging me, there's no set process or procedures that we have to follow. When I receive a referral I immediately want to learn what's going on from the perspective of everyone involved. That person who brought the referral forward, others who may have identified as being involved. But from there we take it step by step and design a process that works for those who are involved. Considering facts of such as how much confidentiality people need, how it is I think I can be helpful based on what I've heard how people want me to be helpful.

So the design of the conflict resolution approach on each referral is informal in that there is no template. It's based entirely upon the needs of those with

whom I'm working. So again, those are the four standards of practice. There's more information about them in the protocol. I just wanted to briefly mention them as a heads up and I think it helps to kind of inform, you know, how it is that I operate as ombuds.

Craig Leen: Also if I could add something, you know, Marcus productivity is measured on resolving disputes. I mean so that's this mission is to resolve disputes. And to facilitate the movement of cases in terms of, you know, if they get stepped or stuck. He assists with our each case initiative. His mission though is the resolution of cases. So that's why I think that even though he works for OFCCP, what he's trying to show is that he can resolve a matter. And he's pragmatic and he's thoughtful and that's what he's going to working towards. And he has the full support of the agency in doing this.

So please keep that in mind when you go to him, his goal is try to resolve your problem.

Marcus Stergio: Thank you, Craig. That's a really helpful point. You know, it wouldn't be in my interest to support one party more so than the other. You know, that neutrality is actually a - it goes well beyond, you know, just my desire as a conflict resolution practitioner to remind neutral.

Okay, so a couple other things about the ombud service. In terms of actually placing a referral, people can do so by a few different platforms. You know, you can just pick up the phone and give me a call. Send me an email letting me know that you have something you'd like to set up a time to discuss. And then we've also created an online referral form that is available on the ombud service landing page where people can confidentially share information about a concern or an issue that they have relevant to OFCCP. And then when that online form is completed and submitted, I receive an email letting me know

that someone has placed a referral and it comes only to me. So then from there, I would reach out and set up a time to discuss.

And once a referral is received, you know, no matter which of those three approaches people take, as I already mentioned, you know, it's informal. I have a conversation with the person who placed the referral to better understand the issues or the concerns from their perspective. Talk with the other people involved to do the same. And then from there, we design a process that works depending on what's going on.

Something else that I will sort of, universally do though that is helpful to, I think, give a heads up about is I found that it's best practice to let the regional director in whoever's region some sort of request for facilitation might have come out of, give them at least a heads up that I received a referral out of their region. And through the process of doing so thus far, what I've found is it gives the regional director the opportunity to be as involved or uninvolved as they thing is necessary and that has really helped with the efficiency of the referral process. So it's something that I'll be doing, you know, given the parameters of confidentiality I'm working within a particular referral. Giving that heads up to the regional director that a referral has been placed in their region.

And then working with those who are directly involved maybe at the district office level and those from the contractor, contractor's outside counsel whoever it may be. So what people usually want to hear about, I'll finally talk about. and Craig you mentioned it earlier that yes, over 90 referrals. And you were correct. This graph, this chart was created last week. So we're already a little outdated, but the total number of referrals today are 96. And here you see sort of a breakdown of where they've come from. I've handled referrals placed by folks from within OFCCP. And on those occasions, it's been on some

occasions it's been a matter of, you know, the scope of a review is in dispute. So a contractor and OFCCP perhaps disagreed on what the scope of an ongoing review should be. Or there have been requests for information that you know, a contractor has pushed on why they are necessary or how quickly it is that they should be expected to provide them.

And in those cases someone from OFCCP working with the contractor kind of saw it as a roadblock to having productive conversation and reached out to me thinking well maybe Marcus can facilitate and be helpful and kind of helping us figure out what is reasonable in this situation. A larger but still comparable number of referrals have come from contractors directly. And then even a larger number of referrals have come from contractor representatives, the attorneys and consultants representing and working with contractors.

The issue types from those two categories have really varied based on what I've seen so far. Some have involved concerns about a district or a regional office's handling of a compliance evaluation. In other cases, concerns about the amount of transparency involved in either compliance evaluation or complaint investigation processes. On a few instances, particularly of late, again, Craig mentioned this earlier. Further along in the process during the conciliation discussions that are happening, when parties might have reached an impasse. And I think this is actually an area moving forward where I can be really helpful because of my background as a mediator as a facilitator.

You know, I would get involved at that point during the conciliation conversation not to, you know, I'm always going to be an OFCCP employee, but I'm not jumping onto the OFCCP negotiation team. If I ever got involved with the conciliation very specifically go facilitate the dialogue between the contractor and OFCCP. And I think that in some situations may prove to be more and more helpful.

I've also received, it's 13 referrals as of today. So a good number of referrals from complainants as well. And on these occasions, it's sometimes been a request for someone neutral to step in and, you know, see about why has this process gone on as long as it has. You know, I haven't seen any measurable progress and I'm wondering what the status is. I'm wondering what's going on in the investigation. I have doubts about it. And so I get involved in relaying information so that the complainant no longer has doubts. And knows where things are at and what the current process is.

You also see on this chart another category which is so far the majority of referrals and I don't think it will continue to be moving forward. But there are a few different types of inquiries that kind of go into this category. One is those which come from an anonymous source because yes, again, people are allowed to place an anonymous referral. The other type of inquiry that's in this category is those which might be better suited for another agency resource. So if someone has a question or a general inquiry, that doesn't suggest an ongoing problem or a specific problem in the current - in the present. Then, maybe that general inquiry or question is better suited for the OFCCP help desk which is very effective in addressing general inquiries.

So then I can refer to the help desk so that they can help the person in providing an official response from the agency. The other piece here and this is the one that I think will probably, you know, we'll see reduced with time (unintelligible) CCP's jurisdiction. And in that case, you know, I don't ever want to say I can't help, good luck. But my role would be to, you know, still respond to that person who's bringing forward the referral, explain what OFCCP does and what it doesn't do. And then if I know of any resources that are better suited for that person, you know, I might have a conversation with them about what might be a more appropriate avenue for having that issue

addressed. And again, I think that will - you'll see less and less of those as we continue to receive referrals.

One other thing quickly about referrals because I sometimes get questions about this; reporting. So, you know, what are the detail or who are the details of these referrals being report to? Well, in short, I don't report specifics of referrals to anyone other than whoever is involved in that referral.

The way that I report - that I report internally is just how I'm doing so on this Webinar. I report statistics. I report on issue types being presented to the Ombuds Service. And I report information confidentially to the front office and senior leadership that might be helpful for the agency to be aware of in terms of issues that are being raised by the contractor community.

The only time where I might consult to someone else, and I would discuss this with someone I'm working with, is if, you know, consulting for CRLN, OFCCP's counsel is necessary or someone else outside the referral who's answer is relevant to being able to be most effective in helping you in that referral. But other than that, you know, statistics and general issue types are all people are hearing outside of specific ombuds referral conversations.

In terms of next steps, goals for the near future of the Ombuds Service, you know, I'm really focused on continuing to engage in dialogs such as this one, which is why I appreciate everyone's attendance and interest in the topics we've discussed because, you know, I want to continue the conversation. I want to educate people from a conflict resolution standpoint both internally at OFCCP and externally within the contractor community.

Educate people on how to effectively utilize the Ombuds Service, the ways I can be helpful and how I can't. Prior to the pandemic, I had joined a few

external stakeholder conferences to speak about the Ombuds Service. And, you know, although I really wish times were different and I were still able to do that, continuing to meet all of you in person, there have been opportunities such as this one to speak about my role through Webinars and conference calls with compliance groups and stakeholder groups, ILGs.

I've done so internally with certain divisions of OFCCP. And I'll continue to do so moving forward. So if there's a group out there that, you know, you're thinking of that would be helpful for me to explain more about the Ombuds Service to, I'm happy to do that.

One last thing relevant to next steps, and I already discussed reporting, but on the horizon, I guess you could say in terms of reporting is the Ombuds Service annual report. So each year I'll be putting together an annual report, which will be shared publicly. And it will consist of the same reporting format that I explained earlier.

So issues handled, where they come from, resolution mechanisms that might have been utilized in handling those referrals, recommendations that might have been made. And in terms of recommendations, you know, sometimes those might be relevant to training. Part of my background prior to joining the agency included designing and delivering conflict resolution training.

So I have my eye on that one. I'm handling referrals. Thinking about conflict resolution methodology that seems like it might be helpful for OFCCP staff to receive training on in order to engage effectively in collaborative dialog with external stakeholders.

So in short, these are the types of things that you can expect out of the annual report. And again, my goal or expectation is that should be available every

year within a few months of the close of the fiscal year.

So now that I've covered both the Pre-Referral Mediation Program, the Ombuds Service, I've done a lot of talking. So I'll stop there. But I want to pause briefly again just to see if any of the other OFCCP presenters on the line wanted to add anything that I might have neglected to cover or reiterate something I did cover; anything from anyone about the Ombuds Service.

Craig Leen: Just one thing from me, Craig. Everyone, please engage Marcus. Please talk to him. Please give him your thoughts and send any feedback to him. Another thing you could do, which is already pre-approved, I've already approved this is I would support him doing more seminars and presentations to your groups virtually. I mean we do always have to check those with ethics and with internally. But typically they're approved, particularly for non-profits.

So if you have a - if you'd like Marcus to speak at one of your seminars, if you're speaking to Federal contractors or if there's some tie-in to OFCCP's mission about dispute resolution, please ask him because that's one of the areas where we've asked him to do as much as he can.

Marcus Stergio: Thank you again Craig. So that concludes our three main topics. But I will go ahead and turn things over to Bob Gaglione.

Bob Gaglione: Well, thank you again. And just for those of you who have questions, I remind you please go ahead and type them into the chat message box and I can read them to our speakers. And I encourage all of you to stay on for the remainder of this program. We've got about 20 more minutes and then we'll be hearing from Deputy Director Patty Davidson and then our Director, Craig Leen, will close the program by 1:30 Eastern Time.

And my first question it really goes to both Bob LaJeunesse and Marcus Stergio. And it relates to the use of expert witnesses. And the question is how and when do you use expert witnesses and for Bob in conciliation and for Marcus in mediation process. So let's start with that question to Bob LaJeunesse.

Bob LaJeunesse: Yes. Thank you Bob and thank you for the question. Going back to my earlier comments, we want you to make the best use of your expert witnesses. And we like to make the best use of our expert services and our, you know, highly qualified experts we have around the country.

And so when we have them scheduled for a conciliation meeting, we really want to make the best use of their time. So this goes for both conciliation and mediation. The more that you can share information and requests for clarification before gathering, the better off we are. Marcus spoke of the pre-mediation discussions that take place. We found those to be very useful for mediation and for conciliation.

So the more exchange that happens before time, the better of. You know, we contemplated to even putting time limits in for exchange of information prior to mediation. We didn't - we really haven't implemented a hard rule there because each mediator may have, you know, different requirements. But again, we established some goals around sharing of information prior to the mediation.

Now your experts will be a little more involved obviously during conciliation meetings. What we found is by the time we go to mediation, you know, those issues have been aired. We agree to disagree or we know where the disagreement lies. And so re-hashing them in mediation that to, you know, can be expensive really isn't a good use of time.

So you wouldn't necessarily always need an expert witness, you know, to participate. This goes back to the earlier discussion about who are the named participants in a mediation. So don't just treat the mediation as if it's a continuation of a conciliation process in terms of the participants. We want to reboot the conciliation process during the mediation to really cut to the chase and try to get a resolution. Thank you.

Bob Gaglione: Marcus.

Marcus Stergio: Yes. I mean I would mostly just agree with everything that Bob just said. I think in my experience where that might be helpful in mediation, you know, one of the most important things sometimes for a negotiator is to consider when there are disagreements about what's fair or what's the right method to be looking at this dispute that we're position ally negotiating.

Something that can sometimes be helpful is to look at objective standards and to define objective standards. And I realize that the question is about witness experts. And, you know, we - in a mediation we might have one approved by OFCCP and one approved by a contractor. But what would ideally be most helpful in that way during a mediation setting is that there could be some sort of an agreement on who that expert approved by both sides was or not necessarily an expert but a model.

You know, what is the objective standard that can be looked at and agreed to as being fair that we can all agree to utilize as a way of sort of deciding how we negotiate the rest of this moving forward? So just a thought from, you know, not having experienced work with expert witnesses in the OFCCP world but just from a mediation standpoint, thinking about it in terms of objective standards can be helpful.

Bob Gaglione: Well, thank you. And somebody just asked the question of how Marcus they could contact or to have you speak to their group. Is it okay for people to reach out to you directly or is there someone else they should contact at OFCCP to have you as a speaker?

Marcus Stergio: No. Please feel free to reach out to me directly. I believe - I don't want to commit to something that isn't happening. I believe these slides are being shared after at some point. And if that's the case, you'll have my email. But if that's not the case, my email is stergio.marcus@dol.gov. And you can feel free to reach out to me at any point. I'd be happy to discuss that.

Bob Gaglione: Okay. Thank you. And I also got another question whether or not the program was being recorded. That I can answer. Yes it is. And the question - he follows to that was will a link be sent out to participants. I don't know if you or anyone else know the answer to that one but I'm sure it'll be available on our Web site in the future. Anyone else know if a link will be sent out to attendees?

Moderator: It will be posted on our Web site in the near future.

Bob Gaglione: Perfect. Thank you. Looks like we're running short of time. I'm going to turn it over to Patty Davidson in just one minute. But before I do, one last question regarding the Ombuds Service. Since this is a relatively new service both at OFCCP and frankly at the Department of Labor, when you do speak to groups Marcus, do you have to explain in great detail what you do, what services you offer? I know you've done that today. But do you feel like - you've been here a year now. Do you feel like the contractor community is starting to understand your role and what services you offer in the Ombuds Service Program?

Marcus Stergio: I would love it if that were the case. Not that I don't enjoy discussing it, but, you know, the contractor community is just so large that to this point I haven't ever really wanted to make the assumption that we're sort of all operating with the same foundational principles and understanding. But if there are groups that tell me, Marcus, we're good with that. Let's talk more specifics, you know, on referrals or whatever else, then I'm happy to do that. We can design whatever makes - or it could be more general conflict resolution discussions that I'm happy to share thoughts on. You know, it's whatever people want or need. It's just that that so far has been my approach.

Bob Gaglione: Great. And I got a note from someone saying you're going to be speaking to the Arizona ILG in October. They're very much looking forward and excited to having you speak to that group. So again, we encourage anyone interested to contact Marcus Stergio if you want a presentation on the Ombuds Program. But it looks like I'm out of time and I want to leave plenty of time to hear from our Deputy Director Patty Davidson and then closing comments from Crain Leen. So I'll just conclude by saying from my part it's been a pleasure to speak to everyone today. And again, stay well. And at this time I'll turn it over to Patty Davidson. Patty.

Patty Davidson: Thank you Bob. Good morning and good afternoon depending on where you're joining us - where in the country you're joining us from. I have - my role here is to wrap up and review. We've gotten a lot of information today, a lot of excellent information today; our kickoff from our Director Craig Leen; conversation about conciliation from Bob LaJeunesse, our Director of Enforcement; Marcus Stergio gave us a lot of really good information about the two programs that he's the most engaged with, Ombuds Service and pre-referral mediation. And it's an exciting time as you can tell from all of the information you've gotten already today.

It's a very exciting time to be part of the Office of Federal Contract Compliance Program. We have a lot going on. Even though we are experiencing some of the same issues and concerns as all of you in terms of teleworking to the maximum of our ability, we're doing a lot of work virtually. This is a situation that has been unprecedented in our experience to be working away from the office for so long. But I think the key there is that we're working and resolving our reviews and answering questions and conducting virtual compliance assistance. It feels like we haven't missed a beat.

We may so differently. And if you do, you can reach out to Marcus and we'll walk you through whatever processes that we can. But this has been for me, you know, a wonderful program to participate in. I talked to my friends in the questions in the chat, to other organizations that we could utilize to help spread this message and convey this information. And we've worked with a number of other organizations - contractor organizations and other stakeholders to share this information.

But this is a very brief wrap up so that we can get to some closing remarks from our Director. As I said, this is a very exciting time to work in the Office of the Federal Contract Compliance Program. And, you know, we are focusing our work on getting the message out, educating contractors, stakeholders and others on what we do. We are also working to conclude all of our reviews as timely and efficiently as we can to come to meaningful resolutions in those times when we can't come to a conciliation agreement before we move to referral to our office of the solicitor, we do offer pre-referral mediation. You got to hear a lot about that process today.

And as always, since the launch of the Ombuds Program, you have another opportunity now to reach out to us in a very meaningful way and engage with

Marcus to ask questions, to resolve matters, to make recommendations, to provide us feedback. And as I think you can - I hope you can tell from the presentation today, we are very open to feedback on things you think we're doing well, things you think we could do better. We're open to hearing about things you think we could do differently.

So it's a great organization of which to be a part. And I'm going to leave it there because I want to leave enough time for Craig to make his closing remarks. So I'll turn it over to Director Leen. Thank you.

Craig Leen: Thank you Patty and thank you Bob and thank you everyone. It really is an exciting time to be at OFCCP. Patty hit the nail on the head. And we're very happy to have Patty here. She came from the Wage and Hour Division over a half year ago now. And as you can see, she's another person that you should reach out to, you should engage with if you're having issues. She is someone that will - that believes in customer service, that believes in being transparent and trying to get to the right outcome. And it's been a real pleasure working with Patty.

And I want to thank Bob Gaglione as well, my other Deputy Director. Bob was an arbitrator, as he mentioned and a mediator; knows a lot about this area. So if you like, you can also reach out to Bob and talk to him about it. He comes with a high level of expertise and subject matter knowledge. He loves the agency as well. And it's been such a pleasure serving as non-career officials together in this agency, so and that has been great.

So let me just conclude with a few points. First of all, everything that we talked about today, I've asked to be put into our compliance manual, the FCCM. So soon you'll be seeing - because I want these things to live long after me. You know, I want them to continue even after I've moved on to

another agency if I do get confirmed. It's very important to me that these are sustainable and you've heard that word a lot. So I'm asking them all to be put into the FCCM. Our Policy Division is doing that. So you will see sections devoted to the Pre-Referral Mediation Program. You'll see sections developed to - devoted to the Ombuds Program. And you'll see a more elaborate section devoted to conciliation.

And Bob LaJeunesse, our Enforcement Director, mentioned something earlier that the legal requirements for conciliation are not that high. The agency really doesn't have to do a lot of conciliation to conciliate in good faith. But that's certainly not the best practice. And that's not the goal. The goal of conciliation is to conciliate. And so I've set a high policy standard at the agency of seeking to fully conciliate cases and to do it promptly. Not to let a lot of time pass. Treat each other as professionals. Sit down virtually and try to work that case out. And so I ask everyone to do that.

But we're going to be adding more to the FCCM about conciliation as well including more information about the different principles, which I touched on earlier, that the agency considers in determining how to address settlements and to make sure that we're treating companies similarly across the United States, that there's uniformity to the way that we approach settlement. That's key as well.

So you may ask why am I so passionate about this. And it's because it works. We have a successful approach through mediation, conciliation, our Ombuds Program. I just want to remind everyone on the phone that there's been over \$40 million in recoveries in fiscal year 2019, which was a record year for OFCCP. It was the first time we recovered more than \$30 million in addition to being the first time that we recovered more than \$40 million.

We're all very proud of that work. And a lot of that was because of conciliation, mediation and our Ombuds Service. So trying to work these cases out earlier. And you know what. There's another excellent year on the horizon. Let me tell you a little bit about the ERCA Program. We're likely by the end of this year, and this goes back to the beginning of the ERCA Program; so it's not just in this fiscal year. But by the end of this year, the ERCA Program, which is another dispute resolution program because it allows for early conciliation and early resolution, we're likely to have 30 ERCA's, 30. Securing more than \$55 million in back pay and covering nearly 700,000 employees in the United States. That's a successful program.

We're ensuring equal employment opportunity for more and more people. And let me tell you; our jurisdiction covers 25 percent of the American workforce. And my goal if it continues to expand our reach so that we touch more and more employees ensuring that they receive full equal employment opportunity. And you know what. I believe that the best way to do that is through compliance assistance, through our contractor compliance institute with our classes and then also with doing more audits and doing more compliance reviews and doing them quicker and more efficiently.

So I have another stat I want to tell you that I'm very proud about. The amount of cases that the agency has opened in this last Quarter 3 of fiscal year 2020, just the quarter, the number of cases opened by the agency is 618. I just got that stat today, 618. Obviously, you multiply that by four, that's over 2400 over the course of a year. Now it's not going to be 2400 this year because that's our highest number so far of all the quarters. But you see that we're trying - that through successful conciliation and mediation, that frees up the agency's resources to touch more people and to do more reviews and to do them prompter.

Now I told you we opened 618 reviews but what's our H case rate? It's 9 percent. Just got that number as well. Nine percent. So it's under ten. And in addition to that, the desk audit remains under 45 days. So we're doing things quicker and more efficiently than ever before. And because we can do all that and meet all of our enforcement goals and priorities, we've also been able to expand into other areas through the Focused Review Program with an intense focus on Section 503 and (unintelligible) on full inclusion of individuals with disabilities, on full inclusion of veterans, veterans with disabilities and military spouses and all aspects of employment.

We're also coming out soon with accommodations and promotions focused reviews. Accommodations will look at both disability accommodations and religious accommodations. The promotions focused review will look at promotions for all ten of our protected classes and best practices related to promotions. The goal in the end is the best use of agency resources, to touch the most people, to make the most impact. We want to be efficient. We want to make a difference. And we want to achieve the agency's mission. And I'm so proud to be the Director of OFCCP. It is the best job in the world.

And I'm - to work with my colleagues - I know many of you know them and work with them in your professional work. I'm so proud of our work and I'm proud of the direction we're going in and these wonderful enforcement numbers that show the impact we're making. And thanks all of you, everyone on this call for working with the agency, engaging with the agency, trying to improve equal employment opportunity in this country at a time when it is so important that we're focusing on equal employment opportunity.

And finally, I just want to say as it relates to mediation and conciliation, the goal - and please take this away from this talk. The goal is efficiency, inexpensiveness where possible because we want companies to do this. Open-

minded, approaching the mediation or the conciliation with an open mind, recognizing that it's important to see the evidence presented by both sides and to consider it and weigh it and that the goal is the truth; and respect; mutual respect for both parties because in the end, it's the respect that we will be able to bridge differences and disagreements and come to a solution that will enhance equal employment opportunity and help the employees that we're seeking to help.

I believe, and I've said this before, that those on this call, those on the NILG calls, the AED calls, the IWE calls, the CWC calls, the calls for all the different groups and consulting, non-profits, et cetera, that focus on OFCCP; that your involvement and engagement in these topics shows your commitment to equal employment opportunity and civil rights. And that often you are the consciences of your companies. And you are there ensuring diversity and inclusion. And our goal - a significant part of our goal is to help you by providing materials, providing compliance assistance.

And occasionally when we do find a problem, our goal - always first, our goal is to work with you to solve the problem. If we can't, and sometimes there will be legitimate disagreements, then sometimes we have to go to adjudication. But that is a long process. And it is not efficient. And in the end, it delays any remedy for the very people we are trying to help.

So I think that conciliation and mediation and our Pre-Referral Mediation Program is a win-win. It's something that everyone should be interested in. And I encourage all of you to take another look at it and avail yourself of it when the opportunity arises. Please consider it. And if you have any feedback from today's program, please reach out to any of us who's spoken or anyone you'd like to OFCCP. In particular, please think about reaching out to Marcus, our Ombuds. You can see that he is someone that cares deeply about what you

think and wants to get it right and wants to be the most effective ombuds possible.

So thank you everybody. I hope you all have a wonderful day. And thank you again for participating in our program.

Coordinator: That concludes today's conference. Thank you for participating. You may disconnect at this time.

End of Transcript