# Wall Street's

# Two Cents

## Industry's Opposition to a Modest Pay Disclosure Rule

**April 2011**

40 YEARS PUBLIC CITIZEN

**Acknowledgments**
This report was written by Bartlett Naylor and Negah Mouzoon.

**About Public Citizen**

Public Citizen is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

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## Introduction

> 'The big banks became stronger as a result of the bailout. That may seem extraordinary, but it's really true. They're turning that increased economic clout into more political power. And they're using that political power to go out and take the same sort of risks that got us into disaster in September 2008.'
>
> –Simon Johnson,
> Former Chief Economist, IMF

Federal financial regulators are asking members of the public to put in their two cents on recent financial rulemakings. Yet, among the commenting parties, Wall Street is investing far more than two cents—more like $2 million.

Since President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (known as the Dodd-Frank Act) into law July 21, 2010, Wall Street has lobbied hard to delay the law's implementation. Last year, Wall Street spent $251 million and dispatched 2,533 lobbyists to lobby Congress.[1] Wall Street also has been meeting with executive branch officials to influence the rules that will put Dodd-Frank into practice. Last November, Citigroup, Goldman Sachs, Morgan Stanley, JP Morgan and other "too big to fail" financial firms received an audience with Treasury Department officials, while consumers watched from the sidelines.[2] More recently, the new House Republican leadership has launched a cacophony of hearings on Dodd-Frank to let bankers vent anger at the new reform requirments.

Wall Street is also poised to take full advantage of the public comment opportunities that accompany the creation of federal rules. Once proposed rules are published in the Federal Register, members of the public typically have at least thirty days to offer their comments and opinions. As the rulemaking process goes forward, Public Citizen encourages ordinary Americans to submit comments to increase the chances that the final rules reflect the reforms Congress intended—fixing the structural problems that led to the financial crash of 2008 and the calamitous recession that ensued.

Wall Street appears determined to dilute these rules so it can continue doing business as usual. Behind its comments stands an army of highly paid lobbyists with close connections to Capitol Hill and executive branch agencies. Many commenters also boast an established history of contributing generous sums to lawmakers, which helps special interests like the banking industry to command attention in Washington.

[1] Center for Responsive Politics. The lobbying figures include activities by entities in the finance, insurance, and real estate industries.
[2] Ben Protess, "Wall Street Visits Washington About Dodd-Frank," *The New York Times*, Dec. 31, 2010. Available at http://dealbook.nytimes.com.

This is the first report in our *Two Cents* series, in which we will document the efforts of special interests to influence the rules that will determine the success or failure of Dodd-Frank. Each report will examine the lobbying expenditures, campaign contributions and "revolving door" connections of the most strident opponents of reform. Our inaugural installment looks at pre-rulemaking efforts to weaken the implementation of the financial reform bill's requirement that companies registered with the Securities and Exchange Commission (SEC) to reveal how much their CEO makes in comparison to their average employees.

## Section 953(b) of the Dodd-Frank Wall Street Reform

At the dawn of the 20th century, John Pierpont Morgan thought that the best paid banker shouldn't earn more than 20 times that of the least paid person in the firm. The founder of the firm now known as JPMorgan Chase didn't elaborate on this formula, but thought that any more pay just wasn't "right." One can quibble with his standard or assert that the robber baron himself surely must have violated it. But many would still agree with it today.

In 2010, the CEO of JPMorgan Chase was paid $20.8 million.[3] JPMorgan does not disclose what its contracted custodians earn, but it is likely close to $13.50 per hour.[4] That translates to about $28,000 annually, a salary that would only amount to only 1/742 of CEO Jamie Dimon's 2010 pay. For the average JPMorgan custodian to receive one-twentieth of Jamie Dimon's compensation, he would need to be paid $1,040,000 annually.

**Out of the 23 groups commenting on section 953(b), RILA, Davis Polk, American Benefits Council and COEC accounted for more than half of all commenters' lobbying expenditures. They also made more than half a million dollars in political contributions to influence during the 2010 elections.**

Dodd-Frank aims to provide insight into companies' current salary ratios. Section 953(b) of the Act requires each company to publish the ratio between the pay of its CEO and the median income of its employees. The provision must be implemented by the SEC before it takes effect. There is no deadline for SEC rulemaking, so it remains unclear when the agency will begin work on the official rule. However, the SEC requested general comments to assist it in the creation of a proposed rule. To date, at least 23 parties have submitted comments addressing section 953(b). These comments were submitted to assist the agency while it formulates a proposed rule. After the SEC issues a proposed rule, the agency will solicit input through the conventional comment making process.

[3] Eric Dash and Susanne Craig, "Big Paydays Return With Big Profits at Wall St. Banks," *The New York Times*, Jan. 21, 2011.
[4] Bob Herbert, "Of Janitors and Kings," *The New York Times*, Sept. 3, 2010. Available at www.nytimes.com/2010/09/04/opinion/04herbert.html

Publication of this ratio won't cure the problem of excessive executive compensation. Sponsors in Congress held no such aspirations. But such disclosure could help shareholders determine whether the CEOs' pay is appropriate.

Not surprisingly, some businesses and business trade associations oppose the disclosure of pay ratios. Some claim that calculating this data will be difficult. (While they claim to be able to forecast the cost of additional paperwork to the penny, they profess an inability to calculate how much they pay their employees.)

Public Citizen has sifted through comments that discuss section 953(b) to highlight organizations that are seeking to influence the rulemaking process—a smallscope of participants in the financial reform debate. Among the 23 commenters on Section 953(b), Public Citizen focused on four particular groups representing industry critics with extensive lobbying operations: the Retail Industry Leaders Association (RILA), Davis, Polk & Wardwell, the Center on Executive Compensation (COEC)[5] and the American Benefits Council.

In 2010, these four groups spent more than $4.5 million lobbying on financial regulation and other issues. They deployed 46 individuals—37 of whom are former government employees—to lobby specifically on issues relating to financial regulation, and made $660,180 in political contributions.[6] Their $4.5 million lobbying bill accounts for half of the total lobbying expenditures by all 23 commenters.

[5] COEC commented under the name of HR Policy Association, its umbrella organization.
[6] Contributions were for the entire 2010 election cycle, which includes 2009.

## Retail Industry Leaders Association (RILA)

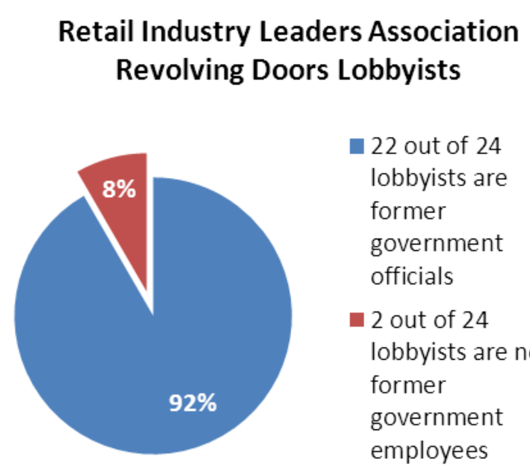
The Retail Industry Leaders Association (RILA) represents more than 200 retailers operating 100,000 stores and selling more than $1.5 trillion in goods. The association complains regarding section 953(b) that its members' "systems were never designed to produce the consistent and integrated data" required to generate a ratio involving their employees' median incomes because they employ many people in foreign countries.

**$1,984,940** – RILA accounted for one-fourth of the combined lobbying expenses of the 23 groups that commented on 953(b).[7]

**$191,525** – In 2010, RILA, political action committee (PAC) and employees made $191,525 in campaign contributions. Of this $184,875 was from the PAC.

**6** – In addition to its own lobbyists, RILA employed six full-time lobbying firms to lobby on financial regulation.

**92%** – 22 out of the 24 of the RILA lobbyists who worked on financial regulation issues are former government officials.


[7] Calculations include only commenting groups that disclosed lobbying on financial reform issues in 2010. The commenting groups spent $8.2 million combined 2010 on lobbying. Disclosure rules to not require groups to enumerate how much they spent lobbying on individual issues.

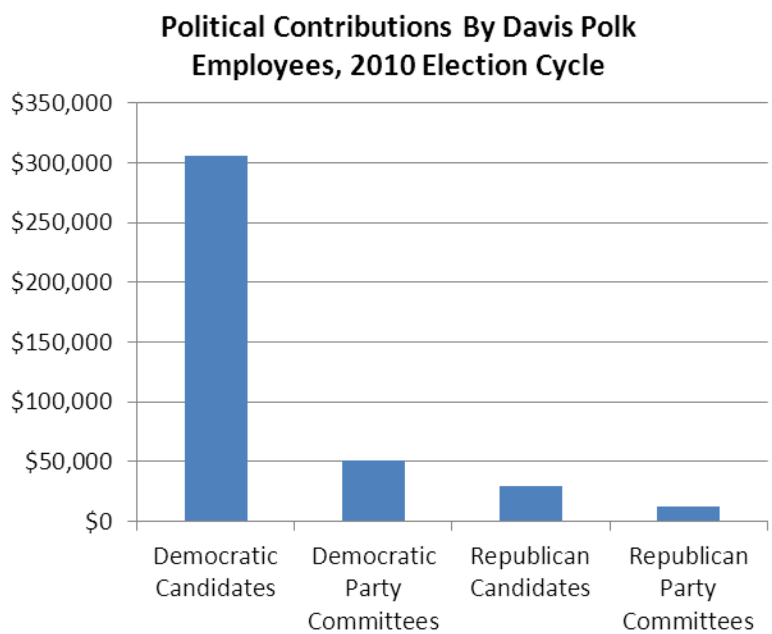
## Davis, Polk & Wardwell LLP

Davis Polk & Wardwell LLP, which has been employed as counsel for Dodd-Frank Act implementation by "all six of the largest U.S. banking organizations, the Securities Industry and Financial Markets Association (SIFMA) . . . [and] several other financial institutions," wants to exclude from the 953(b) calculation the pay for low-wage workers, especially part time employees and those who work outside the United States.[8] The firm claims complications stemming from various foreign laws.

**$120,000** – In 2010, Davis Polk received $120,000 to lobby solely on financial regulation issues.

**$399,611** – In 2010, Davis Polk employees made $399,611 in political contribution.

**75%** – 3 out 4 Davis Polk lobbyists lobbying on financial regulation are former government officials.




[8] Davis Polk & Wardwell, Financial Institutions, http://www.davispolk.com/practices/corporate/financial-institutions/.

## Center on Executive Compensation

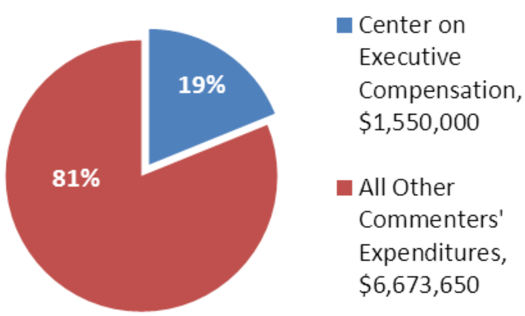
The Center on Executive Compensation (COEC) devoted 25 pages of comments to complaints that the disclosure required by 953(b) would involve too much paperwork. The Center is a division of the HR Policy Association, which represents human resource officers of more than 300 large companies. In addition to extensively commenting on section 953(b), the COEC met with SEC representatives four separate times to discuss executive compensation regulation. No other organization that commented on 953(b) has met with the SEC more than once.

**$1,550,000** – In 2010, COEC, as a part of HR Policy Association, spent $1,550,000 lobbying on financial regulation and other issues.

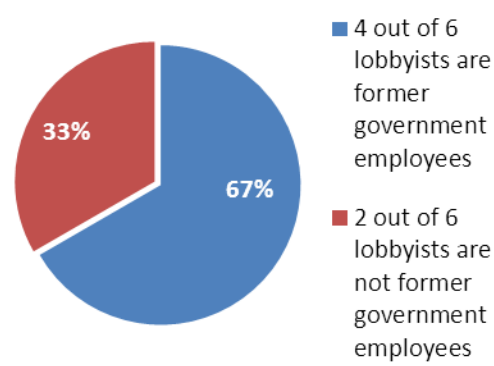
**4** – COEC received an audience with SEC officials four times more than the average commenter.

**67%** – 4 out 6 lobbyists lobbying on behalf of COEC on financial regulation are former government officials.

**Center on Executive Compensation 2010 Lobbying Expenditures**




**Center on Executive Compensation Revolving Doors Lobbyists**



## American Benefits Council

The American Benefits Council (ABC), a lobbying firm that represents Fortune 500 companies, claims that it is "cost-prohibitive" to assess all the compensation employees receive. At the same time, the group asked regulators to permit more complicated calculations in which companies pro-rate the pay of part-time and seasonal employees.

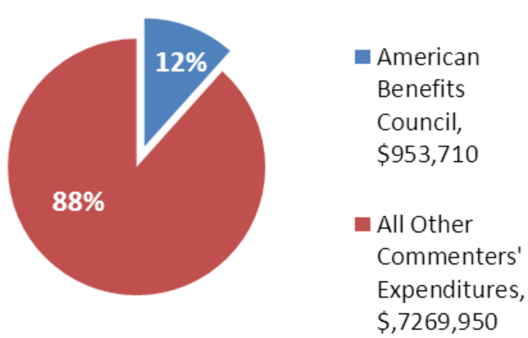
**$953,710** – In 2010, ABC spent $953,700 lobbying on financial regulation and other issues.

**$52,345** – In 2010, ABC made $52,345 in campaign contributions, of which $47,445 came from its political action committee (PAC)

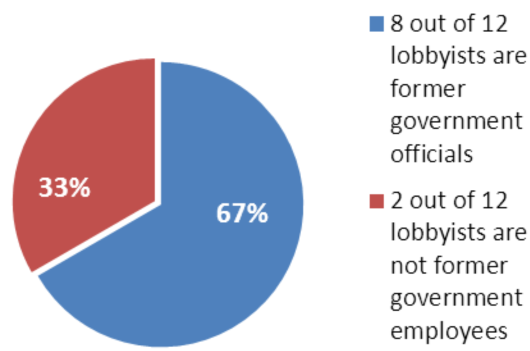
**2** – In addition to its own lobbyists, ABC employed two full-time lobbying firms to lobbying on financial regulation in 2010.

**67%** – 8 out 12 lobbyists lobbying on behalf of ABC on financial regulation issues are former government officials.

**American Benefits Council 2010 Lobbying Expenditures**




**American Benefits Council Revolving Doors Lobbyists**



## Appendix: Lobbyists for Major 953(b) Critics & Their Former Government Affiliations

| 2010 Financial Regulation Lobbyists | Former Government Office |
|---|---|
| **Retail Industry Leaders Association** | |
| **Lobbyist** | **Former Government Position(s)** |
| **Sarah Arbes** | Department of Labor |
| **Kirk Blalock,** | Department of Education, White House |
| **Stephen W. Cannon** | Antitrust Division, Deputy Assistant Attorney General |
| **Julie Carr** | Rep. Joseph Pitts (R-Pa.) |
| **Kirsten Chadwick** | White House |
| **Mike Chappell** | Rep. Roger Wicker (R Miss.), Rep. Charles Pickering (R-Miss.) |
| **Lori Denham** | Rep. Darlene Hooley (D-Ohio), Rep. Calvin Dooley (D-Calif.) |
| **`Steve Eichenauer** | Sen. Jack Reed (D-R.I.) |
| **John Emling** | Rep. Eric Cantor (R-Va.), Federal Emergency Management Agency, White House |
| **Don Fierce** | Rep. James Broyhill (R-Va.), Rep. Walter Powell (R Ohio), Rep. Lamar Baker (R-Tenn.), General Services Administration |
| **Kate Hull** | Sen. William Cohen (R-Maine), Sen. Tim Hutchinson (R-Ark.), Senate Health, Education, Labor & Pensions Subcommittee on Aging |
| **Katie Huffard** | Sen. Bill Frist (R-Tenn.) |
| **Mark Isakowitz** | Rep. Paul Gillmor (R-Ohio), Senate Labor & Human Resources Subcommittee on Aging |
| **Aleix Jarvis** | Sen. Lindsey Graham (R-S.C.), Rep. Charles H. Taylor (R-N.C.) |
| **Lisa Kountoupes** | Department of Energy, Rep. John D. Dingell (D-Mich.), Executive Office of President, Office of Management & Budget |
| **Stephanie Lester** | House Ways & Means Committee |
| **Katherine Lugar** | Sen. Richard G. Lugar (R-Ind.), Rep. Tim Roemer (D-Ind.) |
| **Joe O'Neill** | Sen. Lloyd Bentsen (D-Texas) |
| **Patrick O'Neill** | None reported |
| **Melissa Shannon** | Rep. Nancy Pelosi (D-Calif.), Rep. Nita M. Lowey (D-N.Y.) |
| **Paul Synder** | Rep. Edgar Jenkins (D-Ga.), Rep. Thomas O'Neil (R-Mass.) |
| **Andrew Szente** | None reported |
| **Mark Warren** | Department of Treasury, Senate Republican Policy Committee, House Small Business Committee, Sen. Christopher K. Bond (R-Mo.), Senate Small Business Committee |

| | |
|---|---|
| **Shawn Whitman** | Rep. John A. Barrasso (R-W.Y.), Sen. Craig Thomas (R-Wyo.) |

**American Benefits Council**

| Lobbyist | Former Government Position(s) |
|---|---|
| **Jon Breyfogle** | Department of Labor, Pension Benefit Guaranty Corporation, Office of Management & Budget |
| **James M. Delaplane** | Rep. Earl Pomero (D N.D.), Pension Benefit Guaranty Corporation |
| **Lynn Dudley** | None reported |
| **Randolf Hardock** | Department of Treasury, Benefits Tax Counsel |
| **Diann Howland** | Senate Health, Education, Labor and Pensions Committee, Senate Finance Committee |
| **Janet Jacobson** | None reported |
| **James Klein** | None reported |
| **Kent A. Mason** | None reported |
| **Barbara Pate** | Rep. Rob Portman (R Ohio), Rep. James Pickle (D-Texas) , House Ways and Means Subcommittee on Oversight |
| **Kenneth Porter** | None reported |
| **Jill Randolph** | Agency for Health Care Administration, Gov. Jeb Bush (R-Fla.), Health and Human Services Policy Team |
| **Brigen Winters** | House Ways and Means Committee |

**Davis, Polk & Wardwell LLP**

| Lobbyist | Former Government Position(s) |
|---|---|
| **Robert Colby** | U.S. Securities and Exchange Commission |
| **John Douglas** | Federal Deposit Insurance Council |
| **Randall Guynn** | None reported |
| **Sahni Reena** | U.S. Securities and Exchange Commission |

**Center on Executive Compensation (under HR Policy Association)**

| Lobbyist | Former Government Position(s) |
|---|---|
| **Timothy Bartl** | Rep. Steve Gunderson (R Wis.) |
| **Kendra Kosko** | None reported |
| **Jeffrey McGuiness** | Department of Health and Human Services |
| **Marisa Milton** | Sen. Paul S. Sarbanes (D M.), Rep. Jerrold Nadler (D-N.Y.) |
| **Michael Peterson** | None reported |
| **Daniel Yager** | House Education & Labor Committee, Rep. Marge Roukema (R N.J.), Rep. Steve Gunderson (R Wis.), Rep. Jerrold Nadler (D N.Y.) |