

Pay Ratio Rules in the News

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Perhaps the House legislation, “The Burdensome Data Collection Relief Act,” has inspired the sudden press interest in the Dodd-Frank pay disparity rule requiring public companies to disclose the ratio of the median employee pay to chief executive compensation. H.R. 1135 is designed to repeal that rule, and passed in the House Financial Services Committee in late June with bipartisan support after it was introduced by Representative Bill Huizenga (R., Mich.). Representative Huizenga mentioned several aspects of the rule that companies have found to be untenable, including the possibility of needing to determine global employee compensation and pay for part-time employees, or even defining the scope of the employee compensation data that the rule is designed to capture as to whether it includes health care or “perks” like special parking privileges. An amendment to the legislation to limit the disclosure to domestic employees and provide the SEC with more discretion instead of a wholesale repeal failed.

The rule certainly has its supporters, as Americans for Financial Reform was quick to criticize the Congressional action. Some [proponents](#) of the rule have made clear that they hope this disclosure exercise will result in negative publicity for companies and ultimately result in specific Congressionally mandated CEO to worker pay multiples.

Several organizations have already created their own ratios using a number of assumptions. AFL-CIO claims that the ratio is 354-to-1 at the S&P 500, while [Bloomberg News](#) took its own tally based on proxy disclosure and found that its analysis produced a typical ratio of 204-to-1 for the 250 largest companies in the S&P 500, using generic U.S. government data of worker pay by industry and comparing the CEO pay reported in the proxy to the average of all non-supervisory employees in the United States only, a method similar to one that the Center on Executive Compensation, working with major public companies, suggested as an alternative. The Economic Policy Institute has calculated the ratio at 273-to-1 in 2012, or 202-to-1, depending on how stock options were accounted for.

Other mainstream press has also weighed in more recently. First, the *Washington Post* [reported](#) that the rule remains “in limbo” three years after passage of the Act. According to the article, the SEC staff had “an early blueprint” of the rule ready within six months of the enactment of the law in 2010 and set a deadline of the end of 2011 for completing the rule, before a campaign of resistance by “big business” halted the work. The article characterized the rule as “relatively straightforward” and noted that the threat of litigation has hung over any discussion of the rule.

This past weekend, the *New York Times* editorial board [weighed in](#), urging the SEC to “get on with the job” and require the pay ratio disclosure. According to the paper, the information that this single numerical ratio is expected to provide includes allowing investors to judge a company’s compensation structure on “productivity, efficiency, innovation and other aspects of work-force performance,” helping consumers determine whether companies are “solid corporate citizens or sources of enrichment of the few” and assisting policy makers with determining economic bubbles and crashes, because those events are generally correlated with rising income disparities.

This particular governance provision seems to be driving a number of both concerns and aspirations as to the consequences of its enactment. In the meantime, it seems more likely that we will see one or more of the other three executive compensation disclosure requirements proposed this year instead.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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