

The Ins and Outs of Compensation Monitoring: The Practice & The Technology

Dr. Michael Sinclair, past Director of Statistical Analysis and William Smitherman, Acting Regional Director of the OFCCP's Pacific Region presented an innovative and informative session on compensation analysis. What made this presentation so innovative was the way that it allowed audience participants to gain a better appreciation of what an OFCCP Compliance Officer does when reviewing a contractor's compensation data.

The primary focus of the Sinclair/Smitherman presentation was to provide a how-to workshop to prepare Compliance and Human Resource officials for a compensation review. The attendees participated in a practical exercise wherein they reviewed hypothetical contractor data looking for signs that greater scrutiny was required.

Many contractors put all of their focus on conducting what is sometimes called a "red-flag" or 30-30-3 analysis

followed by a more powerful multiple regression analysis to examine problem areas. While these steps are absolutely the correct thing to do, the one serious assumption being made is that the data being analyzed are accurate and complete.

The part of Sinclair's and Smitherman's presentation that provided the most salient addition to our discussion was the need to ensure that your data are valid, appropriately coded, and consistently formatted before beginning any additional analyses.

Almost nothing alerts the OFCCP that they need to look more closely at a contractor's data than seeing obvious signs that the contractor gave little thought to ensuring that the data being submitted are valid and complete. Some of the key issues you should work hard to avoid in your data submission include:

- Missing Data – Missing data can have a dramatic effect on regression analysis results. If you find that you do not have data for some variables for some

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The Importance of Testing Procedures In Achieving a Diverse Workforce

Fred Azua, Regional Director of the OFCCP's Southwest and Rocky Mountain Region and Dr. Richard Fischer, the OFCCP's lead testing expert, presented an interesting workshop at the 2007 National ILG Conference in New York that discussed the OFCCP's approach to investigating cases of adverse impact arising from selection procedures. A contractor's obligations under Executive Order 11246—even when relying on 3rd party employment services or agencies or when the contractor employs temporary workers was discussed in detail. Following is a summary of the important information that was presented:

The Facts

- Most of the financial penalties resulting from EEOC discrimination investigations were from cases where discrimination

was found in employer hiring procedures. The actual amount contractors had to pay was in the tens of millions of dollars.

- The primary reason that employers lost and had to pay substantial fines to settle the cases was due to the fact that their selection procedure was not validated and was not based on a solid job analysis.
- It is not just the bottom line (80% rule/adverse impact in overall hiring) that the EEOC is looking at. It is a requirement that all stages of the hiring process are valid (i.e., Minimum/Basic Qualifications are validated and used to identify which applications are accepted, application screening to identify who will be tested, the

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Affirmative Action Planning Made Easier: The Benefits of Being Part of Your Local ILG

As a nationwide EEO consulting firm, Biddle Consulting Group, Inc. is exposed to the needs of Federal contractors, both large and small. Through years of experience we have learned that most organizations struggle to keep up with their basic Affirmative Action Plan requirements, not to mention all of the changes in the regulations since the turn of the century. Too many organizations work through their annual AAP requirements without taking the time to gain a working knowledge of what is expected of them.

People need to know that there is a great resource in almost everyone's region for effectively keeping up with the world of EEO. Commonly called the ILG or Industry Liaison Group, the ILG is a group of regional human resource, EEO, and related managers who get together with the OFCCP (Office of Federal Contract Compliance Programs) on a regular basis for an informal gathering to discuss all things EEO.

The ILGs came into existence in the 1980s at a time when the OFCCP and Federal contracting community was struggling to work towards a common goal. It was the OFCCP that introduced an idea for regional gatherings to encourage better communication

between private industry and the OFCCP. Today, there are over 100 ILGs in the United States, including Alaska and Hawaii.

Everyone knows that you can pay to attend all-day, marathon training sessions or read mountains of internet content on how to manage the Affirmative Action Plan process, but few people take the time to tap into what is probably the best resource of them all, a free ILG meeting.

Thousands of ILG members know that Regional ILGs are an amazing resource for networking and keeping up with the EEO industry. Most meetings occur on a quarterly or semi-annual basis for a half-day of getting caught up with the industry. Joining them is either free or at a minimal cost to help support guest speakers and facility rental fees for larger meetings. Typically, the OFCCP speaks about their current initiatives and other areas that the audience requests. Additionally, organizations such as Biddle Consulting Group and other consultants and attorney's come out and speak on key topics to help their peers in the industry manage the difficult tasks associated with EEO compliance.

Starting a little over ten years ago, the various regions began hosting a

National ILG conference where contractors from all over the country get together for a lavish, week-long meeting. Attendees have an opportunity to meet OFCCP officers and hear informative speakers from that work within the industry.

The 2007 conference was held in New York City the week of August 20th. Speakers ranged from Charles James of the OFCCP and Julian Bond, Chair of the NAACP to John Quiñones, co-anchor of "Primetime" (previously a correspondent for "Primetime Thursday" and "20/20").

The consensus among EEO professionals, as well as those who only wear their EEO hat on a part-time basis, is that the ILG meetings are a tremendous resource. Those who need to keep up with EEO requirements, like networking, and want to hear directly from the OFCCP should plan to attend an upcoming ILG meeting.

Connecting to your ILG is easy and highly recommended. The ILG website contains all you need to know about joining your local ILG and attending the national conference. The link is: <http://www.nationalilg.org/main.html>. It is a great professional resource and we are sure that you will benefit from it. ❄

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Testing

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actual testing procedure, and finally, who gets hired). All stages of the hiring process must be fair and valid and it is the employer's responsibility to demonstrate this validity.

- The EEOC has hired highly trained psychometritians/testing experts to evaluate the claims made by employers that their tests and selection decisions are valid.
- Even when an employer hires a 3rd party consultant to develop and

validate their examination, the responsibility for making SURE the test is valid rests with the employer and not the consultant. It is the employer—not the consultant—who will be found liable if the test fails to meet legal standards for validity and fairness.

- If a contractor relies on a 3rd party employment service to refer employees and if the contractor

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Systemic Discrimination and Test Validation: A Review

Affirmative action plan compliance reviews are proving to be extremely productive and lucrative for the Office of Federal Contract Compliance Programs (OFCCP). With the addition of statisticians to the OFCCP regional staff and the focus on systemic discrimination, the OFCCP has collected \$51.5 million from federal contractors in 2006. Eighty-eight percent of those collections came from systemic discrimination-related cases.

How can you protect your organization from adding to those numbers? Fred Azua, Jr., Regional Director of the Southwest and Rocky Mountain Region of the OFCCP, and Richard J. Fischer, Ph.D. and OFCCP Testing Expert, suggest that contactors ask themselves how their practices, procedures, and tests (PPTs) affect their applicant pool, and, whether those PPTs are validated. The Uniform Guidelines on Employee Selection Procedures defines validation as the demonstration of the job relatedness of a selection procedure.

Azua and Fischer stressed throughout their 2007 National ILG workshop that any PPT not subjected to one of the three validation strategies recognized by the Uniform Guidelines (content, construct, or criterion-related validity) will be considered discriminatory.

Common PPTs that tend to slide by validity testing are employment probationary periods and employee training programs. Basic qualifications are also required to be scrutinized for adverse impact against any particular group.

Running validation studies on PPTs is not where the contactor's responsibilities end. The contractor must keep extensive records on the validation study itself. If records are not kept, the OFCCP can draw the conclusion that the test has adverse impact, especially if the contractor is underutilized in the particular job group that the test is screening applicants for. Be sure to keep

record of all of the training that test administrators take part in. Store all scoring guides and the scoring sheets from all test takers. The administration of the test must also be consistent and uniform between all administrators and

each occasion of administration.

Contractors who do not create their own PPTs are also held responsible for the validation of the tests that they have

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Meet Dr. Jim Higgins: Principal Consultant & Director of Compensation Analysis Services



Dr. Jim Higgins is a Principal Consultant with Biddle Consulting Group and also serves as our Director of Compensation Analysis Services. He has over 15 years of professional experience in the HR field that has included the application of advanced statistical techniques in solving a wide variety of HR-related problems. Dr. Higgins is an expert in the use of advanced statistical techniques when solving selection, promotion, and compensation-related problems.

With a doctorate in Educational Psychology and a Master's degree in Industrial and Organizational Psychology, Dr. Higgins has extensive

technical training in methods for validating selection procedures and the use of strategies for identifying and correcting sources of bias in personnel selection tests. He is a frequent speaker on topics related to compensation analysis, statistical analysis, is a professor of applied statistics at American River College in Sacramento, California. He has authored his own statistics textbook, a book chapter on the steps for conducting an OFCCP-Style compensation analysis using multiple regression and several articles related to the use of structured assessment techniques in clinical settings.



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does not have the data available to verify the fairness of the procedures utilized by the 3rd party employment service, the OFCCP may require that the vendor submit these records. It remains the contractor's responsibility to ensure that all procedures associated with their hiring decisions are fair and valid.

The Law

- *Griggs v. Duke Power Company* – Employment selection procedures must be “job related”.
- *Albermarle Paper v. Moody* – “Vague and unsubstantiated heresay” is not enough to demonstrate that your test is related to the job. You must empirically tie your assessment procedures to requirements of the job.
- *Guardians Association v. Civil Service Commission of New York* - Just “having” a job analysis is not enough. The job analysis must be conceptually sound, include clear and appropriate task and KSA statements, and clearly document the link between required KSAs and actual performance on the job.
- Uniform Guidelines on Employee Selection Procedures identifies validation strategies that can be an effective defense in the case of a Title VII Civil Rights Act challenge. The Uniform Guidelines have the force of Law with the EEOC's Office of Federal Contract Compliance Programs.

What This Means to You

- If an agency is going to develop and validate tests on its own for hiring or promotional purposes, make sure to be familiar with the

Federal Uniform Guidelines (www.uniformguidelines.com). Ensure that all tests and employment decisions address the requirements of the Guidelines.

- If you hire a consultant, it is important to keep this in mind:
 - o Remember that it is the agency and NOT the consultant who is responsible for ensuring that a test is valid. The agency will be held financially liable.
 - o Don't trust “that consultant look.” Make sure they are qualified to provide advice or services relating to assessment validation. Find out who will actually be doing your work—and get it in writing. Ask for a copy of the consultant's resume/vita. Since you are paying good money for the work, make sure that they know what they are doing. In most cases, your consultant should have at least a Master's degree in Industrial and Organizational Psychology, Educational Psychology, Testing, Statistics, or Psychometrics. Ask for information documenting how much experience they have in defending their assessments against charges of discrimination. See if they can give you the names and contact numbers of other clients who can vouch for them (but don't give this too much credence since they are likely only to select satisfied clients).
- Keep in mind that in the event you are ever challenged on your assessments, answers like “But I was told the test was valid” or “I just did what I was told to do” or “This is just the way we have always done it” and “I am not sure why we did it this way” is not likely to be an effective defense! ❏

PPTs

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purchased from third parties. All contractors should be acutely aware of the validity evidence of each test that their third parties have chosen when screening applicants or current employees.

In fact, the OFCCP is starting to reach out to testing organizations and requesting to see their validation evidence. All test publishers should be willing, and ready, to provide such evidence to anyone interested. Be weary of purchasing a test from a publisher if they are unwilling to share their validation results with you.

Azua and Fischer also emphasized the importance of transportability studies. There are times when a contractor wishes to use a validated test from one job position for a second job position. In such cases, the Uniform Guidelines require that the test be transportable. To show transportability, a three-part study needs to be completed. First, the test has to be valid in the previous job it was being used for. Secondly, the two jobs must be similar in content and responsibility. Finally, a fairness study needs to be conducted.

The OFCCP is taking selection practices, procedures, and tests very seriously and so should contractors. Contractors bear the burden of responsibility to know the background of their PPTs and ensure that each PPT required of applicants and employees has been proven to be valid. This is a heavy responsibility and contractors do not have to face it alone.

Several organizations, such as Biddle Consulting Group, Inc., have dedicated teams that concentrate specifically on test development and validation. Utilize the resources available to you and help reduce your chances of contributing to the growing collection figures of the OFCCP. Outsourcing can help free up internal resources and allow the experts focus on their specialty. ❏

Professional Seminar Series (Fall 2007): Navigating the Changing Landscape of Affirmative Action Compliance

The new Fall TV season is here, and so begins the live Fall series, *Systemic Discrimination and the Transformed OFCCP*, which made its premiere in Spring 2007 on the East Coast and continued through the Summer on the West Coast. Presented by Biddle Consulting Group, Inc. (BCG) and Jackson Lewis LLP, the seminar series

makes its final appearances for 2007 in Dallas, Texas and Chicago, Illinois. The EEO specialists of BCG and attorneys of Jackson Lewis help you wade through the latest OFCCP guidelines and show you how to turn theory and rules into application. **Call BCG at 800.999.0438 to register today!**

“Very informative seminar, and useful for the more experienced HR Administrator, as well as those newer to the industry. Excellent seminar! I came away with a lot more than I expected. I would definitely recommend to others.”

2007 BCG Training & Events Calendar		
Webinars	Presentations	Seminars
<p>: October 3 : <i>Update - Definition of an Applicant</i> Cost: Free</p> <p>: October 24 : <i>Audit Strategies</i> Cost: Free</p> <p>: November 15 : <i>Adverse Impact</i> Cost: Free</p> <p>: December 3 : <i>Compensation Strategies</i> Cost: Free</p> <hr style="border: 1px solid black;"/> <p style="text-align: center;"><i>AutoAAP 11.0 Training</i></p> <hr style="border: 1px solid black;"/> <p>: September 7 & 24 : : October 5 & 19 : : November 2, 16, and 30 : : December 14 & 28 : <i>AAP Development Using AutoAAP 11.0</i> Cost: Free</p> <p>For date/time listings, check out the online calendar: www.biddle.com/calendar.stm</p>	<p>Biddle Consulting Group, Inc. - Speaking Engagements -</p> <p>: September 12 : <i>Oregon ILG</i> <i>Speaker: Patrick Nooren, Ph.D., Executive Vice President</i> Topic: Part II <i>Biddle Consulting Group, Inc.</i> Oregon</p> <div style="background-color: #ccc; text-align: center; padding: 5px; margin: 10px 0;">Conferences</div> <p>Biddle Consulting Group, Inc. - Exhibit Booth Schedule -</p> <p>: September 30-October 2 : <i>IPMA-HR Annual Conference</i> Chicago, IL</p> <p>: October 10-12 : <i>Mid-Eastern APCO Conference</i> Rehoboth Beach, DE</p>	<hr style="border: 1px solid black;"/> <p style="text-align: center;"><i>AAP Training Workshops</i></p> <hr style="border: 1px solid black;"/> <p>: December 4-5 : <i>Two (2) Day Seminars</i> <i>AAP Methodology & Software Training</i> Folsom, CA Cost: \$990</p> <hr style="border: 1px solid black;"/> <p style="text-align: center;"><i>Regional Seminars</i></p> <hr style="border: 1px solid black;"/> <p>One (1) Day Seminars Systemic Discrimination and the Transformed OFCCP: <i>Navigating the Changing Landscape of Affirmative Action Compliance</i></p> <p style="text-align: center;"><i>presented by:</i> Biddle Consulting Group, Inc. Jackson Lewis LLP</p> <p>Cost: \$595 (Early Bird \$495)</p> <p>: October 11 - Dallas, TX : : October 12 - Chicago, IL :</p> <p style="text-align: center;">REGISTER TODAY: www.biddle.com/registration</p>

For more information on any of the events listed, please call Biddle Consulting Group, Inc. toll-free at (800) 999-0438 or e-mail us at staff@biddle.com

Monitoring

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employees, make sure that you identify this fact before you submit your data. It is a good idea to have a ready explanation for the missing data. Conduct a statistical analysis—or at least generate counts—so you can determine whether the missing data is more common from one group of employees than another.

- **Inconsistently Coded Data** – Make sure that you consistently code the data for every single employee. Referring to males with a “1” in some cases and an “M” in others and “m” in still others tells the OFCCP that you just ran a data export and did not even look at the results to make sure they were accurate. Such coding inconsistencies can cause calculation errors in spreadsheet programs.
- **Tenure Fields** – Often contractors

submit data representing the amount of time an employee has worked with the company (TIC) as well as the amount of time the employee has worked in his/her particular job (TIJ). Make sure that the employee is not shown to have more time in their job than they have with the company. In nearly all cases, TIC should be equal to or larger than TIJ. If TIJ is larger than TIC, it is a clear sign that something may be wrong with the data.

- **Calculated Fields** – If you calculate fields like age (based on the file snapshot date and date of birth) or Time In Company (or TIC, based on the file snapshot date and original date of hire) make sure that the calculations work correctly. Carefully review either all or at least a large selection of the calculated values to make sure

they were calculated correctly. It is also a good idea to sort the data by these values to see if any abnormally large values appear or if there are a lot of blanks or zeros.

- **Submitting Revised Data** – Try to avoid submitting revised data by submitting the correct data the first time. This is important because OFCCP compliance officers may have completed all or most of their review just to be forced to start reviewing your data all over again. We all hate to rework a project once we thought we are finished.

Ultimately, the goal is to make sure the data you submit makes it clear to the OFCCP that you: a) have been very careful to ensure accuracy, b) you know what you are doing, and c) you are aware of any data-related issues that are evident and you have clear reasons for why the data are that way. ❄

FINAL CALL for 2007 Professional EEO Seminar Series

Biddle Consulting Group, Inc., along with Jackson Lewis, are hosting the final two seminars

- covering:**
1. OFCCP Audits: The New Rules
 2. Compensation Analysis
 3. How the Definition of an Applicant Has Changed the Liability Landscape
 4. Test Validation and Privilege
 5. OFCCP Compliance and Self Audits.

FINAL 2007 DATES/LOCATIONS:
October 11, 2007 - Dallas, TX
October 12, 2007 - Chicago, IL

If you would like further information, please download a PDF of the seminar brochure at:
<http://www.biddle.com/documents/2007Seminars-BCGJL.pdf>



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