

Dodd-Frank Section 953(b) – The Pay Ratio Requirement

Congress Should Repeal Burdensome and Misleading Disclosure Requirement Before First Disclosures Are Published

What is the Pay Ratio? The pay ratio mandate in section 953(b) of the Dodd-Frank Act requires companies to calculate and disclose the ratio of the median employee pay to CEO pay. As implemented, companies will be required to identify the *median* – not the average – paid employee of their *entire global* workforce, including all full-time, part-time, temporary, and seasonal employees for the purposes of comparing that employee’s compensation to that of the company’s Chief Executive Officer in the form of a ratio. Unless Congress or the SEC Act, companies will be required to disclose the pay ratio in the annual proxy statement in 2018.

What is the Status? The final pay ratio rules were approved by the SEC in August 2015 in a contentious 3-2 vote with former SEC Chair Mary Jo White joining the two Democrat Commissioners in approving the rule.

On February 6, 2017, the SEC’s Acting Chairman, Michael Piwowar, announced that the SEC is reconsidering the Pay Ratio rule and opened a 45-day public comment period during which the SEC is requesting input on “any unexpected challenges that issuers have experienced as they prepare for compliance with the rule and whether relief is needed.” It is still too early to determine whether the announcement will result in further regulation action, and if so whether such action will result in a delay of the first disclosures, which are required for proxies filed on or after January 1, 2018.

A bill to repeal the pay ratio has been introduced and adopted by the House Financial Services Committee in three consecutive sessions of Congress. In the 114th Congress, Rep. Bill Huizenga (R-MI) introduced the House’s version of pay ratio repeal, the “Burdensome Data Collection Relief Act” (H.R. 414) which was adopted along party-lines by the House Financial Services Committee and repeal was also included in the 2016 version of the Financial CHOICE Act, which the Committee approved in September, 2016. Senator Mike Rounds (R-ND) introduced a pay ratio repeal bill, the “Salary Collection Regulatory Relief Act” (S. 1722) but no action was taken in the Senate Banking Committee.

The Center’s Position – The pay ratio disclosure imposes an enormously complex and expensive data-gathering burden on public companies, particularly those with large, global workforces. Critics of executive compensation argue that the pay ratio disclosure will help remedy income inequality. However, the disclosure only tells us a well-known fact about the differences between line-item worker pay levels and executive pay while doing nothing to address the fundamental issues affecting lower pay levels. In reality, there is no mainstream investor interest in the disclosure. Furthermore, each company’s pay ratios will be a result of a unique business and operating structure and thus, because no two companies are alike, the pay ratios between companies cannot be compared for any useful purpose.

The Recommended Course of Action – The Center urges Congress to repeal the Dodd-Frank Pay Ratio disclosure before the first disclosures are published.