

CLOSING THE GENDER PAY GAP IN MEDICINE

Identifying Drivers of Inequity and Devising Solutions



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Steering Committee



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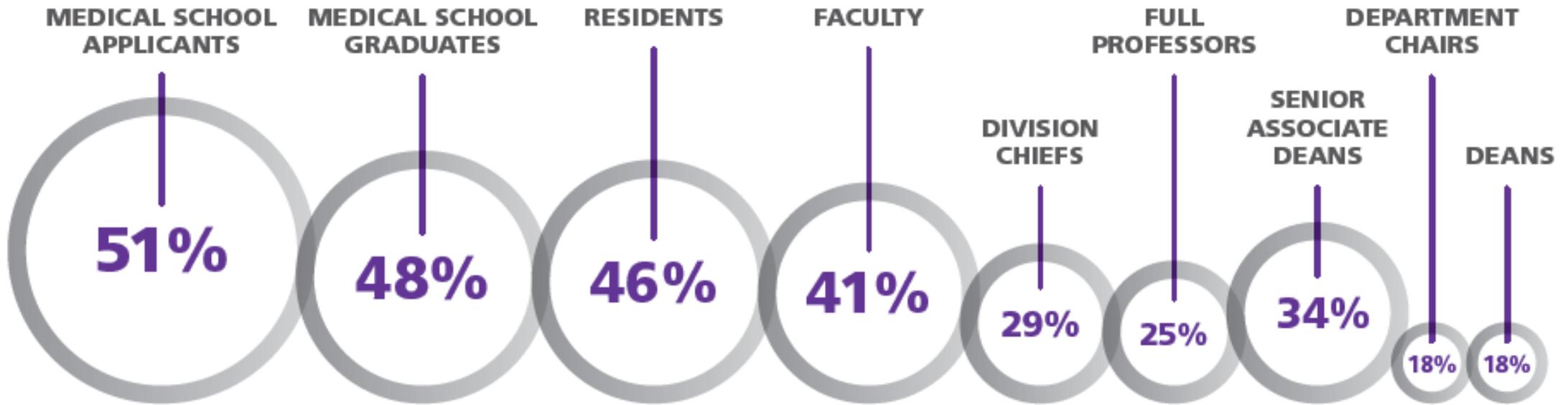
Overview

- **ASG**
 - **Data on the Gender Pay Gap and Context in Which It Emerges**
 - **Traditional Compensation Methodology & Drivers of Disparities**
 - **Organizational Strategies to Close the Gender Pay Gap**
- **Panelists**
 - **21st century compensation methodology and guiding principles that support gender pay equity**
 - **Pay equity laws and institutional risk**
- **Q&A**



Advancement & Leadership ¹⁻¹²

REPRESENTATION OF WOMEN IN ACADEMIC MEDICINE 2018-2019



Gender Pay Gap

Crucible: *A place or situation in which concentrated forces interact to cause or influence change or development (Merriam-Webster)*



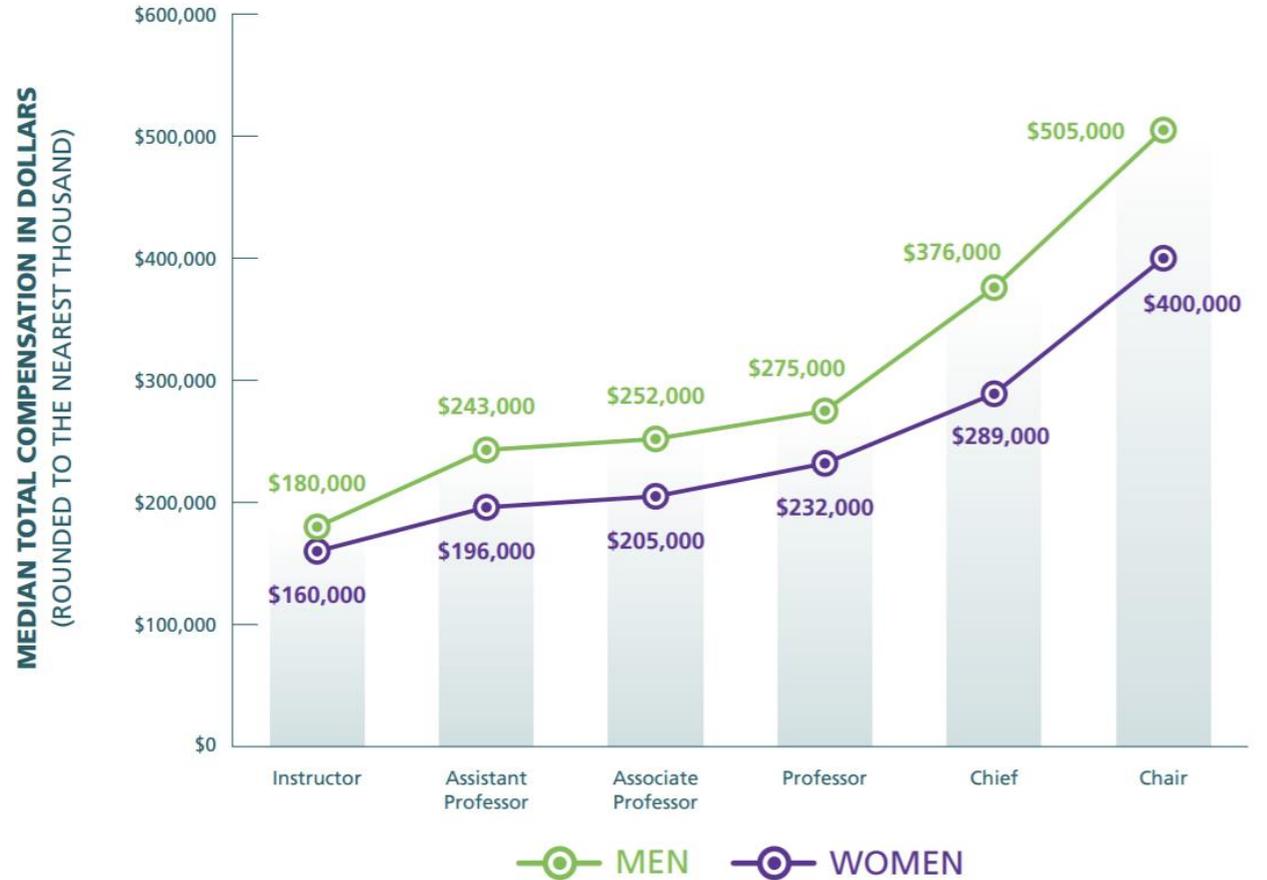
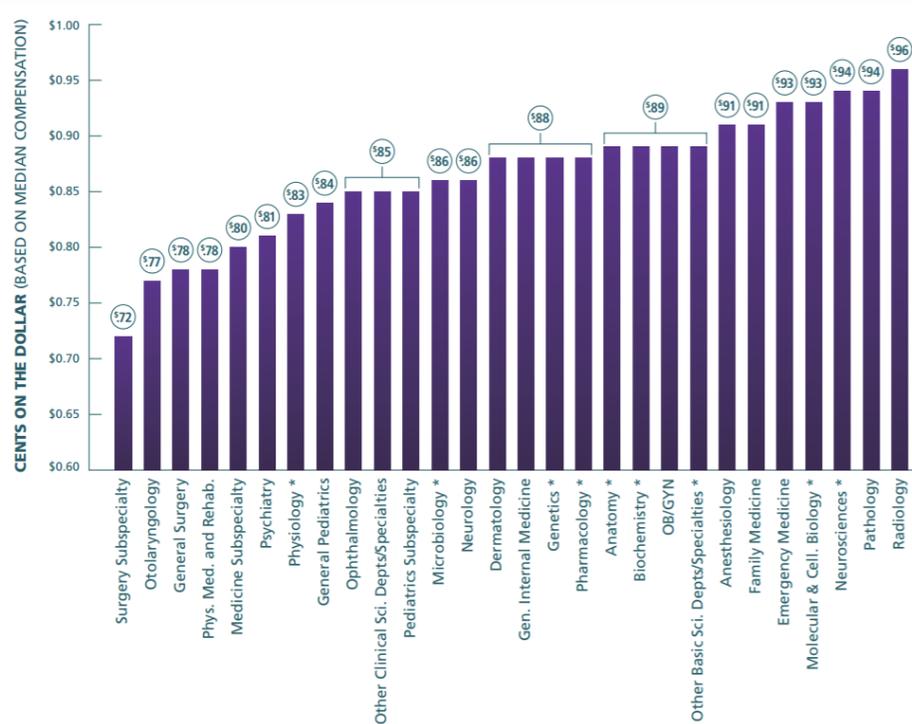
Gender Pay Gap ⁹

Women physicians earn 75 cents on the dollar compared with equally talented male counterparts



Gender Pay Gap ^{9,14}

Women earn < men in every specialty
AND at every academic rank.



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Gender Pay Gap ^{15,16}

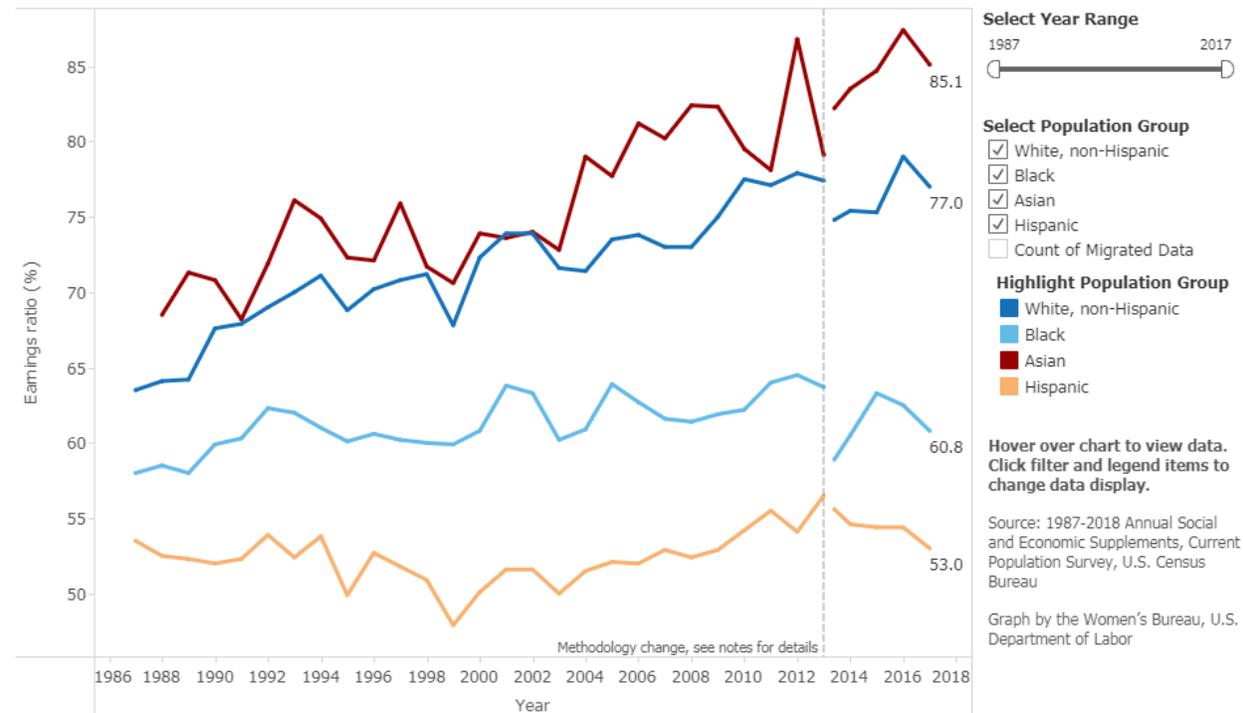
- **Women physicians experience one of the largest gender pay gaps in the US Labor Market**
- **Inequities begin right out of training**



Women of Color (all sectors) ¹⁷

Women's earnings by race and ethnicity as a percentage of White, non-Hispanic men's earnings

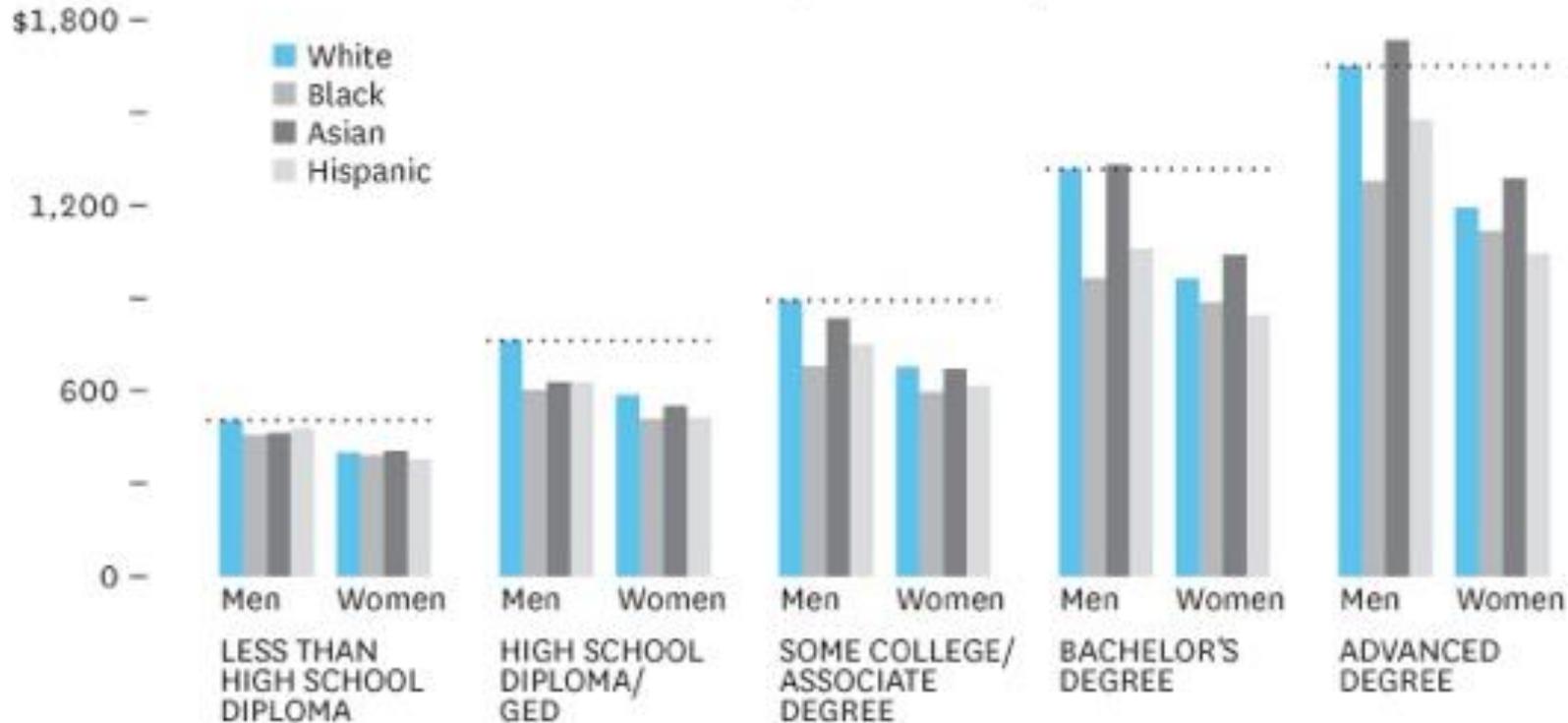
Women's earnings by race and ethnicity as a percentage of White, non-Hispanic men's earnings
March 1987-2017



Race, Gender, and the Pay Gap ^{18,19}

RACE MATTERS LESS THAN BEING A WOMAN WHEN IT COMES TO YOUR PAYCHECK

MEDIAN WEEKLY EARNINGS FOR FULL-TIME WORKERS (WAGE & SALARY)



SOURCE BUREAU OF LABOR STATISTICS, 2013

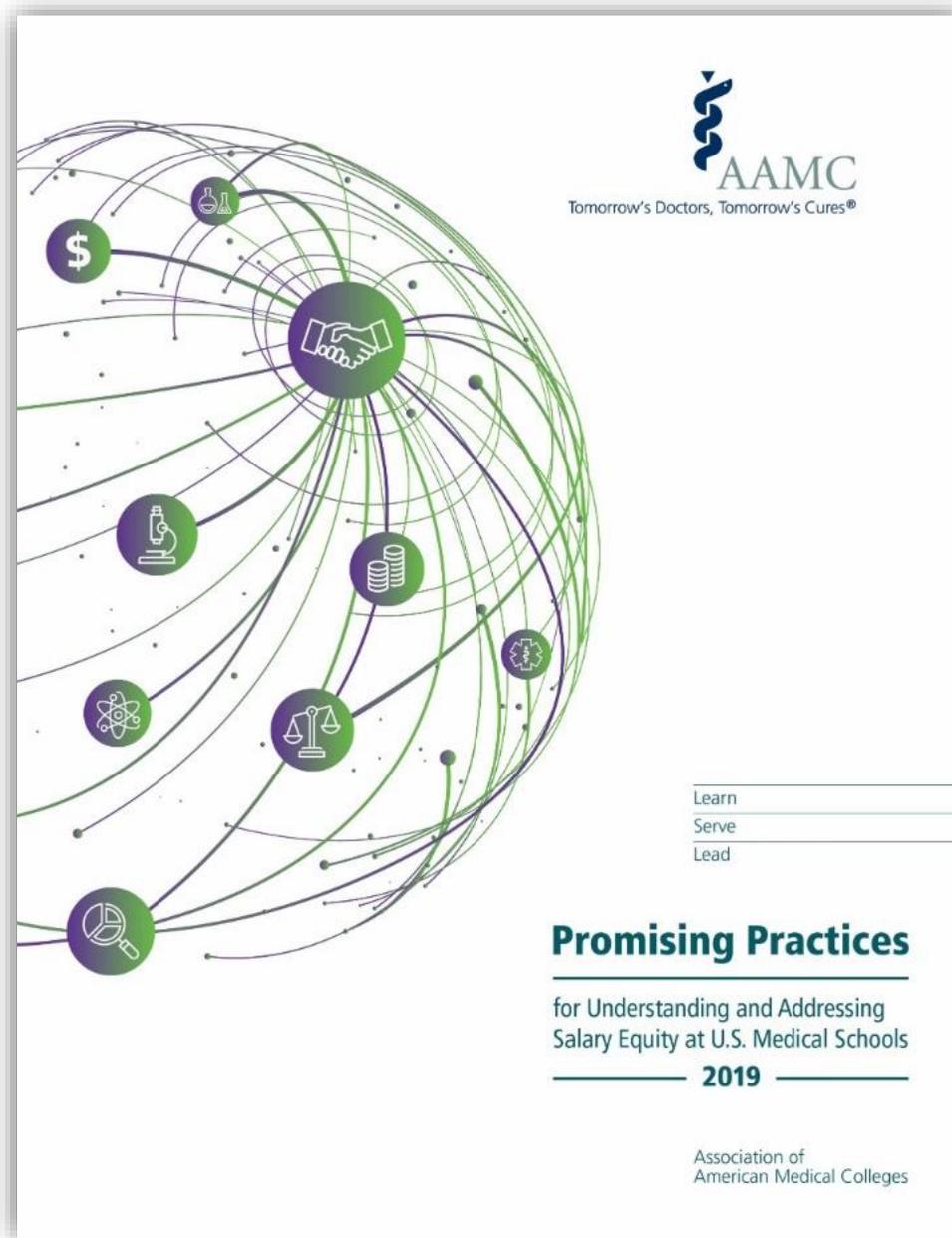
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New Report Coming September 2021

with Salary Data by
Gender and Race/Ethnicity

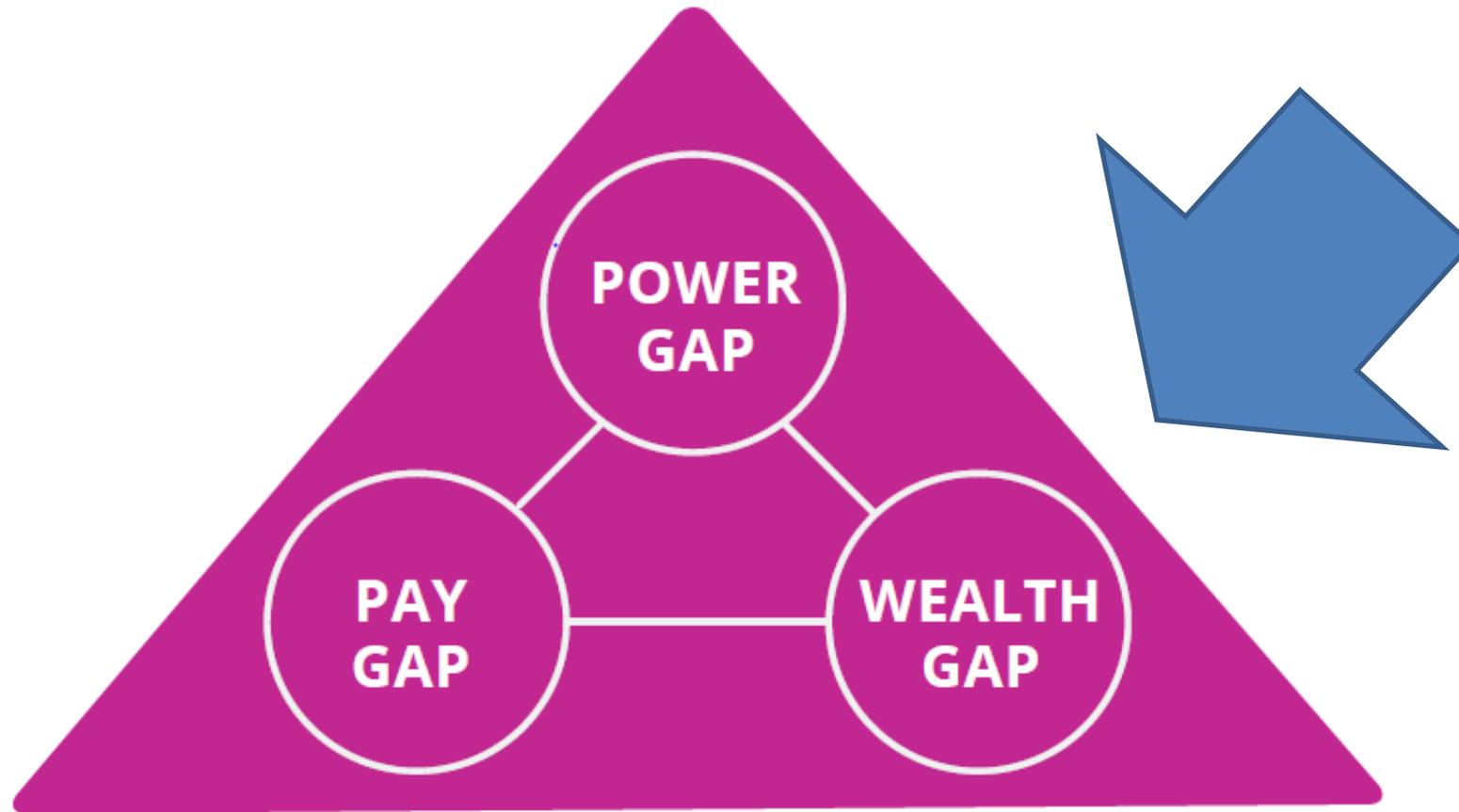


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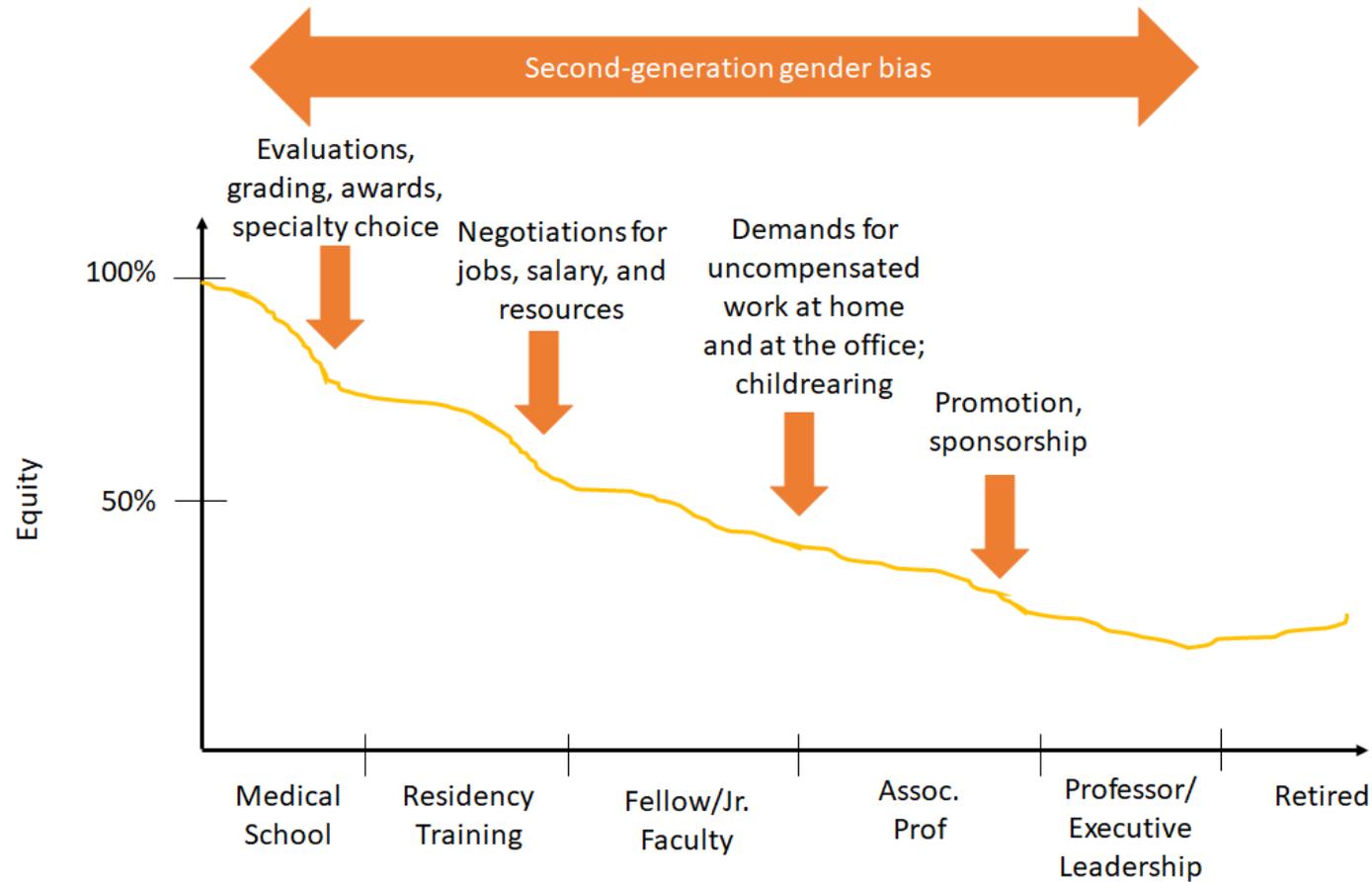


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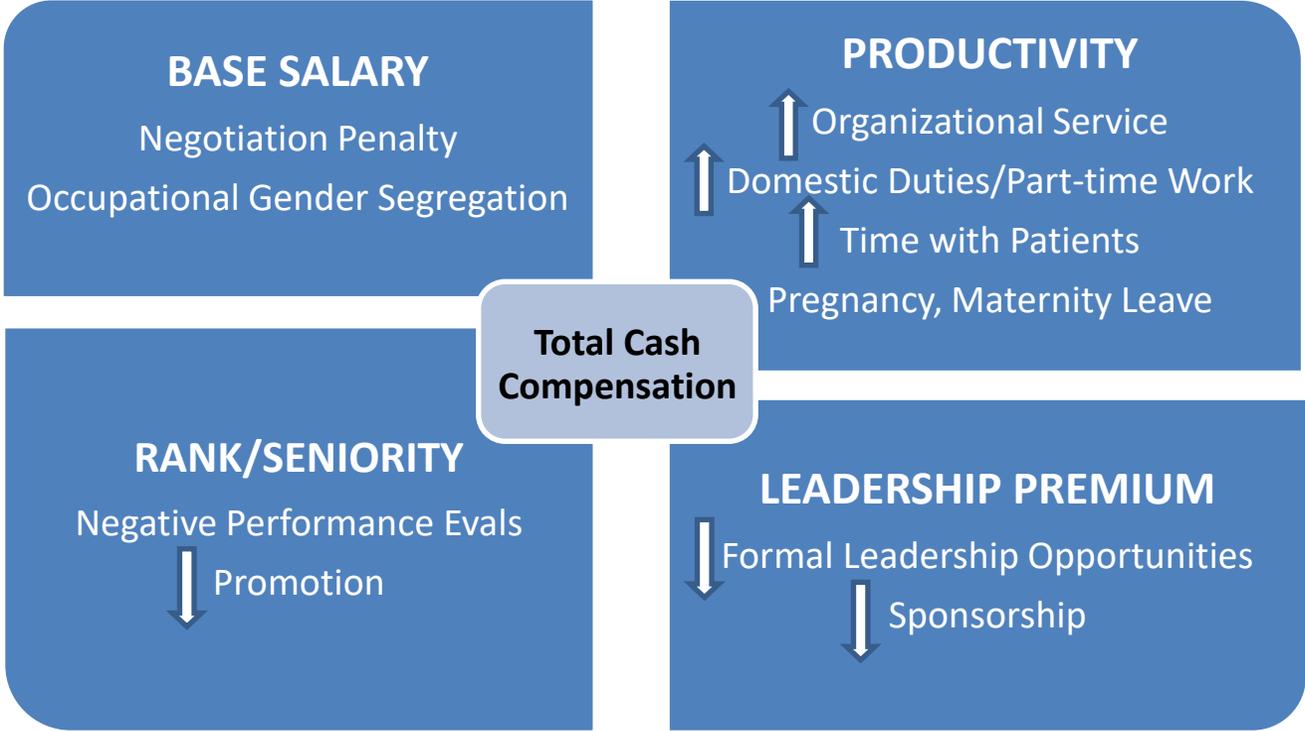
CUMULATIVE IMPACT 20-24



Gender Pay Gap ²⁵



Traditional Comp Methodology & the Gender Pay Gap



Second Generation Gender Bias ²⁶



*“We’re doing everything we can to make him comfortable,
short of dressing up as male doctors.”*

- No overt intention to exclude
- Embedded in unconscious stereotypes/expectations:
 - What leaders look like
 - How men and women should behave
 - How women’s work is assigned & valued



Second Generation Gender Bias ^{6, 27-41}

- **Talented women fail to reach their potential**
 - Gendered career paths
 - More non-promotable tasks
 - Backlash when leading/negotiating



Operational Change

A Business Endeavor

- Meriting same attention to detail and rigor afforded other operating costs
- Finance and HR:
 - Take a hard look at basic assumptions underlying institutional compensation methodologies to understand expectations (and outcomes) they generate
 - Create new approaches that better account for unique contributions of women and biases facing them
 - Track and report gender metrics at all compensation touch points (especially initial hire)



Goals, progress reports, accountability



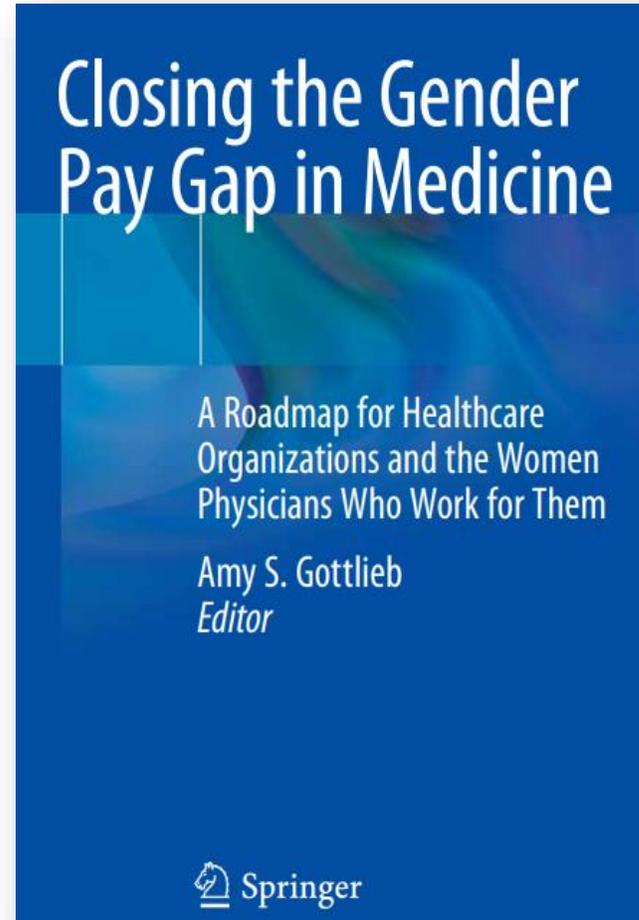
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Operational Change

- **ORGANIZATIONS NEED A ROADMAP**
 - Assess how current compensation methodologies perpetuate pay inequities
 - Build governance structures, coalitions, and processes necessary to incorporate equity principles into routine business practices
 - Create the dialogue, consistent messaging, and cascaded information to achieve organizational transformation around gender equity



<https://www.springer.com/us/book/9783030510305>



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Culture Change ⁴²

- **Culture = collective norms and behaviors**
- **Elements of culture change:**
 - Articulate the aspiration
 - Hire to align with target culture
 - Foster organizational conversations
 - **Intentionally reshape practices & patterns of interaction that inadvertently benefit men, disadvantage women, and drive the gender pay gap**



Build a culture in which men and women are not limited by role expectations...

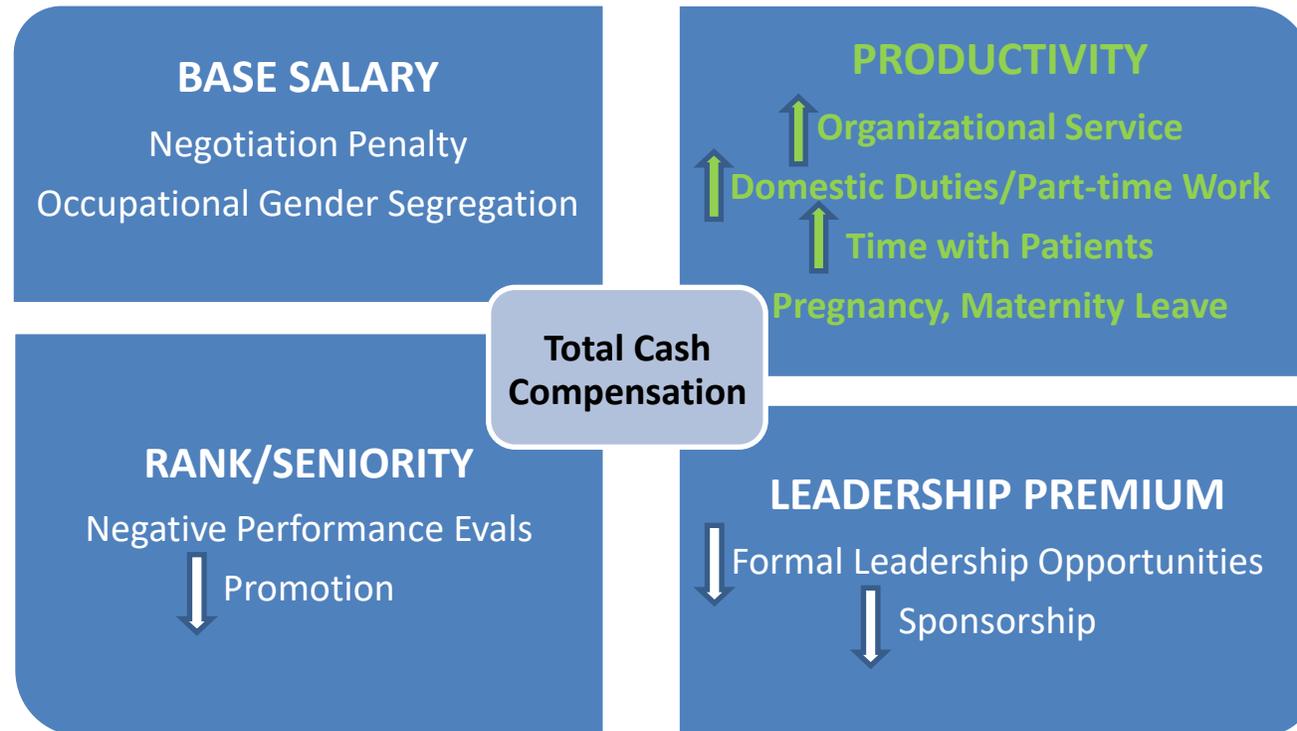


We Can Only Manage What We Measure ⁴³

- **Track Gender Representation:**
 - Applicants, offers, promotions, leadership roles, departures
- **Unconscious bias training: everyone involved in recruitment, hiring, evaluation, promotion, and salary setting**
- **Salary audits, especially initial and final offers/start-up packages**



RVU Conundrum 44-53



RVU Conundrum – QUESTION 1

- Does your organization's compensation methodology for physicians define clinical performance SOLELY by individual RVU generation?

–YES

–NO



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RVU Conundrum – QUESTION 2

- **If you answered NO to the previous question, which additional metrics does your institution use to define clinical performance for physician-compensation purposes:**
 - Team-based RVU generation (e.g., RVU targets for Divisions)
 - Patient panel size
 - Quality metrics
 - Patient experience scores
 - Some combination of the above metrics



Summary: Call to Action

- Conduct regular salary audits to determine salary inequities
- Identify where along the career continuum the gender pay gap is most significant (e.g., initial hire, promotion)
- Review compensation methodology and consider potential drivers of disparities
- Pick a driver of disparities and tackle it
 - Salary benchmark standards
 - Salary negotiations during initial hire and promotion
 - Representation among senior faculty ranks
 - Representation among organizational leadership
 - Allocation of organizational service demands
 - Optimization of clinical systems to improve physician throughput

Start somewhere. Do something.



Closing the Gender Pay Gap in Medicine

WELCOME PANELISTS

Kimara Ellefson

Kevin Eide, MDiv

Patricia Washienko, JD

THANK YOU!



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knowledge changing life

AAMC GENDER COMPENSATION EQUITY *LEVERAGING BUSINESS PROCESSES*

August 20, 2021

Kevin Eide, MDiv

Associate Vice President, Financial Planning and Data Analytics

Kimara Ellefson

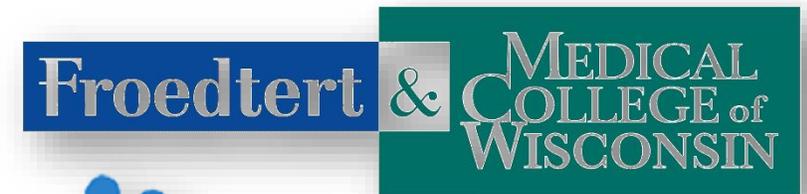
National Director for Partnerships, Kern National Network

ABOUT THE MEDICAL COLLEGE OF WI (MCW)



Private health sciences university with medical, pharmacy and graduate schools, three campuses, largest physician practice group in Wisconsin

Faculty	
Teaching/Research/Clinical	1,715
Lecturer/Instructor	103
Visiting, Emeritus, Voluntary Adjunct	105
Total Faculty	1,923
Students	1,300
Postgraduates, Associates and Fellows	1,000
Staff	4,364
Total Community	8,587



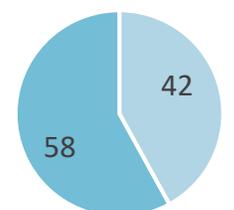
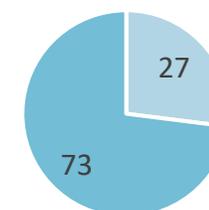
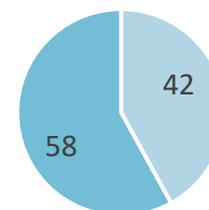
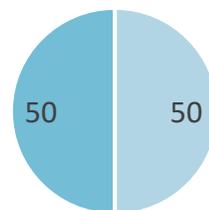
Faculty, by Rank and Gender

Assistant Professor

Associate Professor

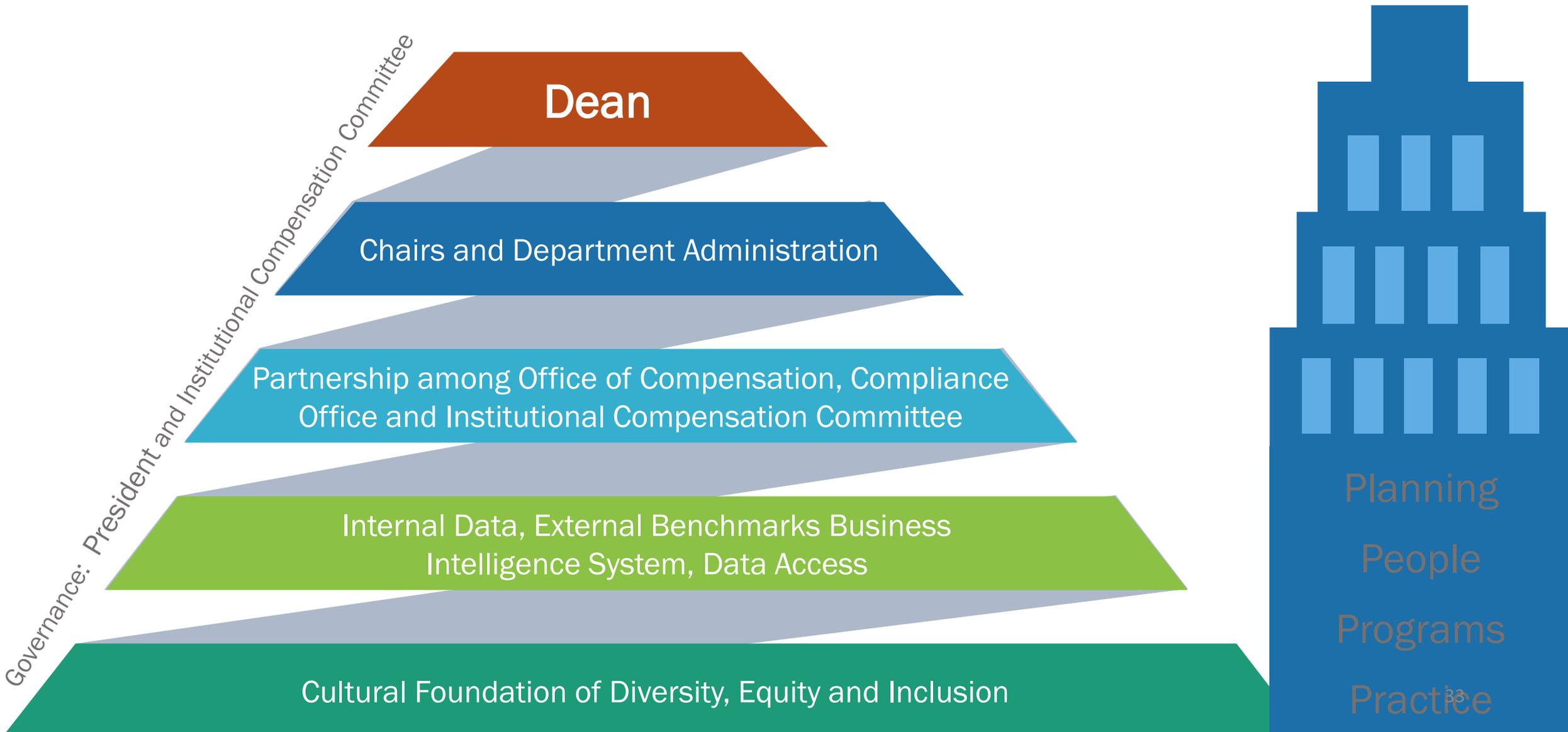
Professor

Overall



Male Female

TONE STARTS AT THE TOP | Dean's Perspective



SELECT COMPONENTS OF THE DIALOGUE

Compensation
to Benchmarks

Representation

Leadership
Opportunities

Gender Impact
on Benchmarks

Complex and Interdependent



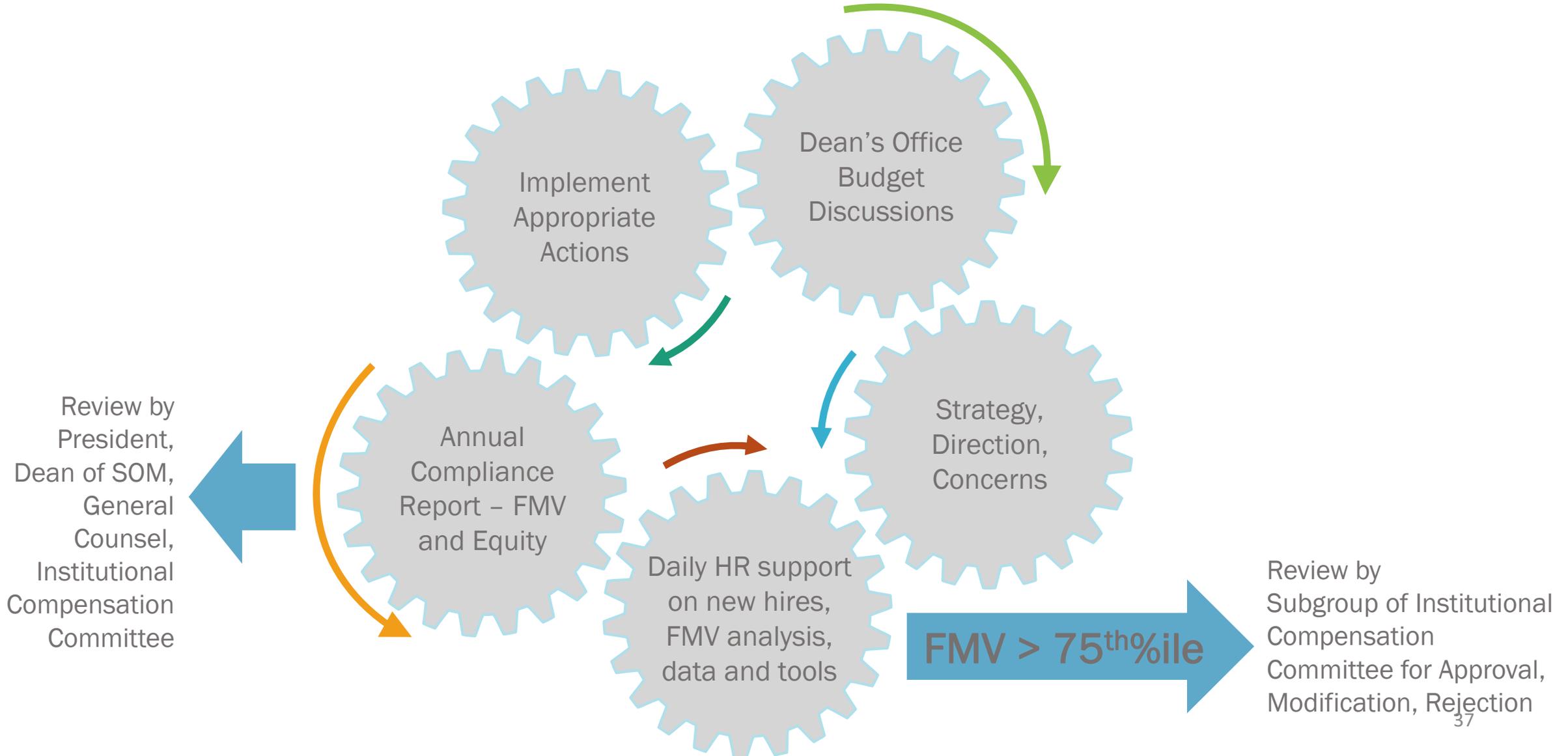
MCW BUDGET PROCESS FOR FACULTY COMPENSATION

- Base compensation makes up ~85% of faculty total compensation
- Budget guidance uses current FMV and performance to develop a pool which is then distributable based on guidelines
- Compensation committee scope is to review faculty total compensation and provide guidance to ensure equity, alignment, and transparency

HEADWINDS TO RESOURCING COMPENSATION EQUITY

- Financial and resourcing constraints continue
- Commercial payor mix deterioration will continue to soften financial results
- Partial closures and level of reduced economic recovery impact are uncertain
- Uncertainty of pent-up demand vs long term clinical recovery
- Impact of unemployment and macro economic environment
- FY22 forecasts are still preliminary and may change
- Future state of the pandemic (variants, vaccine, etc.)

PROCESS – DIALOGUE AND ACCOUNTABILITY



BUDGET GUIDANCE FOR FACULTY COMPENSATION

Faculty Compensation | *Proposed Increase Guidance*

Region 1: Consider above average increase to align compensation.

Region 2: Generally aligned compensation. Consider average increase.

Region 3: Consider no increase or an aligned below average increase.

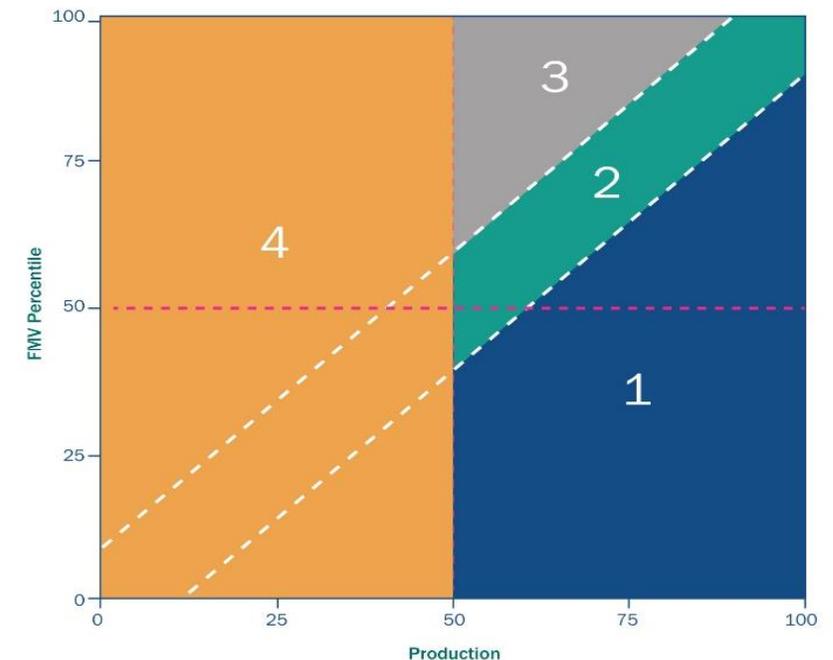
Average or above increases must be justified.

Region 4: Increase must be justified. Increases for faculty in this region will be reviewed this year.

Calculated compensation rates loaded into EPM are aligned to the faculty compensation guidelines.

The Executive Compensation Committee (ECC) will need to approve all increase that result in a faculty compensation over the 75th %ile FMV.

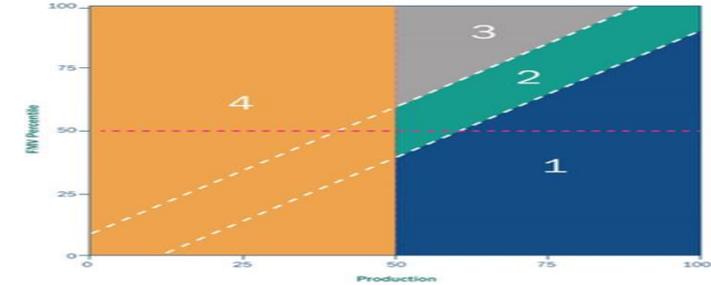
Fair Market Value
Productivity vs. Total Cash Compensation



EXAMPLE POOL MODEL

Budget Guidelines Alignment

Region	Guidance	Increase
Region 4	Prod < 50th %ile	0.0%
Region 3	FMV > 75th Prod < FMV	0.0%
Region 2	FMV < Prod within 10%	2.0%
Region 1	FMV < Prod >10%	5.0%

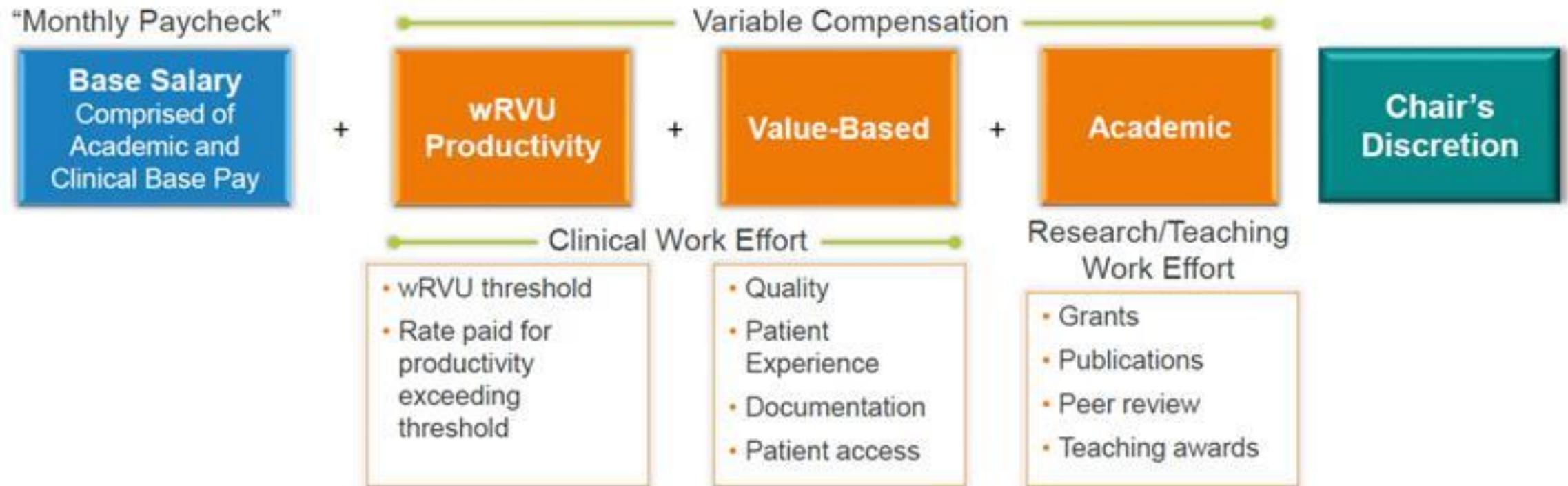


Departmental Summary

Region	Current			Pool	
	FTE	FMV	wRVU	% Inc	\$ Inc
Region 4	26.48	45.3%	29.8%	0.0%	0
Region 3	2.00	79.4%	96.9%	1.0%	14,921
Region 2	2.00	60.5%	64.7%	2.0%	27,576
Region 1	35.00	43.6%	78.1%	5.0%	637,572
Total	65.48	44.2%	57.2%	2.7%	680,069

Department Chair has \$680,069 merit dollars to distribute

MCW'S COMPENSATION PLAN DESIGN



All missions represented in the compensation plan

EQUITY ANALYSIS-RESULTS SUMMARY (2020)

Group	Total Faculty Included in Review	Not Flagged for Comp Difference	% of Total	Flagged for Comp Difference	% of Total	Excluded (i.e. OT only, Retired/Term)	% of Total	Comp Reviewed for Justifying Factors or Salary Action	% of Total
Female	693	672	97.0%	21	3.0%	12	1.7%	9	1.3%
Male	945	923	97.7%	22	2.3%	15	1.6%	7	0.7%
Total	1,638	1,595	97.4%	43	2.6%	27	1.6%	16	1.0%

Group	Total Faculty Included in Review	Not Flagged for Comp Difference	% of Total	Flagged for Comp Difference	% of Total	Excluded (i.e. OT only, Retired/Term)	% of Total	Comp Reviewed for Justifying Factors or Salary Action	% of Total
URMs	108	107	99.1%	1	0.9%	0	0.0%	1	0.9%
NonURMs	633	633	100.0%	0	0.0%	0	0.0%	0	0.0%
Total	741	740	99.9%	1	0.1%	0	0.0%	1	0.1%

DISCUSSION: ACTION STEPS

- Review financial planning process and consider how it proactively supports pay equity
- Pay attention to equity during institutional belt-tightening
- If it matters it is measured
- Prioritize resource allocation
- How does your institution's compensation governance process *drive* pay equity?





DISCUSSION

APPENDIX

SALARY EQUITY FROM START TO FINISH

Compensation Policies and Principles Supporting Gender and URM Equitable Pay at MCW



Pay equity is a core principle of MCW's compensation philosophy. MCW strives to maintain compensation programs that ensure pay is based on experience, performance, responsibility and aligned to market-competitive benchmarks. These principles are governed by various constituency groups across the institution.

PAY PRACTICE
GOVERNANCE

PRESIDENT | PROVOST AND DEAN, SCHOOL OF MEDICINE | DEPARTMENT LEADERSHIP | HR – COMPENSATION SERVICES
CORPORATE COMPLIANCE | FACULTY AFFAIRS | INSTITUTIONAL AND EXECUTIVE COMPENSATION COMMITTEES

POLICIES AND PRACTICES

The MCW Faculty Compensation Policy defines compensation quartiles with recommendations on the placement of individuals based on experience and performance. Any compensation offers outside of these guidelines require additional approval.

For additional details on MCW's pay philosophy and review process, please reference the [Compensation Administration – Faculty](#) policy and the [Institutional Compensation Committee Charter](#).*

FAIR MARKET VALUE (FMV) METHODOLOGY

MCW's faculty compensation strategy is to have an institution-wide framework to help guide the alignment of departmental and individual efforts with the priorities of the institution. The FMV methodology establishes a standard platform to review faculty compensation from a regulatory, retention and consistency perspective. This method blends total compensation benchmark data from clinical, academic and administrative leadership survey sources into a single composite value, weighting data based on reported allocations of effort for each faculty member.

For a full perspective on MCW's FMV methodology, see the [FMV Whitepaper](#).*



MCW'S REVIEW PROCESSES

Annually, the Office of Corporate Compliance conducts individual and cohort based reviews of all faculty compensation utilizing regression based statistical methodologies. Outliers or areas of concern are further reviewed with department leadership and written explanation is required to justify potential differences.

These justifications are reviewed by Corporate Compliance and presented to the ICC. HR – Compensation Services makes adjustment recommendations and follows through with each Academic Unit Leader.

All outcomes are then presented to the President, Provost and Dean of the School of Medicine and Executive Vice President.

HR – Compensation Services administrates the faculty compensation policy quartile definitions and FMV benchmark methodology to recommend compensation decisions that are equitable and free from bias. All faculty compensation actions outside of guidelines require further review and approval. Any compensation changes or new hire offers that exceed the 75th percentile of FMV, are reviewed by a subgroup of the Institutional Compensation Committee.

HR – Compensation Services works collaboratively with Academic Unit Leaders on these decisions and provides consulting insights based on available benchmarks and internal data.



Every faculty salary is benchmarked to the best possible industry available data and reviewed in the parameters set forth in the Faculty Compensation Policy. Each Academic Unit Leader receives compensation information for all faculty in their respective unit, including the data described in this summary.



HR - Compensation Services
compensation@mcw.edu

Office of Corporate Compliance
MCW Compliance Reporting Line
(866) 857-4943

Office of Faculty Affairs
facultyaffairs@mcw.edu
(414) 955-0118

*All links in this document can also be found by searching on InfoScope

ANNUAL COMPENSATION REVIEW PROCESS-DETAILS

Market Percentile Distribution Analysis (Organization Level)

Stratifies compensation by market percentile category (<25, 25-50, 50-75, >75) and gender or URM group. Using a chi-squared test, flags a market percentile category if there are disproportionate counts by gender or URM group. If a category is flagged for review, further analysis is performed to identify the factor(s) causing the difference in distribution.

Internal Gender and URM Equity Analyses (Peer Group and Individual Level)

Assigns faculty into peer groups based on specialty, rank, and people group (e.g. faculty clinical, faculty research). Peer groups qualifying for review must have at least three faculty members and one faculty of each gender or from each URM group. Identifies peer groups where one gender or URM group has lower median compensation (\$2,000 or greater difference) and higher median years in rank. Within the peer groups flagged for a potential compensation gap, individual faculty compensation is flagged for departmental review if lower than the other group's median (\$2,000 or greater difference) and the individual has equal or higher years in rank and productivity.

External Benchmarking Analysis (Individual Level)

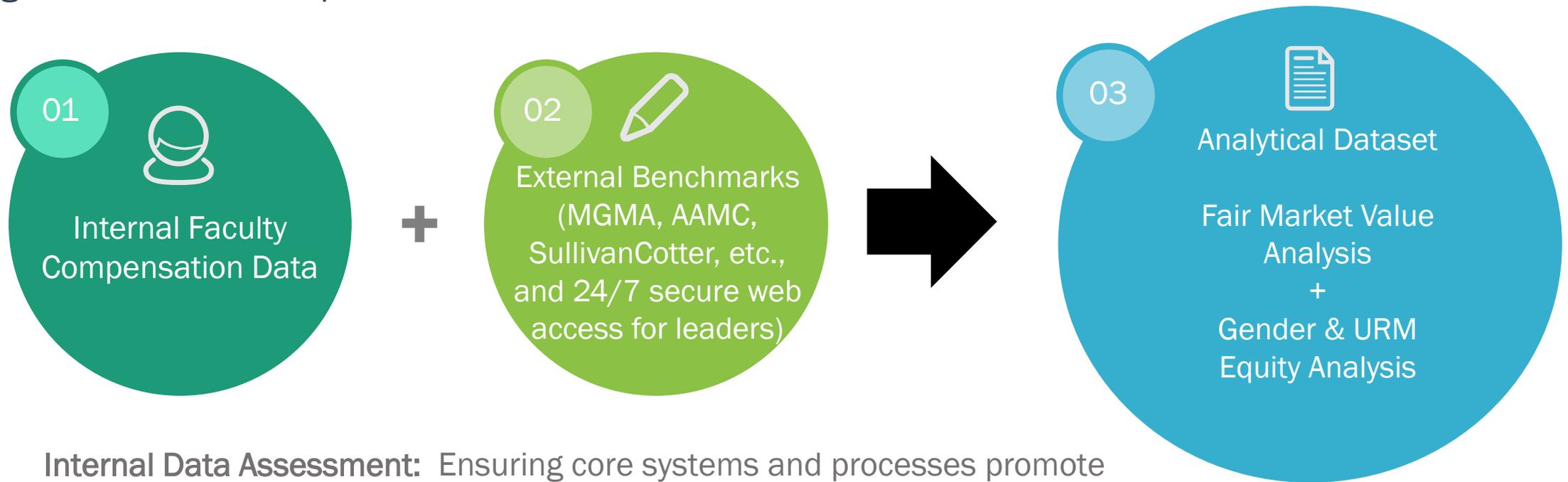
Flags set for further review of individual faculty compensation less than the 25th percentile with disproportionately high productivity when compared to their compensation percentiles.

Departmental Justifications and Action Plans

Obtains justifications or compensation action plans from the departments for the faculty flagged by the equity analyses in steps 2 or 3 above.

CULTURE OF EQUITY

Pay equity is a core principle of MCW's compensation philosophy. MCW strives to maintain compensation programs that ensure pay is based on experience, performance, responsibility and aligned to market-competitive benchmarks.



1. **Internal Data Assessment:** Ensuring core systems and processes promote equitable decisions
2. **Fair Market Value Analysis:** Best-in-class benchmarking data and methodology
3. **Statistical Assessment:** Potential equity issues are further examined, justifications requested, resolutions put into place and approved by Office of Compensation



Fair Market Value

Compensation & Productivity Benchmark Methodology

Office of the Dean, School of Medicine
Medical College Physicians
Children's Specialty Group

Latest Revision Date: 11/30/2017
Document Steward: Compensation Services



MCW's **faculty compensation strategy** is to maintain an institution-wide framework to help align departmental and individual efforts with the priorities of the institution. The FMV methodology establishes a **standard platform** to review and establish faculty compensation from a regulatory, market based and consistency perspective.

This methodology blends total compensation benchmark data from clinical, academic and administrative leadership survey sources into a **single composite value**, weighting data based on reported allocations of effort for each faculty member. The MCW Faculty Compensation Policy defines compensation quartiles with recommendations on the placement of individuals based **on experience, performance and responsibilities**.



Closing the Gender Pay Gap in Medicine

LEGAL CONSIDERATIONS FOR INSTITUTIONS

PATRICIA A. WASHIENKO, ESQ.

FREIBERGER & WASHIENKO LLC



*Disclaimer:
this is not legal advice*



That said,

RISK

Federal Laws: The Equal Pay Act and Title VII

- ▶ The **Equal Pay Act** (EPA) requires employers to pay to men and women in the same workplace equal pay for equal work.
- ▶ The **Civil Rights Act of 1964, Title VII** bans employers from discriminating on the basis of race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification for the job.

Both laws apply nationally, although the contours of the protections of each law may vary by federal circuit unless the Supreme Court has ruled on an issue



Remember: State laws exist, too!!

Virtually every state has also enacted laws to prohibit gender discrimination and gender-based pay disparities.

- ▶ Many provide **more expansive and robust protections** than those set out in the federal laws.
- ▶ An aggrieved person may advance both federal and state law claims in litigation.

Primer On The Federal Equal Pay Act

- ▶ **No employer** having employees subject to any provisions of this section **shall discriminate**, within any establishment in which such employees are employed, **between employees on the basis of sex by paying** wages to employees in such establishment at a rate **less** than the rate at which he pays wages to employees of the opposite sex in such establishment **for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions**, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

29 U.S.C. §206(d)

The Equal Pay Act (cont'd)

- ▶ A plaintiff must prove:
 - ▶ (1) that the employer employed the plaintiff and a male employee in the same establishment in jobs requiring **substantially equal skill, effort and responsibility**;
 - ▶ (2) that the two jobs are performed under **similar working conditions**;
 - ▶ (3) that she received less total compensation than a male employee doing **substantially equal work**
- ▶ **Critically, a plaintiff need not establish the employer had an intent to discriminate.**

The Equal Pay Act (cont'd)

- ▶ There are four “affirmative defenses” to an EPA claim: that the pay differential is (legitimately) attributable to (i) seniority, (ii) merit, (iii) quantity or quality of production, or (iv) “any other factor other than sex.”
 - ▶ **What about market forces??**
 - ▶ **Or prior compensation??**

The Equal Pay Act (cont'd)

- ▶ Once the employer has asserted an affirmative defense, the plaintiff must rebut the affirmative defense to prevail, by demonstrating that the defenses are pretextual or a post-event justification for a gender-based differential.
- ▶ **The employer retains the burden of proving a legitimate reason for the discrepancy in pay**

The Equal Pay Act - Damages

Damages

- ▶ **Value of Underpayment (two or three years)**
 - ▶ Salary, overtime, bonuses, stock options, vacation / holiday pay, travel, reimbursement of expenses
- ▶ **Liquidated Damages (100% of underpaid wages)**
- ▶ **Attorneys' Fees and Costs**

The Equal Pay Act (fine print)

- ▶ **No Administrative Filing Necessary**
- ▶ **Applies to nearly every employer, regardless of size**
- ▶ **Two-year statute of limitations; three years if “willful” violation**
- ▶ **Each paycheck is a violation**
- ▶ **Collective Action***

- ▶ **EEOC Enforcement Activity; requirement that employers provide compensation information**

Primer on Title VII

- ▶ Under Title VII, it shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise **to discriminate** against any individual with respect to his **compensation, terms, conditions, or privileges of employment, because** of such individual's race, color, religion, **sex**, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq.

Primer on Title VII

- ▶ Title VII makes it an unlawful for an employer to **discriminate** against any individual with respect to compensation **because of sex**.
 - ▶ **Intent**
- ▶ How to prove intent?
 - ▶ Usually through a burden-shifting framework: plaintiffs must first establish a prima facie case, defendants must then offer a legitimate, non-discriminatory reason for the pay disparity, plaintiffs must establish pretext

Primer on Title VII (cont'd)

- ▶ 1st stage:
 - ▶ Plaintiff must establish s/he was paid less than a member of the opposite gender in a **similar job***
- ▶ 2nd stage:
 - ▶ Employer must articulate a **legitimate, non-discriminatory reason**
- ▶ 3rd stage:
 - ▶ Plaintiff must show that, regardless of the reasons claimed, her employer **intentionally** discriminated against her. She may do so by showing that the proffered reason was a **pretext** for discrimination and that discrimination was the real decision. (**Pretext PLUS**)

Title VII - Damages

Damages

- ▶ **lost wages,**
- ▶ **front pay,**
- ▶ **compensatory damages (emotional distress),**
- ▶ **punitive damages,**
- ▶ **and reasonable attorneys' fees and costs**
 - ▶ Title VII caps compensatory and punitive damages between \$50,000 and \$300,000, depending on the size of the employer. No cap on lost wages or front pay

Title VII (the fine print)

- ▶ **Employers with 15 or more employees**
- ▶ **Mandatory Administrative Agency filing prerequisite**
 - ▶ 180 days of the “unlawful employment practice
 - ▶ extended to 300 days if a state or local agency enforces a law that prohibits employment discrimination on the same basis
- ▶ **Court filing deadline: 3 years from adverse action**
 - ▶ Presumes agency filing and court filing within 90 days of “right to sue” letter
- ▶ **Ledbetter Act: each paycheck**
- ▶ **Collective Action**

Interplay between EPA and Title VII

- ▶ **Differences between EPA and Title VII** claims for sex-based wage discrimination:
 - ▶ The **Equal Pay Act does not require proof of intent** to discriminate, **has no coverage threshold** in terms of number of employees, **carries a longer limitations period for back pay than does Title VII**, and has **no requirement of filing administrative complaints** and awaiting administrative conciliation efforts.
- ▶ Recovery for the same period of time may be had under **both** the EPA and Title VII so long as relief is not duplicative.



RETALIATION

Retaliation

- ▶ Under the **Equal Pay Act**, It is **unlawful**: “... to **discharge or** in any other manner **discriminate** against any employee **because** such employee has **filed any complaint** or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding . . . “
- ▶ **Title VII forbids** an employer from **retaliating** against an employee **because** of the employee’s **opposition** to “any practice made an unlawful practice” by Title VII, or the employee’s **participation** in “an investigation, proceeding, or hearing under [Title VII].”

Retaliation Elements

Protected Activity

Materially Adverse Action

Causal Connection

Retaliation Elements

Protected Activity

EPA: Filing a complaint or causing to be instituted any proceeding

Title VII: Opposing an unlawful practice or participating in an investigation or proceeding

Retaliation Elements

▶ **Materially Adverse**

- ▶ In a Title VII case, The U.S. Supreme Court has held that materially adverse action is action that “Might well have dissuaded a reasonable worker from making or supporting a charge of discrimination”
- ▶ No requirement that the retaliation be job-related
- ▶ Extends not only to former employees but also certain third parties

▶ **“But-For” Causation**

Retaliation: Danger

- ▶ **Retaliation claims are easier to prove than discrimination claims.**
 - ▶ A plaintiff does **not need to establish the elements of the EPA or Title VII claim** itself, and the affirmative defenses are not implicated.
 - ▶ A plaintiff **does not need to win a discrimination claim** in order to have / prevail on a retaliation claim
 - ▶ A plaintiff need only establish that she engaged in protected activity (*i.e.*, complained about pay inequity), the employer took materially adverse action against her, and causation.
 - ▶ Causation may be inferred when the adverse employment action closely follows the protected activity (but timing is not everything).

State laws!!

- ▶ **State analogs** to the EPA and Title VII **often provide greater protections and remedies** than their federal counterparts
 - ▶ General Law Chapter 151B, **Massachusetts'** analog to Title VII, applies to employers with **six or more employees** (not fifteen), and there are **no caps on punitive damages**, among other things.
 - ▶ **California's** antidiscrimination laws apply to companies with **five or more employees**, and **no caps on punitive damages**
 - ▶ **Michigan's** antidiscrimination law applies to companies with **one or more employees**.

State laws!!

- ▶ Since 2016, more than 200 bills addressing pay equity were introduced in nearly every state
 - ▶ **more aggressive pay equity laws,**
 - ▶ **bans on salary history inquiries,** and
 - ▶ **wage transparency laws**

Risk: how bad can it be?

- ▶ **Haddad v. Wal-Mart Stores, Inc.**, 455 Mass. 91 (2009) (gender-based pay discrimination and retaliation claim): \$1M punitive damages and 19 years of front pay.
- ▶ **New Boston Select Group v. DeMichele**, 15 Mass. L. Rptr. No. 20, 473, 476 (January 13, 2003) \$1,5M punitive damages for retaliation claim only; plaintiff lost her gender discrimination claim.
- ▶ **Chopourian v. Catholic Healthcare West** (E.D. Cal. 2012) (gender discrimination and retaliation both during and after employment): \$3.7M in economic damages, \$39M in non-economic damages, and \$125M in punitive damages
- ▶ **Juarez v. AutoZone Stores, Inc.** (S.D. Cal. Nov. 17, 2014): \$393K in past wages, \$229k in future wages, and \$250k for emotional distress; \$185M (punitive damages)

What Can Be Done?

▶ First,

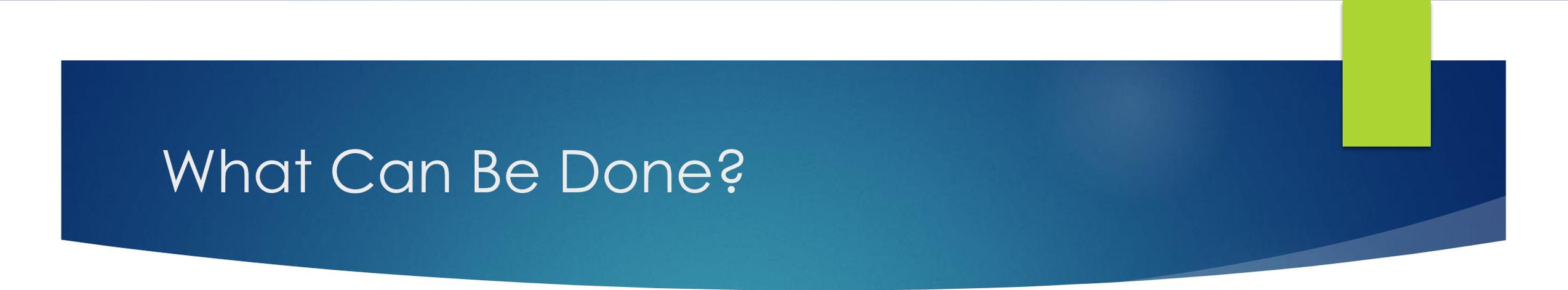
Conduct an audit.

What Can Be Done?

- ▶ Second,

Correct the inequities.

- ▶ Note: in correcting a pay differential, an employer **may not reduce** any employee's pay. Instead, the pay of the lower paid employee(s) must be increased.



What Can Be Done?

Pay Transparency

v.

Pay Secrecy

What Can Be Done?

▶ Third,

Create fair compensation plans

(and do so with a careful eye to the Stark Law, the Fraud and Abuse Statute,
and the Internal Revenue Code)

The American College of Cardiology

- ▶ A fair and equitable compensation plan does not need to create compensation parity, but it should create compensation equity. Every member of the organization – whether a practice, medical group, academic division, or other unit – should have an equal opportunity through the compensation plan to achieve a market-equitable income, applicable performance bonuses, and the resources required to do their specific job well. Plans should avoid undervaluing essential but nonrevenue-producing work, such as educational activities, travel to remote but strategic satellite locations (“windshield time”), committee work, research, and mentoring. Plans must also include consideration of how to balance individual productivity with team-based success, and account for differences in wRVU valuation between procedural and nonprocedural work, while specifying how to appropriately reward different career stages, health risks (e.g., radiation exposure), or those with different work-life balances. For multispecialty groups ..., whether employed, practice, or academic, compensation models should be differentiated by specialty in light of unique considerations including but not limited to supply, demand, training, risk and acuity, and job demands. Although many plans are constructed to reward and enhance productivity, an equally important test of the plan is the impact it has on the organizational culture— whether it aligns the members around common goals and milestones. Successful plans will provide multidimensional gains. Once implemented, most, if not all, of the impacted individuals must feel the plan is fairly and equitably applied. The plan must be flexible enough to evolve with changing circumstances in the market or organization without needing a complete overhaul annually. Every plan must be designed to meet local needs, achieve system goals, and fulfill mission-driven values. The plan should retain enough income to cover leadership costs, support underfunded key mission areas, and allow for program growth and development, including reserving funds for unexpected events. Additionally, a good compensation plan helps attract and retain candidates for positions and aligns incentives to achieve the goals of the practice, group, or academic unit. Organizations need to ensure that their compensation models are fluid and reflect industry trends (thus maintaining market competitiveness) while fulfilling legal and compliance requirements. Finally, no formula or approach is perfect, but routine review of individual total compensation under the plan, particularly with an eye to disparities, will help to close any gaps and achieve equal compensation for equal work.
- ▶ Douglas PS, Biga C, Burns KM, Chazal RA, Cuffe M, Daniel JM Jr., Garzio C, Harrington R, Patel HN, Walsh MN, Wolk MJ. 2019 ACC health policy statement on cardiologist compensation and opportunity equity. *J Am Coll Cardiol* 2019 Oct;74(15):1947-1965

State Salary History Bans as of 7/30/21

- ▶ Alabama (statewide; 2019; employer may not retaliate if a candidate refuses to provide salary history)
- ▶ California (statewide; 2018)
- ▶ Colorado (statewide; 1/1/2021)
- ▶ Connecticut (statewide; 2019)
- ▶ Delaware (statewide; 2017)
- ▶ Hawaii (statewide; 2019)
- ▶ Illinois (statewide; 2019)
- ▶ Maine (statewide; 2019)
- ▶ Maryland (statewide; 2020)
- ▶ Massachusetts (statewide; 2018)
- ▶ New Jersey (statewide; 2020)
- ▶ New York (statewide; 2017)
- ▶ North Carolina (state agencies; 2019)
- ▶ Oregon (statewide; 2017)
- ▶ Pennsylvania (state agencies; 2018)
- ▶ Puerto Rico (commonwealth-wide; 2017)
- ▶ Rhode Island (statewide; effective 1/1/2022)
- ▶ Vermont (statewide; 2018)
- ▶ Virginia (state agencies; 2019)
- ▶ Washington (statewide; 2019)

Local Salary History Bans as of 7/30/21

- ▶ Albany County, New York
- ▶ Atlanta, Georgia (city agencies)
- ▶ Chicago, Illinois
- ▶ Cincinnati, Ohio (15+ employees within city)
- ▶ Columbia, South Carolina
- ▶ Jackson, Mississippi (city)
- ▶ Kansas City, Missouri (city; all employers 6+ ; 10/31/2019)
- ▶ Louisville, Kentucky
- ▶ Montgomery County, Maryland
- ▶ New Orleans, Louisiana
- ▶ New York City, New York Philadelphia, Pennsylvania
- ▶ Philadelphia, Pennsylvania
- ▶ Pittsburgh, Pennsylvania (city)
- ▶ Richland County, South Carolina
- ▶ Salt Lake City, Utah (city hiring)
- ▶ San Francisco, California
- ▶ St. Louis, Missouri (city)
- ▶ Suffolk County, New York
- ▶ Toledo, Ohio (15+ employees within city)
- ▶ Washington, D.C. (agencies of the district government)
- ▶ Westchester County, New York