WorldatWork
The Total Rewards Association

Dec. 2, 2013

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-07-13, Release Nos. 33-9452; 34-70443, RIN 3235-AL47

To Whom It May Concern:

WorldatWork respectfully submits these comments in response to the Securities and Exchange Commission's (SEC) Notice of Proposed Rulemaking implementing Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, File Number S7-07-13. We appreciate the opportunity to provide feedback to the commission.

WorldatWork Background Information

WorldatWork (www.worldatwork.org) is a nonprofit human resources association for professionals and organizations focused on compensation, benefits, work-life effectiveness and total rewards — strategies to attract, motivate and retain an engaged and productive workforce. WorldatWork and its affiliates provide comprehensive education, certification, research, advocacy and community, enhancing careers of professionals and, ultimately, achieving better results for the organizations they serve. WorldatWork has more than 65,000 members and subscribers worldwide; 95 percent of Fortune 500 companies employ a WorldatWork member. Founded in 1955, WorldatWork is affiliated with more than 70 local human resources associations and has offices in Scottsdale, Ariz., and Washington, D.C.

WorldatWork members are human resources professionals who 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 five key elements that effectively attract, motivate and retain the talent required to achieve desired organizational results. The five key elements are: compensation, benefits, work-life, performance and recognition, and development and career opportunities.

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 five 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.

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WorldatWork's Previous Comments on the Pay Ratio

WorldatWork has closely followed the progress of the implementation of Section 953(b) of Dodd-Frank since it was signed into law. WorldatWork 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 current stockholders and potential investors.

WorldatWork has worked with Reps. Bill Huizenga (R-Mich.) and Scott Garrett (R-N.J.) to endorse H.R. 1135, the Burdensome Data Collection Repeal Act, to repeal section 953(b) from the Dodd-Frank law; the bill was favorably reported by the House Committee on Financial Services on June 19, 2013, with a bipartisan 36-21 vote.

The proposed pay ratio rules are far more complex than the brevity of Section 953(b) indicates, most clearly evidenced by the commission's request for comment on 69 separate items. For this reason, WorldatWork also co-signed a letter dated Oct. 9, 2013 requesting a 60-day extension in the comment period. The commission specifically asked that commenters provide supporting quantitative data and analysis in order to assist in the rulemaking process. Additional time to solicit input and complete such data analysis would have yielded more relevant information for the commission's and the public's benefit.

Only 40 percent of the total rulemaking requirements from Dodd-Frank have been finalized, and it is unfortunate that the commission is choosing to move forward with Section 953(b) when other requirements could be addressed, particularly those which are more beneficial to investors and less burdensome on employers. There is no statutory deadline for promulgating rules on Section 953(b). We urge the commission to carefully consider the information it received during the comment period and take an appropriate period of time before finalizing this rule.

Reactions to the SEC's Proposed Rule on Section 953(b)

The commission's economic analysis of the proposed rule observes that "neither the statute nor the related legislative history directly states the objectives or intended benefits of the provision or a specific market failure, if any, that is intended to be remedied." WorldatWork likewise agrees that the pay ratio will not enhance transparency or provide any benefit to shareholders or potential investors.

Publicly traded companies already have to report their summary compensation tables 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 to explain how much a company's principal executive officer (PEO) earns in compensation, the pay ratio then 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 median employee can be affected by several factors, which are discussed later in this letter in WorldatWork's answers to specific requests by the commission.

WorldatWork would like to stress that compensation professionals do not necessarily have readily accessible compensation data available for the company's entire workforce. The proposed rule assumes that flexibility in the methods for identifying the median employee makes up for the difficulty in compliance. This misses the central issue. Some of the largest and most technologically sophisticated companies do not have a central source of compensation data from their international operations or subsidiaries because it is not information that is collected or used for any other aspect of the business. Every country in which a company operates defines compensation and benefits differently. Therefore, the monetary value assigned to each employee has substantial variance.

WorldatWork is disappointed that the commission chose to include temporary, seasonal, part-time and non-U.S.-based employees in the median employee calculation. Defining total compensation for employees based across the globe will prove difficult because each country has different standards defining what makes up a complete compensation and benefits package. The makeup of part-time and seasonal workforces within a company's total workforce is inherently variable, and their inclusion or omission in the pool of employees for calculating the median cannot be accurately reflected in the ratio. WorldatWork urges the commission to revise the final rule so that the pool of employees will be limited to full-time, U.S.-based employees.

Although WorldatWork appreciates the flexibility afforded to employers in the methods they may use to identify the median employee, the proposed rules still do not sufficiently lessen the compliance burden on compensation professionals. WorldatWork opposes the proposed rule as written and hopes that the commission will thoroughly consider its concerns and others expressed during the comment period before moving forward on issuing a final rule.

Survey Findings and Focus Groups

From Nov. 12-25, 2013, WorldatWork surveyed 3,000 members in a Snapshot Survey conducted via email. One-hundred eighty-six respondents were from publicly-traded companies that will be required to calculate and disclose the pay ratio under the proposed rule. Respondents were from companies of varying sizes, as displayed in the chart below, with one third of respondents representing companies with workforces between 2,500 and 9,999 worldwide employees.

Number of Employees Worldwide	Percentage of Respondents
1 – 499	8%
500 – 2,499	8%
2,500 – 9,999	33%
10,000 – 19,999	14%
20,000 – 39,999	12%
40,000 – 99,999	13%
100,000 or more	13%

WorldatWork's survey data indicates that a substantial percentage of the practitioners surveyed believe that excluding part-time, temporary, seasonal, subsidiary and non-U.S.-based employees will reduce the cost of compliance with the proposed rule. Nearly half of respondents expect a U.S.-employee -only ratio to reduce compliance costs by more than 20 percent, while 29 percent of respondents expect it would reduce compliance costs by more than 40 percent. Similarly, more than 30 percent of respondents believe that limiting the median employee calculation to full-time employees will yield cost savings of more than 10 percent. In addition, 18 percent of respondents believe that limiting the median employee calculation to full-time employees will yield cost savings of more than 20 percent.

WorldatWork also held three focus group sessions with members of its Executive Rewards Advisory Council in September, October and November 2013. The group is made up of senior-level executive compensation practitioners who will be directly involved in their company's compliance efforts on the pay ratio rule. References to focus groups in the answers to specific questions from the commission are from at least one of these three sessions.

Answers to Selected Requests for Comment from the Commission's Proposed Rule

Below are WorldatWork's responses to selected requests for comment. The question numbers are carried over from the proposed rule. Emphasis has been added to highlight the main topic of each request for comment.

Registrants Subject to Pay Ratio Disclosures

4. *Should we revise the proposal so that* ***smaller reporting companies*** *would be subject to the proposed pay ratio disclosure requirements? If so, why? If so, also discuss how smaller reporting companies should calculate total compensation for employees and the PEO. For example, should they be required to calculate total compensation in accordance with Item 402(c)(2)(x) instead of the scaled disclosure requirements? In the alternative, should smaller reporting companies be required to provide a modified version of the pay ratio disclosure? If so, why, and what should that modified version entail? Should it be based on the compensation amounts required under the scaled disclosure requirements applicable to smaller reporting companies, such as a ratio where the PEO compensation and other employee compensation are calculated in accordance with Item 402(n)(2)(x)? Please provide information as to particular concerns that smaller reporting companies may have. Please discuss whether the disclosure would be useful to investors in smaller reporting companies.*

WorldatWork: The pay ratio requirements should be limited to those registrants who already provide executive compensation information on proxy statements. Smaller companies would face a double compliance burden if asked to publish summary compensation tables and calculate the pay ratio. WorldatWork maintains that existing executive suite compensation disclosures are sufficient to allow investors to gauge a company's pay practices, so there is no compelling reason to make smaller companies comply with the pay ratio.

Presentation Issues

6. *Are there* ***any other presentation issues*** *that companies need guidance on or that should be clarified in the pay ratio disclosure requirements? If so, please provide details about such issues and any recommended guidance that should be provided.*

WorldatWork: The difficulty in compliance with the pay ratio stems from calculating the median employee across a wide and global workforce, rather than the format in which the ratio is presented. The expression of the ratio as proposed is understandable, though it will not have any particular bearing on the viability of the ratio as a tool for potential investors.

Employees Included in Calculation of the Median

7. *Are there alternative ways to fulfill the statutory mandate of covering* ***"all employees"*** *that could reduce the compliance costs and cross-border issues raised by commenters? For example, would it be consistent with the statute to permit registrants to exclude non-U.S. employees from the calculation of the median? Would it be consistent with the statute to permit registrants to exclude non-full-time employees from the calculation of the median? If not, could these alternatives be implemented in a way that would be consistent with the statute?*

WorldatWork: As written, the proposed rules and their overly expansive definitions of "all employees" represent the biggest compliance hurdle for human resources professionals. WorldatWork believes that it would be consistent with the intent of the statute to limit the pool of employees in the calculation to full-time, U.S.-based employees. The ratio can easily be skewed depending on the company's overall workforce size, its specific industry and the professional experience of its workforce. If the intent of the statute is in fact to provide a quick assessment of the soundness of a company's overall pay practices, a ratio based on a large, global, non-full-time pool of employees will not be accurate without substantial explanation.

Including part-time, seasonal and temporary workers not only represents a substantial compliance burden, but also does not accurately reflect a company's workforce. The wide variances in defining which employees are considered part-time or seasonal as well as corresponding pay strategies mean that the results will be highly variable. This variance applies regardless of the calculation date, whether it is selected by the company or mandated on a specific date. There will always be companies with workforces that look vastly different on a given date due to its unique needs for non-full-time employees. Presenting the ratio based on a company's full-time, U.S.-based employees will give the most accurate reflection of the median employee's pay, eliminating the disparities inherent in calculating compensation across many different countries.

8. *Should registrants be allowed to disclose* ***two separate pay ratios*** *covering U.S. employees and non-U.S. employees in lieu of the pay ratio covering all U.S. and non-U.S. employees? Why or why not? Should we require registrants to provide two separate pay ratios, as requested by some commenters? What should the separate ratios cover (e.g., should there be one for U.S. employees and one for non-U.S. employees, or should there be one for U.S. employees and one covering all employees)? If separate ratios are required, should this be in addition to, or in lieu of, the pay ratio covering all U.S. and non-U.S. employees? Would such a requirement increase costs for registrants? Would it increase the usefulness to investors of the disclosure?*

WorldatWork: Either allowing or requiring a company to calculate a second pay ratio does not solve the compliance difficulties inherent in calculating the pay ratio for non-U.S. based employees. A mandated second disclosure for non-U.S. based employees would result in even more costs to employers. It can be extremely difficult attempting to translate the myriad pay methodologies used in countries throughout the world as well as the dramatic differences in wage rates, which can be heavily influenced by local economic conditions, cultures and government regulations. A separate non-U.S.-based employee pay ratio will still not provide much relevant information because cross-country differences will remain and skew the ratio.

9. *Please identify the applicable* ***data privacy laws*** *or regulations that could impact the collection or transfer of the data needed to comply with the proposed pay ratio requirement. Please also identify*

whether there are exclusions, exemptions or safe harbors that could be used to collect or transfer such data. Please quantify, to the extent practicable, the impact of such laws on registrants subject to Section 953(b), such as an estimate of the number of registrants affected or the average percentage of employees affected. How would the proposed flexibility afforded to all registrants (i.e., selecting a method to identify the median, the use of statistical sampling or other reasonable estimation techniques and the use of consistently applied compensation measures to identify the median employee) impact any potential costs and burdens arising from local data privacy laws? In particular, would a registrant be able to make a reasonable estimation of the total compensation for affected employees? Would a registrant be able to select a consistent compensation measure that is not subject to local data privacy laws? If not, are there alternative ways to meet the statutory mandate of Section 953(b) that would reduce the costs and burdens arising from local data privacy laws?

10. *Are there applicable local **data privacy laws** that would prohibit the collection or transfer of data necessary to calculate the annual total compensation of an employee or group of employees or the identification of a median employee using a consistent compensation measure? In that situation, would a registrant be able to reasonably estimate compensation? If not, are there alternatives to the proposed rule that would address such a situation while still being consistent with Section 953(b)? Should any such alternatives be permitted? If an alternative should be permitted, what limitations or conditions should be imposed on using the alternative? For example, should registrants be required to disclose the approximate number of employees affected and identify the law that prohibits the collection or transfer of data? Please discuss whether any such alternatives would significantly impact the pay ratio disclosure.*

WorldatWork: In response to questions 9 and 10 on data privacy laws, the commission's proposed rule correctly notes that the EU's privacy laws regarding the transmittal of personally identifiable data and data sent to third parties are the most obvious hurdle with which employers will have to comply when calculating the pay ratio. While this will undoubtedly have a negative effect on some companies, others may be able to gather the required information under existing waivers granted to them by the EU. Those companies without such waivers in place will be forced to develop the resources needed to acquire them. Aside from the EU's laws, there are other countries that have confidentiality laws which may impact this information gathering, such as Argentina's confidentiality laws concerning equity awards.

In addition, participants in a focus group were concerned about getting accurate information from employees affected by data privacy laws during a short timeframe should the commission choose to require the calculation date as of the last day of the fiscal year. Some respondents were confident they could estimate the total compensation of employees in countries affected by data privacy laws by placing employees in "bands" of similar compensation and benefits levels and using those bands to estimate total compensation for purposes of calculating the ratio. However, there was disagreement on this point from focus group participants.

11. *Should the rule **cover employees of a registrant's subsidiaries** as defined in Rule 405 and Rule 12b-2, as proposed? Are there any situations where an entity meets the subsidiary definition but its employees should not be included for purposes of the proposed requirement? For example, should the rule be limited to subsidiaries that consolidate their financial statements with those of the registrant? Should the rule not apply to subsidiaries of certain types of registrants, such as the portfolio companies of business development companies? Please provide details of any recommended limitations.*

12. *Alternatively, should the requirements be limited to employees that are employed directly by the registrant (i.e., **excluding employees of its subsidiaries**)? Would such a limitation be consistent with*

Section 953(b)? How would such a limitation affect the potential benefits of the disclosure? Would such a limitation have other impacts, such as incentivizing registrants to alter their corporate structure, and, if so, are there alternative ways that the rule could address those impacts?

WorldatWork: Regarding employees of subsidiaries in questions 11 and 12, WorldatWork believes that the requirements should be limited to employees directly employed by the registrant. This would simplify the process of calculating the median employee because many subsidiary companies are run as independent businesses with different pay practices and systems. Requiring registrants to include subsidiary employees in the calculation would necessitate the sharing of payroll information between two separately administered companies, potentially causing concerns about data privacy.

However, should the commission choose to require the inclusion of subsidiary employees, it should be limited to those based in the United States for the same reasons expressed earlier regarding the difficulties in accessing compensation data for non-U.S.-based employees.

13. *Should Section 953(b) be read to apply to **"leased" workers or other temporary workers employed by a third party**? Does the proposed approach to such workers raise costs or other compliance issues for registrants, or impact potential benefits to investors, that we have not identified? Do registrants need guidance or instructions for determining how to treat employees of partially-owned subsidiaries or joint ventures? If so, what should such guidance or instructions entail?*

WorldatWork: Third party-employed and leased employees should not be included in the calculation of the median employee; to do so would raise costs and present a new pool of employees for which employers do not necessarily have access to relevant compensation data. Employers may have a contractual arrangement with a third party or one that governs leased workers, but may not have ready access to their compensation because leased workers would not be included in the payroll management system. Furthermore, if a leased or third party employed worker was to be chosen as the median employee, much more information would be needed. In addition, different companies that may not have sufficient protocols in place would have to share sensitive information.

14. *Is it likely that registrants would alter their corporate structure or employment arrangements to **reduce the number of employees** covered by the proposed requirements? How should we tailor the proposed requirements to address such an impact?*

15. *Does the proposed inclusion of all employees raise **competition concerns**? If so, are there some industries or types of registrants that would be more affected than others? How should we tailor the proposed requirements to address such concerns?*

WorldatWork: Focus group participants responding to questions 14 and 15 did not believe that the pay ratio rule would affect company-wide employment arrangements or raise competition concerns. While it is possible that companies could adjust any number of factors in order to make their ratios look more favorable, companies are not likely to do so solely because of the pay ratio.

Simply publishing the pay ratio would not necessarily mean that companies would be disclosing proprietary or sensitive information about their business operations, however, explaining the methods used to identify the median employee could. Companies may inadvertently reveal salary structures or benefits practices that are considered sensitive or proprietary and are not meant to be shared with competitors. WorldatWork requests that the commission make the disclosures of the methods used to determine the median employee as minimal as possible so that companies can continue to safeguard such proprietary information.

Date for Determining Employees in Calculation

16. *Is the* ***proposed calculation date*** *workable for registrants? If not, what date should be used (e.g., the last day of the registrant's second (or third) fiscal quarter) and why?*

17. *In the alternative, should registrants be permitted the flexibility to* ***choose a calculation date*** *for this purpose? Why or why not? If so, should we require the registrant to disclose why a particular date was chosen? Should such flexibility be limited to certain circumstances? If so, what principles should apply in identifying those circumstances?*

WorldatWork: In response to questions 16 and 17, participants in the focus group agreed that registrants should be able to choose the calculation date that best fits their company's unique circumstances. Further, they believe registrants should be permitted (but not required) to disclose the reasons behind making that choice. Participants also did not believe that companies would change their calculation dates from those in the first year of compliance.

While some companies would undoubtedly use the end of the fiscal year as the calculation date, one major factor that each company must consider is the availability of its compensation data. For those companies with large global workforces or high numbers of non-full-time employees, additional time will be needed to determine the identity of the median employee and calculate their total compensation, especially if sampling or estimates are not used.

Adjustments and Annualizing for Full- and Part-Time Employees

21. *Is it appropriate to allow registrants to* ***annualize the compensation for non-seasonal, non-temporary employees*** *that have only worked part of the year, as proposed? Why or why not? Would allowing annualizing the compensation for these employees likely impact the median or the pay ratio?*

22. *In the alternative, should registrants be* ***required to annualize the compensation*** *for these employees? Why or why not?*

23. *Should we require all registrants that rely on the proposed instruction to* ***annualize compensation for these employees to disclose that they have done so*** *(or only when the adjustment is material, as would be required under the proposed instruction for disclosure of material assumptions, adjustments and estimates)? Why or why not? If so, what should the disclosure entail? For example, should the registrant only be required to state that it has relied on the instruction, or should it also be required to discuss the number or percentage of employees for which compensation was annualized?*

WorldatWork: Regarding the annualizing issues raised in questions 21, 22 and 23, focus group discussions found that permitting annualizing adjustments for full-time employees who are with the company at the end of the reporting period would be appropriate. WorldatWork does not believe, however, that full-time employees who are no longer employed by the company as of the calculation date should be annualized nor included in the pool of employees to calculate the median. Given that the number of such full-time employees only employed for part of the year is small, it is unlikely they will have a material effect on the ratio, and disclosure should not be required. WorldatWork does not support a requirement making such annualized adjustments mandatory.

24. *Should we allow **full-time equivalent adjustments for part-time employees and temporary or seasonal employees,** as recommended by some commenters? Should we allow cost-of-living adjustments for non-U.S. employees as recommended by some commenters? If so in either case, please explain why. In particular, please address the potential concern that these kinds of adjustments could cause the ratio to be a less accurate reflection of actual workforce compensation. Is there an alternative way to mitigate this concern?*

WorldatWork: As described in the answer to question 7 above, WorldatWork does not believe that part-time, temporary or seasonal employees should be included in the pool of employees for calculating the median. Cost-of-living adjustments and full-time compensation adjustments would make compliance more burdensome by requiring more context in the explanation of how the ratio was calculated.

Methods for Identifying the Median Employee

25. *Should registrants be permitted, as proposed, to choose a method to **identify the median that is workable for the company based on its particular facts and circumstances**? Will registrants be able to use the proposed approach to identify the median? Do registrants need additional guidance or instructions to be able to use the proposed approach to identify the median? If so, what additional guidance is needed?*

WorldatWork: Although WorldatWork remains opposed to the proposed rule in its entirety, the flexibility afforded by the commission in identifying the median employee is a positive step, and WorldatWork encourages its inclusion in the final rule. Registrants themselves have the best sense of which approach will present the most accurate information at the lowest possible cost in staff time and financial resources.

However, WorldatWork still remains concerned that the pool of employees to be included in the calculation is unnecessarily large and urges the commission to limit the employees to those employed full-time and within the United States; to do so would both make compliance easier while not materially affecting the ratio's relevance.

26. *Do registrants need further guidance on the permitted use of **reasonable estimates in identifying the median**? If so, what should that guidance be? In the alternative, should the proposed requirement expressly disallow the use of reasonable estimates? Please explain how the usefulness of the pay ratio disclosure would be affected by the use of reasonable estimates. Should the rule specify **requirements for statistical sampling** or any other estimation methods, such as appropriate sample sizes for reasonable estimates or requiring the results to meet specified confidence levels? Why or why not? If so, what should the requirements be? For example, should the estimate have at least a 90% (or 85%, or some other percentage) confidence level?*

WorldatWork: Although WorldatWork does not support other aspects of the proposed rule, permitting registrants to use reasonable estimates to identify the median employee should be included in the final rule. The amount of guidance provided by the commission on this matter is sufficient.

Likewise, permitting general statistical sampling would present an accurate enough picture of a company's workforce without mandating specific confidence levels. The disclosure of the methodology of the statistical sampling should be sufficient enough to ensure an accurate figure in the pay ratio. Because every company has different access to overall compensation data due to unique workforces, international footprints, payroll system structures and staff resources, providing the maximum amount of flexibility is an important step. Companies will likely find that having the flexibility to comply with the pay ratio rule based on their particular combination of resources will help to comply with what could be a far more restrictive and burdensome rule.

27. *Are registrants likely to use **statistical sampling to identify the median**? How would registrants conduct the sampling? Would it be outsourced or conducted by internal personnel? How much would statistical sampling cost? Would the use of statistical sampling address costs relating to the inclusion of non-U.S. employees in the calculation?*

WorldatWork: The use of sampling to identify the median employee is a reasonable possibility for some companies, although participants in a focus group could not yet say whether sampling would be their preferred method. Likewise, there was not a consensus as to who would conduct the sampling because only some of the respondents believed that the necessary expertise could be found in house.

Employers are more concerned about the difficulty associated with gathering the data for the sampled population. As described above, companies may not have an integrated human resources system that includes multiple divisions, subsidiaries or international operations. Compiling and sorting through the vast quantities of data needed to present an accurate picture of a company's entire workforce remains the most burdensome aspect of the proposed rule. This will remain the case regardless of who conducts the statistical sampling – a third party or the company's own compensation professionals.

28. *Should registrants be permitted, as proposed, to **identify the median employee using a consistently applied compensation measure**? Why or why not? How would this impact compliance costs? Would this address costs arising from having employees in multiple jurisdictions and payroll systems? Should there be any limitations on the types of compensation measures that can be used? What compensation measure would registrants likely use for this purpose? How would that measure compare to total compensation calculated under Item 402(c)(2)(x)? How would the use of that measure affect the median (e.g. would it likely generate a median that is a reasonable approximation of the median of Item 402(c)(2)(x) total compensation)? What impact, if any, would the use of a consistently applied compensation measure have on the usefulness of the pay ratio disclosure? How could the proposed rules be changed to address any such impact? Are there any circumstances where it would be inappropriate to permit a registrant to use a consistently applied compensation measure to identify the median employee?*

While other aspects of the proposed rule are problematic, the ability to use consistently applied compensation measures is one of the primary ways that registrants can reduce the costs of complying with the pay ratio, and should be kept in the final rule.

30. *Could the flexibility of the proposed requirements allow a registrant to **distort its pay ratio** in material respects? If so, explain how.*

WorldatWork: The flexibility afforded to registrants is unlikely to lead to any material distortion of the ratio, as it will simply allow for an easier identification of the median employee. This does not mean, however, that the company will have some way of choosing who the median employee is so as to make the ratio appear more favorable. Registrants' disclosure of the methods used to identify the median will be sufficient to provide a check against any attempt to game the system.

Calculating the Total Compensation of the Median Employee

36. *Instead of allowing the use of reasonable estimates in determining total compensation (or any elements of total compensation) as described in this proposal, **should the rules prohibit the use of reasonable estimates for that purpose**? If so, why? Please include an explanation of how the potential usefulness of the pay ratio disclosure would be affected by a registrant's use of reasonable estimates in this context. Are there alternative ways to address this impact, such as requiring an explanation describing the use of estimates, rather than prohibiting the use of estimates?*

WorldatWork: The ability to use reasonable estimates of total compensation is one of the primary ways in which registrants can reduce the costs of complying with the pay ratio. It should be kept in the final rule.

37. *Is it likely that the proposed requirements would **affect the types of compensation that registrants provide to employees**, and if so, what would that impact be? For example, one commenter suggested that registrants could decide to discontinue pension and incentive plans for employees or eliminate 401(k) plan matching contributions in order to facilitate their calculation of the pay ratio. If so, how should the proposed requirements address that impact?*

WorldatWork: At this time we do not believe that employers will modify or discontinue any existing compensation or benefits plans so as to comply with the pay ratio. Employers tailor their compensation and benefits packages based on the unique needs of their workforce and as part of a comprehensive total rewards strategy. The pay ratio is unlikely to alter that company-wide strategy. Some participants in the focus groups were concerned that simply estimating pension accruals for employees as part of their total compensation will be costly to undertake and difficult to complete in the necessary timeframe between the end of the fiscal year and proxy disclosure season. However, those respondents did stress that they would continue to offer pension plans, and that their concerns were solely that estimating pension values would increase compliance costs.

Disclosure of Methodologies and Estimates

38. *Should we require registrants to **disclose information about the methodology** and material assumptions, adjustments or estimates used in identifying the median or calculating annual total compensation for employees, as proposed? Why or why not? Would this information assist investors in understanding the pay ratio? Are there changes we could make to the requirement to avoid boilerplate disclosure? Should we require a more technical discussion, such as requiring the disclosure of statistical formulas, confidence levels or the steps used in the data analysis?*

39. *Should we require **disclosure when a registrant changes its methodology** (or material assumptions, adjustments or estimates) from previous periods, where such change has a material effect, as proposed?*

Should registrants be required to describe the reasons for the change, as proposed? Should registrants be required to provide an estimate of the impact of the change on the median and the ratio, as proposed? Is the proposed information useful? Is there other information that should be required?

WorldatWork: In response to questions 38 and 39, providing basic disclosure of the methods used to determine the median employee and calculating total compensation are reasonable requirements. Providing disclosure ensures that the pay ratio is somewhat representative of a company's pay practices. The flexibility afforded companies necessarily means that explanations will provide the proper context for the ratio. Methodological changes should be disclosed if they are major (for example, using statistical sampling in one year and reasonable estimates in the following) and cause a material change in the ratio.

However, highly technical discussions are not likely to add to the relevance of the disclosure and would only serve as another compliance burden on compensation professionals. The commission has recently expressed concerns that investors are becoming overwhelmed by too much information required by financial regulations. Mandating the disclosures of statistical formulas, confidence levels and other technical analysis would seemingly add to the pool of information that most observers would find unnecessary. If a third party were to be brought in to conduct statistical sampling, additional technical disclosures or increased confidence levels could increase costs.

40. *Should we require registrants to* ***disclose additional narrative information about the pay ratio*** *or its components, or factors that give context for the median, such as employment policies, use of part-time workers, use of seasonal workers, outsourcing and off-shoring strategies? If so, what additional information should be required? Please be specific as to how this information would assist investors in understanding the pay ratio or in using the pay ratio disclosure. Please also be specific about the costs of providing such disclosure. How could such a requirement be designed to avoid boilerplate disclosure? Would such a requirement raise competition concerns?*

WorldatWork: Additional narrative disclosure requirements will only serve to add more costs in staff time and company resources, while adding little to the relevance of the pay ratio to potential investors. Given the commission's concerns about data overload for investors, piling layers on top of the existing pay ratio rule would only exacerbate the problem.

41. *Should we require registrants to* ***disclose additional metrics about the total compensation of all employees*** *(or of the statistical sample if one is used), such as the mean and the standard deviation, as a supplement to the required disclosure? Would additional metrics be useful to investors? We assume that these metrics could be provided without additional cost or at a low cost once the median has been identified. Is this assumption correct? If not, please identify the costs and benefits of such additional disclosure. Would such a requirement raise competition concerns?*

WorldatWork: Current shareholders and potential investors already receive detailed information about executive compensation levels through say-on-pay votes and Compensation Discussion and Analysis (CD&A) requirements. Applying the same rigorous standards or additional metrics to the compensation of all employees would add to the burden of compliance and serve to further overwhelm potential investors with data that will likely be of limited practical use.

<u>**Timing of Disclosure**</u>

44. ***Is the proposed timing workable for registrants****? Does it provide enough time after the end of the fiscal year for companies to identify the median of the total compensation of all employees for that year? We note that one commenter asserted that it could take registrants three months or more each year to calculate pay ratio disclosure, and, accordingly, that the disclosure would not be available in time to be included in the annual proxy statement or annual report. Would the ability to use reasonable estimates, consistently applied compensation measures, or statistical sampling be sufficient to alleviate this issue? For example, if a registrant is unable to calculate its employees' incentive compensation before such time, would it be able to reasonably estimate such compensation? Instead, should the proposed rules provide an accommodation for a company that cannot compile compensation information in time to be included in its proxy statement for the annual meeting of shareholders or Form 10-K, as applicable? For example, should registrants be permitted to delay the pay ratio disclosure until it is calculable and then file the disclosure under Item 5.02(f) of Form 8-K?135 If so, under what circumstances should registrants be permitted to do so? Or, if we were to allow for such a delay, should we specify when the disclosure should be required to be made? If so, what deadline should we impose? Would such a delay impact the usefulness to investors of the disclosure, particularly if the disclosure would not be available in time for inclusion in proxy or information statements for the annual meeting of shareholders?*

WorldatWork: The timing of the disclosure may not be workable for some registrants, so additional flexibility would be welcomed. Practitioners will need additional time to familiarize themselves with the final rule, consider various approaches, and calculate the most cost-effective and accurate way of determining the median employee, especially in the first year of compliance.

As described in the answer to question 17, WorldatWork believes that companies should have the flexibility to choose the date that would allow for the most complete analysis of the workforce at the minimum cost of compliance.

<u>**Instructions for Calculating Ratio When PEO Pay Information is Unavailable**</u>

49. *Would the proposed instruction* ***cause registrants to change their compensation practices****? Alternatively, would the proposed instruction have an adverse impact on the usefulness to investors of the proposed pay ratio disclosure? How should we change the proposed requirements to address such impacts?*

WorldatWork: As with earlier questions regarding the types of compensation that employers will provide and the potential to adjust a company's workforce, at the moment WorldatWork does not believe that the proposed rule will cause registrants to modify their compensation practices in any substantial way. Compensation and benefits packages as part of a company's total rewards model are tailored to their unique needs, and the pay ratio alone is unlikely to force changes.

<u>**General Comment Requests**</u>

59. *Have we struck the* ***appropriate balance between prescribing rules to satisfy the mandate of Section 953(b) and allowing a registrant flexibility*** *to identify the median in a manner that is appropriate to its own facts and circumstances?*

WorldatWork: WorldatWork remains concerned that the pay ratio rule will prove burdensome on registrants while not providing investors with a meaningful tool in which to evaluate a company's soundness. The commission has taken some encouraging first steps by allowing companies flexibility in the methods used to determine the median employee. But these flexibility measures alone are not enough of a reprieve given the unnecessarily large pool of employees with which registrants must work in determining the median.

60. *Are there **alternatives to the proposals we should consider that would satisfy the requirements of Section 953(b) of the Dodd-Frank Act?***

WorldatWork: It is within the scope of Section 953(b) to limit the pool of employees included in the calculation of the median employee to those employed in the United States at full-time status. This will result in a ratio that is more accurately reflective of a registrant's workforce and assist compensation professionals in compliance with the rule at a minimum cost.

Conclusion

WorldatWork appreciates the opportunity to provide comments to the SEC on the proposed 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 take into account the views expressed in this comment letter because WorldatWork's compensation and benefits professional members and subscribers will be responsible for complying with these rules on behalf of registrants.

On behalf of WorldatWork's 65,000 members, we look forward to working with the commission on this issue and future endeavors. Please do not hesitate to contact me or Jack Swetland, WorldatWork government affairs manager, at 202-315-5500 for further information.

Sincerely,

Cara W. Welch

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Vice President, Public Policy, News & Publications