

BURDENSOME DATA COLLECTION RELIEF ACT

—————
JULY 12, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1062]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1062) to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to repeal certain additional disclosure requirements, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1062, the Burdensome Data Collection Relief Act, repeals Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203), which requires all publicly traded companies to calculate and disclose for each filing with the Securities and Exchange Commission the median annual total compensation of all employees of the company excluding the Chief Executive Officer (CEO), disclose the annual total compensation of the CEO, and calculate and disclose a ratio comparing those two numbers. The legislation is needed to alleviate the enormous burden and complexity this provision poses to publicly traded companies, with very little, if any, corresponding benefit to investors.

BACKGROUND AND NEED FOR LEGISLATION

The disclosure requirements imposed by Section 953(b) of the Dodd-Frank Act originated in the Senate, and were neither dis-

cussed nor debated during the Conference Committee’s deliberations on the legislation. Following enactment of Dodd-Frank, both Republican and Democratic Members of Congress began to question the costs of complying with Section 953(b), the utility of the information required to be disclosed, and the feasibility of its implementation.

On September 24, 2010, the Financial Services Committee received testimony regarding the difficulty and complexity that will confront public companies in meeting these new requirements. The Committee learned that public companies could be required to calculate the median pay for thousands of employees globally, and that compensation data is housed in numerous computer systems and may not be sufficiently accurate to comply with the disclosure rules. The Committee also heard testimony that such disclosures may ultimately yield little useful information to investors.

The Subcommittee on Capital Markets and Government Sponsored Enterprises held a legislative hearing on H.R. 1062 on March 16, 2011. During that hearing, the Subcommittee received testimony from Mr. Kenneth Bertsch, among others. Mr. Bertsch, who testified on behalf of the Society of Corporate Secretaries and Governance Professionals—a professional association with more than 3,100 members who support the work of boards of directors at more than 2,000 companies—stated:

“We believe that it will be virtually impossible for large global companies to comply with Section 953(b) as now written, and that implementation will impose a substantial burden even on smaller non-global issuers. More importantly, while we acknowledge a public policy concern on pay gaps in the United States, we strongly believe the required ratio will not be material or meaningful to investors in company securities. Accordingly, we believe the provision should not be implemented at this time; rather this section should be repealed and, if it is determined to be appropriate, new more workable legislation should be enacted.”

Because the costs of compliance with Section 953(b) are high relative to the benefits to investors from the disclosures, if any, Representative Hayworth introduced H.R. 1062 on March 14, 2011 to repeal Section 953(b) so that resources that would have been allocated to complying with this requirement can be devoted to more productive economic activities.

HEARINGS

On March 16, 2011, the Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing entitled “Legislative Proposals to Promote Job Creation, Capital Formation, and Market Certainty,” to consider H.R. 1062 and four other bills. The following witnesses testified:

- Mr. Kenneth A. Bertsch, President and CEO, Society of Corporate Secretaries & Governance Professionals
- Mr. Tom Deutsch, Executive Director, American Securitization Forum
- Ms. Pam Hendrickson, Chief Operating Officer, The Riverside Company

- Mr. Damon Silvers, Policy Director and Special Counsel, AFL-CIO
- Mr. David Weild, Senior Advisor, Grant Thornton, LLP
- Mr. Luke Zubrod, Director, Chatham Financial

COMMITTEE CONSIDERATION

The Subcommittee on Capital Markets and Government Sponsored Enterprises met in open session on May 3 and 4, 2011, and ordered H.R. 1062 favorably reported to the full Committee by a record vote of 20 yeas and 12 nays (Record vote No. CM-26).

The Committee on Financial Services met in open session on June 22, 2011 and ordered H.R. 1062 favorably reported to the House by a record vote of 33 yeas and 21 nays (Record vote No. FC-46).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

On June 22, 2011, the Committee on Financial Services met in open session and ordered H.R. 1062 favorably reported to the House by a record vote of 33 yeas and 21 nays (Record vote No. FC-46). The names of Members voting for and against follow:

RECORD VOTE NO. FC-46

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-------------------------------|-------|-------|---------|----------------------------|-------|-------|---------|
| Mr. Bachus | X | ..... | ..... | Mr. Frank (MA) ..... | ..... | X | ..... |
| Mr. Hensarling | X | ..... | ..... | Ms. Waters ..... | ..... | X | ..... |
| Mr. King (NY) ..... | ..... | ..... | ..... | Mrs. Maloney ..... | ..... | X | ..... |
| Mr. Royce | X | ..... | ..... | Mr. Gutierrez ..... | ..... | ..... | ..... |
| Mr. Lucas | X | ..... | ..... | Ms. Velázquez ..... | ..... | X | ..... |
| Mr. Paul ..... | ..... | ..... | ..... | Mr. Watt ..... | ..... | X | ..... |
| Mr. Manzullo | X | ..... | ..... | Mr. Ackerman ..... | ..... | X | ..... |
| Mr. Jones | X | ..... | ..... | Mr. Sherman ..... | ..... | X | ..... |
| Mrs. Biggert | X | ..... | ..... | Mr. Meeks ..... | ..... | X | ..... |
| Mr. Gary G. Miller (CA) | X | ..... | ..... | Mr. Capuano ..... | ..... | X | ..... |
| Mrs. Capito | X | ..... | ..... | Mr. Hinojosa ..... | ..... | X | ..... |
| Mr. Garrett | X | ..... | ..... | Mr. Clay ..... | ..... | X | ..... |
| Mr. Neugebauer | X | ..... | ..... | Mrs. McCarthy (NY) ..... | ..... | X | ..... |
| Mr. McHenry | X | ..... | ..... | Mr. Baca ..... | ..... | ..... | ..... |
| Mr. Campbell | X | ..... | ..... | Mr. Lynch ..... | ..... | X | ..... |
| Mrs. Bachmann | X | ..... | ..... | Mr. Miller (NC) ..... | ..... | X | ..... |
| Mr. McCotter | X | ..... | ..... | Mr. David Scott (GA) | X | ..... | ..... |
| Mr. McCarthy (CA) ..... | ..... | ..... | ..... | Mr. Al Green (TX) ..... | ..... | X | ..... |
| Mr. Pearce | X | ..... | ..... | Mr. Cleaver ..... | ..... | X | ..... |
| Mr. Posey | X | ..... | ..... | Ms. Moore ..... | ..... | X | ..... |
| Mr. Fitzpatrick | X | ..... | ..... | Mr. Ellison ..... | ..... | X | ..... |
| Mr. Westmoreland ..... | ..... | ..... | ..... | Mr. Perlmutter | X | ..... | ..... |
| Mr. Luetkemeyer | X | ..... | ..... | Mr. Donnelly ..... | ..... | X | ..... |
| Mr. Huizenga | X | ..... | ..... | Mr. Carson ..... | ..... | X | ..... |
| Mr. Duffy | X | ..... | ..... | Mr. Himes | X | ..... | ..... |
| Ms. Hayworth | X | ..... | ..... | Mr. Peters ..... | ..... | X | ..... |
| Mr. Renacci | X | ..... | ..... | Mr. Carney | X | ..... | ..... |
| Mr. Hurt | X | ..... | ..... |  |  |  |  |
| Mr. Dold | X | ..... | ..... |  |  |  |  |
| Mr. Schweikert | X | ..... | ..... |  |  |  |  |
| Mr. Grimm | X | ..... | ..... |  |  |  |  |
| Mr. Canseco | X | ..... | ..... |  |  |  |  |
| Mr. Stivers ..... | ..... | ..... | ..... |  |  |  |  |
| Mr. Fincher | X | ..... | ..... |  |  |  |  |

During the Committee consideration of H.R. 1062, the following amendment was considered:

1. An amendment offered by Mr. Frank, No. 1, to define the term “employee” for purposes of the median compensation computation, to require an annual disclosure, and to limit median compensation to cash compensation, was not agreed to by a record vote of 25 ayes and 27 nays (Record vote No. FC–45).

RECORD VOTE NO. FC–45

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-------------------------|-----|-----|---------|----------------------|-----|-----|---------|
| Mr. Bachus | | X | | Mr. Frank (MA) | X | | |
| Mr. Hensarling | | X | | Ms. Waters | X | | |
| Mr. King (NY) | | | | Mrs. Maloney | X | | |
| Mr. Royce | | X | | Mr. Gutierrez | | | |
| Mr. Lucas | | | | Ms. Velázquez | X | | |
| Mr. Paul | | | | Mr. Watt | X | | |
| Mr. Manzullo | | X | | Mr. Ackerman | X | | |
| Mr. Jones | | X | | Mr. Sherman | X | | |
| Mrs. Biggert | | X | | Mr. Meeks | X | | |
| Mr. Gary G. Miller (CA) | | X | | Mr. Capuano | X | | |
| Mrs. Capito | | X | | Mr. Hinojosa | X | | |
| Mr. Garrett | | X | | Mr. Clay | X | | |
| Mr. Neugebauer | | X | | Mrs. McCarthy (NY) | X | | |
| Mr. McHenry | | X | | Mr. Baca | | | |
| Mr. Campbell | | X | | Mr. Lynch | X | | |
| Mrs. Bachmann | | X | | Mr. Miller (NC) | X | | |
| Mr. McCotter | | X | | Mr. David Scott (GA) | X | | |
| Mr. McCarthy (CA) | | | | Mr. Al Green (TX) | X | | |
| Mr. Pearce | | | | Mr. Cleaver | X | | |
| Mr. Posey | | X | | Ms. Moore | X | | |
| Mr. Fitzpatrick | | X | | Mr. Ellison | X | | |
| Mr. Westmoreland | | | | Mr. Perlmutter | X | | |
| Mr. Luetkemeyer | | X | | Mr. Donnelly | X | | |
| Mr. Huizenga | | X | | Mr. Carson | X | | |
| Mr. Duffy | | X | | Mr. Himes | X | | |
| Ms. Hayworth | | | | Mr. Peters | X | | |
| Mr. Renacci | | X | | Mr. Carney | X | | |
| Mr. Hurt | | X | | | | | |
| Mr. Dold | | X | | | | | |
| Mr. Schweikert | | X | | | | | |
| Mr. Grimm | | X | | | | | |
| Mr. Canseco | | X | | | | | |
| Mr. Stivers | | | | | | | |
| Mr. Fincher | | X | | | | | |

The following amendment and motion were also considered by the Committee:

1. An amendment offered by Mr. Ellison, No. 2, to strike the text of the bill and insert a new title and a GAO study on pay ratios, was not agreed to by voice vote.

2. A motion offered by Mr. Garrett to move the previous question on H.R. 1062 was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The purpose of H.R. 1062, the Burdensome Data Collection Relief Act, is to alleviate the enormous burden and complexity imposed by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, which requires all publicly traded companies to calculate and disclose for each filing with the SEC the median annual total compensation of all employees of the company excluding the CEO, disclose the annual total compensation of the CEO, and calculate and disclose a ratio comparing those two numbers. H.R. 1062 repeals this section of the Dodd-Frank Act. Because the costs of compliance with Section 953(b) are high in comparison to the benefits to investors of the disclosures, if any, the objective of H.R. 1062 in repealing Section 953(b) is to allow resources that would have been allocated to complying with this requirement to be devoted to productive economic activities.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 30, 2011.

Hon. SPENCER BACHUS,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1062, the Burdensome Data Collection Relief Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Dubary Brea and Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1062—Burdensome Data Collection Relief Act

H.R. 1062 would repeal a requirement that issuers of certain securities include information about compensation of their employees in disclosures required to be made to the Securities and Exchange Commission (SEC). Based on information from the SEC, CBO estimates that implementing H.R. 1062 would not have a significant impact on spending subject to appropriation. Enacting H.R. 1062 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1062 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Dubary Brea and Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1062 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides a short title to the bill by citing it as the “Burdensome Data Collection Relief Act.”

Section 2. Repeal of additional disclosure requirements

This section repeals Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203), and provides that any regulations issued pursuant to such subsection shall have no force or effect.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

* * * * *

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

* * * * *

Subtitle E—Accountability and Executive Compensation

* * * * *

SEC. 953. EXECUTIVE COMPENSATION DISCLOSURES.

(a) * * *

[(b) ADDITIONAL DISCLOSURE REQUIREMENTS.—

[(1) IN GENERAL.—The Commission shall amend section 229.402 of title 17, Code of Federal Regulations, to require each issuer to disclose in any filing of the issuer described in section 229.10(a) of title 17, Code of Federal Regulations (or any successor thereto)—

[(A) the median of the annual total compensation of all employees of the issuer, except the chief executive officer (or any equivalent position) of the issuer;

[(B) the annual total compensation of the chief executive officer (or any equivalent position) of the issuer; and

[(C) the ratio of the amount described in subparagraph (A) to the amount described in subparagraph (B).

[(2) TOTAL COMPENSATION.—For purposes of this subsection, the total compensation of an employee of an issuer shall be determined in accordance with section 229.402(c)(2)(x) of title 17, Code of Federal Regulations, as in effect on the day before the date of enactment of this Act.]

* * * * *

MINORITY VIEWS

Section 953(b) of the Wall Street Reform Act provides much-needed transparency about relative compensation levels, within a public company and between a company and its peers. It does this by requiring each public company to disclose the ratio of the total compensation of its CEO to that of its median-compensated employee. This information is relevant to investors, particularly those concerned about large compensation differentials between CEOs and average workers or relative compensation levels at industry peers, as well as to labor groups and corporate governance reformers. This information also is especially relevant because it will inform shareholders' annual "say-on-pay" votes.

Some valid concerns have been expressed about the quarterly frequency of the reporting requirement, the inclusion of domestic and foreign-based employees, and the complicated nature of identifying the median-compensated employee if all forms of compensation are included. To address these concerns, the Democrats offered an amendment that would (1) make the disclosure annual instead of quarterly; (2) limit coverage to domestic employees; and (3) identify the median-compensated employee based on only cash compensation. These three changes would have addressed the major concerns expressed about section 953(b) and thus rendered an outright repeal unnecessary.

This amendment was offered because Democrats are serious about fixing identified problems with section 953(b) while preserving the meaningful additional information contained in the new disclosure it requires. By rejecting these changes (25–27) in favor of an outright repeal, the Republicans are depriving the public of a meaningful tool by which to assess executive compensation practices within an individual firm and between a firm and its peers.

BARNEY FRANK.
EMANUEL CLEAVER.
GARY L. ACKERMAN.
KEITH ELLISON.
CAROLYN B. MALONEY.
AL GREEN.
WM. LACY CLAY.
BRAD MILLER (NC).
JOE DONNELLY.
MICHAEL E. CAPUANO.
STEPHEN F. LYNCH.
ANDRÉ CARSON.
LUIS V. GUTIERREZ.
RUBÉN HINOJOSA.
MELVIN L. WATT.
GWEN MOORE.
MAXINE WATERS.

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