

Compensation Analysis: Be Aware of a Solution that is a Problem

by Dan Kuang, Ph.D.

The Tables referenced in this article can be found on page 3, Compensation Pitfalls - Tables.

In compensation analyses, statistical evidence of pay disparities in the absence of a job-related explanation typically requires an organization to provide some form of monetary relief to remedy the disparity. Among the myriad of make-whole remedies, the organization almost always makes some type of adjustment to the compensation rates to eliminate the pay disparity. Although this adjustment is seemingly simple, it is not.

Structuring a remedy for pay differences must be done with caution and consideration for several additional factors related to the employees in the analysis. Ignoring these factors may

artificially set an organization on a crash-course with other more significant compensation related issues. The purpose of this paper is to discuss issues that one must consider when attempting to remedy identified pay disparities.

Consider the following example of a 220-person company in *Table 1a, 1b*.

Statistical tests on this data were performed and the results are presented in *Table 2*. Overall, the only significant difference in compensation is between male and female employees. Differences in compensation between Whites and minorities (Black, Hispanic, and Asian) were not statistically significant.

The most straightforward and conservative remedy is to increase the average female compensation up to parity with male employees (\$39,342). A less aggressive approach is to increase

average annual female compensation to the point where the statistical disparity is eliminated. For the present example, the annual compensation for women needs to be at \$38,946 for the difference to be non-significant [$t(218) = -1.95$, $p=0.052$]. Between these two extremes is a range of make-whole remedies that an organization may apply; the decision is largely dependant on the risk they are willing to tolerate.

Regardless of the method, the next step is to distribute the remedy to women among the different race/ethnic groups. The most obvious and evenhanded solution is to distribute the remedy evenly across all female employees. [In the present example, the distribution was weighted by sample representation of each ethnic group.]

In the present example, assume that the organization decides to:

- (1) Apply a make-whole strategy where female compensation is raised until the statistical disparity is eliminated
- (2) Distribute the compensation increase evenly across all female employees

...see *Comp Pitfalls* page 2

OFCCP Operations: December 5, 2007 Webinar Follow-Up

Presenters:

Charles E. James Sr.
Deputy Assistant Secretary
Patsy Baker Blackshear, Ph.D.
*Director, Division of
Program Operations*

In OFCCP's continuing effort to provide more value to the Federal Contracting community they have begun a series of free webinars to update the public on OFCCP Policy and Administrative changes. 477 contractors attended the initial webinar on December 5, 2007.

Key Points

- The OFCCP is conducting 4,000-5,000 desk audits per year. With 10-15% of audits ending in conciliation agreement and 70% of conciliation agreements including some type of financial penalty. [BCG Comment: The vast majority of these fines are based on a finding of adverse impact in the hiring process]
- The neutral audit selection system is still in place with the majority

...see *OFCCP Ops* page 5

Inside...

Compensation Pitfalls.....	1
OFCCP Operations	1
Community Action.....	2
Adverse Impact Analyses	4
Training/Event Calendar	7

Comp Pitfalls

continued from page 1

For the gender difference to be non-statistically significant, the company will need to distribute \$2,200 evenly among the 100 women (see Table 3). Because of differences in headcounts, the distribution will vary by ethnic group. Based on this, adjustments to the annual compensation are computed for all 220 employees and are presented in Table 4.

Once the remedy is distributed, most analysts would consider this the stopping point for the compensation analysis. This would be wrong. It is important to evaluate the impact of the remedy by running a follow-up compensation analysis *after* adjustments have been made to compensation.

The results of the follow-up compensation analysis are presented in Table 5. As expected, the adjustments effectively eliminated the pay disparity between men and women employees, which is what was desired. Unfortunately, these adjustments created statistically significant compensation disparities between Black-White and Asian-White employees, whereas pre-adjustment compensation differences were not significant. How is this possible?

This unexpected consequence is simply due to the fact that an employees' gender and ethnicity status are linked: Manipulating compensation along one facet (e.g., gender) for employees has a direct impact on compensation on their

other facets (e.g., ethnicity, age, tenure). In the present example, the group that benefited most from the compensation adjustment is females who are also White (see Table 3). Consequently, irrespective of gender, this adjustment results in higher compensation for White employees than minority employees. Efforts to eliminate discrimination by one cut of the data may lead to significant pay disparities in another area of the data.

For this reason, compensation analyses are best approached as an iterative process of: (1) statistically testing for pay disparities, (2) proposing adjustments to compensation to eliminate pay disparities, (3) analyzing the proposed compensation adjustment *prior to implementation*, and (4) if all is well, making the adjustment (see Figure 1). The organization and analyst must carefully consider the structure of the compensation adjustments and evaluate its impact on compensation holistically.

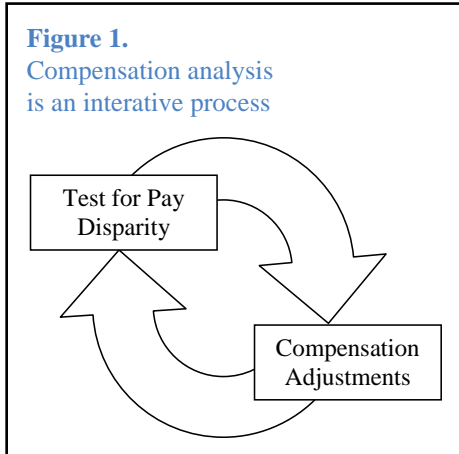
Because there are no restrictions on how adjustments are distributed², it is possible to avoid the complications in the example above.

Conclusions

Overall, the purpose of this article is to highlight a potential pitfall if compensation analyses are not approached

holistically. Although tests for pay disparity are typically focused on one facet (e.g., gender, ethnicity, age) at a time, adjustments along this facet have a cascading impact on compensation on other facets that are also under Title VII protection (e.g., gender and

ethnicity). It is never sufficient to simply examine one cut at a time (e.g., Women & Men, White & Black, White & Hispanics). Analysts must take into account all facets of the compensation model and iteratively investigate how changes in one facet impact others; no single facet is ever fully isolated from others. ❄



² Statistical regression analyses can assist in the allocation of make-whole relief by identifying employees with more (or less) of a job-related variable and thus deserving more (or less) of the make-whole relief.

Staff Contributions

- Contributors.....Dan Kuang, Ph.D.
-Nina Le-Tse
-Chris Lindholm
-John Piatt
-Melissa Davis
-Kim Van Le
- ProductionC. Lori Lee
- Websites.....www.biddle.com
-www.opac.com
-www.critical911.com
-www.uniformguidelines.com

BCG Community Action Plan

Biddle Consulting Group, Inc. is committed to helping the community. Staff members spend a lot of time helping the local Sacramento community through volunteering and charitable contributions. This holiday season was no different.

Contributions were made to local schools in the form of teacher sponsorships. Teachers received gift certificates from BCG to help pay for

classroom supplies.

November 22, 2007 - Run to Feed the Hungry. Members participated in this annual Thanksgiving Day run to benefit the Sacramento Food Bank & Family Services organization.

December 5, 2007 - Providing homemade cookies to incarcerated women and their families. Staff members

...see Giving Back page 6

Compensation Pitfalls - Tables

Table 1a. Compensation broken down by Gender and Ethnicity.

		Ethnicity				Average
		W	B	H	A	
Gender	M	40,000	39,000	39,000	38,800	39,342
	F	38,000	38,250	39,000	38,500	38,363
Average		39,125	38,659	39,000	38,650	

Note. W=White, B=Black, H=Hispanic, A=Asian

Table 1b. Employee headcounts broken down by Gender and Ethnicity.

		Ethnicity				Total
		W	B	H	A	
Gender	M	45	30	25	20	120
	F	35	25	20	20	100
Total		80	55	45	40	220

Note. W=White, B=Black, H=Hispanic, A=Asian

Table 2. Results of statistical tests for compensation disparity.

Comparison		<i>t</i>	<i>df</i>	<i>p</i>
Male	Female	-4.82	218.00	< 0.01
White	Black	-1.77	133.00	0.08
White	Hispanic	-0.45	123.00	0.66
White	Asian	-1.64	118.00	0.10

Table 3. Make whole remedy is evenly distributed among the 100 women employees.

Group	Counts (#)	Make-Whole (\$)
Whites	35	\$770
Black	25	\$550
Hispanic	20	\$440
Asian	20	\$440
Total	100	\$2,200

Note. Distribution is weighted by group representation.

Table 4. Compensation *post* remedy broken down by Gender and Ethnicity.

		Ethnicity				Average
		W	B	H	A	
Gender	M	40,000	39,000	39,000	38,800	39,342
	F	38,770	38,800	39,440	38,940	38,946
Average		39,462	38,909	39,196	38,870	

Note. W=White, B=Black, H=Hispanic, A=Asian

Table 5. Results of statistical tests for compensation disparity *post* adjustments.

Comparison		<i>t</i>	<i>df</i>	<i>p</i>
Male	Female	-1.95	218	0.052
White	Black	-2.10	133	0.037
White	Hispanic	-0.95	123	0.343
White	Asian	-2.04	118	0.044

An Attempt At Better Applicant Tracking: The OFCCP and Adverse Impact Analyses

In recent years, the Office of Federal Contract Compliance (OFCCP) has declared themselves as an agency primarily in search of one thing: systemic disparity. As a result, the OFCCP is conducting a high volume of audits driven by statistics in an effort to validate their findings. The OFCCP is utilizing statisticians and more recently they have begun to train their compliance officers to investigate and identify statistically significant findings with a heavy focus on adverse impact. A focus on adverse impact analyses has resulted in a large number of organizations having to provide Make Whole Relief payouts because the OFCCP continues to find “Low Hanging Fruit” when analyzing hiring data. This is not to say that recordkeeping for promotions and terminations is not very important, but contractors’ poor efforts in tracking the hiring process, particularly applicant data, continues to plague the industry and the OFCCP knows it.

Many contractors are not cognizant of the fact that the OFCCP has access to all of your transaction (i.e., Applicants, Hires, Promotions, and Terminations)

data in the event of an audit. The OFCCP will conduct adverse impact analyses based on the transaction data that is provided to determine if there is a substantial difference in selection rates between men and women and/or whites and minorities. If they find weaknesses in the counts that you provide they will likely ask for all of the detailed data that you compiled into counts for your desk audit submittal. The OFCCP is looking at statistically significant differences equal to or greater than two standard deviations (chi-square approximation method) in selection (i.e., hire, promotion, and retention) rates. It is important to note that while contractors might assume that a statistically significant difference in selection rate equals discrimination, a numerical analysis alone, without additional information, does not. However, it could be viewed as discrimination by OFCCP if you cannot validate the reason behind the difference in your selection rates.

Conducting an Adverse Impact Analysis is not just about the right statistical test; it’s about having the right data. If there is adverse impact in the

initial hiring analysis, there are often appropriate refinements that you can make to the data. For example:

- Only include applicants who are associated with hires in your plan
- Applicants may go outside of the 12-month transaction period if they are linked to hires that occurred within the appropriate 12-month period
- It is unlikely that any applicants belong in your file if they applied for a position *after* the last hire in the 12-month plan period
- Applicants should only be listed once *unless* they applied for and were considered for more than one job.
- A hired candidate’s race and gender should be reconciled against the original applicant file

While the updated Definition of an Applicant should be applied at the onset, you may further refine the data by reviewing it to be sure that each of the four requirements are met:

- The individual submits an expression of interest in employment through the Internet or related electronic data technologies.
- The contractor considers the individual for employment in a particular position.
- The individual’s expression of interest indicates that the individual possesses the basic qualifications for the position.
- The individual at no point in the contractor’s selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

Meet The Expert: Dan Kuang, Ph.D., Principal Consultant at Biddle Consulting Group, Inc.



Dan Kuang, Ph.D. is a principal consultant at Biddle Consulting Group, Inc. He has several years of experience developing and validating tests and measures for personnel selection and performance assessment. Additionally, Dr. Kuang has considerable experience evaluating, supporting, and

challenging employment practices, procedures, and tests in the context of litigation support. His expertise in applied statistics is firmly grounded by his years of experience in high-stakes educational testing and medical health research. In his current role, his primary responsibility is to ensure that clients are in compliance with Federal guidelines and regulations, and are positioned to respond to external legal threats and challenges.



...see AI Talk page 5

of audited locations selected from EEO-1 filings. Contractors checking the EEO-1 box indicating Federal Contracting status for the first time, are audited at a higher rate than contractors are as a whole. Charles James refers to auditing first time contractors as the *Contracts First* list.

- The OFCCP released 2,500 corporate scheduling letters in Fall 2007 and expects to release 5,000 corporate scheduling letters in Spring 2008.
- Quick Polls – The OFCCP conducted quick polls during the webinar allowing attendees to respond to three predefined questions.
 - Have you seen an increase in the quality of the OFCCP investigation process over the last few years? 77% said “Yes, they have seen improvements”
 - Did those audited this year receive a CSAL (corporate scheduling announcement letter)? 58% of the responds said they did NOT receive a letter of notification. Charles James attributed the low

affirmative response to the fact that only companies with more than two audits would receive the letter and that many of those responding were single plan audits.

- How would you rate compliance assistance?
 - 11% - Not helpful
 - 38% - Somewhat helpful
 - 40% - Helpful
 - 10% - Very helpful
- Charles James affirmed their intent to increase compliance satisfaction by utilizing internal and external resources, but stopped short of providing specific initiatives.
- FAAPs (functional AAPs) – there are currently 2.4 million employees covered under 1,857 FAAPs with 135 active FAAP agreements currently in place.
 - Compliance Improvement Initiatives – The OFCCP will continue to find ways to recognize contractors for their proactive diversity initiatives, e.g. EVE Awards and Secretary of Labor Opportunity Awards.

Questions & Answers

- Q:** Will the OFCCP began using expanded race categories in audits?
- A:** Policy and procedures prevents them from commenting at this time.
[BCG Comment: Many clients are already using the new race codes in order to keep recordkeeping in a single format in line with EEO-1 requirements.]
- Q:** Once a corporate scheduling letter is received, how long does it remain active?
- A:** 1-year
[BCG Comment: Be aware that some companies have received a second Corporate Scheduling Letter increasing their total number of expected audits.]
- Q:** How does the OFCCP determine FAAPs to audit?
- A:** They do not have a formula to date.
- Q:** Do the EEOC and the OFCCP share information?
- A:** No, not really.
- Q:** Will the OFCCP suspend compensation in light of Michael Sinclair’s departure from the agency?
- A:** No, compensation audits continue to be conducted.
[BCG Comment: We are aware of new and active compensation audits occurring in the industry.]
- Q:** Where are most compliance violations found?
- A:** Failure to keep proper records and Past performance and monitoring

AI Talk

continued from page 4

Since adverse impact is often the driving force in problems associated with OFCCP audits, it is **highly recommended** that contractors perform the following two steps prior to submitting any information to the OFCCP. First, check and re-check your data to ensure accuracy. Second, proactively analyze your data so that you know exactly what the OFCCP will find before a 30-day letter arrives on your desk.

To be ready for an audit, be sure to collect and retain all required data and repair all incorrect or incomplete data. Analyze your data annually, at

a minimum. It is highly recommended that data be analyzed throughout the year, especially if there are previous or known issues, and, of course prior to submitting information to the OFCCP. If statistical significance is discovered, ask yourself the following questions: Can the data be refined/cleaned-up? Are you conducting the appropriate analysis? Can you identify where in the process the impact occurs?

If you wish to learn more please attend one of BCG’s informative webinars, see page 5 or our calendar at www.biddle.com/calendar.stm. ❄

...see OFCCP Ops page 6

OFCCP Ops

continued from page 5

[BCG Comment: Recordkeeping issues exist in most audits, especially smaller organizations that do not have the budget for comprehensive Applicant Tracking Systems.]

Q: How does the OFCCP assess their performance?

A: 1. Number of audits conducted, 2. Amount of money levied from non-compliant contractors, and 3. Improvements to compliance assistance

[BCG Comment: It is worth noting that the OFCCP has reported an increase in fines collected from approximately \$23 million in 2002 to over \$50 million in 2006.]

Q: Are first time contractors required to establish prior year goals?

A: Yes, if contract existed in prior years, prior year goals are expected.

Q: Why does it take so long to close an audit?

A: 1. It takes two-to-tango. Contractors' slow response can lead to lengthy audits 2. Analyses are increasingly more

complex and take more time. 3. If systemic problems are identified, the seriousness of the findings are cause enough to make sure they get it right.

Q: Will the OFCCP conduct a webinar on compensation?

A: If contractors request it they will conduct it, but, not until Sinclair's vacancy is filled.

[BCG Comment: BCG's Director of Compensation, Jim Higgins, Ed.D., will be conducting a compensation webinar in March that is open to the public.]

Q: Is previous plan data used in future audits?

A: It is archived and it can be but there is no specific formula for when/if it will be used

[BCG Comment: Contractors should keep in mind that if an audit is open as a new plan year is reached, the new AAP may be requested as part of the audit as well.]

Q: How are universities selected for audits?

A: If they are federal contractors, they are audited in accordance

with all other contractors.


Q: How will the OFCCP continue to collaborate with the contracting community?

A: The OFCCP will continue to provide outreach through webinars and encourages all contractors to be involved with their ILG.

Q: When will the next corporate scheduling letter be delivered?

A: No date has been determined. Contractors can request to be notified by sending an e-mail to ofccp-public@dol.gov.

Q: Is Charles James planning to leave the OFCCP?

A: He has no plans to leave at this time. 

OFCCP Webinar Dates

December 2007 – Operational Issues
 February 2008 – Policy Issues
 May 2008 – Operational Issues
 July 2008 – Policy Issues

<http://www.dol.gov/esa/ofccp/Webinar-Operations%2012-5-07a.pdf>

Giving Back


continued from page 2

put on their aprons and turned on their ovens to bake 100s of cookies for this worthy program.

December 18, 2007 - Helping to feed the hungry at St. Philomene's Church. Over 1,400 meals were served at this Christmas feast. The Christmas feast also featured entertainment, grocery, and gift distribution to families. BCG staff members were involved in everything from traffic control and cleaning tables to serving meals and washing the dishes.

December 2007 - Donations to Shriner's Hospital for Children. BCG set up a giving tree to help collect gifts and other holiday necessities for Shriner's, a one-of-a-kind international health care system dedicated to improving the lives of children by providing specialty pediatric care, innovative research and outstanding teaching programs. Toys, clothes, cameras, movies, music, gift certificates, electronics, and more were all included in the contributions made to the hospital.

Additionally, in the true spirit of helping those affected by natural disasters, just as was done for victims of Hurricane Katrina in 2005, BCG contributed several Staples gift certificates to students who lost their homes in the 2007 Southern California fires.

It is important that we take care of each other. Volunteerism not only helps people and causes but it's the best return on investment a single person can enjoy if it's something that matters to you and/or your organization. 

2008 BCG Training & Events Calendar

Webinars	Presentations	Presentations (cont'd)			
<p>Cost of attending BCG webinars is free, unless otherwise noted.</p> <p>: Every Friday : <i>AAP Development Using AutoAAP 11.0</i></p> <p>: January 23 : <i>Validation</i></p> <p>: March 19 : : June 26 : <i>Compensation Strategies</i></p> <p>: April 24 : <i>Audit Strategies</i></p> <p>: May 29 : <i>Adverse Impact</i></p> <p>For a detailed description of each webinar, visit www.biddle.com/calendar.stm</p> <p>To register: Call: (800) 999-0438 ext. 150 or E-mail: mdavis@biddle.com</p>	<p>Biddle Consulting Group, Inc. - Speaking Engagements -</p> <p>: January 16 : <i>California State University Auxiliary Organizations Associations</i> <i>Speakers:</i> <i>Shana Larrucea & Christine Anthony</i> Topic: Preparing for an OFCCP Audit Monterey, CA</p> <p>: January 24 : <i>Northern California ILG</i> <i>Speakers:</i> <i>Dan Biddle, Ph.D. & Patrick Nooren, Ph.D.</i> Topic: Leveraging Title VII and Affirmative Action for Diversity San Francisco, CA</p> <p>: February 26 : <i>Arizona ILG</i> <i>Speaker: Patrick Nooren, Ph.D.</i> Topic: Adverse Impact & The Mantel-Haenszel Phoenix, AZ</p> <p>: March 20-21 : <i>Personnel Testing Council - Northern California</i> <i>Speaker: Jim Higgins, Ed.D.</i> Topic: Informed Job Applicant Self-Assessment as a Model for Human Resources Modernization: Facilitating Recruitment, Enhancing Selection, and Building Staff Development Concord, CA</p> <p>: March 25 : <i>Arizona Affirmative Action Association</i> <i>Speaker: Jim Higgins, Ed.D.</i> Topic: OFCCP-Style Compensation Analysis Phoenix, AZ</p>	<p>: April 23 : <i>American Association for Affirmative Action (AAAA)</i> <i>Speaker: Dan Biddle, Ph.D.</i> Topic: TBA Washington, DC</p> <tr style="background-color: #e6f2ff;"> <td colspan="3" style="text-align: center;">Conferences</td> </tr> <p>Biddle Consulting Group, Inc. - Exhibit Booth Schedule -</p> <p>: May 5-7 : <i>Association of Legal Administrators (ALA) Annual Conference</i> Seattle, WA</p> <p>: June 7-12 : <i>National Emergency Numbers Assoc. (NENA) Annual Conference</i> Tampa Bay, FL</p> <p>: June 22-25 : <i>Society for Human Resource Management (SHRM) 2008 Annual Conference</i> Chicago, IL</p> <p>: July 30 - August 1 : <i>NILG Conference</i> Anaheim, CA</p> <p>: August 4-6 : <i>Association of Public-Safety Communications Officials (APCO) International Conference</i> Kansas City, MO</p> <p>: October 12-14 : <i>American Society for Healthcare Human Resources Association (ASHHRA) Annual Conference</i> Austin, TX</p>	Conferences		
Conferences					
Seminars					
<p>: April 22-23 : : September 23-24 : <i>Two (2) Day Seminars AAP Methodology & Software Training</i> Folsom, CA Cost: \$990</p> <p>: Dates TBD : Returning in 2008 <i>2008 Professional Seminar Series: OFCCP Hot Topics</i> Sponsored by: <i>Biddle Consulting Group, Inc. & Jackson Lewis LLP</i></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



Biddle Consulting Group, Inc.

Online: www.biddle.com | Toll-Free: (800) 999-0438