

CRS Report for Congress

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Securities Fees and SEC Pay Parity

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Summary

Sellers of corporate stock, companies that issue new stocks and bonds, and bidders in corporate takeovers all pay fees to the Securities and Exchange Commission (SEC). These fees were enacted to fund the SEC, but the amount of fees collected in recent years has far exceeded the SEC's budget. (In FY2000, the SEC collected \$2.27 billion in fees, while the agency's budget was \$377 million.) Legislation enacted by the 107th Congress (P.L. 107-123, H.R. 1088) reduced securities fees by lowering the percentage rates of some fees and by setting annual caps on the amounts collected by others. The law also included "pay parity" provisions that allow the SEC to raise salaries for certain employees to levels comparable to the salaries of federal bank examiners, but the 107th Congress adjourned before funds for this purpose were appropriated. This report provides background and analysis of the securities market fee and pay parity legislation enacted in the 107th Congress. It will not be updated further.

Securities Transaction Fees: Background

Since the 1930s, the securities laws have imposed fees on certain transactions in securities markets. The principal fees are:

- ! Section 6(b)¹ registration fees, paid by corporations when they register new stocks and bonds for sale to investors.
- ! Section 31² transaction fees, paid by sellers of corporate stock on the stock exchanges and the Nasdaq market. (Bonds and other debt securities are exempt).

¹ Of the Securities Act of 1933.

² Of the Securities Exchange Act of 1934.

- ! Fees on mergers and tender offers, which are bids to acquire publicly-traded corporations through purchase of their stock.³

P.L. 107-123 reduced the basic rate of the 6(b) fees from \$200 per \$1 million in securities sold, or 1/50th of 1 percent, to \$92 per \$1 million. The Section 31 fee rate was reduced from 1/300th of 1% to \$12 per million in stock sales. The new law also includes dollar figures called "target offsetting collection amounts" for both Section 31 and 6(b) fees for fiscal years 2002 through 2011. The SEC is required to adjust the basic rates for those fees to make it "reasonably likely" that collections would equal the target amounts.

The basic fee rate for merger and tender offers was reduced from \$200 to \$92 per million, and will be adjusted annually to the same level as the 6(b) fees.

In March 2002, the SEC began issuing fee rate advisories, adjusting the rates to achieve the target amounts. On October 18, 2002, the rates were set for FY2003 as follows: \$30.10 per million in stock sales (Section 31 fee) and \$92 per million for the 6(b) and merger and tender offer fees.

Table 1 below shows the amounts collected in FY2000, by type of fee.

Table 1. Securities Transaction Fees Collected in FY2000
(in millions of dollars)

Type of Fee	Total
Section 31 (stock sales)	1,090.1
Section 6(b) (new issues)	1,102.9
Mergers & tender offers	78.3
Totals	2,271.3

Source: Securities and Exchange Commission.

Table 2 shows estimates of collections under the old fee schedule and the new rates established by P.L. 107-123. The figures depend on Congressional Budget Office (CBO) estimates of future stock prices and the volume of securities market transactions, which are extremely difficult to predict. If the stock, bond, and merger markets underperform the CBO estimates, fee collections (under the old law, where rates were fixed) might have been significantly lower than the CBO's forecasts. (The forecasts were made in early 2001, before the worst of the recent stock market price declines.)

³ Pursuant to Sections 13(e)(3) and 14(g) of the Securities Exchange Act of 1934.

**Table 2. Estimated Collections of Securities Fees,
Under P.L. 107-123 and the Former Fee Schedules:
Fiscal Years 2002-2011**
(All figures in millions of dollars)

Fiscal Year	Old Law CBO Fee Collections Forecast	Current Law (P.L. 107-123)	
		Estimated Collections	Change From Old Law
2002	2,872	1,212	-1,660
2003	3,188	1,309	-1,879
2004	3,523	1,525	-1,998
2005	3,958	1,827	-2,131
2006	4,444	2,172	-2,272
2007	2,079	1,141	-938
2008	2,124	1,177	-947
2009	2,373	1,368	-1,005
2010	2,641	1,566	-1,075
2011	2,939	1,797	-1,142
Totals	30,141	15,094	-15,047

Source: Calculated by CRS using April 2001 baseline forecasts by the Congressional Budget Office (CBO).

Background

Congress addressed the issue of the SEC fee “surplus” in 1996. The National Securities Markets Improvement Act of 1996 (NSMIA, P.L. 104-290) reduced the Section 6(b) and Section 31 fees, and enacted further reductions to take effect in fiscal 2007. According to the conference report, NSMIA’s intent was “to reduce over time the fees collected by the [SEC]” and to ensure “that at the end of the applicable 10 year period, the SEC collects in fees a sum approximately equal to the cost of running the agency.”⁴

However, following the enactment of NSMIA, stock market prices and trading volumes soared (as did the value of new securities offered for sale) and giant corporate mergers occurred at a record pace. The CBO in 2001 projected that the amounts collected

⁴ U.S. Congress. House. *National Securities Markets Improvement Act of 1996: Joint Explanatory Statement of the Committee of Conference*. House Con. Report 104-864. p. 40.

would continue to grow until NSMIA's final reductions of fee rates take effect in fiscal 2007.

The case for lowering the fees was based on considerations of fairness. Since the fees were enacted to fund the SEC, supporters of fee reduction argued that securities market participants should be expected to pay the cost of federal regulation of the market, but not more. In this view, the surplus over the SEC budget is an unwarranted tax on capital formation and savings – user fees have become taxes that lower investment returns and subtract from business spending on new productive capacity and jobs. Opposition to fee reduction was based on general fiscal principles. The Clinton administration opposed fee reduction legislation in the 106th Congress,⁵ on the grounds that there were higher budgetary priorities than lowering fees paid by investors and the securities industry.

Congressional Action to Reduce Fee Collections

In the 107th Congress, House and Senate passed separate securities fee reduction bills. On March 22, 2001, S. 143 passed the Senate by unanimous consent. On June 14, 2001, H.R. 1088 passed the House by recorded vote: 404 - 22. (S. 143 proposed different reductions in the individual fees, but the overall impact on total fee collections would have been approximately equal to the House bill.) The Senate passed H.R. 1088 without amendment by Unanimous Consent on December 20, 2001, and it was signed into law on January 16, 2002.

SEC Pay Parity

P.L. 107-123 also includes provisions that permit the SEC to raise salaries for certain of its employees to the levels of federal bank examiners, whose pay exceeds the normal civil service scale by a considerable margin. The law directs the SEC to consult with the bank regulators to ensure that this pay parity is maintained.

The SEC has argued that pay parity is necessary to allow it to attract and retain qualified personnel. The agency complains that it suffers from a very high rate of employee turnover because of the high salaries available in the securities industry.

The Office of Personnel Management (OPM) opposed the pay parity provisions because of concerns about the fragmentation of personnel systems and adverse effects on the portability of federal employees. In a May 15, 2001 letter to Chairman Dan Burton of the House Government Reform Committee, OPM noted that in March 2001 it approved special pay rates for SEC lawyers, accountants, and examiners. The letter recommended that the pay parity provisions not be enacted until the effectiveness of these special pay rates can be assessed, and also called for more study of the SEC pay situation. Chairman Burton stated that the SEC pay raises should not be enacted without a broad review of the effects on the civil service system.

⁵ Transaction Fee Measure Clears House Commerce Committee. *Securities Regulation & Law Report*, v. 32, October 16, 2000. p. 1405.

Latest Developments

Estimates of the cost of granting pay parity raises to SEC employees are in the range of \$60-80 million. The Senate version of the FY2002 Commerce-State-Justice appropriations legislation provided \$60 million for this purpose, but this provision was not adopted in conference. (The SEC's FY2002 budget was set at \$437.9 million.)

The Administration's FY2003 budget requested \$466.9 million for the SEC, not enough to fully fund pay parity. In the wake of the Enron scandal, Congress passed the Sarbanes-Oxley accounting reform legislation (P.L. 107-204), which included a provision authorizing appropriations of \$776 million for the SEC in FY2003. However, at the end of the 107th Congress, no appropriation for the SEC had been enacted, leaving the agency operating under a continuing resolution at FY2002 budget levels.