

March 21, 2017

Acting Chairman Michael S. Piwowar  
Securities and Exchange Commission  
100 F St., NE  
Washington, D.C. 20549-1090

**RE: File Number S7-07-13, Comments on Acting Chairman's Feb. 6, 2017, Statement on Reconsideration of Pay Ratio Rule Implementation**

Dear Acting Chairman Michael S. Piwowar,

WorldatWork respectfully submits these comments in response to the Securities and Exchange Commission (SEC or Commission) Acting Chairman Michael S. Piwowar's request for further comment on the pay ratio disclosure rule<sup>1</sup>. We appreciate the opportunity to provide further feedback to the Commission.

**WorldatWork Background Information**

[WorldatWork](#) is a nonprofit human resources association for professionals and organizations focused on compensation, benefits, work-life effectiveness and total rewards — strategies to attract, motivate, retain and engage a productive workforce. It's our mission to help total rewards professionals achieve their goals and influence their organization's success. We do so by providing total rewards thought leadership from the world's most respected experts and fostering an active community of total rewards practitioners.

WorldatWork and our affiliates provide comprehensive global education, certification, research, advocacy and community to our members and the total rewards community. Our work enhances the careers of professionals and optimizes the employee experience, which leads to improved organizational results. WorldatWork has more than 70,000 members and subscribers worldwide; more than 80% of Fortune 500 companies employ a WorldatWork member.

Founded in 1955, WorldatWork has offices in Scottsdale, Ariz., and Washington, D.C., and is affiliated with more than 70 human resources associations across the United States and around the world.

WorldatWork members believe there is a powerful exchange relationship between employer and employee, as demonstrated through the [WorldatWork Total Rewards Model](#). Total rewards involves the deliberate integration of six key elements that effectively attract, motivate, retain and engage the talent required to achieve desired organizational results. The six key elements are: compensation, benefits, work-life effectiveness, recognition, performance management and talent development.

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<sup>1</sup> Securities and Exchange Commission Acting Chairman Michael S. Piwowar's public statement, Reconsideration of Pay Ratio Rule Implementation. Feb. 6, 2017. Available at <https://www.sec.gov/news/statement/reconsideration-of-pay-ratio-rule-implementation.html>.

This model recognizes that total rewards operates in the context of overall business strategy, organizational culture and human resources strategy, as well as a complex external environment. Within this context, an employer leverages the six elements to offer and align a value proposition that benefits the organization and the employee. An effective total rewards strategy results in satisfied, engaged and productive employees, who in turn deliver desired performance and results.

There is significant social value derived from a compensation strategy. Compensation's positive influence on an employer in terms of long-term results and productivity gains has far-reaching benefits to organizations and individual employees; the communities in which they operate, live and work; and the overall U.S. and global economies. There are many approaches to achieving this positive effect from the employment relationship, all of which consider a broad array of ideas, values and goals.

The influence of public policy on shaping compensation practices should be carefully considered. Government has demonstrated that it can positively influence the final outcome through areas such as prohibiting wage discrimination for protected classes or establishing a reasonable minimum wage for employees. However, government policies also can disrupt the delicate environment of cost structures for employers and competitive pay for employees.

### **WorldatWork's Previous Comments and Position on the Pay Ratio**

WorldatWork has closely followed the implementation of Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 since it was signed into law. We co-signed, along with 22 other organizations, a Jan. 19, 2012, letter to the SEC expressing concerns that Section 953(b), as written, would impose substantial costs on employers while providing few material benefits to stockholders and potential investors.<sup>2</sup> Additionally, WorldatWork submitted comments on Dec. 2, 2013, in response to the SEC's notice of proposed rulemaking (NPRM)<sup>3</sup> implementing Section 953(b), and again on July 6, 2015, in response to the SEC's request for comment on additional analysis related to the proposed pay ratio disclosure rules<sup>4</sup>.

WorldatWork strongly believes that the pay ratio will not enhance transparency or provide any benefit to shareholders or potential investors. Since 2011, we have been working with members of Congress to repeal Section 953(b) from the Dodd-Frank law. For example, in the 114<sup>th</sup> Congress WorldatWork endorsed H.R. 414, the Burdensome Data Collection Relief Act, which would repeal Section 953(b) from the Dodd-Frank law.

The Commission's most recent economic analysis of the proposed rule observed that "neither the statute nor the related legislative history directly states the objectives or intended benefits of the

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<sup>2</sup> WorldatWork joint letter, RE: Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Jan. 19, 2012. Available at <https://www.worldatwork.org/waw/adimLink?id=59075>.

<sup>3</sup> WorldatWork comment letter, RE: File Number S7-07-13, Release Nos. 33-9452; 34-70443, RIN 3235-AL47. Dec. 2, 2013. Available at <https://www.sec.gov/comments/s7-07-13/s70713-515.pdf>.

<sup>4</sup> WorldatWork comment letter, RE: File Number S7-07-13, Division of Economic and Risk Analysis; Additional Analysis Related To Proposed Pay Ratio Disclosure Rules. July 6, 2015. Available at <https://www.sec.gov/comments/s7-07-13/s70713-1565.pdf>.

provision or of a specific market failure, if any, that is intended to be remedied.”<sup>5</sup> WorldatWork agrees that the intent of this provision and the intended benefits were unsubstantiated and continues to urge the SEC to carefully reconsider the pay ratio rule.

Publicly traded companies already have to report their executive compensation in annual proxy statements, and shareholders have the ability to express their opinion on the soundness of executive compensation levels through say-on-pay votes. With sufficient information available for interested parties about how much a company’s principle executive officer (PEO) is compensated, the pay ratio serves only to shed new light on the median employee’s pay. However, this is an imperfect measure for judging a company’s overall workforce-based pay practices because the definition of the median employee can be affected by several factors including a company’s overall size, its specific industry and the professional experience of its workforce. Additionally, the costs associated with identifying seasonal, part-time, temporary and international employees are still burdensome for a global workforce, even when counted as only a percentage of the ratio calculation.

### **Additional Input on Compliance Challenges**

The acting chairman’s understanding of the pay ratio disclosure requirement is correct. Many issuers have begun to encounter unanticipated compliance difficulties as they prepare to comply with the requirement. Relief from this rule is needed and is necessary to avoid these difficulties. Companies are unique, as are their industries, and therefore the challenges complying with the new requirement are numerous. Many companies have spent a tremendous amount of time and resources to get ready, and many continue to find further difficulties as the compliance date rapidly approaches.

In response to membership need, in December 2015 WorldatWork created a Pay Ratio Workgroup made up of executive compensation professionals from various industries who are heavily involved in bringing their companies into compliance with the new requirements. The workgroup offers participants an opportunity to learn what other companies are doing to calculate their pay ratio, and to share how their companies are thinking about approaching this work. Workgroup participants can collaborate and innovate with other practitioners; hear rationales and thinking of other people confronting challenges; and hear creative ways that other members are thinking about sampling, methodologies and so on. The workgroup continues to meet and has shared its learnings more broadly via panel presentations to large groups of compensation professionals (e.g., WorldatWork webinars and conference sessions at outside events).

Based on input from the Pay Ratio Workgroup, the WorldatWork Executive Rewards Advisory Council and other professional members at large, WorldatWork has identified several serious unanticipated challenges companies are facing complying with the rule, which we ask the SEC to consider: 1) identifying and defining “all employees” for a particular company, 2) data mining and gathering and 3) determining the best approach for identifying the median employee.

**Identifying and defining “all employees” for a company can take a significant amount of time and resources in respect to the pay ratio calculation.** There are many ambiguities and unique situations that make it extremely difficult to determine exactly who should be included in the calculation (e.g.,

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<sup>5</sup> Federal Register, Vol. 78, No. 190. Oct. 1, 2013. Page 60582.

co-shared or cross-shared employees, franchise employees, those with production cycles, active-military employees, those with long-term disability (LTD) situations, daily hires and furloughed employees). Examples:

1. **Global hotel groups:** In instances where leadership is employed by the company but staff is employed by the hotel owner, questions have arisen around who ultimately sets the pay and therefore whether the staff should or shouldn't be included in the calculation for the company.
2. **The entertainment industry:** Daily hires such as talent for hair and makeup services on an on-call or as-needed basis have come into question. These employees may not be called or may decline work but are still on payroll, and the company sets their pay. They may have \$0 in wages for the year. Also, anyone involved in productions appears to fall under the definition of "employee"; this requires reaching out to all active productions for breakouts of payments.
3. **Companies that have business relationships with various third parties, including unions:** Workers employed by these third parties also provide services to other companies, and it's not unusual for an individual employed by the third party to work a handful of hours at multiple companies in the same industry every week. This is a common arrangement in the United States, and there are similar arrangements overseas. Whether these tens of thousands of individuals are included in figuring out the median employee can have a substantial impact on the calculated ratio. The determination of whether they are employees for purposes of the ratio is complex, and companies have already expended considerable resources in response.
4. **On-call, freelance and temporary employees:** These employees may be hired late in a period but have no compensation as of the time of calculation. For example, the individual is an employee as of the measurement date but has earned \$0 in wages for the measurement period.
5. **Airlines that use flexible staffing programs where employees can be called in but are capped on the hours they can work:** These employees are treated like temporary employees, and therefore their compensation cannot be annualized.
6. **Co-shared, cost-shared or cross-shared employees:** These employees are hard to identify and assign to a company for inclusion in the calculation.
7. **Employees on military leave:** Companies must make their own determination on how to consider these employees for the calculation.
8. **Employees on long-term disability:** These employees' payroll may be administered in-house or by an outside party; how to handle those that are considered permanently disabled and those who are anticipated to return to work has created confusion.

**Data mining and gathering are challenges, especially for global companies and those with decentralized HRIS/payroll systems. In addition to the nightmare of identifying who is an employee, this fact-finding mission can take a significant amount of additional time and resources for data that are difficult, if not impossible, to match and use as a true comparison.** Examples:

1. **U.S. data gathering**
  - a. Compensation data are often not stored in a single or integrated payroll/HRIS system but instead on multiple and decentralized payroll/HRIS systems. National and global companies have large, geographically dispersed and/or complex workforces with various types of workers and business arrangements (e.g.,

acquisitions, subsidiaries and foreign affiliates), as well as diverse workgroups on different platforms. Thus, new and expensive sourcing tools and software are necessary to source the disparate compensation data from various systems and countries.

- b. Companies in industries where tipped wages are prevalent must make assumptions. These companies must decide whether tips are included in compensation for the calculation even though they are paid by the customer, not the employer. Adding to the uncertainty, consultant and legal advice differs on this issue, and companies differ on the approach.
- c. Identifying the proper data to collect can be quite complex, especially in the early stages, as companies must evaluate what approach and/or consistently applied compensation measure (CACM) to use. In addition to compensation data, the collected data may include additional information (e.g., hours worked and eligibility) that must be sorted through, considered or scrubbed.
- d. Data on workers who start sometime during the year or have an unpaid leave of absence during the year must be collected so that compensation may be annualized for calculation purposes.

## **2. International data gathering**

- a. Data to be collected from different countries and markets has proven to be heterogeneous and difficult or arguably useless to compare. Not all markets follow the same fiscal years, nor are all companies in every market on automated payroll systems. Companies may have many countries to gather data from (e.g., 40, 70 or 100), and compiling data from a large number of countries without a single, consolidated system of record is a new, costly and difficult process. Additionally, understanding and collecting information on exotic or unique pay elements from outside the United States, such as geographically unique compensation and retirement programs, which again are not centrally managed or maintained, is another significant and new burden.
- b. Companies are encountering major difficulties getting accurate, comprehensive and timely global/international (non-U.S.) data. They are experiencing local resistance or lack of response and need to spend substantial resources educating partners outside the United States about the importance of the data to secure their buy-in and engagement.
- c. Companies have many partners globally that need to be considered or explored for inclusion. Initially they must identify who their partners are outside the United States, then work to get the data and understand all the unique compensation practices for elements that U.S. companies do not have to capture. (Companies must perform broad initial sweeps for data and then perform deeper analyses and refine their results to identify the unknowns as to what to include and not include in calculations.) This is an unanticipated, significant and unique consequence.
- d. Companies are experiencing unique difficulties, such as obtaining data for acquired global employees while integrating the employees into the main HR system following an acquisition.
- e. Companies need to perform additional analyses to determine if, and how, to use the global exclusion option.
- f. The proper exchange rate and effective date to use must be determined.

g. Examples

- i. An expert attested that he/she had to dispatch more than 25 different teams across the globe to collect and validate data and predicted more than 3,000 hours will be invested on a cumulative basis. Ongoing support will also be significant.
- ii. Another expert attested that due to the need to replace the HRIS, he/she had to change the HR/compensation database vendor and system to one that is less customized than the prior system. As a result, costs and resource concerns are looming around the additional manual work to gather the pertinent information:
  1. The added complexity of gathering the data will require additional time for both report rebuilds and manual country-by-country data extraction.
  2. The prior system's estimated cost was a fraction of the anticipated cost for the new vendor and system.

**Identifying the median employee is a complex exercise that requires formulating and evaluating a variety of approaches to identify the best-suited approach for a company. This exercise is costly and time consuming but necessary so companies can defend the approach as well as institute the process on an ongoing annual basis. Additionally, very little guidance is provided on how to address the granular details of identifying the median employee. Since identifying the median employee is unique to the particular facts and circumstances of each company it is that much more complex.**

As mentioned previously, companies must identify the proper CACM to use, which is difficult because there are many options to explore, with various combinations of pay elements. Companies may also need to collect additional information other than traditional compensation data (e.g., hours worked) and have all the data readily accessible.

**Factors to consider as companies explore compensation measures to identify the median employee include:**

1. Should a company use sampling vs. the full population?
2. How should a company address similar or different median employee determinations?
3. What date should companies use to determine the proper CACM considering several important factors (e.g., seasonal work, access to data and time to calculate)?
4. What time period should companies use to determine the proper CACM considering the allowable options (e.g. companies are not required to use a full annual period, but can use prior-year data and can calculate pro-forma data)?
5. How are other companies approaching the identification, and are there other reasonable methods they should consider or compare?
6. How does a company know its measure or method is reasonable and proper?
7. How should a company address the hiring of outside experts to explore sampling?
8. If a company uses W-2 data for its compensation measure in the United States, what is the proper equivalent outside the United States?
9. How should a company use W-2 data if its fiscal year is not a calendar year?

10. If a company believes that base salary, which is typically the most accessible measure, may not be an appropriate measure for the company's particular facts and circumstances, how should it identify the most appropriate alternative measure?
11. How should a company select the specific median employee if there are multiple employees that are identical based on the pay element used to identify the median employee (e.g., if there are 70 employees at median in one case, which one is the median)?
12. How should companies address the need for balance between efficiency and confidence in the decided-upon method to satisfy their legal and auditor expectations?
13. How should companies gather accurate and comparable global data for sampling (as described earlier)?
14. Examples:
  - a. An expert attested that acquiring data for all employees globally has proved to be the biggest challenge and a time-consuming exercise, and recommends pushing the disclosure out another year at a minimum. His/her organization is in the middle of implementing a global human capital management system that will eventually house the data needed to run this calculation. While the system is scheduled to be operational by the time the organization needs to prepare the disclosure, doing test runs of the ratio is difficult prior to the system being implemented. Delaying the disclosure by a year would allow the organization to perform test runs with quality data and build a proper communications plan to go along with the disclosure, which the organization cannot do until it has a better sense of the actual ratio.
    - i. A lot of thought and strategy goes into the disclosures to ensure the organization is communicating the proper message to investors. With a hastily prepared disclosure, the organization runs the risk of over- or under-disclosing information regarding the ratio and the narrative around it. If the disclosure is hastily prepared without a well-thought-out strategy the organization could put its say-on-pay vote at risk as well.
    - ii. With clear, concise reporting the organization hopes to demonstrate to investors and employees that the ratio is reasonable and makes sense given the industry, and make them feel good about how employees are paid.

If the SEC revisits the regulations, WorldatWork strongly supports excluding part-time, seasonal, temporary or international employees from the pay ratio calculation to determine the median employee. Doing so will not make the ratio perfect, or even useful, but it will significantly lessen the compliance burden imposed on compensation professionals from the proposed rule.

If the intent of the statute is to provide a quick assessment of a company's overall pay practices, a ratio based on full-time, U.S.-based employees will provide shareholders and investors with the most accurate reflection of the median employee's pay, eliminating the disparities inherent with including employees across many different countries. The costs of going from a full-time U.S. workforce to find the median employee to trying to incorporate international, part-time and nontraditional employees are substantial for even moderately large or complex organizations. In the end, the incremental benefits of including all employees in the ratio are not obvious.

## Conclusion

WorldatWork remains opposed to the rule in its entirety. If, however, the Commission chooses to revisit the rule, we urge the Commission to limit the employees included in the ratio to those employed full time and within the United States; provide further clarification and simplification that address the previously stated issues and concerns; and provide companies additional time to properly comply. Due to the complexity and unanticipated difficulties companies have discovered and must navigate as they institute the systems for compliance, more time is necessary. The risk of making an error and reporting an incorrect ratio is too high, but a distinct possibility if companies are rushed.

Our members agree that shareholders and potential investors already receive detailed information about executive compensation levels in the proxy through compensation tables and Compensation Discussion and Analysis (CD&A) requirements. Based on extensive regular conversations with major shareholders, the ratio is neither requested nor of interest. The disclosure of the CEO pay ratio is not needed and will provide little to no value to shareholders and investors, while being extremely costly and burdensome for corporations to gather and produce.

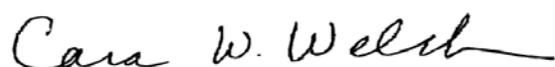
The development of the pay ratio is a time-consuming task that adds zero value to improving business performance and does nothing to better inform shareholders. To the contrary, the lack of comparability of the metric across companies and industries means that publishing the metric misinforms shareholders and the public. Furthermore, comparing compensation of individuals in substantially different job markets is the equivalent of comparing apples and oranges. Thus, there is no quantitative value delivered by the metric based on the rules as currently written.

Companies will also face the burden of deciding whether to simply disclose the ratio or provide additional narrative commentary, including different cuts or modeling of the ratio. If a company decides it does in fact need to further explain its ratio, the additional disclosures will only further lengthen proxy statements, which the SEC has worked over the years to simplify for investors.

WorldatWork appreciates the opportunity to provide further comments to the SEC on the final rule implementing Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, File Number S7-07-13. The association hopes that the commission will consider the views expressed in this and previous comment letters, as WorldatWork's 70,000 members and subscribers will be responsible for complying with these rules on behalf of their organizations.

We look forward to working with the Commission on this issue and future endeavors. Please do not hesitate to contact me at [REDACTED] for further information or to schedule a meeting to discuss the concerns addressed in this letter.

Sincerely,



Cara Woodson Welch, Esq.  
Vice President, External Affairs & Practice Leadership