Publish What You Pay
United States

March 17, 2020

Vanessa A. Countryman
Secretary, Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090

Re: Disclosure of Payments by Resource Extraction Issuers, Release No. 34-87783, File No. S7-24-19.

Dear Secretary Countryman:

We appreciate the opportunity to submit this comment to the Commission as part of its rulemaking to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504). We believe that a robust rule to implement Section 1504 that requires fully public, company-specific, project-level reporting with no exemptions is in the best interests of governments, shareholders, and citizens in resource-rich countries.

Publish What You Pay - United States, and our 39 member organizations, is not alone in that belief. In fact, investors with over $12 trillion in assets under management, hundreds of civil society organizations across the globe, national security experts, academics, economists, former and current U.S. government officials, members of congress, and oil, gas and mining company representatives share our position. The broad support for the strong 2016 final implementing rule for Section 1504 was perhaps most apparent when it was under threat by the Congressional Review Act in early 2017.

In the following pages, I share with you a sampling of the reactions to the introduction of the CRA resolution of disapproval, and responses to its eventual passage. These examples include news articles, press releases, blogs, op-eds, and more. As you consider the contents of the final rule, I ask that you also consider the perspectives provided by these authors regarding the vote of disapproval that led to the current proposed rule.

Thank you for this opportunity to comment. I would welcome any questions you may have regarding this submission.

Sincerely,

Kathleen Brophy
Director
Publish What You Pay - United States

Articles about the Congressional Review Act

Value Walk - Section 1504: Last Chance To Save Oil, Mining Payment Transparency Law
1/13/2020 - https://www.valuewalk.com/2020/01/section-1504-oil-mining/

Section 1504: Last Chance To Save Oil, Mining Payment Transparency Law
POSTED BY: UMAIR TARIQ JAN 13, 2020, 1:23 PM

On December 18, 2019, the Securities and Exchange Commission approved new draft rules to implement of Section 1504 of the Dodd-Frank Act. Section 1504 mandates that individual oil and mining companies registered with the SEC publicly report the payments they make to the governments where they operate in a manner consistent with the Extractive Industries Transparency Initiative (EITI).

The draft rules issued on December 18 would create data that is of little use to investors and would place the U.S. far outside of international norms for oil and **mining** payment data disclosure through EITI and EU and Canadian laws.

The draft rules replace those that the SEC finalized in June 2016, but were voided in February 2017 through the Congressional Review Act. The Section 1504 law remains in place and needs implementing rules to take effect. The SEC's draft rules fall short of what the law requires and in the words of SEC Commissioner Allison Lee "deviate widely from existing international disclosure regimes and severely limit the utility of the required disclosure".1

The SEC is about to open a 60-day comment period and is seeking input on how the draft rules may be changed to best serve **investors** and advance the objectives of the law. Investors have supported strong rules for Section 1504 unanimously and this will be the last chance to influence the implementation of this important advance in transparency.

Since Dodd-Frank Section 1504 was passed in July 2010, several countries have passed complementary laws. Unlike Section 1504, those laws are in effect and more than $800 billion in payments made to 152 countries have been disclosed publicly to investors by more than 850 public, private and state-owned companies. These disclosures are happening without revealing commercially sensitive data or causing undue burdens, competitive harm or conflicts with existing laws.

Research summarized in a December 10 Columbia Center for Sustainable Investment (CCSI) submission to the SEC2 used payment data generated under a Canadian law modeled after Section 1504 in routine securities analysis. The researchers found that the data is very useful in accounting for changes in fiscal policy in oil and mining securities valuation, adjusting cash flows for tax deferments, and in sovereign credit analysis in resource-dependent countries. Slow and flawed implementation of the U.S. version of these transparency laws is denying investors in U.S. markets useful data available through EU and Canadian laws and Wood Mackenzie's Fiscal Service, for example.

Since the beginning of the first Section 1504 rulemaking comment period in late 2010, investors with more than $10 trillion in assets under management have shown unanimous support for implementation that creates public, project-level data to optimize its usefulness in securities analysis. The new rules undermine those objectives.

Please join your colleagues in urging the SEC to reclaim U.S. leadership in oil and mining payment transparency and to provide material data for the analysis of these vital industries.

The Emerging Markets Investor Alliance is helping organize its third seminar on the use of Section 1504 data in securities analysis in late January. These seminars build on reports by WK Associates that are available upon request.

Support is also needed to organize an investor sign-on letter and other communications that will give voice to concerns about the new rule and provide recommendations for its improvement.

Please contact Alexander Schay (aschay@emfminvestor.com) and Paul Bugala (pbugala@gmail.com) to learn more and get involved.

1 U.S. Securities and Exchange Commission. "Statement on Proposed Resource Extraction Rule
Commissioner Allison Herren Lee". December 18, 2019. **https://www.sec.gov/news/public-statement/statement-lee-2019-12-18-resource-extraction**

2 Comment submitted to SEC by Columbia Center on Sustainable Investment. December 10, 2019. **https://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/cll6-6521646-200386.pdf**

Bloomberg - ANALYSIS: SEC Tries to Solve CRA Conundrum on Resource Payments
1/7/2020 - https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-sec-tries-to-solve-cra-conundrum-on-resource-payments

ANALYSIS: SEC Tries to Solve CRA Conundrum on Resource Payments By Peter Rasmussen Jan. 7, 2020, 7:38 PM The long and winding road of the SEC's extractive resource payment disclosure rule took another turn last month with the emergence of yet another proposed rule.

The SEC had to walk a tightrope between duplicating the rule requirements that Congress invalidated in 2017 while still complying with the DoddFrank Act mandate to act in this area. The resulting proposal may successfully respect the congressional disapproval resolution, but it does little to implement the spirit of the Dodd-Frank disclosure mandate.

This is the third iteration of the rule to emerge from the statutory mandate enacted in 2010 in Section 1504 of the Dodd-Frank Act. The current version of the proposed rules would require companies engaged in resource extraction (such as mining and drilling) to disclose payments made by the issuers to foreign governments or the U.S. federal government for the purpose of the commercial development of oil, natural gas or minerals. Issuers would also be required to disclose payments made by a subsidiary or any entity controlled by the issuer.

Section 1504 represented an attempt by Congress to mitigate the “resource curse,” under which resource-rich nations often suffer significant costs associated with the extraction of those resources. Many of these countries are poor, and the population often does not benefit from the economic rewards of extraction.

Previous Tries

Previous attempts at complying with the Section 1504 mandate have not ended well. Rules covering resource extraction payments first surfaced in 2012. As adopted, these rules required resource extraction issuers to annually file a new form with the SEC, Form SD (the form is also used for conflict mineral disclosures).

The U.S. District Court for the District of Columbia vacated the rules on July 2, 2013. The court found that the Commission misread Section 1504, now codified as Exchange Act Section 13(q), to compel the public disclosure of the issuers’ reports, and found that the SEC’s explanation for not granting an exemption for when disclosure is prohibited by foreign governments was arbitrary and capricious.

In June 2016, the SEC adopted a revised version of the rules and amendments to Form SD that addressed the concerns raised in the prior litigation. On February 14, 2017, Congress disapproved the rules by a joint resolution pursuant to the Congressional Review Act (CRA).

The CRA disapproval places the SEC in an interesting statutory box. The CRA joint resolution had no impact on the Section 1504 mandate. That provision still directs the SEC to adopt rules requiring “each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.” The CRA provides, however, that a rule disallowed by Congress “may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued.” The rule proposals also had to deal with the issues that caused the district court to vacate the 2012 rule.

The December 2019 Proposal

The SEC, by a 3 to 2 vote, attempted to resolve the conundrum by significantly changing some of the terms of the 2016 rules. The proposed rule changes would:
—revise the definition of the term “project” to require disclosure at the national and major subnational political jurisdiction, as opposed to the contract level;
—revise the definition of “not de minimis” to include both a project threshold and an individual payment threshold so that disclosure with respect to payments to governments that equal or exceed $150,000 would be required when the total of the individual payments related to a project equal or exceed $750,000;
—add two new conditional exemptions for situations in which a foreign law or a pre-existing contract prohibits the required disclosure;
—add an exemption for smaller reporting companies and emerging growth companies;
—revise the definition of “control” to exclude entities or operations in which an issuer has a proportionate interest; and
—limit the liability for the required disclosure by deeming the payment information to be “furnished” to, but not “filed” with, the Commission;

As proposed, the rules would require disclosure of the following kinds of payments:
—taxes; —royalties, fees, and bonuses;
—dividend payments;
—infrastructure payments;
—community and social responsibility payments; and
—in-kind payments.

The rule as proposed does require that the Form SD disclosures be made publicly available on EDGAR. However, the public disclosure requirement is significantly watered down from the 2012 version. The higher de minimus threshold would shield many payments from disclosure, and the submission deadline would be significantly extended. As proposed, for issuers with fiscal years ending on or before June 30, the disclosure must be furnished no later than March 31 in the following calendar year, and for issuers with fiscal years ending after June 30, companies must provide the information no later than March 31 in the second calendar year following their most recent fiscal year.

The disclosures would also be treated as “furnished” rather than filed. Such treatment precludes liability under Exchange Act Section 18 (but not Section 10), and disclosures that are “furnished” rather than “filed” are not automatically incorporated by reference into Securities Act registration statements.

Do the Changes Avoid the CRA “Substantially the Same” Prohibition?

Are the changes sufficient to avoid the “substantially the same” CRA restriction? The act itself provides little guidance, either on its face or in the legislative history, on what “substantially the same” actually means, and the courts have not weighed in to date.

The differences between the 2016 rules and the 2019 proposal do appear to be significant, however. The proposed increase in the de minimis threshold from $100,000 to $150,000 is notable, and even these payments must be disclosed only when the total of the individual payments related to a project equal or exceed $750,000. The shift from disclosure based on a per contract basis to the national and major subnational political jurisdiction level is also significant. Issuers would also be allowed to aggregate payments by payment type made at a level below the major subnational government level. In addition, the proposal adds an exemption for smaller reporting companies and emerging growth companies and includes relief for issuers that have recently completed their U.S. initial public offerings.

The Dissenters and the Section 1504 Question

The 2019 proposals may have avoided the CRA prohibition, but do the measures satisfy the SEC's obligation to act under Dodd-Frank Act Section 1504? The answer from the commissioners in the minority is a resounding no.

According to Commissioner Robert J. Jackson Jr., the proposed rulemaking fails to "give investors nearly enough information about how their money is used to pay for the right to extract certain natural resources." He stated that the heightened de minimis threshold would keep many payments in the dark, and indicated that the SEC would frustrate the purpose of the rulemaking mandate by "allowing issuers to file confidential disclosures rather than providing the public accountability that Congress intended when enacting Section 1504."

Commissioner Allison Herren Lee stated that the proposal would not further the role of the U.S. in leading international anti-corruption efforts. According to Commissioner Lee, the proposals would "deviate widely from existing international disclosure regimes and severely limit the utility of the required disclosure." She recognized the dilemma inherent in balancing compliance with both Section 1504 and the CRA. She rejected the notion, however, that "the CRA disapproval requires us to promulgate a rule that essentially reverses the 2016 final rule in almost every significant respect." She commented that the majority did not identify any legal authority or precedent that would compel this result, and concluded that "I cannot agree that we must stray so far from the policy determinations the Commission made in 2016" to comply with the CRA.

She also was very critical of the $750,000 aggregate de minimis threshold. The commissioner stated that the $750,000 figure was "a number without support anywhere in the release," and added that "it stretches credulity to call three quarters of a million dollars 'de minimis' in this context."

Conclusion

A federal court and conflicting congressional directives combined to put the SEC in a rather untenable position. The Commission must act under Section 1504, but the CRA draws a rather narrow, if poorly defined, circle around what that action may look like.

Even the commissioners who voted for the proposal noted the awkwardness of the situation. Commissioner Hester Peirce stated that under the Dodd-Frank Act, disclosure requirements have become "the vehicle of choice for achieving laudable objections that are outside the SEC's normal remit." Similarly, Commissioner Elad L. Roisman stated that the rulemaking "has no pretense of furthering the SEC's tripartite mission: protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation," and added that "not one of us can pretend that it does so." As Commissioner Lee points out however, even if "some may disagree with Section 1504 or that the Commission should be in the business of promulgating anti-corruption rules," that is the law.

The disclosures that would be generated under the proposed rules will be of little decision-making use to investors. Too many payments may be shielded under the proposed de minimis standard, and the information would not be available to investors in a timely fashion. Commissioner Lee described the challenge of crafting a delicate balance between Congress' intent under Section 1504 and the concerns expressed in the CRA disapproval resolution. The resulting rulemaking proposal, however, has largely abandoned that balance and swung dramatically away from the intent of Congress in enacting Section 1504.

Offshore Technology - American withdrawal: what now for the oil industries flagship transparency initiative?

1/26/2018 - https://www.offshore-technology.com/features/american-withdrawal-now-oil-industries-flagship-transparency-initiative/

OFFSHORE TECHNOLOGY
16 JANUARY 2018

ANALYSIS

American withdrawal: what now for the oil industries flagship transparency initiative?

The US has taken the controversial decision to withdraw from the Extractive Industries Transparency Initiative (EITI), a global standard on accountability in the oil, gas and mining industries. Julian Turner talks to Jonas Moberg, head of the EITI International Secretariat, about the potential ramifications.

In November, the US Government announced that it was withdrawing as an implementing country from the Extractive Industries Transparency Initiative (EITI), the global standard that promotes the open and accountable management of extractive resources, with a particular focus on oil and gas.

The US Department of the Interior claimed that US laws prevent compliance with the EITI standard.

For EITI advocates such as NGO Global Witness, however, it was proof that the Trump administration and US multinationals are intent on undermining programmes aimed at encouraging environmental protection – and transparency and accountability in how oil, gas and mining revenues are managed.

"When major Russian and Chinese oil companies are disclosing more information about their deals around the world than their US counterparts, you have got to ask: what are Exxon and Chevron so desperate to hide?" said Corinna Gilfillan, head of the US Office at Global Witness.

"It was hugely important that the US implemented the EITI," says Jonas Moberg, head of the EITI International Secretariat. "The previous government under President Obama acknowledged that there was a lack of transparency when it came to payments of taxes and royalties within the US.

"It was significant both domestically in the US, and in the context of the wider international quest for transparency and improved governance in terms of how we manage our natural resources.

"We are now at the beginning of the process of decarbonising global economies, and so it is really important to do whatever we can to demonstrate good governance, transparency and openness about the oil and gas we do need to produce and use."

Withdrawal symptoms: why did the US exit the EITI?

Enacted in 2003, the EITI aims to improve information on oil, gas and mining companies' interactions with government and their tax arrangements in order to minimise financial corruption.

The onus is on individual governments to sign up for and uphold the rules, which may require them to change or amend domestic laws and tax regulations in order to fulfil EITI reporting requirements.

"The EITI is a standard implemented by countries, and supported by companies, civil society and the other member nations," explains Moberg. "If, for example, a company operates in Saudi Arabia, it is not required to report to the government since Saudi Arabia does not currently implement the EITI."

"Of the 51 countries that implement the EITI, there are many countries that have had to remove legal barriers or have opted for legislation to enact the EITI. In Nigeria, for example, EITI implementation involves a legal authority employing 60 staff, and [is] based on law.

"Many countries have something similar to the legal framework that exists in the US and there are a number of ways that can be addressed, either through law or other means, waivers, for example."

In other words, the US doesn't lack the legal means to enact the EITI; rather it lacks the political will.

"The key stumbling block was that a number of US companies would not agree to disclosing their corporate tax; royalties wasn't the problem," Moberg says. "So, when the US said there are internal regulatory barriers… I don't think the US Government felt it even had the right to ask for this information – which is odd, because that is what the EITI is actually about in most countries."

Political warfare: the battle over Section 1504 of the Dodd-Frank Act

Inextricably linked to the US withdrawal from the EITI is the ongoing political battle in the US over the bipartisan Cardin-Lugar Amendment, otherwise known as Section 1504 of the Dodd-Frank Act.

The 2010 law requires US-listed companies to publish details of payments to governments in return for rights to natural resources, and inspired 30 countries to follow suit. To date, resource companies from other countries have disclosed more than $150bn in payments under similar regulations.

Rules issued by the US Securities and Exchange Commission (SEC) sought to ensure that Section 1504 would complement the EITI – for example, the definition of "payment" specifically referred to the EITI.

However, in February 2017, President Trump signed into law Congressional action to disapprove the rule submitted by the SEC. The US House Financial Services Committee subsequently voted on 14 December to proceed with a bill (H.R. 4519) that would repeal Section 1504 of the Dodd-Frank Act.

EITI chairman Fredrik Reinfeldt commented: “I believe it would be a setback for transparency in the extractive industries if this legislation is adopted and 1504 repealed”.

Moberg goes a step further.“The main thing was Section 1504 and the politics around that,” he says. “Had that been solved then I think the EITI issue would also have been resolved.

“It is important to recognise that 1504 was passed before we got similar legislation within the EU and with ESMA in Canada,” he continues. “We have seen significant developments in a number of important jurisdictions and this repeal effort is taking us in the wrong direction.

“This is not just about the domestic situation; it is about also reporting to foreign governments and that is why it is very important for the EITI and outside the borders of the US. If 1504 is repealed, there is the possibility that this will have negative consequences abroad, because it potentially means that companies can try to refuse reporting in other countries that are implementing the EITI.”

The future of the EITI: promoting a culture of transparency

However, Moberg is optimistic and insists that the credibility of the EITI remains unaffected.

“The US remains a supporting country in that politically it still supports implementation of the EITI,” he says. “Mexico signed up to the EITI in October and I’ve just returned from Buenos Aires, where there is a very strong political commitment.

“Things are changing. Europe has accepted these types of disclosure requirements. Total, for example, has spoken out strongly in favour of 1504 and the mining companies are altogether in a different place.”

Does Moberg envisage a time or scenario in which the US could rejoin the EITI?

“It is not for me to speculate about the future, but our door is always open to any country, including the US, who wants to implement the EITI,” he says. “There have been examples of that in the past.

“It is a more complicated picture than a few years ago – things have evolved and expectations have changed. Voluntary, semi-voluntary and different forms of corporate disclosure of payments have become increasingly commonplace inside and outside of the EITI.

“The bottom line is that all payments between producing companies and the receiving government are made publicly available in a meaningful way.”

Foreign Affairs - A Serious Setback for Cleaning Up Big Oil Why the U.S. Needs EITI
1/9/2018 - https://www.foreignaffairs.com/articles/2018-01-09/serious-setback-cleaning-big-oil?cid=int-fls&pgtype=hpg

FOREIGN AFFAIRS

A Serious Setback for Cleaning Up Big Oil
Why the U.S. Needs EITI

By Marti Flacks and Alisa Newman Hood

January 9, 2018

MARTI FLACKS was formerly a State Department official and Director of African Affairs at the National Security Council. She is currently Deputy Director and Head of the North America Office at the Business & Human Rights Resource Centre.
ALISA NEWMAN HOOD was previously Senior Adviser to the U.S. Special Envoy for International Energy Affairs at the State Department and Adjunct Professor of oil and gas law at Georgetown Law and Sciences Po.

In September 2011, President Barack Obama announced that the United States would be implementing the Extractive Industries Transparency Initiative (EITI), a global effort to clean up the oil, gas, and mining sectors. The goal was to bring transparency and accountability to industries in which mismanagement and corruption too often undermine development, increase poverty, and fuel conflict. Until the U.S. announcement, only developing countries (and Norway) had actually adopted the EITI transparency standard, even though it had been launched by former British Prime Minister Tony Blair and was largely financed and overseen by developed countries. Global transparency advocates hailed the United States for taking the lead. And soon after, other developed countries, such as Australia, France, Germany, Italy, Mexico, and the United Kingdom joined the United States in announcing their implementation of EITI. In doing so, they made a clear statement: it was important for all countries to participate in the effort to increase transparency in these industries.

Now, the Trump administration is threatening to upend all the progress that has been made to date. It announced on November 2 of last year that the United States would halt its domestic implementation of EITI (known as USEITI). Although the United States will continue its role in setting the global EITI rules, it has refused to adopt the same standards it encourages others to maintain. This means that it is not only undermining its global leadership on this issue, but also depriving Americans of an important transparency tool, one that enables them to hold their government accountable for collecting revenues related to the development of the nation's resources.

GOOD FOR THE WORLD, GOOD FOR AMERICAN TAXPAYERS

In committing to USEITI, the Obama administration made clear that it was doing so not simply because it might be good for the rest of the world, but also because it was good for the American people. As it noted in a 2011 report, honoring USEITI would "ensure that taxpayers are receiving every dollar due for extraction of our natural resources." Over the past decade, the U.S. Department of the Interior has collected on average about $10 billion in revenues per year from oil, gas, and mineral extraction on federal lands and water, making this sector one of the largest sources of non-tax federal government revenue. And this is in addition to what the Department of the Treasury collects in federal corporate income taxes on the companies developing these resources and to what state governments collect from the development of the resources on their lands.

Accordingly, one of USEITI's central objectives was revenue transparency: enabling the government to account for and confirm the funds that it was owed. Announced only months after the disastrous Deepwater Horizon oil spill, which exposed deep mismanagement at the Department of the Interior, the commitment to implement USEITI signaled that the administration took seriously the need to reestablish public trust in the U.S. government's management of national resources. Even extractive industry representatives participating in EITI noted, in November 2013, that they wanted to see greater clarity and responsibility over revenue collection.

However, although the Obama administration had begun implementing USEITI, progress was stalled by companies that refused to disclose their tax payments, as required under EITI.. Had USEITI been fully implemented, however, it could have played an important role in helping citizens understand certain implications of the major U.S. tax overhaul late last year. Limited public information about tax payments by U.S. companies in the extractives sector, including reporting through USEITI, suggests that the industry is paying a rate far lower than the typical corporate rate of 35 percent. It has been reported that the new Republican tax law will deliver even more favorable treatment to the upstream oil and gas sector by allowing them to deduct certain expenses. It's thus important to raise the question: would that outcome have been different if members of Congress and their constituents had had access to better information about what companies were (or weren't) already paying in federal taxes?

Granted, EITI and related transparency initiatives have their shortcomings and critics. EITI has been criticized for being too narrowly focused on revenue transparency without offering the necessary contextual information to make the data useful, such as production levels or contractual terms. (This is a charge that the EITI Board has worked to address in recent versions of the EITI Standard.) It has also been criticized for failing to clearly show that its fairly burdensome set of requirements for governments and companies actually results in a reduction in corruption and mismanagement.

In addition, U.S. companies continue to object to Section 1504 of the Dodd-Frank Act, which complements USEITI by requiring oil, gas, and mining companies listed on U.S. stock exchanges to report payments they make to both the U.S. federal and foreign governments for the development of these resources. Specifically, U.S. companies have voiced concerns about the possible disclosure of sensitive information to commercial competitors and other governments and about losing bids in certain countries to companies that are not required by their home jurisdictions to make such disclosures.

To date, these concerns have not matched the experience of businesses in other countries implementing similar disclosure rules. Moreover, more than 50 countries have now implemented EITI, including the majority of resource-rich developing countries, having calculated that the benefits of EITI outweigh its challenges.

MITIGATING THE COSTS OF WITHDRAWAL

Although it's unlikely that the United States will rejoin EITI anytime soon, there are some steps that federal agencies, Congress, and even state and tribal governments can take to mitigate the costs of withdrawal.

The Department of the Interior should maintain and continue to update its groundbreaking data portal, which was developed as part of the USEITI process and is now used as a model for other countries implementing EITI. It provides a wealth of useful public information about the U.S.

oil, gas, and mining industries, including an interactive state resources map and detailed overviews of revenues collected from each type of mineral. But the risk of having this portal removed is real: for example, the Trump administration has taken down crucial information before, including climate change material from the EPA website. Fortunately, Interior has indicated that it plans to maintain the portal at this time.

At the same time, the DOI should continue holding multi-stakeholder discussions about how the U.S. government manages its natural resources. One of the underappreciated benefits of USEITI was the opportunity to build direct dialogue between U.S. domestic NGOs working on natural resource issues and extractives sector companies—groups that are typically accustomed to meeting in more contentious settings. The USEITI Multi-Stakeholder Group, a mandatory component of EITI, was formed as one of more than 1,000 current Federal Advisory Committees whose purpose is to allow the government to hear from citizens and experts on a wide variety of issues. Continuing this committee in some form would be a welcome sign that the administration intends to maintain its engagement with all stakeholders on natural resource management.

There is much that the State Department can do, too, to demonstrate its continued commitment to transparency and accountability in this sector and dispel any perception that Secretary Rex Tillerson's old loyalties to longtime employer ExxonMobil—which participated in USEITI but refused to disclose its taxes as required—precipitated the Trump administration's pull back from EITI.

To fight this notion, the State Department should devote the necessary human and financial resources toward the implementation of EITI and accountable resource management globally. Like most bureaus at State, the Bureau of Energy Resources, which oversees U.S. engagement in EITI, currently has yet to fill the important role of Assistant Secretary. It recently downgraded U.S. participation on the international EITI Board and its proposed budget cuts threaten initiatives that support good governance of extractive industries in developing countries.

Congress, meanwhile, must protect Dodd-Frank Section 1504. In February 2017, Congress controversially repealed the Securities and Exchange Commission's rule implementing Section 1504, and there are now efforts underway to repeal the law entirely, along with its companion rule on conflict minerals, known as Dodd-Frank Section 1502. Although Section 1504 is no substitute for EITI, its implementation would bring welcome transparency around oil, gas, and mining company payments not only to foreign countries but also to the United States. Given that Canada and the European Union have already adopted equivalent legislation, the repeal of section 1504 would not only walk back years of progress on this issue, but also put the United States behind the curve once again.

Additionally, Congress should mandate disclosures of all beneficial owners of U.S. companies, so they cannot be used to avoid or evade taxes. The obscuring of beneficial ownership contributes to corruption by allowing public officials to use such companies to direct payments and contracts, such as oil, gas and mineral leases, to entities that they in effect own or control. The United States is one of the easiest places in the world to set up shell companies, but there is now bipartisan legislationbefore Congress to make this more difficult. Several countries, including the United Kingdom, have already mandated this disclosure. It's time for the United States to join them.

State and tribal governments can also lend their support to EITI by adopting its principles. A substantial portion of government revenue from the extractive industries within the United States is collected by state and tribal governments because of the resources located on their lands. Four major resource-producing states—Alaska, Colorado, Montana, and Wyoming—had voluntarily opted to participate in some aspects of the EITI process. A number of tribal representatives also chose to sit in on the multi-stakeholder meetings while they considered implementing the initiative in their jurisdictions. Although there is no mechanism for subnational governments to formally join the international EITI initiative, subnational governments can now join the global Open Government Partnership, and this multi-stakeholder dialogue could continue at the state and tribal levels.

Above all, Americans must resist the argument that EITI and other natural resource transparency initiatives help only poor people in poor countries run by corrupt governments. These are powerful tools that hold the U.S. government and companies accountable and ensure that U.S. citizens receive what is owed them from their nation's resource bounty.

The Hill - Effort to repeal oil, gas, and mining law could fuel corruption
1/9/2018 - https://thehill.com/opinion/energy-environment/368146-effort-to-repeal-oil-gas-and-mining-law-could-fuel-corruption

Effort to repeal oil, gas, and mining law could fuel corruption
BY ISABEL MUNILLA, OPINION CONTRIBUTOR — 01/09/18 03:15 PM EST

As oil and gas and mining companies celebrate the billions in expected windfall from the new tax law, some members of Congress are now working to scrap a law designed to combat corruption in this industry.

Last month, most Republicans on the House Financial Services Committee voted for HR 4519, which seeks to strike down Section 1504 of the Dodd Frank Act, a law supported by oil and mining investors with nearly $10 trillion in assets. Make no mistake, a vote to roll back Section 1504 is a vote for corruption.

Also called the Cardin-Lugar provision, Section 1504 requires foreign and domestic oil and mining companies listed on U.S. stock exchanges to disclose their payments to governments, including tax payments. The law covers both U.S. firms and murky Chinese and Brazilian state-owned oil companies.

Secrecy is fertile ground for corruption and embezzlement in resource-rich countries. Oil and mining corruption and revenue theft undermine democracy and are often a precursor to destabilizing conflicts that can shut down investment and disrupt economic growth for decades. Without adequate sunshine, oil and mineral revenues can easily be funneled to buy arms and fund groups like ISIS and the Taliban, as we've seen in Iraq and Afghanistan.

Despite well-documented risks and strong U.S. anti-bribery legislation, corruption by U.S.-listed oil and mining companies is alive and well. U.S.-listed companies — at the highest levels — are taking risks and getting caught. Their investors and the citizens of countries where they operate are left managing the fallout.

Senior Shell executives, for instance, were found to have taken part in a vast bribery scheme to purchase an oil block from a corrupt former Nigerian oil minister that robbed the Nigerian people of $1.1billion. *Financial*

Times reports they will stand trial with Italian state oil company Eni — also U.S.-listed — in Italian courts.

And Petrobras, the Brazilian state oil company listed on the NYSE, recently announced that they will pay a $2.85 billion settlement in a class action lawsuit on corruption. The scandal brought down the Brazilian government and led to a downgrade of Brazil's sovereign bonds to junk status.

In 2010, the United States Congress recognized that it can help address these risks and led the world by passing Cardin-Lugar. The law was designed to shine a light on billions in oil and mineral financial flows to enable citizens to follow the money and investors to manage risk, while setting a global standard for other markets to follow. The European Union and Canada — the second and third largest oil, gas, and mining markets, respectively — now have laws in force modeled on Cardin-Lugar.

Unfortunately, the Trump administration and the Republican-led Congress appear blind to these developments. President Trump decided to repeal the reasonable implementing rules adopted by the Securities and Exchange Commission (SEC) in 2016 using the Congressional Review Act. The arguments supporting the repeal were based largely on already debunked myths about the law.

Despite misplaced concerns about competitive and reporting costs leading companies, including oil majors Exxon, Chevron, Conoco, Shell, BP, and Total, have already reported over $150 billion in payments without incident. This year, even their Russian competitors Gazprom and Rosneft will disclose for a third time under these laws.

Concerns that countries like China and Angola would allegedly force companies to close down their operations if they complied with Cardin-Lugar are unfounded. Shell, BP, and Statoil have been disclosing in these countries for several years with no negative repercussions.,

Not a single member of the Financial Services Committee should have voted for HR 4519 and no other Representative should do so. The United States cannot declare that it supports democracy and U.S. investors while obstructing initiatives designed to help these thrive. Oil, gas and mining investors worth trillions in assets have publicly supported Cardin-Lugar repeatedly in formal comments because it will shine much-needed light on material company projects operating in volatile markets.

It would be foolish for the U.S. to scrap its commitment to transparency after establishing the standard now being implemented in other markets.

The law's repeal effort is also misplaced since the SEC is already working on a new rule to replace the rules repealed in February 2017 through the Congressional Review Act. Leading Senate Republicans wrote to the SEC last February in support of a new rule aligned with other markets.
The National Journal recently reported that Senators Isakson and Young do not support the repeal.

Representatives must not vote for corruption. They should vote no on HR 4519 and keep the Cardin-Lugar provision in place.

Isabel Munilla is the policy lead for Transparency in Extractive Industries at humanitarian and relief organization Oxfam America.

The Holland Sentinel - My Take: Returning home to Huizenga's year of deceit
12/22/2017 - https://www.hollandsentinel.com/news/20171222/my-take-returning-home-to-huizengas-year-of-deceit

THE HOLLAND SENTINEL
My Take: Returning home to Huizenga's year of deceit
By Brendon Thomas
Posted Dec 22, 2017 at 4:57 PM

Though I will always consider Grand Haven home, my career over the past six years has carried me to remote areas in rural Southeast Asia. In that time I've seen firsthand how government corruption falls hardest on the most vulnerable communities. Bribery by officials to line their own pockets too often keeps essential revenue from flowing into public services, perpetuating extreme poverty and fueling conflict.

This phenomena in which countries that are rich in natural resources yet remain deeply impoverished is known as the "resource curse."

But while I collaborated on environmental governance reform projects in Cambodia to find solutions to this "resource curse," it turns out U.S. Rep. Bill Huizenga, R-Zeeland, was doing the bidding of powerful corporations and the foreign regimes they do business with by undermining a key anti-corruption law.

Even worse, he has relied on outright lies to convince his constituents that his efforts to eliminate transparency is somehow in their interest. West Michigan is better than this.

In 2010, Congress enacted a bipartisan measure, Section 1504 of the Dodd-Frank Wall Street Reform Act, to require oil, gas and mining companies to disclose the payments they make to foreign governments and the U.S. government as part of the regular financial reporting to the Securities and Exchange Commission (SEC). The landmark transparency law is a vital tool to expose and deter nefarious backroom deals in a notoriously corrupt industry, to protect investors, and to enable communities to sustainably manage their resources.

The law has long had bipartisan support and the backing of national security experts, investors and faith-based development groups. The main source of opposition is the few companies that want to keep their dealings with foreign dictators secret. In January 2017, Huizenga showed where his priorities lie by introducing H.J. Res. 41, a bill of "disapproval" that undid the work that the SEC had conducted to implement the transparency law, thereby giving companies more time to keep their payments secret.

This month, Huizenga introduced a new bill, H.R. 4519, that would permanently repeal Section 1504. As a native of West Michigan dedicated to serving communities devastated by the actions of irresponsible governments and companies, I am embarrassed by this effort, which will only further enable corrupt extractive deals around the world. But I'm even more embarrassed by how Huizenga has sold both measures to his constituents.

In a February op-ed ("Cutting red tape will grow our economy and increase opportunity," Sentinel, Feb. 19), Huizenga claimed the law hurt the economy in West Michigan and "has left our nation with less opportunity." The jobs rationale is dishonest political pandering at its worst. This legislation has nothing to do with jobs. Requiring companies to simply disclose the payments they make — which they already track in the regular course of business — does nothing to harm the economy in Michigan or anywhere else.

Huizenga also dishonestly argues that Section 1504 would require U.S. companies to "reveal sensitive business information" to their competitors. That's not true either. The law does not require the disclosure of any contractual details, trade secrets, or strategies for bidding; it simply requires disclosure of how much companies pay foreign governments.

Huizenga has also ignored the interests of investors, dubiously claiming that disclosures under the law "fails to provide investors with useful information." However, investors representing $10 trillion in assets under management have fervently disagreed and repeatedly supported implementation of the transparency law as key to evaluating investment risk. Who should we trust to know what benefits investors — investors or Huizenga?

Huizenga has also claimed the law isn't necessary to fight corruption because paying bribes is already illegal. That misses the point. The public and civil society are the most effective tools for exposing corruption because the public disclosure of payment information allows civil society groups to investigate and hold their governments accountable. This power of information is a cost-effective way to prevent the most egregious forms of corruption.

If Huizenga succeeds in destroying this anti-corruption law there will only be two winners: Corrupt foreign regimes and the companies that are willing to exploit that corruption to get an edge on more transparent competitors. H.R. 4519 does nothing for his constituents, and nothing for the American people. It is simply serving the interests of lobbyists and the powerful corporations who fund Huizenga's campaigns.

In past years I have returned home with a deep sense of pride because of the work of the community and faith-based groups that humbly serve the world's poorest. This year, it feels different. I pray Huizenga will remember who his constituents are and stop promoting policies that harm the world's most vulnerable communities.

— Brendon Thomas is a native of Grand Haven. He can be reached at brendonhahns@gmail.com.

Japan Times - How corruption is fueling climate change
3/26/2017 - https://www.japantimes.co.jp/opinion/2017/03/26/commentary/world-commentary/corruption-fueling-climate-change/#.Xm84MJMzau4

JAPAN TIMES
How corruption is fueling climate change
BY LILI FUHR

MAR 26, 2017

LONDON/BERLIN – Anti-corruption campaigners achieved a number of crucial victories in 2016, not least by ensuring accountability for one of Big Oil's most crooked deals: the acquisition of Nigerian offshore oil block OPL 245 in 2011 by Royal Dutch Shell and Eni, Italy's largest corporation. Last December, Nigeria's Economic and Financial Crimes Commission indicted some of the Nigerians involved, and Italian prosecutors then concluded their own investigation, bringing the executives and the companies responsible for the deal closer to standing trial.
Several months earlier, in June 2016, the U.S. Securities and Exchange Commission published a rule, under Section 1504 of the 2010 Dodd-Frank Act, requiring oil, gas and mining companies to disclose all payments made to governments on a project-by-project basis. If the SEC had issued its rule earlier, Shell and Eni most likely would not have gone ahead with the OPL 245 deal, because they would have had to disclose their payment. But opposition from the oil industry delayed the rule, so the companies were able to conceal their payment.

Last year also marked the first time in millions of years that the concentration of CO_2 in the atmosphere reached 400 parts per million. While the Paris climate agreement was hailed as a major success when it was concluded in December 2015, many signatories have displayed a remarkable lack of ambition in upholding their carbon-reduction commitments. To understand why is to see the sheer extent to which our systems of government have been captured by the corrupting influence of vested interests.

The story of OPL 245 began in 1998, when the Nigerian dictator Sani Abacha awarded the block to Malabu Oil and Gas, which was secretly owned by Dan Etete, Abacha's own oil minister. Thus, Etete had essentially given OPL 245 to himself. But after the Abacha regime fell, the block was taken from Malabu and awarded to Shell. This triggered a series of legal battles between Malabu, Shell, and the Nigerian government that ended only with the corrupt Shell-Eni deal in 2011.

Public documents show that the $1.1 billion that Shell and Eni paid to the Nigerian government for the deal was, in reality, being paid to Malabu. Both companies knew that this payment method, through an account created by J.P. Morgan in London, was in breach of the Nigerian Constitution, and that the funds would end up in private hands.

Eni claims that it investigated the deal and found "no evidence of corrupt conduct in relation to the transaction." Shell, for its part, says that it only paid the Nigerian government, and that it does “not agree with the premise behind various public statements made by Global Witness about Shell companies in relation to OPL 245.” But Italian prosecutors have now requested a trial for several senior Eni executives — including the current CEO, Claudio Descalzi, and his predecessor — as well as Etete and several others; and they are pursuing separate charges against four senior Shell executives.

Whether or not these prosecutions succeed, for now we can no longer celebrate the SEC’s disclosure rule, or the United States’ renewed support in creating a global standard of transparency for the extractive industries. With Donald Trump’s presidency and a Republican-controlled Congress, the SEC rule was immediately vacated under the Congressional Review Act, an obscure law that had been used only once before.

Trump’s frequently racist and misogynist campaign promised to “drain the swamp” of corruption in Washington politics. But congressional Republicans’ decision to scrap the SEC rule, which Trump quickly signed into law, was an act of pure cynicism that helps perpetuate the “corrupt” system that Trump claims he ran against.

After the oil and gas industry failed to block Section 1504 through legal action, it appealed to its friends in Congress for help. And the arguments used by its congressional proxies would be risible had the consequences not been so tragic. U.S. Sen. James Inhofe, a notorious climate-change denier who has received more than $3 million in campaign contributions from the fossil-fuel industry, led the charge: the disclosure rule was an imposition from the Obama era that would be too costly to implement and add needless bureaucratic red tape. No mention was made of the costs borne by citizens when their national wealth is sold off through dirty deals, or by investors when corruption leads to prosecutions and massive fines.

To fulfill the Paris agreement, efforts to combat corruption and climate change must go hand in hand. Corruption, in the widest sense of the word, is the glue that holds the “system” together, that ensures that moneyed and powerful interests are free from rules that are meant to hold them in check. It is why governments that pledged to make large reductions in greenhouse-gas emissions have been unable to meet their commitments.

Shell, Exxon, and most other major oil and gas companies knew decades ago that their products were fueling climate change. But instead of acting on that knowledge, and changing their business model, they embarked on a massive campaign to deceive the public and lure policymakers into complacency. Not surprisingly, Shell is one of 47 major hydrocarbon producers now being investigated by the Filipino government for its role in contributing to human-rights violations stemming from climate change.

To sustain progress in the fight against climate change and corruption, environmental and anti-corruption movements will have to work together, and play to their respective strengths. If nothing else, Trump’s election, and the possibility of more populist victories in Europe this year, have given us a wake-up call.

The Hill - Trump signs repeal of transparency rule for oil companies
2/14/17 - https://thehill.com/policy/energy-environment/319488-trump-signs-repeal-of-transparency-rule-for-oil-companies

THE HILL

Trump signs repeal of transparency rule for oil companies
BY TIMOTHY CAMA - 02/14/17 02:37 PM EST

President Trump signed legislation Tuesday to repeal a controversial regulation that would have required energy companies to disclose their payments to foreign governments.

The legislation is the first time in 16 years that the Congressional Review Act (CRA) has been used to repeal a regulation, and only the second time in the two decades that act has been law. It is the third piece of legislation Trump has signed since taking office three weeks ago.

It is the start of one front in an aggressive deregulatory effort that the Trump administration and the GOP Congress are undertaking to roll back Obama-era rules on fossil fuel companies, financial institutions and other businesses that they say have suffered for the last eight years.

The resolution repeals a Securities and Exchange Commission (SEC) rule written under the 2010 Dodd-Frank financial reform law.

It was meant to fight corruption in resource-rich countries by mandating that companies on United States stock exchanges disclose the royalties and other payments that oil, natural gas, coal and mineral companies make to governments.

At a signing ceremony in the Oval Office, Trump said the legislation is part of a larger regulatory rollback that he and congressional Republicans are undertaking with the goal of economic and job recovery.

“This is a big signing, very important signing,” Trump said, flanked at his desk by House Speaker Paul Ryan (R-Wis.), House Financial Services Committee Chairman Jeb Hensarling (R-Texas), Sen. Jim Inhofe (R-Okla.) and other lawmakers.

“We’re bringing back jobs big league. We're bringing them back at the plant level, we're bringing them back at the mine level. The energy jobs are coming back,” he continued. “A lot of people going back to work now.”

Trump then asked Rep. Bill Huizenga (R-Mich.), the measure's lead sponsor, to speak about it and regulatory reform in general.

"Over 20 years, there's been 56,000 rules that have been put in place, with very little legislative input or oversight, and it's time that changed," he said. The administration and congressional allies say the SEC rule imposes massive, unnecessary costs on United States oil, natural gas and mining companies, putting them at a significant competitive disadvantage to foreign companies that do not have to comply.

"Misguided federal regulations such as the SEC rule addressed by H.J.R. 41 inflict real cost on the American people and put our businesses, especially small businesses, at a significant disadvantage," White House Press Secretary Sean Spicer said earlier Tuesday.

"It's a priority for the Trump administration to fix our broken regulatory system so that it enhances American productivity and well-being without imposing unnecessary costs and burdens," he said.

"Signing this joint resolution is one more step toward achieving this goal."

The House passed the repeal measure earlier this month, followed shortly by the Senate.

Democrats and supporters of the SEC rule see the rollback as a victory for corruption.

"The rule they're trying to repeal protects U.S. citizens and investors from having millions of their dollars vanished into the pockets of corrupt foreign oligarchs," Sen. Sherrod Brown (D-Ohio), top Democrat on the Senate Banking Committee, said earlier this month. "This kind of transparency is essential to combating waste, fraud, corruption and mismanagement."

Supports argued in part that if the United States takes a leading role on foreign payment transparency, other major nations would follow.

Exxon Mobil Corp., whose former CEO Rex Tillerson is now secretary of State, was one of the most vocal opponents of the rule, along with other major oil companies.

The SEC is still obligated under the Dodd-Frank law to write some form of a transparency rule for extractive industries.

But under the CRA, the agency can never publish any rule that is “substantially the same” as the one that has now been overturned.

Both chambers of Congress have also passed a CRA resolution to overturn the Interior Department’s stream protection rule for coal mining, and Trump supports the repeal.

The House has passed numerous other regulatory repeal measures under the CRA, including ones on methane pollution and gun ownership, and the Senate is likely to take up at least some of them.

The Guardian - Donald Trump lifts anti-corruption rules in 'gift to the American oil lobby'
2/14/2017 - https://www.theguardian.com/us-news/2017/feb/14/donald-trump-anti-corruption-rules-dodd-frank-oil-companies

THE GUARDIAN

Donald Trump lifts anti-corruption rules in 'gift to the American oil lobby'
- Campaigners alarmed as president expunges element of Dodd-Frank Act
- Energy companies no longer need disclose payments to foreign governments

Donald Trump moved on Tuesday to expunge rules aimed at forcing oil companies to disclose payments made to foreign governments in order to secure lucrative mining and drilling rights.

The rules, called the Cardin-Lugar regulations, were established under the Dodd-Frank Act, the wide-ranging financial regulations brought in after the last financial crisis. Energy industry executives, including the former Exxon boss and now secretary of state, Rex Tillerson, have lobbied hard against the rule, arguing it gives global rivals a competitive edge.

The rules aimed to help fight corruption, and critics charge that Tuesday's move handed "an astonishing gift to the American oil lobby".

"It's a big deal," Trump said to reporters in the Oval Office as he signed the resolution. "The energy jobs are coming back. Lots of people going back to work now."

Representative Bill Huizenga, the repeal's lead sponsor, said: "Over 20 years, there's been 56,000 rules that have been put in place, with very little legislative input or oversight, and it's time that changed."

The repeal was made using the Congressional Review Act (CRA), which allows an incoming president to overturn new federal regulations. It is the first time the CRA has been used to repeal a regulation in 16 years.

Trump's move comes as oil company deals have come under intense scrutiny. Late last year, Russia sold a 19.5% stake in its giant oil company Rosneft, but the full identities of those who bought it are unknown.

Last year, the Guardian revealed that Exxon, then led by Tillerson, was under investigation by Nigeria's economic and financial crimes commission over lucrative oil rights it secured in 2009 by beating out China's fourth-largest oil producer, despite apparently underbidding its rival bid by $2.25bn.

“Trump has given an astonishing gift to the American oil lobby. Oil, gas and mining companies listed across the EU, including Russian companies, have already disclosed $150bn of payments in resource-rich countries, with no ill effects. This makes a mockery of claims by US oil companies such as Exxon that greater transparency would damage companies’ competitiveness. If the European companies can do it, you have to ask – what are US companies trying to hide?” said Zorka Milin, senior legal adviser at the advocacy group Global Witness.

Eric LeCompte, executive director of the religious development organization Jubilee USA, said: “In the short term, we lost a tool that can help track the billions of dollars lost to corruption and tax evasion in the developing world. Now we need to be sure that the new rule that the Securities and Exchange Commission writes will be a rule that can still stop corruption.”

Jubilee USA, which represents over 650 faith groups, fought for the passage of the Cardin-Luger rules in 2010 as a way of tackling bribery and corruption in developing countries that it argues exacerbate conflict and poverty. “Improving financial transparency and ending global poverty are two sides of the same coin,” said LeCompte.

The Hill - Senate votes to repeal transparency rule for oil companies
2/3/17 - https://thehill.com/policy/energy-environment/317700-senate-votes-to-repeal-transparency-rule-for-oil-companies

THE HILL
Senate votes to repeal transparency rule for oil companies
BY TIMOTHY CAMA - 02/03/17 06:53 AM EST

The Senate voted strictly along party lines Friday morning to repeal a regulation requiring disclosures for the payments that energy companies make to foreign governments.

The measure passed 52-47 in a pre-dawn vote.

The Securities and Exchange Commission's (SEC) foreign payments rule was mandated by a key provision of the 2010 Dodd-Frank financial reform bill and was meant to reduce corruption in resource-rich countries by detailing the royalties and other payments that oil, natural gas, coal and mineral companies make to governments.

But the rule, made final last year, fell victim to a push by congressional Republicans to erase large portions of former President Barack Obama's legacy by repealing major regulations through the Congressional Review Act. The move followed a late Thursday vote against the Interior Department's stream protection rule for coal mining.

The House voted Wednesday to repeal the SEC transparency rule, so the Senate's action sends the measure to President Trump's desk.

The White House said Wednesday that Trump would sign the resolution and other measures to overturn Obama-era rules. The SEC rule, the White House said, would "impose unreasonable compliance costs on American energy companies that are not justified by quantifiable benefits" and could put those companies at a disadvantage to their foreign competitors.

The vote on the SEC rule is a major win for oil producers and other companies in extractive industries.

Senate Banking Committee Chairman Mike Crapo (R-Idaho) said on the Senate floor Thursday that the SEC's own research did not show a strong connection between transparency and improving the lives of citizens in countries where mineral extraction revenues fuel government corruption.

“Unlike the potential benefits, though, the costs of this rule are reasonably certain,” he said. “The SEC estimated up to $700 million in initial costs, and up to $590 million on ongoing annual costs.”

Crapo warned that numerous small companies would be hurt in addition to major oil companies.

“We cannot view these costs as only affecting the largest companies, but must consider the plight of the smaller ones,” he said.

Sen. Sherrod Brown (Ohio), the top Democrat on the Banking Committee, framed the resolution as a vote for corruption.

“The rule they’re trying to repeal protects U.S. citizens and investors from having millions of their dollars vanished into the pockets of corrupt foreign oligarchs,” he said on the floor. “This kind of transparency is essential to combating waste, fraud, corruption and mismanagement.”

The oil industry has made it a priority to lobby against the SEC rule. Exxon Mobil Corp., whose former CEO, Rex Tillerson, was confirmed this week as secretary of State, was one of the most outspoken opponents, owing in part to its business operations in scores of countries around the world.

“The SEC’s rule requires disclosure for American companies but not foreign entities, fundamentally harming American workers and shareholders,” Stephen Comstock, head of tax policy for the American Petroleum Institute, said in a statement.

Anti-corruption advocates slammed the move by Congress.

“Voting to roll-back basic transparency rules provides zero benefit for the public but will instead allow corrupt elites to continue to stuff their pockets with oil money and steal from their citizens,” said Isabel Munilla, senior policy adviser for extractive industries at Oxfam America.

Under the Congressional Review Act, the Senate only needs 51 votes to pass repeal resolutions, a lower bar than the 60 needed to pass most legislation.

The vote does not repeal the provision in the 2010 law that mandates that the SEC write a transparency rule.

But under the CRA, the agency will be prohibited from writing another rule that is “substantially the same” as the one overturned by Congress.

Reuters - U.S. Republicans ax disclosure, emissions rules on energy

2/3/2017 - https://www.reuters.com/article/us-usa-congress-regulations/u-s-republicans-ax-disclosure-emissions-rules-on-energy-idUSKBN15I1JF

FEBRUARY 3, 2017 / 8:10 PM / 3 YEARS AGO

REUTERS

U.S. Republicans ax disclosure, emissions rules on energy

Lisa Lambert, Timothy Gardner

WASHINGTON (Reuters) - U.S. Republicans on Friday repealed a securities disclosure rule aimed at curbing corruption at energy and mining companies and voted to ax emissions limits on drilling operations, part of a push to remove Obama-era regulations on extractive industries.

In a 52-47 vote, the Republican-controlled Senate approved a resolution to eradicate a rule requiring companies such as Exxon Mobil and Chevron Corp to publicly state taxes and other fees paid to foreign governments like Russia.

The House of Representatives already passed the measure. President Donald Trump is expected to sign it within days. On Thursday, the Senate repealed a rule that would have limited coal companies from dumping waste into streams.

After a number of legal battles, the U.S. Securities and Exchange Commission in June 2016 completed the regulation, which supporters said could help expose questionable financial ties U.S. companies may have with foreign governments.

Senate Democrats raised concerns that Exxon’s chief executive during those legal fights was Rex Tillerson, who was recently confirmed as U.S. secretary of state and has worked extensively in Russia.

“It should be lost on no one that in less than 48 hours, the Republican-controlled Senate has confirmed the former head of ExxonMobil to serve as our secretary of state, and repealed a key anti-corruption rule that Exxon Mobil and the American Petroleum Institute have erroneously fought for years,” Senator Ben Cardin of Maryland said, referring to the oil industry’s trade group.

Exxon and other major energy corporations fought for years to block the rule, required by the 2010 Dodd-Frank Wall Street reform law.

Cardin, the senior Democrat on the foreign relations committee, wrote the Dodd-Frank section on the payments to foreign governments with Richard Lugar, a former Republican senator.

Critics of the rule said it duplicated existing regulations, was too costly and burdensome for companies to implement and that it put U.S. companies at a competitive disadvantage with state-owned companies in other countries that do not have to divulge such information.

The change could give American companies an edge over Canadian and European companies that face some of the toughest transparency rules in the world.

RARELY USED LAW PREVENTS OPPOSITION

Republicans have taken advantage of a seldom-used law known as the Congressional Review Act to overturn recently enacted rules with simple majorities in both chambers, denying senators the opportunity to filibuster and stall a vote.

Democrats said Republicans were using the review act to help companies not the public.

“When it comes to giving public resources to private interests and gutting our nation’s health, environmental and financial standards, the Republicans can’t seem to act fast enough,” said Representative Raul Grijalva. “Whoever they’re doing this for, it isn’t the American public.”

Rocky Top Politics - Does Bob Corker have a problem with Jesus?
2/1/2017 - https://rockytoppolitics.com/2017/02/01/w-w-j-d/

February 1, 2017

Does Bob Corker have a problem with Jesus?

Regular readers of Rocky Top are well aware that we have a wee bit of a problem with the junior senator from Tennessee. His financial dealings are suspect, his conduct in office has been the focus of at least two ethics complaints and maybe a couple of other ongoing investigations. His relationship with Wells Fargo is the stuff of legend, and we don't mean that in a good way.

So with all his detractors and facing re-election in 2018, one would think Corker would not want to attract any more enemies.

But Jesus? Why would RTP say a thing like that? Is Sen. Corker going to Hell or something?

We will humbly leave final judgement of Sen. Corker to an authority much higher than a ragtag group of political miscreants like the crew here at Rocky Top. But here is why we say 'Ol Bob has a bit of a moral credibility problem (above and beyond his rather obvious personal financial credibility problem).

A bit of history: Back in 2010, as a part of the noxious Dodd-Frank bill, a modest provision was inserted into the massive legislation. The Cardin-Lugar amendment addressed a very big problem. When large U.S. companies (such as major oil and mining companies) cut deals around the world, more often than not they have to deal with some unsavory characters. Dictators, tyrants, despots and strongmen rule over some of the most abundant and lucrative natural resources. Once the deals are cut, they then re-route billions of dollars to their personal use and that of their cronies. The people of their country suffer greatly for this governmental theft. These countries are typically racked with poverty, disease, war, human trafficking and slavery.

The Cardin-Lugar amendment sought transparency on such dealings, requiring such deals be reported to the U.S, government so that we would have a road map of where to look when trying to address these problems. Cardin-Lugar provides evidence that companies play it by the book, and that such exchanges of vast amounts of money need to and will see the light of day.

But in addition to rampant greed and theft, even more ominous is a common denominator that unites many of these rogue countries: **They like to kill Christians**.

From Nigeria to Kenya and many others in between, the dictators gleefully harass, torment, torture and kill Christians. It's a fact:

When Rep. Chris Smith (R) first floated the concept behind the Cardin-Lugar Amendment, he was thinking specifically of persecuted Christians in third world countries. The Obama administration largely turned a blind eye to their plight. And now, just as President Trump seeks to shine a light on persecution of Christians, the U.S. Senate is considering turning out that light and making it harder to detect. All because the big oil folks don't like the hassle of some extra paperwork.

But now the oil companies want to change all that and go back to the bad old days of See No Evil, Hear No Evil, etc. They want Congress to remove the rule through something called the CRA (Congressional Review Act) which would cancel this law as well of a raft of other regulations. RTP agrees that many regulations need to be expunged, but Cardin-Lugar is not one of them.

That's where Bob Corker comes in. From his position as chairman of the Foreign Affairs

Committee, Corker has made a big show of appearing to fight human trafficking. Even introducing a bill to fight trafficking, called the "End Modern Slavery Act" just a year or so ago and which went nowhere.

But when the vote comes up as early as this week to get rid of the Cardin-Lugar transparency provisions, Corker has a big decision to make. And his decision as Chairman will likely sway some of his committee members to do the right – or wrong – thing.

If he votes for any CRA legislation which includes revoking Cardin-Lugar, Corker is voting to aid those who target and kill Christians. It's as simple as that. Any Sunday School student at First Pres in Chattanooga could recognize this. Can Sen. Corker?

Bob, the world is a dangerous place. It is going to take more than taking selfies of yourself with an "X" painted on your hand" and introducing half-hearted legislation to solve this problem. Don't compound the problem by getting rid of one of the few tools we have to counter Christian persecution.

RTP will be watching how you vote. But more important, so will your colleagues, the voters and your pastor.

Maybe if Jesus was on the board of Wells Fargo, you would pay more attention.

Foreign Policy - Greasy Palms Dept.: Congress To Repeal Oil and Mining Anti-Corruption Regulation
2/1/2017 - https://foreignpolicy.com/2017/02/01/greasy-palms-dept-congress-to-repeal-oil-and-mining-anti-corruption-regulation-exxon-mobil-rex-tillerson-republicans-resource-curse/

FOREIGN POLICY

Greasy Palms Dept.: Congress To Repeal Oil and Mining Anti-Corruption Regulation
The same week former Exxon chief Rex Tillerson is expected to become secretary of state.

BY ROBBIE GRAMER

| FEBRUARY 1, 2017, 11:37 AM

On Wednesday, the House of Representatives passed a resolution to repeal an obscure anti-corruption rule aimed at the oil and gas industry before the rule even took effect. Now oil majors like ExxonMobil or Chevron won't have to disclose payments they make to foreign governments while chasing resource deals around the world.

The rule, put forth by the Security and Exchange Commission in 2012, requires oil and mining companies listed on U.S. stock exchanges to disclose payments made to governments around the world for access to natural resources. It covers U.S. oil giants and foreign oil companies like Shell and BP.

But it sparked fierce and years-long court battles between industry groups and transparency organizations. Soon-to-be Secretary of State Rex Tillerson fought it for years while he ran Exxon.

The final iteration of the rule, which the SEC released in June, 2016, wasn't slated to go into effect until 2018.

Proponents of the rule say it's a desperately needed-measure to root out corruption, particularly in "resource-cursed" countries from Nigeria to Venezuela. "It's really a critical anti-corruption provision for an industry that's been historically notorious for corruption," Zorka Milin of industry transparency watchdog Global Witness told Foreign Policy.

Critics, including the oil and mining industries, say the regulation is ineffective and ultimately counterproductive. "The biggest problem is it provides really bad unintended consequences," said Christopher Guith of the U.S. Chamber of Commerce, which lobbied against it. He said the rule inadvertently forces companies to disclose trade secrets and bidding estimates, which competitors can use to undercut them.

U.S. oil and mining companies are already members of the Extractive Industries Transparency Initiative (EITI), a global corruption watchdog group that pushes transparency in resource-rich countries. (While Exxon sits on the EITI board, it came under fire in 2015 for not releasing its U.S. tax data to the group on time). Guith cited the EITI as a model of oil and mining regulation, unlike the SEC rule, which he said was "unnecessarily broad."

He also said the SEC rule puts Western firms at a disadvantage when competing with less transparent rivals. "It pushes Western companies out and what you're left with is state-owned oil companies who you could argue are the least transparent in the world," he said, citing state-owned companies in Russia and China.

Industry groups also say it's too costly. The SEC itself estimates the industry would have to spend between $239 million and $700 million to comply with the rule initially, and between $91 million and $591 million annually from there. (For context, Exxon's annual revenue in 2015 was $268.8 billion.)

Nonsense, retort proponents on both sides of the aisle. Companies in the EU, Norway, and Canada already comply with similar rules.

"Companies already filing have suffered no commercial harm nor revealed vital secrets," former Sen. Richard Lugar (R-Ind.) and Sen. Ben Cardin (D-Md.) wrote in an op-ed on Tuesday urging lawmakers not to repeal the rule. "Cast it aside and we are undoing a clear act of moral leadership, turning our back on corruption," they wrote.

While the rule is based on bipartisan legislation, the House voted to kill it largely on partisan lines, with a majority of Republicans lining up against it. Tillerson, who personally lobbied for years against the rule, adds an extra wrinkle to the tale: The Senate is widely expected to approve his nomination as President Donald Trump's secretary of state on Thursday. Critics worry that he will bring an oilman's outlook to U.S. diplomacy, including transactional relations with unsavory regimes.

"This has been a seven-year battle, fought tooth-and-nail by Exxon and now here we are," a dejected Congressional staffer told FP, referring to the rule's repeal. "It's like a slap in the face that they're both happening within 24 hours of each other," the staffer said.

The Atlantic - "The House Kills an Anti-Corruption Measure"
2/1/2017 - https://www.theatlantic.com/international/archive/2017/02/exxon-mobil-tillerson-state-corruption-russia-sec/515244/

The Atlantic

The House Kills an Anti-Corruption Measure

If the Senate approves, it could change how multinationals deal with foreign governments.

SIDDHARTHA MAHANTA

FEBRUARY 1, 2017

Among the numerous concerns addressed by 2010's Dodd-Frank financial reform bill was the so-called "resource curse," whereby mineral or fossil fuel-rich countries are unable to transform their wealth into economic growth and development, often falling victim to corruption and poor governance. The final bill included a measure, co-sponsored by Senators Ben Cardin and Richard Lugar, requiring that all oil, gas, and mineral companies on the U.S. stock exchange disclose any payments they make to foreign governments for licenses or permits for development. It aimed to curb bribery and give poor countries rich in resources a chance to hold their governments and resource-extraction companies accountable. After years of delay, on June 27, 2016, the Securities Exchange Commission published a final version of the rule that enforces Cardin-Lugar. It was set to go into effect in 2018.

On Wednesday, the House of Representatives voted to kill that rule and effectively gut Cardin-Lugar using a special authority that allows lawmakers to undo recently passed regulations. The Senate will likely take up a complementary measure in the coming days. It is expected to pass.

In an op-ed in *The Wall Street Journal* last week, Republican Majority Leader Kevin McCarthy declared that the rule "would put American businesses at a competitive disadvantage"— a position echoed by the American Petroleum Institute (API), the top energy-lobbying group in Washington, and the oil giant ExxonMobil, one of API's top members. Over the years, ExxonMobil has claimed that Cardin-Lugar, if turned into an enforceable rule by the SEC, would compel the company to disclose private, internal data. That, in turn, would place it a severe competitive disadvantage relative to the BPs and Shells and Rosnefts of the world, the company has argued.

How Tillerson, confirmed as secretary of state today, thinks about corruption and regulating the resource-extraction industry matters. During Tillerson's confirmation hearing earlier this month, Virginia Democrat Tim Kaine raised the point that ExxonMobil has conducted business in countries afflicted by the resource curse like Chad, Equatorial Guinea, Nigeria, Indonesia, and Angola. "How will you work with nations that suffered under this resource curse ... [and] make sure they respect human rights, the rule of law and our longstanding commitment to transparency and anti-corruption?" he asked. Tillerson, in response, touted the role of USAID in "strengthen[ing] the institutional capacities and set standards of expectation in the developing part of the world including those that have resource wealth." (Donald Trump has yet to appoint anyone to head up USAID.)

While SEC filings do not show that Tillerson played a direct role in ExxonMobil's lobbying over Cardin-Lugar, between October 25, 2011, and January 31, 2012, company representatives filed a number of comments and attended meetings with SEC commissioners concerning the rule, focusing largely on the competitiveness argument; API also lobbied the commission on several occasions. "Exxon was just incredibly vocal and aggressive," Zorka Milin, the senior legal adviser of Global Witness, an international anti-corruption NGO, told me. "What are they fighting so desperately to hide?"

After the SEC first published the rule in 2012, API, the U.S. Chamber of Commerce, the Independent Petroleum Association of America, and the National Foreign Trade Council sued the SEC in the U.S. District Court for the District of Columbia to undo the rule, and the court vacated it. But in 2014, Oxfam sued the SEC for dragging its feet on drafting the rule; in 2015, a federal judge ordered it to fast-track the rule, and it complied.

In an email, ExxonMobil spokesman William Holbrook wrote that the company believes "the best approach would be to adopt a rule consistent with Extractive Industries Transparency Initiative principles," referring to a parallel system similar to the one envisioned in Cardin-Lugar. Several years ago, Steve Coll helped explain why companies like ExxonMobil might prefer this alternative: It is a voluntary regime and, according to its critics, includes slow, insufficient enforcement mechanisms. ExxonMobil executive have also sat on the initiative's board, Coll reported.

Yet 30 countries have enacted laws mirroring Cardin-Lugar that feature the same reporting requirements. The requirements are so similar, in fact, that companies would have been able to file the same report with the SEC as they do with other jurisdictions, Milin explained.

According to the Natural Resource Governance Institute, 120 companies have reported their foreign government payments under the British, Canadian, French, and Norwegian laws, including BP, Shell, Total, Gazprom, and Rosneft. Of these companies, payments totaling $150 billion have been made to governments in 102 countries. "The companies which are reporting under U.K. law such as BP and Shell have not noted that this has been overly burdensome," Milin said.

The point of Cardin-Lugar was not to malign foreign governments or multinational companies like ExxonMobil, but simply to compel them to play fair. And as Richard Lugar pointed out in 2015 while the measure was mired in bureaucratic hell, "Allowing for greater transparency of government finances gives the United States more information about what actions these governments are taking"—it's a tool of soft power, in other words, using American business interests to help the Washington further its interests abroad.

Tillerson's critics will remain skeptical over his ties to Russia, a country where ExxonMobil has done lucrative business which may soon receive relief from sanctions under Donald Trump, and question whether his recusal agreements with the company are sufficient, especially as the lengthy list of Donald Trump's conflicts of interest grows. Questions about whether Tillerson can, with satisfaction, leave behind ExxonMobil and its concerns—over things like Cardin-Lugar—will dog him through his tenure at State.

Politico - Rex Tillerson Tried to Get This Rule Killed. Now Congress Is About To Do It For Him

2/1/2017 - http://www.politico.com/magazine/story/2017/02/rex-tillerson-tried-to-get-this-rule-killed-now-congress-is-about-to-do-it-for-him-214725

POLITICO

Rex Tillerson Tried to Get This Rule Killed. Now Congress Is About to Do It for Him

Should oil companies disclose payments to foreign governments? The GOP, and former Exxon CEO, think not.

By **MICHAEL GRUNWALD**

February 01, 2017

he leader of the world's most valuable company doesn't typically fly to Washington to fight one obscure amendment to a 2,300-page bill, especially a motherhood-and-apple-pie-style amendment designed to prevent and expose corruption abroad. But back in 2010, ExxonMobil's then-CEO, Rex Tillerson, was deeply worried about Section 1504 of the Dodd-Frank Wall Street reforms, a bipartisan amendment that required drilling and mining companies to disclose any payments they make to foreign governments. So Tillerson and one of his lobbyists paid a half-hour visit to the amendment's Republican co-author, then-Senator Richard Lugar, to try to get it killed.

Tillerson argued that forcing U.S. oil firms to reveal corporate secrets—such as paying foreign governments—would put them at a competitive disadvantage. He also explained that the provision would make it especially difficult for Exxon to do business in Russia, where, as he did not need to explain, the government takes a rather active interest in the oil industry. But Lugar believed greater transparency could help alleviate the "resource curse" of corruption that plagues so many mineral-rich countries, so he told Tillerson they would have to agree to disagree. Section 1504 stayed in the bill, the bill became law, and the disclosure requirement became an international example: France, Canada and the United Kingdom all went on to use it as a model for similar rules.

Today, seven years later, Republicans confirmed Tillerson as President Trump's secretary of state, despite allegations that he's too cozy with Russia. At the same time, the GOP is preparing to try to kill the disclosure rule created under Section 1504, despite warnings from international aid groups that the move would provide a wink-and-nod blessing to hidden corporate payments to petro-thugs. The House is expected to act this afternoon, and since the move relies on a special mechanism for reversing rules enacted late in a presidential term, Senate Republicans will need a mere majority rather than a filibuster-proof 60 votes to follow suit.

So after all of Trump's promises to drain the swamp, an anti-anti-corruption bill pushed by Big Oil and his own top diplomat might be the first policy legislation to reach his desk.

"It would be a real tragedy for democracy and human rights," says Lugar, the former chairman of the Senate Foreign Relations Committee, who now leads a center in his name focusing on global issues. "It's hard to believe this would be such a high priority right now."

The so-called resource extraction rule is not one of President Obama's most prominent legacies, but one reason getting rid of it is such a high Republican priority is that it's one of his most vulnerable legacies. That's because it was finalized only last June, two weeks too late to avoid scrutiny under the Congressional Review Act, a law allowing Congress to strike down end-of-term regulations with simple majorities. The CRA has been used only once before, when Congress erased a Clinton-era workplace ergonomics rule in 2001. But now that the Republicans have control of both houses of Congress and the White House, they hope to use the CRA to wipe out a variety of Obama rules, starting today with this and another measure opposed by extractive industries, a “stream protection” rule restricting discharges from mining operations.

Aside from anti-Obama politics, the other reason gutting the Section 1504 rule is a high priority for Republicans is that their supporters in the oil industry really hate it. In fact, oil interests successfully sued to block an earlier version of the rule, contributing to the delays that pushed the final rule past the CRA deadline.

Yesterday, American Petroleum Institute President Jack Gerard sent a letter to House leaders reiterating the industry’s long-standing complaints that the rule would damage the competitiveness of U.S. firms. He noted that America already has laws like the Foreign Corrupt Practices Act that specifically ban U.S. firms operating abroad from making illicit payments, describing the additional rule as regulatory overkill. And he said the rule injected the Securities and Exchange Commission into a “social agenda issue” that had little to do with its mission of policing fraud and protecting investors. By striking it down, Gerard wrote, “Congress can reclaim its authority, and in the process protect American companies, workers, and investors.”

Tillerson alluded to those competitiveness arguments in his written responses to Senate questions about his confirmation, noting that since the Section 1504 rule would impose restrictions on U.S.-based companies, part of his job as secretary of state would be to make sure "foreign companies or investors do not get an unfair advantage by cheating or keeping to a lower standard." But groups that specialize in fighting global poverty and corruption argue that those arguments make no sense now that foreign nations have adopted similar rules; in fact, conglomerates like BP, Total, and even Russian oil majors listed in London have already filed disclosures under those rules. A blog post on the issue yesterday from Oxfam America—which sued the Obama administration in 2014 for moving too slowly to revise the rule after the initial effort was struck down in court—was titled “From Russia With Love,” characterizing the GOP effort as a gift to Vladimir Putin and other authoritarian leaders of resource-rich countries.

“Why would Congress want to take a stand for facilitating corruption?” asked Jana Morgan, director of Publish What You Pay USA, a coalition of groups focused on accountability in the extractive industries. “Why would anyone want to help the oil industry hide payments to kleptocracies?”

Senator Lugar pointed out that in 2010, his amendment introducing Section 1504 with Democratic Senator Ben Cardin had a fair amount of bipartisan support. But so far, no Republicans have come out against the resolutions to strike it down, filed by Bill Huzienga of Michigan in the House and James Inhofe of Oklahoma in the Senate. If the GOP can cobble together a majority for the resolution in the Senate, Democrats can spend five hours of floor time delaying it, but they can’t stop it. And nobody seems to think that Trump, who had lunch with Tillerson today, would veto it, regardless of his fiery rhetoric about taking on special interests. The White House did not respond to a request for comment.

Most of Obama’s most important regulations, like his Clean Power Plan to rein in greenhouse-gas emissions or other Dodd-Frank financial rules designed to rein in Wall Street, were completed early enough to avoid CRA challenges. Trump and the Republicans will have to take on protracted legislative and judicial fights to kill those rules. But there are plenty of less prominent late-term rules that Republicans can take on if they're willing to devote the floor time, on issues ranging from paid sick days for federal contract workers to energy efficiency for ceiling fans to carcinogenic beryllium in the workplace.

In general, the rules that are most likely to face challenges are the rules that could cause problems for the best-connected Republicans. And the kind of rules that inspire impassioned lobbying campaigns by the CEO's of megacorporations like ExxonMobil seem unlikely to survive in the current Washington environment.

"It's a tough political landscape," says Zorka Milin, a senior legal adviser for the anti-corruption group Global Witness. "The issue of corruption ought to resonate with both parties, but we know this won't be easy to stop."

Washington Post - One of House GOP’s first targets for regulatory rollback is top on oil industry’s wish list

2/1/2017 - https://www.washingtonpost.com/news/energy-environment/wp/2017/02/01/one-of-house-gops-first-targets-for-regulatory-rollback-is-tops-on-the-oil-industrys-wish-list/

THE WASHINGTON POST

One of House GOP’s first targets for regulatory rollback is top on oil industry’s wish list

By **Steven Mufson**

Feb. 2, 2017 at 3:20 a.m. GMT+8

One of House Republicans’ first targets for regulatory rollback is torn from the oil industry’s wish list: eliminating recent Obama administration requirements that oil, gas and mining companies divulge more information about business payments they make to foreign governments.

A resolution, which aims to scrap the transparency rule imposed by the Securities and Exchange Commission, was passed by the House Wednesday afternoon. It is one of the first measures that seeks to use the previously obscure Congressional Review Act to undo regulations adopted during the final months of the Obama administration.
And its passage came at an awkward moment, shortly after former ExxonMobil chief executive Rex Tillerson, who opposed the SEC regulation, was confirmed by the Senate as the new secretary of state.

The review act could be used to nullify regulations dating back to June last year, experts on the law say.

In this case, the SEC drafted the regulation in response to directions in the Dodd-Frank financial reform legislation. The directive was in an amendment backed by Sen. Ben Cardin (D-Md.) and then-Sen. Richard Lugar (R-Ind.). “Information is power,” Lugar said at the time. “It is power for shareholders and power for citizens living under oppressive regimes.”

The SEC said that it would “combat government corruption through greater transparency and accountability.”

But the SEC’s first version of the regulation was struck down by a federal district court in the District of Columbia after the American Petroleum Institute and U.S. Chamber of Commerce filed suit in 2012. That prompted a second attempt by the SEC. Because the final version was imposed near the end of the Obama administration, it now falls within the time frame that permits Congress and the president to use the review act to undo the regulation.

And now, the change in administrations has put the SEC rule in even greater peril. The new acting SEC chairman Michael S. Piwowar posted a statement on the SEC web site late Tuesday saying that he had “directed the staff to reconsider whether the 2014 guidance on the conflict minerals rule is still appropriate and whether any additional relief is appropriate.”

Piwowar said “While visiting Africa last year, I heard first-hand from the people affected by this misguided rule. The disclosure requirements have caused a *de facto* boycott of minerals from portions of Africa.” He said the effort to put an end to “conflict minerals” had hurt innocent people and businesses in the Congo in particular.

The oil industry has been particularly incensed about the regulation, complaining that the SEC rule would put them at a competitive disadvantage to foreign firms and be unduly expensive.

The SEC has argued that the rule would help fight corruption not only by companies but by governments around the world. It has also noted that global companies have begun to provide, on a voluntary basis, more comprehensive disclosures. In December 2015, then-commission member Luis A. Aguilar said that at least two large resource extraction companies were already providing payment disclosure on a project basis, and at least one other major resource extraction company was voluntarily providing other disclosures.

“Other global companies are also beginning to open their books to permit a window into their resource extraction payments to foreign governments,” he said.

But Jack Gerard, president of the American Petroleum Institute, said in an interview that big oil and gas companies compete with state-owned companies that do not have disclosure requirements and that the SEC rule would allow those companies to win contracts after seeing what U.S. firms pay.

“We think it’s a regulation that would have an unintended consequence of hurting U.S. business’s ability to compete,” he said. He said the SEC’s requirement that information be provided on a project basis was particularly objectionable.

He also cited the SEC’s own estimates of the cost the regulation would impose on oil, gas and mining companies. Gerard said compliance would cost between $96 million and $591 million annually for the entire industry. On an individual corporate basis, that would work out to $225,000 to $1.4 million a year, Gerard said.

ExxonMobil spokesman William F. Holbrook said “the SEC largely ignored industry’s comments and published a notice of a final rule that remains based on the [European Union’s] model and likely will adversely affect the ability of publicly traded companies to compete globally.”

Other groups disagree. “Rolling back this law will enable the corruption President Trump told us all he would end,” said Corinna Gilfillan, head of the U.S. office of Global Witness, an advocacy group that targets environmental and human rights abuses. “The oil industry has been striking backroom deals with dictators and tyrants for decades, wrecking developing economies and the environment in the process."

She added that "this law helps prevent it by making sure people can see how much money is changing hands for their resources, and who is really benefiting from those deals."

The House resolution was introduced by Rep. Bill Huizenga (R-Mich.), a member of the House Financial Services Committee. The measure now goes to the Senate for approval and then to Trump for signature. The lead sponsor in the Senate is Sen. James Inhofe (R-Okla.).

CNN - House Republicans look to roll back transparency law for energy companies
2/1/2017- http://www.cnn.com/2017/01/31/politics/oil-industry-regulations/index.html

CNN

House Republicans look to roll back transparency law for energy companies

By Rene Marsh, CNN

Updated 0321 GMT (1121 HKT) February 1, 2017

(CNN)Congress is preparing this week to start the process of rolling back multiple regulations, one of which is a bipartisan rule that requires extractive industry corporations, like oil, gas and mining companies to disclose payments they make to foreign governments for access to natural resources.

The rule, the Cardin-Lugar Amendment, became law in 2010 as Section 1504 of the Dodd-Frank Act. After delays by court challenges by some in the oil and gas industry, the Securities and Exchange Commission implemented the rule, saying that all foreign and domestic companies listed on US stock exchanges and involved in oil, gas and mineral resource extraction must publish payments they make to foreign countries in which they operate.

Michigan Republican Rep. Bill Huizenga is leading the charge for the rule's repeal, which is scheduled for a vote in the House Wednesday. The Senate also will need to vote on this measure, with 51 votes needed to overturn the rule.

"In reality, this very flawed rule is diverting precious resources not only from the SEC, but more importantly resources from American companies that could otherwise be used to create jobs," his office told CNN in a statement.

The congressman suggested the SEC is guilty of overreach.

"Despite being instructed in federal court, the SEC continues to propose a resource extraction rule that is overly burdensome, puts US companies at a competitive disadvantage and fails to provide investors with useful information," Huizenga said.

His opponents say he is acting on behalf of an industry with a strong lobby. According to OpenSecrets.org, Huizenga's campaign received $46,050 from oil and gas interests.

Rep. Maxine Waters, D-California, ranking member of the House Committee on Financial Services, responded to Huizenga's resolution, saying in a statement, "the American people have a right to know where Big Oil is drilling and who they're paying, especially if it involves countries that have been hostile to the United States."

Waters specifically said companies like ExxonMobil would benefit, citing the company's former CEO, Rex Tillerson, who is President Donald Trump's nominee for secretary of state.

"Striking Section 1504 would mean that Big Oil companies like ExxonMobil would be able to continue their questionable dealings with corrupt parties such as Vladimir Putin and Russia," Waters said.

Critics say Wednesday's House vote will be on the heels of the backlash Republicans received after planning to gut the Office of Congressional Ethics, a nonpartisan congressional watchdog, with a vote to strip the agency of its powers. House Republicans eventually pulled their plans to gut the agency.

The rule is finalized and has legal standing but it has a phase-in period so companies do not have to disclose those government payments to the SEC until 2019.
Jodi Vittori, a retired Air Force lieutenant colonel who also teaches courses in terrorism finance at Georgetown University and worked on counter-corruption efforts for NATO, said repealing this rule could impact US national security.

Vittori said "a lot" of the money the gas and oil industry pays to many poor or fragile countries for access to their natural resources "gets diverted to other places out of these slush funds they can be going to hackers that are hacking political parties. It could be going to terrorists, insurgents, warlords, criminals, wherever these authoritarian governments or the cronies who have access to their money choose to divert it. "

But the American Petroleum Institute, a top lobbyist for the oil industry, said the SEC's recent rule "undermines global payment transparency efforts" and the oil and natural gas industry "has been an advocate of greater revenue transparency for decades."
Exxon said the rule "likely will adversely affect the ability of publicly traded companies to compete globally," though other oil giants, including Shell and BP, have supported it.

Isabel Munilla, a policy adviser of Oxfam, an international confederation of charitable organizations focused on the alleviation of global poverty, said the rule helps the citizens of fragile countries and American taxpayers follow the money.

"At a time when terror groups like ISIS' largest source of revenue is from oil, we deserve to know where oil companies' payments to foreign governments are going," she said.

Munilla added, "What does Exxon and Chevron have to hide? How does these payment disclosures put you at a competitive risk if your competitors are disclosing the same information? These oil companies are not being asked to disclose proprietary information."

API argues more than 90% of the world's oil reserves are owned or controlled by state-owned oil companies, many of which are not subject to either the SEC's jurisdiction or disclosure requirements. Competitors could examine the disclosures of US companies to discern commercially sensitive information, and countries wishing to avoid disclosure could divert their business to foreign competitors not subject to the US disclosure rule, the institute said.

New York Times - "Republicans' Paths to Unraveling the Dodd-Frank Act"
1/31/2017 - https://www.nytimes.com/2017/01/30/business/dealbook/republicans-unravel-dodd-frank-act.html?_r=0

The New York Times

Republicans' Paths to Unraveling the Dodd-Frank Act

By Ben Protess
Jan. 30, 2017

President Trump took aim at financial regulations and other federal rules on Monday, signing an executive order to trim back the federal regulatory thicket and promising to do "a big number" on Obama-era Wall Street restrictions.

At the same time, congressional Republicans opened their own front against the Dodd-Frank Act, the law that overhauled financial regulation after the 2008 financial crisis. And with Mr. Trump in the White House, Republicans who previously challenged Dodd-Frank now see success in their sights after years of futility.

"Dodd-Frank is a disaster," the president declared during a 10-minute session with reporters as he signed an unrelated executive order that could reduce other types of government regulations.

"We're going to be doing a big number on Dodd-Frank," Mr. Trump added. "The American dream is back."

In reality, the president cannot unravel Dodd-Frank with a stroke of a pen, and congressional Republicans will find it easier to chip away at the law than to repeal it altogether.

Defanging Dodd-Frank, a sweeping law that created a consumer protection agency and reined in mortgage practices and derivatives trading, would also seem to contradict Mr. Trump's anti-Wall Street language from the campaign trail. His closing campaign ad, which lamented a "global power structure" and a "corrupt machine," flashed an image of Lloyd C. Blankfein, the chairman and chief executive of Goldman Sachs.

But the president has spoken out against Dodd-Frank, claiming that eliminating it would benefit working people, even as he stocks his administration with former Goldman executives and billionaires.

His allies in Congress began their legislative assault on Dodd-Frank on Monday, introducing a measure to repeal a Securities and Exchange Commission regulation that requires oil companies to publicly disclose payments they make to governments when developing resources around the world. The regulation was tangential to Dodd-Frank's mission of reforming Wall Street but was included as a bipartisan effort intended to shine a light on potential bribes.

Republicans argue that the rule puts American companies at a disadvantage; the House Financial Services Committee has called it a "politically motivated mandate." And the rule has some powerful opponents in the industry, including Exxon Mobil and, according to one account, its former top executive, Rex W. Tillerson, Mr. Trump's pick for secretary of state.

The legislation to repeal the rule, introduced by Representative Bill Huizenga of Michigan and advanced to the House floor by the rules committee on Monday, has a good shot of becoming law thanks to an obscure parliamentary procedure. Under the Congressional Review Act, passed in 1996, Congress has a limited window to undo newly finalized regulations using only 51 Senate votes, rather than the normal 60 needed to overcome a filibuster. Republicans hold a majority in both chambers, all but guaranteeing them success.

This effort is just the beginning. House Republicans are also moving bolder legislation that would repeal crucial provisions of Dodd-Frank, including the so-called Volcker rule, which prevents banks from making risky bets with their own money. And they are exploring ways to use the budget process to potentially defund some of the law's most contentious provisions.

Still, each strategy has its limits. The House legislation to repeal Dodd-Frank could stall in the Senate, where it needs 60 votes. And even though the Congressional Review Act requires only a majority of lawmakers to repeal a rule, only 10 or so Dodd-Frank rules are vulnerable to this process.

"It is the height of hypocrisy for Republicans to now be wasting time attacking rules signed by the former president, which went through a rigorous vetting process," said Representative Louise M. Slaughter of New York, the top Democrat on the rules committee.

Even the president's latest executive order could have a minor impact.

The order says each new rule must be offset by regulatory cuts that save at least twice as much money. It also instructs the Office of Management and Budget to set annual limits on the total cost of rules issued by each department. For the current year, the limit is set at zero.

"This will be the largest cut ever, by far, in terms of regulation," Mr. Trump said hyperbolically.

But the order does not apply to independent agencies like the Federal Reserve and the Consumer Financial Protection Bureau, limiting its effect on financial regulation.

Independent agencies could choose to comply but are unlikely to do so while under the leadership of people appointed by President Obama.

In addition, the order includes a broad exemption for "emergencies and other circumstances."

Despite the obstacles, there are a number of different tactics that Republicans can use to try to dismantle Dodd-Frank.

Congressional Review Act

Dodd-Frank opponents owe Newt Gingrich a debt of gratitude.

The Congressional Review Act, passed some 20 years ago as part of his Contract With America, provides lawmakers at least 60 days to introduce legislation disapproving major new regulations. The lawmakers can ultimately repeal the regulations with support from just a majority of lawmakers and the president. The Congressional Research Service has determined that rules sent to Congress on or after June 13 of last year are vulnerable to repeal.

Until now, the Congressional Review Act was not much of a weapon. It has led to a repeal measure being signed into law only once, in 2001, when Republicans and President George W. Bush wiped out workplace safety regulations adopted near the end of President Bill Clinton's administration.

But Republicans have identified dozens of potential rules to override, some of which arose from Dodd-Frank, according to congressional documents reviewed by The New York Times.

Republicans can target a derivatives rule adopted last year by the Commodity Futures Trading Commission, a Consumer Financial Protection Bureau rule for prepaid debit cards and a rule approved by banking regulators that imposed capital requirements for banks that trade derivatives. The threat also applies to any unfinished rules that the consumer bureau completes, including its looming crackdown on payday lending.

The S.E.C. oil-payment rule is the first of five Obama administration rules scheduled to be challenged this week. The House rules committee advanced the legislation to repeal that rule on Monday over the objections of the panel's Democrats, who argued that Republicans were misusing the Congressional Review Act to undermine Dodd-Frank.

The oil-disclosure policy has already had a tortured history. The S.E.C. completed the rule in 2012, with the support of antipoverty groups like Oxfam and the One Campaign, but the American Petroleum Institute, the trade group representing Exxon Mobil and other oil companies, sued the agency and won.

In 2013, a federal judge in the District of Columbia vacated the rule. It took the S.E.C. another three years to redo the rule, which it finally did in June of last year, opening it to Republican attack under the Congressional Review Act.

"What they're doing is responding to a narrow interest within the industry that is trying to be secretive," said Senator Benjamin L. Cardin of Maryland, the top Democrat on the Senate Foreign Relations Committee, who sponsored the amendment in Dodd-Frank along with former Senator Richard Lugar, a Republican.

Replacing Dodd-Frank

If the Congressional Review Act is a scalpel, then the Financial Choice Act is a sledgehammer.

The legislation, introduced last summer by Representative Jeb Hensarling, the chairman of the House Financial Services Committee, represents the most comprehensive response to Dodd-Frank yet.

The bill would repeal the Volcker rule as well as the so-called Durbin amendment, which set a limit on fees retailers are charged for debit card transactions. It would replace Dodd-Frank with a more flexible regulatory structure.

After a false start under President Obama, Mr. Hensarling's plan to repeal and replace Dodd-Frank could gain new life from Mr. Trump.

"Republicans on the Financial Services Committee are eager to work with the president and his administration to unclog the arteries of our financial system so the lifeblood of capital can flow more freely and create jobs," Mr. Hensarling said in a statement.

He hopes to pass the bill this year — with his committee expected to take it up in the coming weeks — but that is no sure thing.

For one thing, the deep-pocketed banking lobby is not unanimous in its support of Mr. Hensarling, a Texan with a populist streak whose plan is arguably more geared toward small banks than big ones. Many of the biggest banks, creatures of habit that have already adjusted to much of Dodd-Frank, would prefer specific accommodations, rather than wholesale repeal of the law.

Mr. Hensarling's plan would also need to merge with legislation offered by Senate Republicans. And even then, they would need some Democrats to reach 60 votes.

House Democrats have vowed to fight Mr. Hensarling.

"This bill is so bad that it simply cannot be fixed," Representative Maxine Waters of California, the top Democrat on Mr. Hensarling's committee, said of his bill last year.

The Budget

If his straightforward legislation stalls, Mr. Hensarling may find comfort in the minutiae of the budget reconciliation process.

In the next six weeks or so, his committee is required to submit its “budget views” for 2018 to the House Budget Committee. In this document, Mr. Hensarling is expected to recommend a number of measures that could rein in some core aspects of Dodd-Frank.

For example, he will most likely recommend replacing regulators’ authority to wind down troubled banks with a new chapter of the bankruptcy code. He also could tinker with the funding for two bodies that Republicans love to hate: the Consumer Financial Protection Bureau and the Financial Stability Oversight Council, a collective of regulators who monitor threats to the financial system.

By subjecting these bodies to the congressional appropriations process, rather than a dedicated funding mechanism, Congress may be able to cut their funding.

It is unclear whether this plan will gain traction with congressional leaders.

Regulatory Apathy

While Congress is busy fighting Dodd-Frank, the Trump administration’s financial regulators may prove that less is more.

Wall Street is hoping that with new leaders at the S.E.C. and the Commodity Futures Trading Commission, regulators may allow some leeway for violations of the Volcker rule and other regulations.

And while most of Dodd-Frank has been completed, there are rules left to set, including restrictions on executive compensation. Under the Trump administration, those rules may remain unfinished business.

The Hill - Put the American people first: Keep the anti-corruption rule
1/31/2017 - https://thehill.com/blogs/congress-blog/foreign-policy/317082-put-the-american-people-first-keep-the-anti-corruption

Put the American people first: Keep the anti-corruption rule
BY FORMER SEN. RICHARD G. LUGAR (R-IND.) AND SEN. BEN CARDIN (D-MD.) — 01/31/17 10:55 AM EST

One lesson from President Trump's election is, as he said in his inaugural speech, the interests of citizens should prevail over the powerful special interests in Washington. Yet some politicians now want to do just the opposite, and cancel a pioneering anti-corruption law that bolsters American national security, advances our humanitarian goals, and demonstrates U.S. moral leadership.

The bipartisan Cardin-Lugar amendment, aimed at fighting corruption in mineral-rich developing countries, was enacted in 2010 as Section 1504 of the Dodd-Frank reform bill. It requires that oil, gas and mining companies listed on U.S. stock exchanges (whether or not U.S.-based) disclose their royalties and other payments to foreign governments. History shows that many resource-rich countries are actually poor because the vast mineral revenues breed corruption that leads to poverty, hunger and instability. Oil-rich Venezuela is running out of food and medicine. Nigeria, with vast reserves, is gripped by economic crisis and terrorism.

This "resource curse" is not only a tragedy for the citizens of these countries, it impacts Americans, too. It has empowered anti-American dictators in Iraq, Libya and Syria. It worsens global poverty, which can be a seedbed for terrorism, as in Yemen. It dulls the effect of our foreign assistance, and it can lead to instability that crimps global oil supplies and raises pump prices for American motorists.

One way to fight this corruption, waste and mismanagement is to reveal just how much money the autocrats are making from their oil, gas, copper, gold and other resources. These vast sums are often secrets known only to the governments and the international extractive industry companies who pay them. Disclosure of these funds shifts power from the elites to the citizens so they can "follow the money" and hold governments accountable.

That's why we sought a mandatory extractive industries disclosure rule. The Big Oil lobby strongly opposed the legislation and fought the rule in court. But we felt it was important to assert America's traditional role as a global leader in fighting corruption.

American leadership paid off: the European Union promptly moved to enact nearly identical legislation, as did Canada, with support of its global mining companies. Cardin-Lugar has become an international norm, with 80 percent of the world's largest oil, gas and mining firms now covered. Already in Europe, majors like Shell, BP and France's Total have filed disclosure reports, as have state-controlled Russian firms Rosneft and gas giant Gazprom. Once Cardin-Lugar reporting starts for U.S.-listed firms in 2019, state companies from China and Brazil will be disclosing.

But now Big Oil is back, seeking repeal of Cardin-Lugar so their payments can be kept secret from the people. They claim they will be at a competitive disadvantage to foreigners, or they'll have to reveal commercially sensitive information.

But events since Cardin-Lugar passed render such fears unfounded. With Europe and Canada in the same disclosure system, the playing field is now level. And the companies already filing have suffered no commercial harm nor revealed vital secrets.

Section 1504 was specifically ordered by Congress and promulgated after years of rulemaking and court review. It won't cost a single American job. Everything the oil companies can legally do today is still allowed once Cardin-Lugar takes effect. They will only have to do one more thing—send in their numbers. Besides Big Oil, those most eager to repeal Cardin-Lugar are the autocrats, in places like Russia, Iran or Venezuela, with oil wells, gas fields or copper mines who want to keep the money secret from their citizens. Why do their bidding?

Most important, at a time of tight budgets, Cardin -Lugar is our most affordable and effective means to make a difference in many underdeveloped nations. Cast it aside and we are undoing a clear act of moral leadership, turning our back on corruption. This would betray our own principles and severely undercut our allies in Europe and Canada. It would cost countless lives over the long run and harm our security.

Some Americans would shut out the world and let poor countries stew in their own problems. But most, including many in our churches, recognize that we have important development goals consistent with our military interests and our history as a moral nation. Cardin-Lugar advances those goals without burdening the taxpayer. It's the kind of creative solution to global problems that our leaders should be embracing, not rejecting at the behest of a single industry. Let's put American interests first, ahead of the special interests, and retain Cardin-Lugar.

Former Sen. Richard Lugar (R-Ind.), President of The Lugar Center, was chairman and ranking member of the Senate Foreign Relations Committee. Sen. Ben Cardin (D-Md.) is the current ranking member of the Committee.

E&E News (Climate Wire) - Where would Rex Tillerson stand on oil corruption?
1/31/2017 - http://www.eenews.net/climatewire/2017/01/31/stories/1060049239

CLIMATE WIRE

STATE DEPARTMENT

Where would Rex Tillerson stand on oil corruption?

Jean Chemnick, E&E News reporter

Published: Tuesday, January 31, 2017

If former Exxon Mobil Corp. CEO Rex Tillerson is confirmed as secretary of State, some worry he'll bring a pro-oil bias to federal efforts at helping poor countries endowed with fossil fuel resources stand up to multinational corporations.

Tillerson's four decades at Exxon Mobil included years directing the oil giant's investment in impoverished countries with an abundance of oil and gas — the kind of investment that has at times done more to enrich local strongmen than to raise the local population out of poverty.

As the veteran oilman prepares to take the reins of the State Department, environmentalists and some Democrats fear for the future of programs aimed at ensuring impoverished countries get the best possible deal for their energy resources.

"What I'm afraid of is that you'll get laxer environmental regulations and you'll have laxer profit-sharing agreements because Rex Tillerson thinks that oil and gas development is the goal," said Jesse Coleman of Greenpeace.

To be clear, the State Department doesn't regulate extractive industries in other countries. What it does do through a program called the Energy Governance and Capacity Initiative (EGCI) is offer advice to countries that want it on how to create in-country legal, regulatory and oversight structures. The goal: helping countries avoid what is known as the "Dutch disease" or the "resource curse." That is, the tendency for a boom in one sector to take a toll on the health of the overall economy, as occurred in the Netherlands after it found gas in the North Sea in the late 1950s.

Weak governance in developing countries have contributed to that problem, as fees and other payments flow to corrupt local officials rather than to public coffers. That's what the EGCI, which was set up in 2010 under then-Secretary of State Hillary Clinton, was intended to help fix. It provides legal and technical guidance and best practices to countries to help ensure resource development doesn't contributed to poverty and oppression and degrade the environment.

"If [poor countries] are going to start getting a big spigot of money coming in from one place, they need to have a much more robust accounting and fiscal control system in place to keep track of the money," said Jay Branegan of the Lugar Center. "When you're a big rich country, you kind of do it automatically, but when you're a poorer country, it kind of goes from the tax collector into the pocket of the president."

Exxon's own activities have been seen as the cause of this problem in places like Nigeria, Equatorial Guinea and Indonesia, and the U.S. oil and gas industry has opposed domestic laws aimed at averting the resource curse (***Climatewire***, Jan. 23).

Tillerson personally lobbied against, and the American Petroleum Institute still opposes, a provision of a major 2010 financial reform law that requires U.S. oil companies to disclose their payments to foreign countries as a means of boosting transparency. The so-called Cardin-Lugar law was enacted, and the Securities and Exchange Commission finalized a rule last year, but Republican lawmakers are now aiming to use the **Congressional Review Act** to invalidate that rule.

Tillerson says aid can counter the curse

Senators raised the resource curse issue with Tillerson during his Jan. 11 confirmation hearing before the Senate Foreign Relations Committee. Sen. Tim Kaine (D-Va.) noted that "Exxon Mobil does business in many countries — Chad, Equatorial Guinea, Nigeria, Indonesia, Angola — that have suffered through this phenomenon."

"How will you work with nations that have suffered under the resource curse to make sure they respect human rights, the rule of law, and our long-standing commitment to transparency and anti-corruption interests?" Kaine asked.

Tillerson responded that the U.S. Agency for International Development (USAID) has programs "to strengthen the institutional capacities and set standards of expectation in the developing part of the world, including those that have resource wealth."

The EGCI program falls under the Bureau of Energy Resources at the State Department itself, but seems to meet that description.

But Democrats, including Maryland Sen. Ben Cardin, the committee's ranking member, voiced concerns that Tillerson's presence at the helm of the State Department would weigh policy in favor of oil and gas development. And with his refusal to promise to recuse himself from decisions impacting Exxon after his first year at State, some predicted that he and the political appointees he taps to oversee EGCI could turn the program into a liaison unit for major oil companies, including his former employer.

Take Guyana, where Coleman said EGCI would be "pretty well set up to benefit Exxon."

Guyana: a case study

The Western Hemisphere's third-poorest country is the site of a massive offshore oil find Exxon plans to begin developing by year's end. EGCI has been advising the tiny country since 2010, stepping up its activity after Exxon made its discovery. The company promises, according to the Bureau of Energy Resources' website, to "dramatically change the future of the country's energy landscape, as well as its long-term economic prospects."

Personnel from the State, Interior and Treasury departments have provided technical expertise and advice to help the country manage the drilling and the revenue that will come from it.

Patrick Heller, director of legal and economic programs for the Natural Resource Governance Institute, said EGCI had performed well there and Guyana's government was earnestly seeking to develop strong regulations. But Tillerson's new position presents an optics problem.

Heller said U.S. diplomats already faced undeserved suspicion that they are in fact an arm of U.S. corporate interests.

"I think that Tillerson being in the lead at State would make it more challenging for the officials who are executing those programs to combat or counteract those kinds of challenges," he said.

Guyana also demonstrates that Tillerson's much-discussed international experience comes with its own baggage. Exxon's interest off the Guyanese coast is disputed by Venezuela, which lays claim to the Essequibo maritime zone where it is located. Exxon's involvement in Guyana came after Tillerson clashed for years with the socialist leadership in Venezuela over its efforts to renationalize the oil and gas industry.

In 2014 the World Bank arbitration tribunal ordered Venezuela to pay Exxon $1.6 billion to compensate for nationalizing its projects in the country, a sum much smaller than the $15 billion the company had sought. The decision was claimed as a victory by Venezuela. Some analysts have called Tillerson's efforts in Guyana part of a bid to antagonize Venezuelan President Nicolás Maduro.

"With the nomination of Rex Tillerson, the prospects for normalized relations between the U.S. and Venezuela appear quite poor at this point in time," said Timothy Gill, a professor at the Center for Inter-American Policy and Research at Tulane University.

This comes after relations between the two countries appeared to be thawing before the election, as former Secretary of State John Kerry dispatched Undersecretary of State for Political Affairs Tom Shannon to Caracas to meet with Maduro.

A transparency rule in the crossfire

Meanwhile, the future of the Cardin-Luger law could have significant implications for the program.

Cardin and then-Foreign Relations Chairman Richard Lugar (R-Ind.) attached their transparency provision to the 2010 financial reform law in hopes that by making the fees, royalties and bonuses paid by U.S. companies abroad, publicly available foreign officials would feel pressure not to pocket them.

Branegan, an alumnus of Lugar's Foreign Relations staff, said that when despots pocket the proceeds of their countries' oil and gas wealth, the results aren't good. Former Iraq President Saddam Hussein used revenue from Iraq's oil and gas resources to fund the invasion of Iran and Kuwait, while former Prime Minister Muammar Gaddafi used Libya's to launch a nuclear weapons program. Venezuela's own oil wealth was squandered, with the result that the country is now facing food and medicine shortages.

"From a U.S. national security point of view, if these countries could turn a large portion of their oil revenues into productive investments and into schools, hospitals and roads instead of military aggrandizement, palaces, Swiss chalets and collections of Rolls-Royces, that would be an enormous benefit to U.S. foreign policy," he said. "It would stabilize these countries."

API continues to oppose the Cardin-Lugar rule on the grounds that it places U.S.-listed companies at a disadvantage with international competitors by requiring it to supply proprietary information.

"This can give some large industry players an advantage on future business projects, and can fundamentally harm American jobs," API said in a statement in June after the SEC finalized a new Cardin-Lugar rule.

But Branegan argued that the provision was not aimed at penalizing oil companies and provided exemptions for proprietary information. Furthermore, it has been a template for similar requirements adopted by Canada and the European Union. And as most large multinational companies have listings in Western industrialized nations, U.S. companies operate on a par with the vast majority of the industry, he said.

Tillerson served on the board of API. Asked by Cardin in written questions after the hearing about his stance on the Cardin-Lugar rule and other efforts to shine a spotlight on oil and gas revenue, the nominee responded that the U.S. should use development assistance to boost transparency abroad.

"Part of my job, if confirmed as secretary of State, will be to make sure that because American companies, NGOs [nongovernmental organizations] and development relief efforts are expected to play by the rules and abide by [the Cardin-Lugar rule] ... and other laws, that foreign companies or investors do not get an unfair advantage by cheating or keeping to a lower standard," he said.

Branegan said he hoped Tillerson would press Japan and other countries to adopt standards that are equivalent to those in the West rather than rolling them back for U.S. companies.

Bloomberg - "Exxon Set for Early Victory as Congress to Rescind Payments Rule"
1/31/2017 - https://www.bloomberg.com/news/articles/2017-01-31/exxon-set-for-early-victory-as-congress-to-rescind-payments-rule

BLOOMBERG

Exxon Set for Early Victory as Congress to Rescind Payments Rule

By
Catherine Traywick
January 31, 2017, 8:00 AM GMT+8

- House votes this week to stop regulation on oil disclosures
- Exxon, Chevron face criticism for pushing repeal of SEC rule

For years the oil industry has appealed to the executive branch and courts to de-fang a U.S. rule forcing Exxon Mobil Corp., Chevron Corp. and other producers to disclose their payments to foreign governments.

Now, the Republican takeover in Washington is handling it for them.

The House of Representatives is set to vote this week on killing a Securities and Exchange Commission edict that requires publication of overseas payments by oil, natural gas and mining companies. The industry says the rule, part of the 2010 Dodd-Frank act, gives global rivals a competitive edge. Backers say it will help keep payments to foreign nations in government coffers, not private pockets.

"To roll it back would be a complete abdication of U.S. initiative and leadership on issues of corruption," said Daniel Kaufmann, president of the Natural Resource Governance Institute, an international transparency watchdog.

The SEC rule, set to take effect next year, is one of a series of Obama administration regulations Republican lawmakers are trying to reverse using the Congressional Review Act, a law that allows Congress to undo regulations with a simple majority vote.

Congress also plans to vote this week to kill rules curbing methane venting and mountain-top mining. To do so, both chambers must pass a resolution disapproving the rules, which the president would then have to sign. While President Barack Obama would have reliably vetoed such resolutions, President Donald Trump is likely to sign it.

Trump argues that curbing regulations is key to unleashing investment by U.S. companies. He pledged to rescind two existing regulations for each new one that's issued.

See also: Trump Pledges 'Big Number' on Dodd-Frank

"The SEC's rule forces U.S. companies to disclose proprietary information to its competitors while foreign entities do not. This can give some large industry players an advantage on future business projects," the American Petroleum Institute, an industry group, said in a statement.

House Majority Leader Kevin McCarthy pledged in a Wall Street Journal op-ed, to "take the ax" to the SEC rule, which he characterized as "an unreasonable compliance burden."

Transparency advocates dismiss that argument, pointing out that the European Union and U.K. already require such disclosures from some of Exxon's biggest competitors. BP Plc, Total SA and Royal Dutch Shell are among those that annually report taxes, bonuses and other payments to foreign governments.

U.S. Advantage

Because Exxon and Chevron aren't listed on the European exchanges, they don't have to comply with the EU disclosure rules. That may give them an edge over other oil majors who must report project-level payments, critics say.

In its 2015 disclosure to the UK, Rosneft reported $29.8 million in payments to the Russian Federation, Vietnam, Brazil and Norway. In the same year, BP reported $15.2 billion in payments to 23 countries, Total disclosed $16.7 billion to 44 countries, and Shell reported $21.8 billion to 24 countries.

The idea behind the measure is simple: If foreign oil companies disclose payments of $1 million to the government of Country X, then the lawmakers and citizens of Country X will know that $1 million should show up on the country's budget. If less shows up, that means it has been diverted for private use.

ExxonMobil and Chevron say they support financial transparency in the oil sector. Both are members of an advisory committee under the Interior Department that oversees a voluntary corporate financial disclosure program.

SEC Comments

In comments to the SEC, the companies say they would support a version of the regulation that protected company-specific data. They argue that the current SEC rule would make available potentially valuable company information to state-owned competitors such as Saudi Aramco and Cnooc Ltd., neither of which are subject to the disclosure rules.

The American Petroleum Institute successfully challenged an earlier version of the rule in court, forcing the SEC to rewrite it. API asked the agency to consider a reporting model that detailed payments by resource type and production method -- omitting company-specific data. But, the SEC didn't adopt that approach.

"The SEC largely ignored industry's comments," said Exxon spokesman Bill Holbrook. While the final rule included exemptions for acquired companies and exploratory activities, it "remains based on the EU's model and likely will adversely affect the ability of publicly-traded companies to compete globally," he said.

A Chevron spokesperson did not respond to a request for comment.

Pattern of Behavior

Transparency advocates say they're concerned that the repeal effort is part of a pattern of behavior among Republican lawmakers.

"The GOP that tried to gut the ethics committee is trying to gut a critical anti-corruption law," said Jana Morgan, director of the advocacy group Publish What You Pay. "It sends a really disturbing message."
The planned vote is generating tension among members of the anti-corruption advisory committee on which Exxon, Chevron and API sit. The panel, made up of representatives from government, industry and civil society, publishes an annual report detailing U.S. government revenues from the oil, natural gas

and mining industries, as well as voluntarily reported payments made to the U.S. government from companies in those sectors.

Civil society members of the committee say Exxon's opposition to the SEC rule jeopardizes its standing on the panel. At a meeting on Wednesday, members will discuss whether Exxon, Chevron and API should keep their seats at all.

"I really have to question whether it's appropriate for companies like Exxon and Chevron and API to continue to sit around this table," said Zorka Milin, an attorney with the anti-corruption group Global Witness, and a member of the advisory committee.

Financial Times - Republicans to start rapid rollback of Obama regulations
1/31/2017 - https://www.ft.com/content/74127172-e6d0-11e6-967b-c88452263daf

FINANCIAL TIMES

Republicans to start rapid rollback of Obama regulations

Trump seeks boost for oil, gas and mining industries

Ed Crooks in New York and Barney Jopson in Washington
JANUARY 31 2017

Republicans in Congress are moving this week to help President Donald Trump roll back business regulations imposed by the Obama administration, with a focus on the oil, gas and mining industries.

The Republicans want to use the Congressional Review Act, a 1996 law that has until now been used to strike down a regulation only once, to achieve a speedy rollback of regulations introduced in the Obama administration's final year.

Rules covering the wastage of gas from oil production, payments to governments around the world by natural resources companies, and pollution of streams by the coal mining industry are among the first targets.

Mr Trump has put a vow to slash government regulation at the heart of his pledge to create jobs and spur economic growth by energising US business. Since the election the president has repeatedly promised to cut regulation by "75 per cent", and on Monday he signed an executive order demanding that any proposed new regulation should be matched by two identified for repeal.

Republicans in the House of Representatives have already passed legislation intended to remove existing regulations and limit the introduction of new ones, but they are unlikely to pass the Senate in the face of Democratic opposition.

The CRA, however, gives lawmakers the power to strike down regulations finalised in the last seven months of the Obama administration, one by one. The law sets a deadline of 60 legislative days after a regulation has been submitted to Congress for it to be reviewed, but the clock resets in a new session.

That means any regulation submitted after June 13, 2016, will be open to review until late March or early April this year. Kevin McCarthy, the Republican majority leader in the House, wrote in a column for the Wall Street Journal last week that Congress would "repeal as many job-killing and ill-conceived regulations as possible".

Once the House votes on a resolution to scrap a regulation, it must pass the Senate — where Democrats will not be able to use the filibuster techniques they can use to block other legislation — and is then sent to the president for his approval. The law is particularly powerful because any future administration is not allowed to bring the regulation back in "substantially the same form", unless fresh legislation authorises it.

Votes on the first resolutions on the House floor are expected on Wednesday and Thursday, according to a House leadership aide. One of the first targets is the Securities and Exchange Commission rule requiring oil, gas and mining companies to report details of payments to countries where they operate, to comply with Section 1504 of the 2010 Dodd-Frank financial regulation act.

On Monday, Jim Inhofe, a senator from Oklahoma, and Bill Huizenga, a congressman from Michigan, filed a "resolution of disapproval" of the regulation under the CRA in the Senate. Campaigners for financial transparency in developing countries urged Congress to defend the rule, which is similar to requirements imposed by Britain and France. Isabel Munilla, a policy adviser at Oxfam, said: "A vote for this resolution is a vote for corruption."

The American Petroleum Institute, the oil industry group, argues that by imposing tougher requirements than most other jurisdictions, the rule will put US-listed groups at a competitive disadvantage when trying to win contracts around the world.

Congress is also moving to scrap the Bureau of Land Management's curbs on venting and flaring gas from oil and gas production on public and tribal lands. The API says the rules could prove counter-productive to efforts to reduce wastage by stifling innovation, while raising costs and impeding oil and gas production.

Mark Brownstein of the Environmental Defense Fund, a group that has championed efforts to stop gas being wasted, said the move showed "how aggressively the US oil and gas industry is pursuing its anti-regulation agenda".

He added: "The industry is talking about a rollback of regulations that require private companies to take proper care of these public resources." The other energy-related regulation to face the axe is known as the stream protection rule.

It imposes requirements on coal mining companies to prevent water pollution and damage to wildlife, and to restore mined areas after operations end. Thirteen states led by Ohio and West Virginia earlier this month sued to block the rule, saying it violates the states' rights to control coal mining regulations, and "effectively makes mining impossible in vast areas of the country".

There are two other regulations that the House is this week moving towards striking down: one monitoring compliance with labour laws by subcontractors on government projects, and another that makes it more difficult for social security recipients with "a disabling mental impairment" to buy guns.

Huffington Post - "This Move By The US Congress Is Good For Exxon, Bad For Everyone Else"
1/26/2017 - http://huff.to/2jbOJPs

HUFFPOST
This Move By The US Congress Is Good For Exxon, Bad For Everyone Else

01/26/2017 05:48 pm ET **Updated** Jan 27, 2018

One of President Trump's best tools to "drain the swamp" is under threat from his own side. A mere four days after he took office, Republican Congress members began attacking a key piece of anti-corruption legislation.

This rule, the Cardin-Lugar provision (also known as Section 1504 of the Dodd-Frank Act), was a bipartisan effort to shield US citizens and shareholders from millions of their dollars vanishing to foreign oligarchs in the oil, gas and mining sector, which is particularly vulnerable to corruption. The "swamp" — a handful of lobbyists, executives and contractors who feed off such business ties — has attacked it for years.

When the provision was born in 2010 it set an international movement in motion. United States leadership inspired similar legislation in the EU, oil-rich Norway, Canada and beyond. In total, governments enacted similar provisions in over 30 countries.

Today these measures apply to 80 percent of the world's largest publicly listed oil, gas and mining companies, including state-owned companies from Russia, China and Brazil. This is a win-win for resource-rich countries too: citizens from Indonesia to Zimbabwe are using these transparency laws to keep track of the funds their governments receive and ensure that oil, gas and mining revenues don't simply vanish into private accounts held offshore, but rather contribute to shared economic growth.

But to those in Washington D.C. the most spectacular part of the provision was its bipartisanship, at a time when such feats seemed almost impossible. Later, laws in Canada drew the full support of the mining sector. Yet a handful of oil companies seeking to keep their business dealings secret continued to oppose the law. Leading this opposition was one company, Exxon Mobil, hiding behind an oil lobbying group called the American Petroleum Institute (API).

First API opposed the law in Congress. When that failed, they tried to water down the regulations. After that, they sued the Securities and Exchange Commission, an agency of the US Federal government, resulting in the regulation being sent back for revision, on technicalities.This delayed implementation by years — until a new rule was released in June 2016.

Next week, Republicans in Congress plan to use an obscure law called the Congressional Review Act (CRA), in an attempt to void the implementing rule for the Cardin-Lugar provision. Despite the Cardin-Lugar provision's long legislative history, and two robust rulemakings, the delays caused by API's litigation makes it vulnerable to the CRA.

In the early rush of a new administration, members of Congress are moving as quickly as they can to damage anti-corruption standards, a move which only benefit lobbyists and corporate bottom lines. The greatest damage, however, will be to the communities around the world who currently fail to benefit from their natural resources because of the conduct of the likes of ExxonMobil.

To US citizens and the rest of the world, this offensive threatens a return to the dark days of unhinged economic and environmental crime. It means vanished millions of dollars that shareholders, citizens and their representatives can know nothing about. It is a huge step backwards for transparency after years of progress. It undermines US diplomacy with oil-rich allies who followed their lead and adopted similar laws. It gives the most corrupt members of the global elite an unassailable voice at the heart of Washington D.C..

Wall Street Journal - “Populism Doesn’t Cure Corruption Ills, Transparency International Says”
1/25/2017 - http://on.wsj.com/2jgCP24 ; WSJ Podcast with Sam Rubenfeld
quotes from Jana Morgan and Simon Taylor

THE WALL STREET JOURNAL

Republicans Move to Kill Extractive Anti-Graft Rule

By

Samuel Rubenfeld

Jan 25, 2017 5:13 pm ET

Congressional Republicans are planning to kill a U.S. Securities and Exchange Commission rule on oil, gas and mining companies that experts say prevents corruption in the resource sectors.

The rule, which was established by the Dodd-Frank Act, requires oil, gas and mining companies to disclose the payments they make to foreign governments for things such as licenses and permits needed for development. Activists and industry observers have said for years such payments can be used to hide bribes to secure business. The rule is set to go into effect in 2018; its first iteration was killed off in a lawsuit filed by the oil industry, and the SEC later rewrote it after a nonprofit sued to force the agency to act. House Majority Leader Kevin McCarthy, (R, Calif.), in an op-ed published Wednesday in The Wall Street Journal, wrote the House of Representatives will "take the ax" to the rule, saying it "adds an unreasonable compliance burden" on American energy companies that doesn't apply to their foreign competitors.
"This rule, which closely mimics a regulation already struck down by the courts, would put American businesses at a competitive disadvantage," he wrote.

Lawmakers would use the Congressional Review Act to repeal the rule, Mr. McCarthy said in the op-ed. That law gives Congress the right, with a simple majority vote, to overturn rules finalized in the past 60 legislative days. The SEC approved the rule on extractive disclosure in late June, which falls within the 60-day legislative deadline.

An SEC spokesman declined to comment.

The SEC had approved a rule in 2012, but a judge vacated it and sent the SEC back to the drawing board. Nonprofit group Oxfam America sued the SEC to move forward with a new rule more quickly and a judge ordered the agency to do so on an expedited schedule. Since passage of Dodd-Frank, similar disclosure rules have been passed in Europe (where the U.S. lobbied for them), Norway and Canada.

At the time of the rule's passage, the Natural Resource Governance Institute had noted in a statement that many U.S.-listed companies already reported such payments under European rules, but the SEC rule would extend it to another 425 companies, including Exxon Mobil Corp.

Exxon lobbied against the rule as far back as 2011. The company opposes the U.S. rule as rewritten, according to the transparency page on its website. Its former chief executive, Rex Tillerson, is President Donald Trump's pick for secretary of state; his nomination cleared a significant hurdle in the U.S. Senate, where he awaits a full floor vote. The question of extractive disclosure came up briefly during the end of Mr. Tillerson's confirmation hearing, but he didn't answer a question about it.
Activist groups slammed the move. Jana Morgan, director for the U.S. chapter of the Publish What You Pay coalition, said the move, coming on the heels of the attempt to dismantle the Office of Congressional Ethics, "sends a very disturbing message" about House Republicans' commitment to fighting corruption.

"Why are Republicans prioritizing voiding an anti-corruption rule that has been adopted in 30 other countries around the world when the message the Trump administration ran on was one of ‘draining the swamp’?" she said.

Simon Taylor, co-founding director of the group Global Witness, said in a statement that the move on the extractive rule and the nomination of Mr. Tillerson show "not only do [the administration and Congress] think corruption is perfectly acceptable, but that they intend to become proactive enablers of corruption."

High-Level Thought Pieces

ICAR - "End the Corporate Hijacking: Time to Separate Oil and State"
4/25/2018 - https://icar.squarespace.com/news/2018/4/25/end-the-corporate-hijacking-its-time-to-separate-oil-state

Letter from ICAR, *Corporate Capture*

End the Corporate Hijacking: It's Time to Separate Oil & State

APRIL 25, 2018

After what seems like months of alleged corruption and pompous disregard for the rules of decorum for public servants, Scott Pruitt has finally landed in hot water. The Environmental Protection Agency Chief's **slick real estate deal** with a (former) energy lobbyist's wife, and other ethically questionable actions, have caught the attention of lawmakers, watchdogs, and the general public.

This latest example reminds us yet again that the Trump Administration has been captured and the 'revolving door' has been knocked off its hinges. The head of the EPA appears to be in bed with the oil and gas sector (for the low, low price of $50 a night), and is just one sign of how pervasive Big Oil's hijacking of our government has become.

Early in 2017, an anti-regulatory putsch began as lobbyists flocked to the Hill to demand that Republican allies repeal as many Obama-era regulations as possible. Using an obscure and seldom used provision called the Congressional Review Act (CRA), lawmakers successfully repealed 15 regulations.

There has been a lot of talk from pundits and politicians about the power of the CRA since that flurry of repeals. (In fact, lawmakers are now looking to expand the reach of the CRA well beyond its original intent.) But an important element of that conversation has been missing. Why did Republicans target the laws for repeal that they did? And which companies got the lion's share of the benefits?

The victims now lying in the CRA's regulatory graveyard leave no doubt about whose wish list was prioritized: Big Oil's, with a little help from Big Coal.

Some notable victims of the CRA include:

- A regulation that would have protected streams and drinking water from mining waste run-off, which was adamantly opposed by Big Coal;
- A land-use rule that would have required extractives companies utilizing federal land to ensure there was "no net loss" of environmental assets due to their operations - a regulation opposed by frack-happy oil and gas companies; and,
- A bipartisan anti-corruption safeguard that required oil, gas and mining companies to disclose their payments, like taxes and royalties, in every country where they operate, including the United States.

Without specific Congressional authorization - with the exception of the anti-corruption rule which is backed by a legislative mandate and subject to different rules under the CRA - all of the repealed regulations, and the years of work and taxpayer dollars spent on developing them, will likely have been wasted.

Out of the 34 rules targeted for repeal using the CRA, at least 40% had to do with issues impacting extractive companies. Of the 15 that were passed, more than 20% were oil, gas and mining company priorities. No other industry can claim that success rate under the CRA.

How did these companies and industry associations curry such special favors?

Easy. They bought it.

According to the Center for Responsive Politics, Chevron, ExxonMobil, and the American Petroleum Institute - the oil and gas industry's lobbyist - doled out big money in the 2016 elections - more than $5 million, $2 million, and $2 million respectively. In total, energy companies spent over $172 million during the 2016 election cycle, with over $34 million spent on presidential candidates alone. Over 75% of these contributions went towards Republican candidates, which helped prime the pump for these regulatory rollbacks early on.

Since then, the Trump Administration has continued to hand the oil, gas, and mining sector a number of important wins. Secretary Zinke's Department of Interior is systematically opening up public lands to extraction, including by shrinking Bears Ears National Park, an area of cultural and historical significance to many Native American tribes. Interior has also proposed a rollback of the safety regulations enacted to prevent another BP oil spill, which caused the deaths of 11 workers in 2010. But the most significant win came with last year's passage of Trump's deeply unpopular corporate tax give-away by Congress.

The 2017 tax bill, widely viewed by economists as a boon for big corporations and a bust for the average American, was especially kind to extractive companies. ExxonMobil spent more than $11 million lobbying in 2017, on the tax bill and other priorities, and is estimated to save $5.9 billion in taxes alone thanks to the new law. Oil and gas companies spent over $125 million in total lobbying last year and can expect a $190.4 billion benefit in increased asset values from the tax bill - an eye-popping return on investment.

While the above numbers make it easy to illustrate the benefits accruing to the sector, these numbers don't take into account the value of rampant deregulation, relaxing of industry standards, and the opening of new land for federally subsidized extraction. The windfall return on investment is almost incalculable, and some of those arguably ill-gotten gains will surely be used to influence future government policies and elections.

With enormous sums of money on the line - both in profits and campaign contributions - it's no wonder that when these companies say "jump" Mitch McConnell asks "How high?"

But when the government responds to the wishes of corporations and societal elites, that's not a democracy - that's an oligarchy.

Conflicts of interest and entanglements between officials and the industries they are supposed to regulate undermine our democracy, and violate our right to a government 'by the people, for the people.' The corporate bottom line is being prioritized at the expense of people's rights to clean drinking water, a healthy environment, and safe working conditions. And millions of dollars spent on lobbying has unfairly and unevenly shifted the nation's tax burden from corporations onto the public. The revolving door needs to be sealed shut and elected officials must start acting in the best interests of the American people - not Big Oil.

It's time to separate oil and state.

Jana Morgan, Campaigns and Advocacy Director

The Georgetown Environmental Law Review - Maximizing Anti-Corruption through Disclosures about Payments in Extractive Industries
9/26/2017 - https://gielr.wordpress.com/2017/09/26/maximizing-anti-corruption-through-disclosures-about-payments-in-extractive-industries/

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Maximizing Anti-Corruption through Disclosures about Payments in Extractive Industries

By Somin Lee, Senior Editor

Introduction
Bribery and corruption have long been a part of doing business in the energy industry. To combat this trend, the U.S. along with other countries and international organizations have worked for years to increase transparency and curb corruption. The U.S. joined the Extractive Industries Transparency Initiative ("EITI"), and Congress enacted a version of the Publish What You Pay ("PWYP") rule in § 1504 of the Dodd-Frank Act.[1]
The Trump administration, however, has taken a step back from the EITI, and the Republican-led Congress has repealed § 1504. A much-debated question now is whether these actions remove the U.S. from the anti-corruption track that it has long touted.

This blog first explains some of the reasons why extractive industries are more susceptible to Foreign Corrupt Practices Act ("FCPA")[2] investigations and enforcement actions in the U.S. It then discusses the purpose and intent of the EITI and the Cardin-Luger Amendment that was enacted in § 1504 of the Dodd-Frank Act. Finally, by looking at several case studies in the extractive industry, it considers at what point the global EITI standard or the U.S. rule would have triggered disclosures, and whether these disclosures would have made a difference to the FCPA investigation and action.

Pervasiveness of FCPA Violations in the Energy Industry

Violations of the FCPA are widespread in the energy industry, particularly in extractive sectors such as oil, gas, and mining. The FCPA is a U.S. federal law that criminalizes the bribery of foreign officials by companies based in the U.S. or listed on the U.S. stock exchanges.[3] In 2016, of the seventy-five listed companies under FCPA investigation related to bribing foreign officials, twenty-two were in the extractive industry.[4] The history of FCPA enforcement actions paints a similar picture. As of 2013, of the total 173 FCPA actions, forty-six were against companies involved in the production of oil and gas, twenty-one were against oil and gas refiners, and thirty-four were against other types of energy companies.[5] Furthermore, eleven of the twenty largest FCPA settlements involved energy companies.[6]
These enforcement figures suggest not only that extractive companies frequently violate the FCPA, but also that the Department of Justice ("DOJ") and the Securities Exchange Commission ("SEC") tend to prioritize their enforcement activity against those companies.[7] Over the last few years, the DOJ and SEC have increased FCPA enforcement, which has had a dramatic impact on the energy industry.[8]

Many factors explain the extractive industry's particular vulnerability to bribery and corruption. First, extractive ventures are often located in developing countries, which typically have emerging markets, cash-based economies, and less stable governments. These traits raise the likelihood of corrupt actions by firms and government-related personnel.[9] Countries whose economies rely heavily on raw materials such as oil, gas, diamonds, and other natural resources are often afflicted with the "resource curse,"[10] also known as the paradox of plenty. The paradox arises from the "failure of many resource-rich countries to benefit fully from their natural resource wealth, and [of] governments in these countries to respond effectively to public welfare needs."[11] These countries tend to have higher rates of conflict, authoritarian governments, and lower rates of economic growth. Firms are pressured to explore and set up ventures in these countries, but these businesses are exposed to higher-than-average risks because of the unstable governments and changing political situations, the lack of infrastructure, as well as the absence of adequate monitors and controls to curb corruption.[12]

A second reason why extractive industries are susceptible to corrupt practices is that they regularly deal with the foreign government officials. In many countries with emerging markets, there is a great deal of bureaucracy.[13] Throughout the whole process, which includes tendering a bid, submitting a bid, procuring a contract, receiving relevant licenses and permits, arranging customs, and putting in place monitors, the extractive companies are in constant communication and interaction with foreign government officials. Because those officials have relatively low salaries, they are often tempted to solicit and take bribes, especially when the extractive companies work in such close proximity with the government at all levels of the project.[14] Furthermore, because the oil and gas sectors are often wholly or partially state-owned, it is highly likely that their employees fall under the FCPA's definition of "foreign officials."[15] Under the FCPA, a foreign official includes "any officer, or employee of a foreign government or any department, agency, or instrumentality thereof . . . or any person acting in an official capacity for or on behalf of any such government, department, agency, or instrumentality."[16] Because the term "foreign official" is quite broadly defined (in part due to the extensiveness of the term "instrumentality"), the employees of the state-owned oil and gas companies fall easily under this umbrella definition. Thus, companies making payments to any of the defined individuals are subject to the FCPA.

Third, the extractive industries rely on third parties at different levels of the project, which gives rise to opportunities for FCPA violations. When it comes to oil, gas, or mining ventures, the transactions are complex, involve multiple parties, and occur in high risk locations with cultures and customs that are unfamiliar to the companies' employees. Therefore, companies often use third-party agents—via consulting or service agreements—to gain access to local expertise.[17] Yet, many of the third-party agreements that provide consulting or other services are vague and do not provide clear indication of the services that the third party performs.[18] These vague agreements sometimes serve as conduits to pay bribes to foreign officials.

Background on the EITI and Section 1504 of the Dodd-Frank Act

Over the past few years, the U.S. has taken a leading role in promoting transparency and honest international business practices. In 2002, the U.K. Prime Minister Tony Blair and several other leaders, activists, and scholars helped create an international body called the Extractive Industries Transparency Initiative ("EITI").[19] EITI is a global standard that encourages transparency and accountable management of extractive energy resources.[20] The EITI board, composed of civil society advocates, political leaders, and executives of extractive companies works to combat corruption and develop a global standard.[21] The fifty-one countries that follow the EITI standard must agree to report all money they receive from extractive industries and how they spend it; the extractive companies operating inside those countries must declare what they pay to the government at the project level.[22] Despite U.S. efforts since 2012 to comply with the EITI standard, that work has come to a standstill after Trump assumed office.

In the spirit of furthering the EITI, the Cardin-Lugar Amendment was included in the Dodd-Frank Act. Codified in § 1504, the amendment requires oil, gas, and mining companies listed on the U.S. stock exchange that engage in the commercial development of natural resources to disclose certain payment or series of payments (of at least $100,000) made to the host foreign government or the U.S. government.[23] This is the U.S. version of Publish What You Pay ("PWYP") rule. The types of payments that must be disclosed include taxes, royalties, fees, production entitlements, bonuses, dividends, and infrastructure improvements.[24] The Cardin-Lugar Amendment also added § 13(q) to the Securities Exchange Act, requiring the Commission to mandate resource extraction companies to submit to the SEC an annual report disclosing certain payments made to a foreign government for the purpose of the commercial development of oil, natural gas, and minerals.[25] The EITI and § 1504 were both intended to avoid the resource curse, help ensure that the wealth from natural resources in resource-rich countries will trickle down to regular people, and prevent governments from skimming off the payments from drillers and miners.[26]

FCPA is closely related to the EITI and the disclosure requirements set out in § 1504. Whereas the FCPA covers payments to *government officials*,[27] the EITI and § 1504 are applicable payments to *governments*.[28] Despite the subtle difference, § 1504 of the Dodd-Frank Act defines "government" to encompass "foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government."[29] As such, in spite of the difference at a cursory glance, there is in fact significant overlap between the "government officials" under the FCPA and "government" under § 1504. Because of this overlap, some critics believe the EITI standard is duplicative of the FCPA. Yet, that view cannot be further from the truth. EITI and § 1504 require extractive companies to disclose payments to the government. Increased disclosure requirements are meant to discourage bribery payments, heighten public awareness, and prevent FCPA violations. Therefore, the EITI standard and the recently repealed § 1504 would have simultaneously served as a prophylactic complement to the FCPA. Even if the companies make bribes in spite of the EITI and § 1504 disclosure requirements, these early disclosures could lead to reduced sentences in cases of enforcement actions for cooperating with the DOJ and the SEC.

Current Status of EITI and Section 1504 of the Dodd–Frank Act

Oil, gas, and mining companies have long opposed the level of disclosures set by the EITI and required by § 1504. Many U.S.-based extractive companies were particularly disgruntled about the voluntary disclosure of tax payments.[30] In February, Congress and Trump used the Congressional Review Act to void § 1504 of the Dodd-Frank Act that complemented the EITI standard. By eliminating the U.S. version of the PWYP rule, the extractive companies are no longer required to make public the money they pay to foreign governments for the commercial development of natural resources.

In addition to repealing the PWYP rule, many are speculating whether the U.S. will continue to play any role in the EITI. Recent actions taken by the Trump administration suggest that the U.S. may withdraw from the EITI altogether. For instance, U.S. Department of the Interior officials cancelled scheduled meetings with industry groups related to the EITI due to excessive time and financial commitment; they also cancelled the weekly subcommittee phone meetings.[31] According to Daniel Kaufmann, an EITI board member and a scholar of the economics of corruption, "[t]he U.S. has not formally left the EITI[, but] it is impossible to ignore the recent lack of initiatives on these matters from the super power."[32] Although the U.S. has not yet left the EITI, its recent actions signal a clear departure from its prior anti-corruption efforts, which sets a stark tone for the international community.

At the same time, commenters, extractive companies, and the oil and gas industry lobbying group, American Petroleum Institute ("API"), criticized § 1504 for requiring disclosures that are at odds with the EITI standard and disadvantage American companies operating in resource-rich countries.[33] Moreover, API argued that the rule should only require disclosures of aggregate payments at the "political subdivision" level rather than at "project-level."[34] However, these limited disclosures would not address actual needs and interests of users. Moreover, looking at the purpose and intent of § 1504, it is evident that Congress wanted the U.S. rule to reflect the EITI standard because Congress was "[u]nsatisfied with the EITI regime alone."[35]

In addition, API's conflicting interpretations of "political subdivision" and "project-level" are unreasonable in light of the plain meaning and legislative intent of the statute. The plain text calls for disclosing information including "the type and total amount of *such payments made for each project* of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals"[36] and electronically tagging those payments with information such as "*the project of the resource extraction* issuer to which the payments relate."[37] Therefore, it is clear that the project level payments do not refer to the API's interpretation of payments to a "political subdivision." As for legislative intent, Congress passed § 1504 to promote honest business practices and to protect investors from the risks that accompany secret payments to foreign governments.[38] Because project level payment disclosures increase transparency, reveal discrepancies, protect investors, and help combat corruption, the Trump administration's recent actions contrary to such goals have generated widespread criticism that the U.S. is abandoning its efforts to combat corruption.

Extractive Industry FCPA Case Studies
Given the recent repeal of § 1504 and the stalled progress towards being EITI compliant, questions remain as to whether the disclosure requirements would have made a difference and whether they would have been effective complements to the FCPA. To help answer these questions, this blog looks at two FCPA enforcement actions: *United States. v. Total S.A.* and *United States v. Statoil, ASA* and considers when these disclosures would have been triggered and whether they would have been effective deterrents or self-monitors.

United States v. Total S.A.

In *United States v. Total*, a French oil and gas company (Total) sought to obtain contracts with the National Iranian Oil Company ("NIOC") to develop gas fields in Iran in 1995.[39] Total entered into consulting agreements with an Iranian government official, under which Total would pay an intermediary designated by the Iranian official; during the course of three years, Total paid about $16 million in bribes pursuant to this agreement.[40] In another scheme, in 1997 Total entered into a second purported consulting agreement with a different intermediary to negotiate a contract with the NIOC; under that agreement, in the following seven years, Total paid $44 million in bribes.[41] Between 1995 and 2004, Total made unlawful bribery payments totaling approximately $60 million under the direction of the Iranian official via two intermediaries; in return, the government official leveraged the official's connections and influence to provide Total with lucrative rights to oil and gas fields in Iran. Total mischaracterized those payments as "business development expenses" in its financial records.[42] In 2013, Total agreed to pay a penalty of $245.2 million as part of the deferred prosecution agreement ("DPA") with the DOJ—one of the largest penalties in the history of FCPA enforcement. Total also spent $398 million to settle the SEC charges, and it paid disgorgement of $153 million.[43]
The FCPA enforcement action took place nearly a decade after Total had made corrupt payments. Therefore, much of this investigation happened before the U.S. started aggressively prosecuting FCPA violations, before the EITI standard, and before the enactment of § 1504.

Counterfactually, if the EITI and § 1504 were applicable back in the 1990s, then Total's payments to the Iranian government official would have been reportable. Because the payments occurred under two distinct projects pursuant to two consulting contracts,[44] the disclosures would have been made separately. Furthermore, the disclosures would have identified the payment amounts at each project level rather than one aggregated lump sum at the "political subdivision" level, which is API's preferred method. Total could have tried to evade the reporting requirement by arguing that it did not cover payments to intermediaries—i.e., non-governmental entities. This line of reasoning would likely be unpersuasive, however, because the intermediary would be an "agent" under the definition of the foreign "government" in § 1504. Therefore, even under the guise of the consulting agreements, the disclosure obligation would be triggered.
United States v. Statoil, ASA

In *U.S. v. Statoil,* the Norwegian oil company paid $15 million in bribes to an Iranian official in 2001 and 2002 to procure a contract to develop oil and gas rights in Iran.[45] Statoil and the Iranian Official negotiated the terms of a Consulting Contract through which Statoil paid bribes to the Iranian Official.[46] The "consulting company" invoiced Statoil to pay $200,000 in June 2002, $5 million in December 2002, and ten subsequent annual payments of $1 million each.[47] Statoil's internal audit department discovered the bribe payments in March 2003 and informed senior management, the chairman, and the CEO, but no appropriate measures were taken.[48] Ultimately, the Consulting Contract between Statoil and the Iranian Official was disclosed in the Norwegian press in September 2003.[49] In 2006 Statoil entered into a three-year DPA with the DOJ, acknowledged its FCPA violations, and agreed to pay $10.5 million penalty as well as disgorgement of an additional $10.5 million to the SEC.[50]

Like Total's bribes, Statoil's payments occurred before the enactment of § 1504 of the Dodd-Frank Act and before the U.S. was accepted as a EITI candidate in 2014. Yet, had these disclosure rules been in place, Statoil would have had to report the payments. As in *Total*, Statoil made bribe payments through the consulting company. The facts are only superficially different in that the consulting company was not designated as "Intermediary One" or "Intermediary Two" so it could be seen that there was no intermediary agent as in *Total* to peddle the payments from the oil company to the foreign official. Even though, in *Statoil*, the Iranian official who indirectly controlled the oil fields negotiated the Consulting Contract and was the consultant under the contract, he also functioned as an "intermediary" for the purpose of § 1504.
As for the timing of the hypothetical disclosures under EITI or § 1504, Statoil would have made the disclosures after each payment. Some commenters may argue that if Statoil had broken down the payments to the Iranian Official into smaller amounts, Statoil could have avoided the reporting requirements and detection. Yet, this is an inaccurate interpretation; § 1504 mandates disclosure of a single payment *or a series* of payments totaling at least $100,000. Because Statoil's payments add up to $15 million—far above the $100,000 threshold—Statoil would have had to report the unlawful series of payments.
However, Iran is not a country implementing the EITI standard. Thus, the Iranian government would not be obligated to make public the payments it received from Statoil. As a result, comparing the payments made to the government versus the payments received by the government would be more difficult and the public would not have the opportunity to see how the Iranian government allocated or used the accepted payments from Statoil.

Nonetheless, if Statoil had to report the payments, arguably it would have been deterred from further violating the FCPA. On the other hand, Statoil could have sought other avenues to pay the Iranian official to secure rights to develop the oil field. Unfortunately, the disclosure requirements may have been an ineffective deterrent, considering that the CEO of Statoil ignored the warning by the internal auditing department when it discovered the irregular payments to a non-existing company and the security group prompted remedial action.[51] This type of willful ignorance on the part of Statoil's management suggests that even if the EITI standard and § 1504 were in full force, Statoil would have engaged in the same corruption to advance its oil and gas businesses in Iran.

Conclusion
Based on the facts and the DPA from *United States v. Total* and *United States v. Statoil*, it is unclear whether the reporting requirements set out by the EITI global standard or the now repealed § 1504 of the Dodd-Frank Act would have caused Total and Statoil to make different decisions had they been in place at the time. In both cases, Total and Statoil's payments would have triggered disclosures, and the payments would have been subject to a reporting requirement at the project level. Both Total and Statoil's payments went through a consulting agreement so that the foreign official did not directly accept payments from the extractive companies; instead, the bribe payment was a step removed and made to look like there were services being performed in consideration of the payments. As such, these cases are less transparent and more complicated when it comes to following the trail of payments.
Regardless of the potential effectiveness of the EITI and § 1504 that codified the U.S. version of the PWYP rule, the U.S.' initiatives did have the potential to bring transparency by increasing access to information about the extractive industries, publicizing how foreign governments spend money paid by extractive industries, and revealing whether those funds are being skimmed by the government officials or being put to use for the benefit of the public. It may impossible to determine whether the disclosures would have made a difference, but the demonstrated intent of the mandated disclosures would could have led to less corrupt practices in the extractive sectors in the long run, thus serving the purposes of the FCPA.

[1] 15 U.S.C. § 78m.
[2] 15 U.S.C. § 78dd-1.
[3] Max George-Wagner, *Oil, Gas, Mining Remain Major Focus for FCOA Investigations*, Natural Resource Governance Institute, (Oct. 18, 2016), https://resourcegovernance.org/blog/oil-gas-mining-remain-major-focus-fcpa-investigations.
[4] *Id.*

[5] Will White, *Oil, Corruption, and the Department of Justice: FCPA Enforcement and the Energy Industry*, 10 Tex. J. Oil Gas & Energy L. 181, 189 (2013-2014).
[6] *Id.* The eleven companies were KBR, Total, ENI, Technip, JGC, Pride International, Marubeni, Baker Hughes, Willbros, Chevron, and Tital.
[7] *See id;* Amy Deen Westbrook, *Enthusiastic Enforcement, Informal Legislation: The Unruly Expansion of the Foreign Corrupt Practices Act*, 45 Ga. L. Rev. 489, 512 (2011).
[8] These enforcements significantly impacted investigations related to the United Nations Oil for Food Program and the Brazil Operation Carwash. *See, e.g.*, United States v. Weatherford Services, Ltd., 13-CR-734 (S.D. Tex. 2013); United States v. Total, S.A., 1:13-CR-239 (E.D. Va. 2013); United States v. Flowserve Pompes Sas, 08-CR-035-RJL (D.C. 2008) (listing examples of FCPA actions connected to Iraq's "Oil for Food" scandal). *See also* United States v. Odebrecht S.A., 16-CR-643 (E.D.N.Y. 2016) (listing examples of FCPA investigations related to Brazil "Carwash" scandal).
[9] *See* DLA Piper, *FCPA Enforcement: Trends Facing Energy Companies*, (Jun. 3, 2015), https://www.dlapiper.com/~/media/Files/Insights/Events/2015/06/June3FCPAPowerpoint.pdf.
[10] Adam Davidson, *Did the U.S. Just Pull Out of a Global Anti-Corruption Group?*, The New Yorker, (Apr. 2, 2017), http://www.newyorker.com/business/adam-davidson/did-the-u-s-just-pull-out-of-a-global-anti-corruption-group.
[11] *The Resource Curse: The Political and Economic Challenges of Natural Resource Wealth*, Natural Resource Governance Institute, NRGI Reader, Mar. 2015. *See also* Escaping the Resource Curse, 34-35 (Macartan Humphreys, et al. eds., 2007).
[12] *See Managing bribery and corruption risks in the oil and gas industry*, EY, 5 (2011); DLA Piper, *FCPA Enforcement: Trends Facing Energy Companies*, (Jun. 3, 2015), https://www.dlapiper.com/~/media/Files/Insights/Events/2015/06/June3FCPAPowerpoint.pdf.
[13] *See id*.
[14] *See id.*
[15] *See id.*
[16] 15 U.S.C. § 78dd-1(f)(1)(A).
[17] *See The Foreign Corrupt Practices Act: Focus on the Mining and Oil & Gas Industries,* Bryan Cave, (Feb. 15, 2012), http://root.bryancavemedia.com/docs/021512_focus_mining_oil_gas.pdf.
[18] *See* Daniel Chow and Thomas Schoenbaum, International Business Transactions: Problems, Cases, and Materials, 527 (3d. Ed. 2015).
[19] *See* Davidson, *supra* note 11.
[20] Philip Urofsky, Hee Won (Marina) Moon, and Jennifer Rimm, *How Should We Measure the Effectiveness of the Foreign Corrupt Practices Act? Don't Break What Isn't Broken – The Fallacies of Reform*, 73:5 Ohio St. L. J. 1145, 1162 (2012).
[21] *See* Davidson, *supra* note 11.
[22] *See id*.
[23] 15 U.S.C. § 78m(q); Tom DiChristopher, *Trump and GOP killed an energy anti-corruption rule for no good reason, advocates say*, CNBC, (Feb. 14, 2017 3:16 P.M.), http://www.cnbc.com/2017/02/14/trump-and-gop-killed-energy-corruption-rule-for-no-good-reason-advocates-say.html; *Administration Sounds Death Knell for Transparency Initiative*, EITI, (Mar. 20, 2017), https://www.earthworksaction.org/media/detail/administration_sounds_death_knell_for_transparency_initiative#.WRp4nhPyvBI.
[24] 15 U.S.C. § 78m(q); *Fact Sheet: Disclosing Payments by Issuers Engaged in Resource Extraction*, SEC, (Feb. 6, 2017), https://www.sec.gov/opa/Article/press-release-2012-164—related-material.html (last visited May 12, 2017).
[25] *Cf.* Letter from Global Witness to SEC, Mar. 8, 2016 (urging the SEC to finalize the proposed Rule 13q-1 implementing § 13(q).).
[26] *See* DiChristopher, *supra* note 24.
[27] 15 U.S.C. § 78dd-1.
[28] EITI Requirement 4, The EITI Standard 2016, 22; 15 U.S.C. § 78m(q)(1)(B).
[29] 15 U.S.C. § 78m(q)(1)(B).
[30] *See* DiChristopher, *supra* note 24.
[31] *See id*.
[32] *See* Davidson, *supra* note 11.
[33] API v. SEC, Civil Action No. 12-1668 (D.D.C. 2013).
[34] *See* Global Witness 2; Letter from Exxon (Feb. 16, 2016), at 7; Letter from API (Feb. 16, 2016), at 7, 35.
[35] *See* 156 Cong. Rec. S3816 (May 17, 2010) (quoting Senator Lugar as saying § 1504 "domestic action will complement multilateral transparency efforts such as the EITI").
[36] 15 U.S.C. 78mq(2)(A) (emphasis added).
[37] 15 U.S.C. 78mq(2)(D)(ii)(VI) (emphasis added).
[38] *See* 156 Cong. Reg. S3316 (May 6, 2010). *See also* Letters from Senators Richard G. Lugar, Carl Levin and Christopher J. Dodd (Feb. 4, 2016); Letters from Senators Benjamin L. Cardin, Patrick Leahy, Richard J. Durbin, Sherrod Brown, Elizabeth Warren, Tammy Baldwin, Edward J. Marke, Christopher A. Coons, Jeanne Shaheen, Sheldon Whitehouse, Robert Menendez and Jeffery A. Merkley (Feb. 5, 2016).

[39] Press Release, SEC, SEC Charges Total S.A. for Illegal Payments to Iranian Official (May. 29, 2013); United States v. Total, S.A., No. 1:13CR 239, Deferred Prosecution Agreement (E.D. Va. 2013).
[40] *See* Press Release, Dep't of Justice, French Oil and Gas Company, Total S.A., Charged in the United States and France in Connection with an International Bribery Scheme (May. 29, 2013).
[41] United States v. Total, S.A., No. 1:13CR 239, Deferred Prosecution Agreement, at A-5, 7 (E.D. Va. 2013) (Statement of the Facts).
[42] Press Release, Dep't of Justice, French Oil and Gas Company, Total S.A., Charged in the United States and France in Connection with an International Bribery Scheme (May. 29, 2013).
[43] *Id.*
[44] The first project is located in Sirri A and E oil fields, and the second project is located in South Pars gas field. These projects are pursuant to the Consulting Services Request umbrella agreement with Intermediary One as well as Consulting Services Request umbrella agreement with Intermediary Two. *Id.* at A-5, 6.
[45] United States v. Statoil, ASA, No. 06-960, Deferred Prosecution Agreement (S.D.N.Y. Oct. 13, 2006); Press Release, Dep't of Justice, U.S. Resolves Probe Against Oil Company that Bribed Iranian Official, (Oct. 16, 2016).
[46] United States v. Statoil, ASA, No. 06-960, Deferred Prosecution Agreement (S.D.N.Y. Oct. 13, 2006), App. A, at 1, 3.
[47]*Id.,* Deferred Prosecution Agreement, at 3-4.
[48] *See id*., Deferred Prosecution Agreement App. A, at 5.
[49] *Id.*
[50] *Id.*, Deferred Prosecution Agreement, at 1-3.
[51] In spite of Statoil's security group's troubling report in June 2003 that Statoil may have violated Norwegian and U.S. anti-bribery laws, Statoil's senior management failed to take appropriate action to address the Consulting Contract and Statoil's relationship with the Iranian official. Statoil's then-Chairman of the Board, instead of taking up the matter, told the security group to raise the issue with the CEO. Upon the security group's recommendation of ceasing payments under the Consulting Contract and terminating the Contract, the CEO agreed to suspend payment but refused to terminate the Contract or to address the principal concerns of the security group. *See* United States v. Statoil, ASA, No. 06-960, Deferred Prosecution Agreement Appendix A, at 4 (S.D.N.Y. Oct. 13, 2006).

Center for Global Development - Extractive Industry Transparency Rule Subject to Long Battle, Poised to Meet a Quick End

2/6/2017 - https://www.cgdev.org/blog/extractive-industry-transparency-rule-subject-long-battle-poised-meet-quick-end

CENTER FOR GLOBAL DEVELOPMENT

Extractive Industry Transparency Rule Subject to Long Battle, Poised to Meet a Quick End

FEBRUARY 6, 2017

Erin Collinson

President Trump and many congressional Republicans have made no secret of their strong interest in dismantling "Dodd-Frank," a law signed in the wake of the 2008 financial crisis to strengthen regulation of the financial industry in the United States. But it's a small, seemingly peripheral, transparency provision focused on developing countries that's poised to be one of the law's earliest casualties. Congress quietly voted last week to torpedo implementation of a rule that would require U.S. firms to disclose payments made to foreign governments for the commercial development of oil, natural gas, or minerals.

Section 1504 of the Dodd-Frank Act aimed to increase the transparency of extractive industry operations in foreign countries to empower citizens to hold their governments accountable and ensure natural resource revenues are spent wisely. This aim made the provision a priority for transparency advocates, but it also attracted the attention and support of development experts. CGD scholars followed the (mis)fortunes of Dodd-Frank Section 1504 along the way, occasionally chronicling its progress toward implementation.

But more telling than the sporadic blog post is that on not one, but *two* occasions, CGD bestowed its then-annual "Commitment to Development 'Ideas in Action' Award" to champions of the provision. In 2010, CGD honored Publish What You Pay, highlighting the civil society coalition's work on section 1504. And then, in 2012, CGD gave the award to Senator Dick Lugar (R-IN)—praising a decades-long commitment to international development, including sponsorship of Section 1504—also known as the Cardin-Lugar Transparency Provision. In celebrating the provision, CGD recognized its potential to yield outsize impact as a "beyond aid" approach to development.

How did Section 1504 fall so quickly in these early days of the Trump Administration? The provision always faced strong opposition from US industry interests, and litigation plagued the rulemaking process and delayed implementation of the provision from the start. It wasn't until June of last year that the Securities and Exchange Commission (SEC) published a revised final rule—mandated disclosures were slated to begin with fiscal year 2018. Unfortunately the late promulgation date left the rule vulnerable to reversal using the Congressional Review Act (CRA)—and that's just what happened. (The rarely used CRA gives Congress the ability to abolish major rules finalized within a specified time period.)

At the moment, the ultimate fate of Section 1504 remains something of a mystery. Despite the fact that the transparency provision is still on the books, under the CRA, the SEC cannot promulgate a disclosure rule “substantially the same” as what Congress voted to repeal in the absence of new legislation. We’ll keep watch—and hope the bipartisan support for transparency and development we’ve seen from Congress in recent years propels action to salvage this award-winning provision.

Global Witness - Why Republican Plans to End Anti-Corruption Regulations Can Put Our Troops Serving Overseas in Greater Danger
2/1/2017 - https://www.globalwitness.org/en/blog/why-republican-plans-end-anti-corruption-regulations-can-put-our-troops-serving-overseas-greater-danger/

GLOBAL WITNESS

Blog / Feb. 1, 2017

WHY REPUBLICAN PLANS TO END ANTI-CORRUPTION REGULATIONS CAN PUT OUR TROOPS SERVING OVERSEAS IN GREATER DANGER

By Lt Col (Ret) Jodi Vittori, PhD, Adjunct Professor, Georgetown University

Do Republican leaders know that their plans to overturn counter-corruption regulations on Monday ultimately hurts American national security overall, and could put troops serving overseas in places like Iraq and Afghanistan at greater risk?

As a retired Air Force veteran who has served in Afghanistan and Iraq and as an expert in terrorist finance, I've witnessed firsthand the damage that corruption can do to American national security and troops in the field.

On Monday, under obscure legislation known as the Congressional Review Act (CRA), the House and Senate introduced resolutions to end regulations that require oil, gas, and mining companies to publicly disclose the project level payments they make to governments all over the world.

So what does this have to do with American national security, and especially, how could this put our brave American troops lives in greater risk?

Ending these regulations, and the transparency goes with them, means more conflicts around the globe, while better enabling corrupt, predatory governments and their associates to divert funds to terrorists, insurgents, militias, and warlords where American troops are already stationed.

Some of the most conflict-ridden countries in the world are fragile states heavily reliant on the revenues from oil, natural gas, and minerals mined or pumped out of the ground by foreign firms, including American ones. Such revenues should be a boon for poor countries, providing money for healthcare, education, and infrastructure, as well as pay for military and police forces to implement the rule of law and protect their populations, making their countries peaceful and safe.

Sadly, the exact opposite occurs. There's strong evidence that countries rich in natural resources like oil and minerals but with weak institutions are more likely to experience conflict than countries without an abundance of these resources--a 50 percent higher risk-- and such conflicts tend to last about twice as long and have double the number of battle-related deaths.

Why is this? A few different factors are at work. First, natural resource revenues are often siphoned off by greedy, predatory governments into overseas bank accounts and luxury real estate rather than to fulfill the needs of their citizens. To hold onto power, these leaders usually employ corrupt, thuggish security services to quash the media and repress and steal from their own citizens. This builds up the popular grievances that eventually explode into terrorism, insurgency, or revolution, as we saw with the Arab Spring.

Even worse, many corrupt governments outsource their security, using the money from the oil, gas, and mining projects to pay off a variety of militias, warlords, and private security companies. These militias and warlords use some of the money to pay and equip their private armed forces.

And they do so right where American troops are stationed today, placing these troops in harm's way. Take Iraq and Syria—it has been well-publicized that oil was the primary means for ISIS to fund itself, and America has conducted extensive air strikes against ISIS' oil industry in order to cut off ISIS funding, and thus its ability to continue to make war in Syria and Iraq.

But at the same time, the Iraqi government itself is embroiled in a winner-take-all, full-contact sport involving armed militias and death squads over who controls the oil and its revenues. The result has been a government that was so violent and venal that, in some places, ISIS was initially invited in as a less bad alternative. Meanwhile, those various Shia militia, partially funded with oil revenues, were responsible for the deaths of many American troops during Operation Iraqi Freedom; many of these same militias have now been rolled into the so-called “Popular Mobilization Forces” that fight alongside the Iraqi military, and thus alongside our American troops.

Given that natural resource revenues help perpetuate in conflict in many fragile states, Congress should be pushing for more transparency, not less. And that’s just what Congress did in 2010 when it passed the legislation requiring greater natural resource transparency. It took many delays and court cases, but the associated regulations were finally passed last summer. Now, Republicans seek to cut this rule, thereby gutting the legislation.

Less transparency in this sector means more conflict around the world, and thus more American troops potentially deployed into harm’s way. It also means even more ability for governments and their cronies to divert cash from oil and mineral sales to terrorists, insurgents, warlords, and militias who all put our American troops’ lives at risk on overseas deployments. Congress owes it to our troops not only to vote no on this CRA, but also to strengthen existing legislation that fights corruption.

Judicial Watch - “Rex and the Resource Curse”

2/1/2017 - https://www.judicialwatch.org/investigative-bulletin/rex-resource-curse/

FEBRUARY 01, 2017|JUDICIAL WATCH

Rex & The Resource Curse

The Trump Presidency has opened with a bang. Death to ObamaCare, a new SCOTUS nominee, a Muslim ban, a Mexican wall, various conspiracies—the Russians and the dossier, the electoral tally, the inauguration crowd size—attacks on the media, on Boeing, Lockheed Martin, General Motors, Toyota, Hollywood actors, John Lewis, John Brennan, alternative facts, the global gag rule, the death of the Trans-Pacific Partnership, the rebirth of the Keystone and Dakota Access pipelines. The president is tweeting. The president has kept his campaign promises. The president has lost his mind. The town is in tumult. The opposition is aghast. Critics have assigned the president **his own Robespierre**. Grievances mount. “I haven’t slept in a month,” Kellyanne Conway **tells Fox News Sunday**. “If you are part of Team Trump, you walk around with these gaping, seeping wounds every single day, and that’s fine.”
Thirteen days into the new administration, the spectacle continues, delicious and appalling and mesmerizing. But in Congress real business is starting to get done. Follow the money. *Cui bono?* Who benefits? The answers to that timeless investigative question will tell us a lot about Mr. Trump’s Washington.
Last week, **we flagged** rule changes coming before Congress to reform the controversial EB-5 visa program. Critics of EB-5 say it’s a magnet for fraud, a national security risk and a vehicle for rich foreigners to purchase U.S. citizenship. The Trump and Kushner families, among others, have profited from the EB-5 cash flow. The powerful real estate industry opposes the reform measures. President Trump could swing the vote any way he wants.
This week, Congress put another anti-corruption measure into play. House Republicans **introduced a resolution** to repeal an SEC rule known as the Cardin-Lugar provision. It requires that extractive industries—oil, gas and minerals—listed on U.S. stock exchanges disclose payments to foreign governments. Such payments might include consulting fees, royalties,

bonuses, and taxes. It's a well-greased avenue for payoffs and bribes and Cardin-Lugar is a classic "follow the money" transparency measure.
House Majority Leader Kevin McCarthy wrote in the Wall Street Journal that Congress will "take the ax" to the rule because it places an "unreasonable compliance burden on American energy companies that isn't applied to their foreign competitors." Mr. McCarthy added that the regulation puts "American businesses at a competitive disadvantage." He neglected to mention that those foreign competitors are already complying with similar disclosure laws introduced in Europe and Canada.

President Trump can work his will with this one too. He wants to give American business a competitive advantage. He also wants to "drain the swamp" of corruption. One tweet, and Cardin-Lugar remains law.

Cardin-Lugar and similar measures are aimed at the so-called "resource curse." The resource curse has been observed in many countries and is the subject of a lot of **esoteric studies**, but it's not rocket science. Resource-rich developing countries are often "cursed" with failing economies. Corruption is one culprit. Wealth generated from extractive resources—oil, gas, timber, minerals, etc.—flows to the ruling class. The powerful, often abetted by large corporations, pillage the resources and throw crumbs to the hoi polloi.
Nigeria is a casebook example. Nigeria is the sixth largest oil producing country in the world and has vast mineral wealth. Yet its people live in crushing poverty. According to the activist group Global Witness, more than $400 billion in oil revenues have been lost to corruption and mismanagement since 1960. **Last week**, oil giants Dutch-British Shell and the Italian Eni company ceded control of a lucrative oil tract back to the Nigerian government after a $1.2 billion bribe to a former Nigerian oil minister and cronies was revealed. It's precisely the sort of corrupt transaction that Cardin-Lugar is designed to counter.

One of the strongest opponents of Cardin-Lugar has been ExxonMobil CEO Rex Tillerson, President Trump's secretary of state-designate. Mr. Tillerson is scheduled for a confirmation vote today. As CEO of ExxonMobil and head of the industry's trade group, the American Petroleum Institute, Mr. Tillerson lobbied against Cardin-Lugar. Later, API successfully sued to overturn the provision—a newly crafted version is now before Congress. Sources on Capitol Hill say that Mr. Tillerson, lobbying against the bill in 2010, personally made the case to senators that successful passage of the measure would doom ExxonMobil's chances to do business in Russia.

At his confirmation hearings, Mr. Tillerson offered up a whole lot of nothing when questioned about the resource curse and Cardin-Lugar. He said there would be "a lot of opportunity" through U.S. programs to "strengthen the institutional capacities and set standards of expectation in the developing part of the world, including those that have resource wealth."

Former Senator Richard Lugar takes a particular interest in the issue and his Lugar Center in Washington closely followed the Tillerson hearings. **Reporting for the Lugar Center**, senior fellow Jay Branegan made it clear that Mr. Tillerson was not going to be an apostle of transparency and accountability.

ExxonMobil, by the way, reportedly is under investigation in Nigeria. The country's Economic and Financial Crimes Commission is examining ExxonMobil's successful $1.5 billion bid for oil rights to four lucrative Nigerian fields. According to **an investigative report** in the Guardian, based on documents provided by Global Witness, ExxonMobil beat out the Chinese oil company CNOOC in 2009 in the deal. The only trouble? China bid $3.75 billion for the same oil rights.

How did ExxonMobil win Nigerian oil rights despite bidding $2.25 billion less than its rival? Golly, no one seems to know. But one former Nigerian oil minister is under investigation in London and Lagos for **corruption involving billions in missing oil funds**, and the inquiry is expanding. The minister denies any wrongdoing. So does ExxonMobil.

The Washington Post - How our incoming secretary of state helped to enrich Africa's nastiest dictatorship

2/1/2017 - https://www.washingtonpost.com/news/global-opinions/wp/2017/02/01/how-our-incoming-secretary-of-state-helped-to-enrich-africas-nastiest-dictatorship/

How our incoming secretary of state helped to enrich Africa's nastiest dictatorship

By **Tutu Alicante**

Feb. 2, 2017

Tutu Alicante is executive director of EG Justice, a nonprofit that promotes human rights and democratic values in Equatorial Guinea.

Rex Tillerson's confirmation hearing for secretary of state on Jan. 11 was — as anticipated — saturated with hard-hitting questions about climate change and his cozy relationship with Russia's oligarchy. But several senators also raised incisive questions about ExxonMobil's role in my homeland, Equatorial Guinea, noting that Tillerson's company helped to sustain, enrich and embolden a dictator and the circle of family and sycophants who surround him. Tillerson feigned ignorance, danced around the questions, and even avoided mentioning the country by name.

"I have no direct knowledge of that," Tillerson replied to a question from Sen. Tim Kaine (D-Va.). To Sen. Jeff Merkley (D-Ore.), he claimed: "I'd have to review for my memory the circumstance you're talking about." Why would Tillerson dodge questions about a nation where, just two years ago, his company pompously celebrated its 1-billion-barrel-production threshold?

An inconvenient truth: Exxon enables kleptocracy in Equatorial Guinea.
In the 20 years after the 1991 oil discovery in Equatorial Guinea, the country's GDP grew from $130 million to $2.3 billion. This sudden growth was singularly fueled by the petroleum industry, with ExxonMobil drilling in the largest proven oil reserve. Overnight, Equatorial Guinea went from a repressive, corrupt, poor and isolated nation to a filthy-rich — but still tyrannical and obscure — darling of the West. Today, Equatorial Guinea has the highest GDP per capita of any sub-Saharan country, yet nearly two-thirds of the population lives in extreme poverty. Spending on health, education and other social sectors remains below the Central Africa regional average. Infant mortality rates rival those of Afghanistan.

Instead of benefiting the people, oil revenue is subsidizing the lavish lives of President Teodoro Obiang Nguema — in power since 1979, when he had the former president executed — and his extended family. This lifestyle includes mega-mansions, yachts, sport cars and luxury goods around the world, as well as the vast trove of Michael Jackson memorabilia collected by Obiang's eldest son, the nation's vice president and heir apparent.

Remember the crystal-studded “Bad Tour” glove and the “Thriller” jacket? Both are now stashed in Equatorial Guinea. These goods are the subject of law enforcement investigations, legal indictment, trial and a settlement in several countries, including Spain, Switzerland, France, and the United States. In Spain the judges are looking at how millions of dollars deposited by Exxon and other oil companies at the now-defunct Riggs Bank were used to acquire villas, resorts, ships and other items for the benefit of the president of Equatorial Guinea and his cronies.

Corruption is not the only problem in Equatorial Guinea. Human rights violations are widespread. Many of my colleagues inside the country have been arbitrarily detained, unlawfully imprisoned, and even tortured because of their human rights or pro-democracy work. This prolonged brutal repression by the Obiang regime would not be possible without the support of ExxonMobil.

In 1995, just as I left Equatorial Guinea to pursue an education in the United States, three critical events took place in my country. First, the U.S. government closed its embassy in Equatorial Guinea, according to Human Rights Watch researchers, due in part to the record of “pervasive human rights abuses and endemic corruption.” Second, my country came close ousting Obiang, when a coalition of opposition parties achieved an unprecedented victory in the municipal and parliamentary elections. Third, according Steve Coll’s “Private Empire,” ExxonMobil discovered that the 1.2-billon-barrel Zafiro oil field had production three times greater than Mobil’s entire worldwide output of oil and gas at the time. Nothing has been the same since.

The following year, in advance of the presidential election, ExxonMobil’s petrodollars bankrolled the involvement of a U.S. lobbyist who helped legitimize a rigged contest in which Obiang claimed 97.8 percent of the vote from the same constituency that only months earlier had opted overwhelmingly for the opposition coalition. Nicholas Shaxson’s “Poisoned Wells” recounts the participation of the ExxonMobil-funded Institute for Democratic Strategies, led by Bruce McColm, into the 1996 presidential election in my country.

ExxonMobil didn’t limit itself to paying Obiang’s government under the terms of its oil contract. The findings from a 2004 U.S. Senate probe into the role of Riggs Bank in facilitating money laundering show that in 1998 ExxonMobil directly partnered with Abayak, a company owned by Obiang, granting it a 15 percent share of ExxonMobil’s profits in Equatorial Guinea.

The Senate’s report conclusively documents that an ExxonMobil subsidiary then leased office space in the “Abayak Compound” from Obiang and his wife, Constancia Mangue. The lease, which in 2001 was at $175,500 per year, remains in place at a price that is likely to remain undisclosed absent another outside investigation.

The report further reveals that by 2004 Equatorial Guinea and senior government officials held more than 60 accounts at the Washington branch of the Riggs Bank, valued at up to $700 million. One of the largest accounts held payments from oil companies doing business in Equatorial Guinea, with the largest share coming from

ExxonMobil. Meanwhile, millions of dollars were transferred from government holdings into accounts held by offshore companies that were tied to Obiang.

The list of ExxonMobil's ethically compromised payments used to prop up Equatorial Guinea's oppressive regime is long. According to the Senate report, the company's subsidiaries paid $45,020 to the agriculture minister, to lease a house for a company manager; $236,160 to a labor contracting agency owned by the interior minister; and $710,300 to a security service company owned by the president's brother. These payments proved a convenient way to avoid conflict with the U.S. Foreign Corrupt Practices laws but in fact ensured that the "right" people from the dictatorship were favorable to Exxon's activities in the country.

When a Senate committee asked ExxonMobil to list its payments to Equatoguinean officials and their family members, the company said it did not have a complete inventory and "would need additional time to research about 500 contracts." There is no evidence in the committee's exhaustive 1,500-plus-page report that such a list was ever produced.

In the wake of the Senate report, the Securities and Exchange Commission initiated an investigation of ExxonMobil and other U.S. oil companies for potential violations of the Foreign Corrupt Practices Act in Equatorial Guinea. I since learned through filings from Marathon to its shareholders that five years later, the SEC notified the companies that the commissioners "completed their investigation and did not intend to recommend any enforcement action in this matter."

But the dubious collaboration between government officials and ExxonMobil didn't end there. Under President George W. Bush, and following what Human Rights Watch calls "intensive lobbying from the US oil industry," the United States resumed diplomatic functions in Equatorial Guinea in 2003, at first using as its diplomatic mission an office inside the ExxonMobil compound. In 2006, the U.S. government started renting a building from the minister of national security, an uncle of the president. Shortly thereafter, Secretary of State Condoleezza Rice welcomed Obiang to Washington. Although Obiang was one of the world's most brutal and corrupt dictators, Rice praised him for his welcoming treatment of U.S. oil companies while passing over his rampant human rights abuses, publicly declaring him a "good friend" of the United States.

For thousands of people in my country who have no access to clean running water, reliable electricity, adequate health clinics, schools for their children, or freedom of speech and assembly, ExxonMobil's engagement under Tillerson has emboldened a dictator, providing him with an economic lifeline to become the longest-ruling "elected" head of state in the world today.

Exxon's embrace of Obiang has been mutually beneficial. The energy company drills and exports oil while a despot consolidates and remains in power for nearly four decades — and, unlike his fellow citizens, is showered by enormous wealth, whose major provider is Exxon. This — a system in which corrupt and repressive government officials and their corporate partners have hijacked the governmental apparatus for the dual purpose of resource extraction and the enrichment and security of the government — is what I call a classic “petro-kleptocracy.”

Yet Tillerson testified under oath that he has “no direct knowledge of that,” and that he would “have to review for my memory the circumstance you’re talking about.”
Kaine asked Tillerson how will he “work with nations” that have suffered under the “resource curse,” and how he intends to “make sure they respect human rights, the rule of law and our long-standing commitment to transparency and anti-corruption.”

Equatoguineans are asking ourselves the same questions. How will Tillerson stand up against a brutal regime that continues to yield large dividends to his former company, now run by his understudy? Can we expect him to be the first secretary of state to act upon Presidential Proclamation 7750, which stipulates the denial of visas to people “benefiting from corruption,” including his long-standing business partner, Obiang? Can we expect Tillerson to openly call for democracy and human rights in Equatorial Guinea? I’m inclined to be skeptical.

Jubilee USA - Repealing transparency measure hurts the poor

2/1/2017- http://thehill.com/blogs/congress-blog/foreign-policy/317324-repealing-transparency-measure-hurts-the-poor

THE HILL

Repealing transparency measure hurts the poor

BY ERIC LECOMPTE, OPINION CONTRIBUTOR — 02/01/17 11:40 AM EST

Congress could imminently repeal anti-corruption measures put in place after the 2008 financial crisis. If Congress does repeal these transparency efforts it will be a mistake.

On behalf of the hundreds of faith communities who supported Section 1504 or the “Cardin-Lugar amendment” to the Dodd-Frank Wall Street Reform Act, I’d encourage all Members of Congress to consider how weakening 1504 could impact vulnerable populations. Now is the time to hold hearings for Congress, not for hasty actions that prevent members from understanding why a post financial crisis world needs more accountability, not less.

Six years ago, Jubilee USA and a coalition of religious and development groups worked for passage of 1504 because of how the financial crisis impacted some of the poorest people in the world. The World Bank estimates that more than 70 million people, mostly women and children, were pushed into extreme poverty due to the crisis. As the crisis continued to unfold the developing world turned to more borrowing and more austerity policies to try and survive a crisis that was not of their making.

As the crisis roared on, developing countries lost a trillion dollars a year due to corruption and tax evasion. Since the crisis a popular name concretized to describe this revenue loss – “illicit financial flows.” I supported the “Cardin-Lugar amendment” because it was a common sense, bipartisan model to combat revenue thefts from the poor and start to address these illicit financial flows.

Section 1504 requires annual reporting by oil, gas and mining companies to the Securities and Exchange Commission (SEC) of financial activity and payments to governments where these companies operate. Requiring disclosure of these payments helps fight corruption by extending the transparency we have in our own federal budget to other countries that need to be more forthcoming about public finances.

Because Congress acted on this transparency initiative, the world followed. Europe and Canada passed and expanded Congress' action and the idea of increasing this type of financial reporting has now become a critical part of global development agreements. As Congress prepares to debate the U.S. budget and foreign assistance, we should support countries in their efforts to capture greater revenue at home. We should support citizens in developing countries as they work to make sure their leaders are not bribed when they are negotiating the sales of their natural resources.

Bribes and other illicit transactions, including outright theft, by leaders of resource-rich countries perpetuate poverty, fuels conflict and threatens our national security. In large part, companies that are subject to Section 1504 are already tracking and reporting these payments, and face minimal to no disadvantage in the marketplace.

As people of faith we see the issues that impact the poor - corruption and tax evasion - as moral issues.

Congress needs to slow down and understand how diminishing 1504 hurts poor people and budgets. It's a moment to expand the power of the "Cardin-Lugar amendment," not dismantle it.

Eric LeCompte is the executive director of Jubilee USA Network, a religious development coalition representing more than 650 faith groups.

Oxfam America - “Let the sunshine in: A call to African governments to urge US government to protect anti-corruption rule”
2/1/2017 - http://politicsofpoverty.oxfamamerica.org/2017/02/let-the-sunshine-in-a-call-to-african-governments-to-urge-us-government-to-protect-anti-corruption-rule/#

Let the sunshine in: A call to African governments to urge US government to protect anti-corruption rule

February 1, 2017

Dr. Mohammed Amin Adam
Executive Director

The annulment of 1504 will have dire consequences on oil, mining, and gas transparency efforts in Africa.

Today, Congress will be voting on whether to keep or throw out a key regulation, the Cardin-Lugar Amendment aka Section 1504. If Congress votes to annul, US oil, gas and mining companies will be allowed to keep secret their payments to foreign governments, opening the window for corruption at home and abroad. On top of that, the US would be out of step with similar laws passed in countries like Canada, Norway and the European Union and would come up short against international norms that have the support of governments and companies all around the world. And the move would undo years of bipartisan cooperation and legislative process.

With the former CEO of ExxonMobil, Rex Tillerson, likely to become the next Secretary of State, these moves are sending shockwaves of concern and alarm globally.

The Cardin-Lugar Amendment is particularly critical for places like Africa. With the future of US foreign assistance in limbo, it is ever more critical that Africa governments be able to better manage their own resources and that the African people have the information they need to hold their government accountable. During the rule-making process for Section 1504, African CSOs poured in mountains of evidence, like this one from Ghana, for why the rule was essential for the responsible governance and development of their countries.

Mining and oil/gas play an enormous role in Ghana’s economy. As one of the largest gold producer in Africa, Ghana is host to several mines operated by US-listed companies including Newmont, AngloGold Ashanti and Gold Fields, which operates the country’s largest gold mine. Lucrative quantities of offshore oil and gas are also being exploited by US-listed companies including Kosmos Energy and Anadarko. The CEO of Newmont and the Senior Vice President of Kosmos Energy both publicly support payment disclosure and Section 1504. Both sectors combined bring in several billion dollars of government revenue each year. Section 1504 would be absolutely necessary for the Ghanaian public and civil society to be able to monitor government revenue reporting and rout out corruption.

Ghana itself is settling into a new administration with presidential elections having concluded late last year. The country is at a pivotal moment as it seeks to manage its economic crisis. The public is calling on the new government to capitalize on its oil, gas and mining riches rather than squander it. The new ruling party has made promises for "transparent, accountable and efficient management of the country's petroleum resources for the benefit of all Ghanaians." Disclosure of payments from resource companies, as would be required by Section 1504, is a vital part of this process. With Section 1504 on the line, policy experts in Ghana are again speaking out.

Below is a statement from Dr. Mohammed Amin Adam, the Executive Director of the Africa Centre for Energy Policy, a leading African think tank on energy governance. The press release can also be found here.

AFRICAN GOVERNMENT MUST CONDEMN EFFORT TO ANNUL THE SEC RULES ON TRANSPARENCY IN THE EXTRACTIVE SECTOR.

PRESS RELEASE, 1ST FEBRUARY 2017

The Africa Centre for Energy Policy (ACEP) is saddened by the attempt by US Republican Senators to darken the global effort to ensure transparency in the governance of the extractive sector by repealing the rules on the Dodd Frank Act. Today, the US, European Union, Canada and Norway, have rules that require their companies operating abroad to disclose payments made through taxes, royalties, contract fees and all other payments for infrastructure development and Corporate Social Responsibility to host government.

Ironically, this global effort was initiated by the US through the Dodd Frank Act in 2010 and subsequent regulations by the Securities and Exchange Commission (SEC) through the Cardin-Lugar Transparency Rule in 2016, which provides express requirement on US companies to disclose payments to host governments.

The development of regulation on the section 1504 of Dodd Frank Act witnessed strong opposition from the business interests in the US which saw the America Petroleum Institute (API) taking the matter to court. The SEC and civil society organisations led by Oxfam America, as the Intervenor, defended the case for three years until it was thrown out in April 2016, to pave the way for Cardin-Lugar Transparency Rules to come into force.

Having failed in court, Some Republican Senators, including the Majority Leader Mitch McConnell have file a Congressional Review Act, seeking to annul the SEC rule on the Dodd Frank Act. This represents a travesty of important effort to improve on governance *of extractive resource in poor countries where the secrecy around resource rents activates bribery, greed, corruption, extreme poverty and many other social injustices.*

Ghana, like many other countries, has been a direct beneficiary of SEC rules through contracts and payment disclosures which empowers citizens to demand accountability from their government. This "U-turn" proposed by the Senators is only an attempt to entrench minority business interest against that of the suffering masses who live the "paradox of plenty" daily.

ACEP would like to call on African governments to individually and/or collectively condemn this move by minority business interest to influence US Congress to roll back transparency efforts. The world cannot suddenly deviate from the reality that corruption and secrecy is at the heart of mismanagement of extractive resource. We also call on the Africa Union to develop its own rule to regulate companies operating in our countries to disclose payment, contracts and beneficial ownership information as a condition precedent for operating in Africa.

Signed

Dr. Mohammed Amin Adam
Executive Director

Public Citizen - "Will Trump Keep His Promise to Return Government to the People? Pending Fight Over Oil & Gas Rule Will Show"
2/1/2017
- http://www.huffingtonpost.com/entry/5891d599e4b04c35d58354e1?timestamp=1485953064677

Dan Dudis, Contributor
Director of the Chamber Watch project at Public Citizen

Will Trump Keep His Promise To Return Government To The People?

Trump and the Republicans appear to be giving yet more power to the fossil fuel industry, one of the most powerful corporate lobbies in the country.
02/01/2017 07:44 am ET

President Donald Trump began his inaugural address by declaring that he would be "transferring power from Washington, D.C., and giving it back to [us], the people." After having repeatedly promised to "drain the swamp" in Washington during his campaign, it comes as no surprise that he would continue to at least rhetorically train his fire on Washington elites once in office.

But are these promises to give power to the American people anything more than rhetoric?

Judging by Trump's first decisions in office as well as the priorities of the Republican majorities in Congress, it appears that Trump and the GOP have another constituency to whom they intend to transfer power: the fossil fuel industry.

On his fifth day in office, Trump revived both the Keystone XL pipeline and the Dakota Access pipeline, the construction of both of which had been blocked due to a variety of environmental concerns. On the same day, U.S. House of Representatives majority leader Kevin McCarthy announced that the House would use the Congressional Review Act (CRA) to attempt to repeal three important regulations that are opposed by fossil fuel companies: the stream protection rule, which would require coal mining companies to take steps to avoid contaminating streams and drinking water; the methane and waste prevention rule, which would limit the amount of methane, a potent greenhouse gas, that can be released during drilling on public lands; and the resource extraction transparency rule, which would require oil, gas, and mining companies to publish what monies they pay to governments around the world. CRA disapproval resolutions on these rules were in fact introduced on Monday, Jan. 30.

So much for giving power to the people, who value clean water, are concerned about global warming, and worry about corporate capture of our government. Instead, Trump and the Republicans appear to be giving yet more power to the fossil fuel industry, one of the most powerful corporate lobbies in the country.

The long, tortured saga of the resource extraction transparency rule perfectly illustrates the fossil fuel industry's tremendous power. The rule has its origins in a bipartisan amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act, passed in 2010. Its purpose was to bring transparency to a notoriously opaque and politically powerful industry: companies that drill oil and gas or that mine valuable minerals. Domestically, it would allow the American people to see how much these companies earned from resources produced on public land and in public waters. Internationally, it would make it harder for corrupt politicians to steal the billions in revenues generated by resource extraction and thereby help to combat the resource curse in which developing countries are destabilized by the corruption engendered by natural resource wealth.

The U.S. Securities and Exchange Commission (SEC) was supposed to finalize the rule within 270 days, but under industry pressure, the agency dragged its feet, and the rule was not finalized until 2012. The U.S. Chamber of Commerce and the American Petroleum Institute (API) then sued the SEC, arguing that the agency had not properly weighed the costs of the rule and that the rule violated corporations' free speech rights. A judge vacated the original rule in 2013 and the SEC again dragged its feet and did not issue a new rule until 2016. It is this new version of the rule that is being targeted by Republicans in Congress.

The resource extraction transparency rule also offers a nice lesson in corporate hypocrisy. While Big Oil companies like Exxon and Chevron have the Chamber and API do the dirty work litigating and lobbying against the rule, they tout their involvement (here and here) in the U.S. Extractive Industries Transparency

Initiative (EITI), a separate, voluntary initiative to further natural resource revenue transparency in the U.S. Of course, since US EITI is voluntary, without the resource extraction transparency rule, the information it will be able to publish about company tax payments will be extremely limited. For Exxon and Chevron, it's the best of both worlds – they polish their corporate image by participating in the voluntary US EITI process while they have the Chamber and API kill the rule that would allow US EITI to fulfill its mission of publishing all payments that oil, gas, and mining companies make to the U.S. government.

If Trump is serious about giving power back to the people, then he must stop doing the bidding of the Chamber and the fossil fuel industry and oppose Republican efforts to undo critical rules protecting the environment and public welfare. In his inaugural address, Trump famously declared that alleged "American carnage stops right here and right now." The resource extraction transparency rule would be of significant aid in stopping the all too real carnage taking place in countries afflicted by the resource curse, countries like Nigeria, the Democratic Republic of the Congo and Afghanistan. It's time that Trump gets serious about putting people – all people – first, and corporate special interests like the Chamber, API and Big Oil companies second.

Dan Dudis serves on the US EITI federal advisory committee and is director of Public Citizen's Chamber Watch project.

EITI Statement - Chair of EITI
https://eiti.org/news/statement-from-eiti-chair-on-repeal-of-secs-resource-extraction-rule

Statement from EITI Chair on repeal of SEC's 'resource extraction' rule

Jan 31, 2017

Updated 14 Feb 2017

On 14 February 2017 the President of the United States Donald Trump signed into law Congressional action to disapprove the rule submitted by the SEC relating to "Disclosure of Payments by Resource Extraction Issuers" required by section 1504 of the Dodd Frank Act. The outlook and implications are unclear. There may be further efforts by the SEC to redraft the rule, but also efforts to repeal or amend the Dodd Frank Act.

Ahead of the vote, the EITI Chair made the following statement:

The EITI has in recent years frequently spoken about the ways in which disclosure requirements like Dodd Frank 1504 and the EITI complement each other. See for example, the EITI Statement on the SEC's regulation on mandatory company disclosure. I reiterate earlier held EITI positions on this matter. Our aim is to ensure responsible and transparent resource governance and this requires multiple efforts. The SEC took great care in drafting these rules in consultation with industry to ensure that they complement the EITI's efforts and avoid unnecessary duplication. I would urge Congress to consider this matter thoroughly, and to ensure that any action does not undermine the hard-won gains in this arena.

Fredrik Reinfeldt

Public Citizen - CRA Resolutions Declare Open Season On Americans
http://www.huffingtonpost.com/lisa-gilbert/cra-resolutions-declare-o_b_14500756.html

CRA Resolutions Declare Open Season On Americans

01/30/2017 02:26 pm

For corporate predators, pickpockets and polluters, it's morning in America.

Today, both chambers of Congress will begin introducing and voting on Congressional Review Act (CRA) resolutions of disapproval that wipe out public protections established during the final six months of the last administration.

As a result of these resolutions, Americans could lose dozens of critical health, safety, financial, and environmental protections that keep us safe from the same big corporate interests running the Trump administration and bankrolling Republicans in Congress

The CRA allows Congress - with limited debate and no possibility of a filibuster - to strike down recently issued rules as long as the president does not veto their actions. There are hundreds of rules at risk.

But CRA resolutions do more than just strike down vital safeguards; they also block agencies from ever again issuing "substantially similar" regulations without express authorization from Congress. Once the rules are gone, there's no getting them back - at least not anytime soon.

It's may be a dream come true for corporate criminals, but it's an absolute nightmare for the rest of us. Republicans in Congress need to understand that if they do the bidding of their big corporate donors and vote to repeal key protections under the CRA, they will inflict significant pain on their own constituents - and likely anger voters who came to the ballot box this year on a wave of populist rhetoric aimed at reining in out-of-control corporate interests like Wall Street.

If key regulatory protections are repealed, payday lenders, debt collectors and credit card companies will be allowed to scam and rip off the voters who put these members of Congress (and Trump) in office. Polluters will get away with dumping dangerous chemicals in their backyards and poisoning the wells near their homes. Voters everywhere will pay more out of pocket for home appliances, trucks and electricity bills.

In short, wiping out public protections will allow big banks on Wall Street, big polluters and their well-paid lobbyists on K Street to abuse, exploit and discriminate against regular Americans with impunity.

Regular voters certainly were not asking for this. They didn't ask the new administration or Congress to declare open season on American workers, consumers and families. But that's exactly what these CRA resolutions will do.

Congressional Republicans need to think twice before backing CRA resolutions - because the consequences will fall on their own constituents.

Sooner or later, voters from all walks of life will feel the very real pain that results from CRA repeal. When they do, don't be surprised if they lash out at those responsible for their suffering.

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Gilbert is director of Public Citizen's Congress Watch division.

FACT Coalition - "House Attempts to Repeal Bipartisan Anti-Corruption Safeguard in Controversial Move"
1/26/2017 - https://thefactcoalition.org/house-attempts-to-repeal-bipartisan-anti-corruption-safeguard-in-controversial-move/

House Attempts to Repeal Bipartisan Anti-Corruption Safeguard in Controversial Move

January 26, 2017

By Clark Gascoigne

Rolling Back Extractives Transparency Measure Could Hamper National Security

Lawmakers in the House of Representatives are expected to introduce **a controversial resolution** to repeal a bipartisan anti-corruption safeguard, in a move panned by non-partisan anti-corruption experts.

Former Sen. Richard Lugar (R-IN) and Sen. Ben Cardin (D-MD) sponsored the **Energy Security Through Transparency Act**, as an amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The provision protects U.S. national security and combats corruption in developing countries (particularly those plagued by extremist violence and conflict) by requiring oil, gas, and mining companies which report to the Securities and Exchange Commission to publicly report all payments made to host-governments.

As ***The Wall Street Journal*** **reports**:

Activists and industry observers have said for years such payments can be used to hide bribes to secure business…House Majority Leader Kevin McCarthy, (R, Calif.), in an op-ed published Wednesday in The Wall Street Journal, wrote the House of Representatives will "take the ax" to the rule, saying it "adds an unreasonable compliance burden" on American energy companies that doesn't apply to their foreign competitors…

Lawmakers would use the Congressional Review Act to repeal the rule, Mr. McCarthy said in the op-ed. That law gives Congress the right, with a simple majority vote, to overturn rules finalized in the past 60 legislative days. The SEC approved the [implementing] rule on extractive disclosure in late June, which falls within the 60-day legislative deadline.

Rep. Bill Huizenga (R-MI) is expected to **introduce the "Congressional Review Act" resolution Monday** in the House of Representatives to nullify the bipartisan Cardin-Lugar Amendment. The House is expected to vote on the controversial measure within a couple of days.

The FACT Coalition sent a letter to lawmakers **Thursday** urging them to reject the resolution. FACT's **Gary Kalman** and **Clark Gascoigne** explain in **the letter**:

It's inaccurate to suggest that the implementing rules promulgated by the SEC in July put U.S. companies at a competitive disadvantage. 30 other countries—including Norway, Canada, and all 28 members of the European Union—have instituted the same disclosure requirements on extractive companies. This means that over 90 percent of internationally operating companies in the extractives sector are covered by these transparency measures. And, there are already reports coming out of these countries. We have seen reports from BP, Shell, and BHP Billiton—among other major multinational oil and gas companies. Despite this, no European company has suffered any disadvantage as a result of disclosures it has made.

Moreover, it's estimated that Cardin-Lugar would result in negligible compliance costs for American businesses, as was noted by one company, Tullow Oil, which has been reporting under requirements equivalent to Cardin-Lugar for several years. The rule requires disclosure of payments that companies track in the normal course of doing business.

Additionally, the SEC issued an equivalency order alongside its implementing rule for the Cardin-Lugar provision determining that companies reporting under EU rules, Canadian rules, or the U.S. Extractives Industry Transparency Initiative (EITI) standard would be deemed substantially similar to the SEC rule. As such, companies reporting under the above equivalent rules may submit those existing required reports to fulfill the SEC disclosure requirements, and would not add any new burdens or compliance costs for those companies.

The letter goes on to say:

Corruption is more than just a threat to economic growth and human rights; corruption threatens U.S. national security by fueling and funding terrorism and driving conflict globally. Disclosure of company payments to governments for access to natural resources, and government commitments to publish receipts of those payments, are key to battling corruption and ensuring citizens benefit from their country's natural resource wealth.

Conservatives in the House wrongly see this as regulatory overreach as noted in **a recent blog** by the right-of-center Hudson Institute's Kleptocracy Initiative:

Financial arrangements with foreign-owned extractives operations are often the only significant source of government revenue in underdeveloped countries. Where democracy and rule of law are weak, gaining control of this revenue stream presents local elites with unparalleled opportunities for illicit personal enrichment, the creation of political patronage networks, and ultimately the chance to entrench themselves in power. When the stakes are so high, political competition can swiftly descend into open violence.

This downward spiral of corruption and conflict has been repeated with tragic consequences in dozens of countries worldwide—but it isn't territorially confined to them. Their instability also hurts the U.S. financially, through global economic and market disruption, lost trading opportunities, and the cost of development and humanitarian assistance. When the U.S. intervenes to quell armed conflicts or confront extremist movements which have their root causes in corruption, the lives of American service men and women are threatened directly…

Payments made by American extractives firms to corrupt foreign governments are an important part of this global "Kleptocracy Curse." Removing the requirement to report them would effectively blind the U.S. government to the role played by its own citizens.

It is alarming that Congressional leadership would consider undermining American efforts to combat violent extremism abroad by rolling back this anti-corruption measure which protects American companies and democratic interests around the globe. It is especially surprising that Congress would prioritize such a move in the first days of a new Administration.

Clark Gascoigne *is the deputy executive director of the FACT Coalition.*

Hudson Institute - Fueling Kleptocracy: Transparency in the Extractives Industry
1/24/2017 - https://www.hudson.org/research/13288-fueling-kleptocracy-transparency-in-the-extractives-industry

THE HUDSON INSTITUTE
Fueling Kleptocracy: Transparency in the Extractives Industry

Nate Sibley

January 24, 2017
Kleptocracy Initiative

The new administration's commitment to reducing unnecessary regulation should be welcomed not only by Americans, but anyone who wants to do business with a more competitive United States. However, efforts reportedly underway to remove the legal requirement for American oil, gas, and mining firms to disclose payments made to foreign governments may have serious unintended consequences.
The payments in question may be entirely legitimate and made in good faith—taxes, for example. (If not, the firms involved could fall foul of other U.S. provisions such as the Foreign and Corrupt Practices Act.) The government officials to whom they are made, however, are sometimes anything but well-intentioned.

Financial arrangements with foreign-owned extractives operations are often the only significant source of government revenue in underdeveloped countries. Where democracy and rule of law are weak, gaining control of this revenue stream presents local elites with unparalleled opportunities for illicit personal enrichment, the creation of political patronage networks, and ultimately the chance to entrench themselves in power. When the stakes are so high, political competition can swiftly descend into open violence.

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Unfortunately, foreign corruption has never been a one-way street. Public funds stolen by predatory elites are usually spirited out of their home country to offshore jurisdictions through a network of Western-registered anonymous companies, laundered by unscrupulous Western professionals, and ultimately re-invested in luxury Western assets. This complicity is not only morally wrong—nor is it even just a development, tax, or social justice issue. It is, most importantly, a core threat to U.S. and Western national security.

Payments made by American extractives firms to corrupt foreign governments are an important part of this global Kleptocracy Curse. Removing the requirement to report them would effectively blind the U.S. government to the role played by its own citizens.

Oxfam - "Is Representative Bill Huizenga pro-corruption?"
1/24/2017 - http://bit.ly/2jubeLB

Is Representative Bill Huizenga pro-corruption?

January 24, 2017 Posted by Ben Grossman-Cohen

Then why is he trying to make corruption easier?

Breaking news today from the House of Representatives is that Representative Bill Huizenga (R-MI) is gathering support from his fellow Republicans to gut one of the signature bi-partisan anti-corruption laws passed in the last 8 years.

Huizenga plans to introduce a bill today that will roll-back the anti-corruption rule known as "Section 1504," which requires oil and mining companies to publish the payments they make to governments around the world. This transparency measure was passed to ensure people in poor countries can follow the money and to break the "resource curse", which has plagued poor countries like Nigeria, Angola, Equatorial Guinea and more. It's one of the most important anti-corruption/anti-poverty laws that Congress has passed in recent years and was spearheaded by Republican Senator Richard Lugar and Democratic Senator Ben Cardin.

So why is Rep. Huizenga trying to make it easier to engage in corruption in poor countries? Could the $46,050 he's received from oil and gas interests be one reason? One week into the new Trump administration, is this really Congress' top priority?

The timing is certainly suspicious. It comes just one day after the former CEO of Exxon Mobil Rex Tillerson, a vocal opponent of this anti-corruption rule, was confirmed by the Senate Foreign Relations Committee as a nominee to be the next Secretary of State. Exxon has spent millions, along with the American Petroleum Institute, to try to block this rule. Tillerson has personally lobbied on Capitol Hill and elsewhere to stop it.

Members of Congress supporting this effort are playing a dangerous game. On the substance, there is absolutely no benefit to rolling-back the rule. It is consistent with similar laws passed around the world requiring companies to disclose their payments; investors worth $10 trillion have said they support it; and it facilitates more responsible and ethical business practices. The US would immediately go from a transparency leader to transparency laggard if this rule is overturned.

But the politics are even worse. Are Republicans really going to expend their energy and political capital working to make it easier to get away with corruption? In the 5 years after the Cardin-Lugar rule passed, oil companies should have paid more than $1.5 trillion to governments of some of the poorest countries on earth. This money could have helped pay for schools, roads, hospitals and other critical measures to fight poverty without spending a dime of foreign aid. But too often, because these payments are kept secret, the funds are wasted or worse funneled to corrupt officials without any accountability.

On the heels of their ethics committee fiasco, is rolling back a rule to fight this corruption really the next big initiative Congress wants to lead with? “Forget jobs we stand in favor of corruption.” Not good.

So how do we stop it?

Stopping the bill requires 51 votes in the Senate. So call your Senator and urge them to oppose this measure. Tell them that a vote to overturn 1504 is a vote in favor of corruption.

Please call (202) 224-3121 and ask to speak with the office of your state’s Senator. Here’s a helpful script, just fill in your Senator’s name:

Hello,

I’m calling to urge Senator [X] to vote NO on the joint resolution overturning the Cardin-Lugar anti-corruption rule.

A vote to overturn Section 1504 is a vote for corruption. Please stand up against corruption and poverty and defend Section 1504.

CNBC - "This is one of our top strategies for fighting terrorism"
12/15/2016 - http://cnb.cx/2jx1XTg

This is one of our top strategies for fighting terrorism

l, the Under Secretary of State for civilian security, democracy and human rights
Published 4:47 PM ET Thu, 15 Dec 2016

The fight against corruption must become central to our broader strategy against terrorism. From Afghanistan to Kenya, graft fuels terrorist groups like the Taliban and al-Shabaab. The mayor of Mosul called corruption "essential" to the city's fall to Da'esh and now Iraqi forces struggle and die to free the city once more. In case after case, corruption undermines the struggle against terrorism at every level.

First, corruption fuels new terrorist threats. When public officials and businesses can demand bribes with impunity, it shreds the compact between citizens and government and allows terrorists to cast themselves as a better deal. Over 15 years of struggle in Afghanistan, we've seen the Taliban replenish fighters by railing against government corruption. The Department of State's research on Africa found that personal experiences with corruption were significantly linked to political violence, including violent extremism.

Second, corruption helps existing terrorist groups sustain operations and infiltrate new areas. In Mosul, smuggled oil enriched Da'esh before they seized the city. In Eastern Europe, foreign terrorist fighters have bribed border guards on their path to jihad. Across West Africa, we've heard reports of soldiers selling weapons on the black market to Boko Haram, or even tipping off al-Qa'ida about future troop deployments for a fee. As one currently imprisoned al-Qa'ida fighter said, "Thank god, Mali is a very corrupt country."

Finally, corruption saps the government's ability to combat terrorist threats and ensure security. When President Buhari of Nigeria came to office, he inherited an army hollowed out by decades of graft that was wholly unprepared to confront Boko Haram. When Prime Minister al-Abadi assumed power in Iraq, he found

50,000 "ghost soldiers" on the payroll draining precious resources from the fight against Da'esh. By reducing the combat effectiveness of critical foreign partners, corruption reduces the impact of our foreign assistance and increases foreign dependence on U.S. military power – exposing our soldiers to even greater risk.

For all of these reasons, Secretary of State John Kerry has called the fight against corruption a first-order national security priority.

Today in Kenya, the U.S. is making a concerted effort to fight both terrorism and corruption. There, as in many other places, corruption feeds and enables terrorism. Smuggled rice and sugar enriches al-Shabaab, and its fighters repeatedly invoke corruption and alleged abuses by Kenyan security forces to recruit new fighters. So as we intensify counter-terrorism operations against the terrorist group, we are also ramping up the battle against corruption.

Last July, the U.S. and Kenya made an unprecedented joint commitment to partner on over 40 major actions to combat graft. We've since helped to create a special anti-corruption investigative unit, which made its first arrests this October. We've helped Kenya develop mandatory ethics training for Kenyan public servants and have partnered with local police to promote accountability in their ranks. On top of that, we are collaborating with Kenya to develop tools to fight money laundering, improve transparency in procurement systems, and strengthen legal protections for whistleblowers. And we encourage Kenya's participation in the Open Government Partnership, a platform for governments and citizens to share lessons in promoting transparency. Though Kenya's fight against corruption has only begun, these steps speak to the breadth of actions we can take with partners across the globe.

For years, the world has looked at corruption as a threat to economic growth and human rights. But we have underestimated the threat – corruption is far more dangerous than many realize, and it is time to confront it with the urgency, intensity, and resources it deserves. In doing so, we can help build societies that are not only more transparent and accountable, but also more secure and safe from the threat of terrorism.

Commentary by Sarah Sewall, the Under Secretary of State for civilian security, democracy and human rights. Follow her on Twitter @civsecatstate.

Lugar Center - “Will Tillerson and Trump reverse U.S. leadership on global anti-corruption?”
1/13/2017 - http://www.thelugarcenter.org/blog-will-tillerson-and-trump-reverse-u-s

Will Tillerson and Trump reverse U.S. leadership on global anti-corruption?

By Jay Branegan | 13-Jan-2017

At Wednesday’s confirmation hearing for Exxon-Mobil chief Rex Tillerson to be Secretary of State, Sen. Tim Kaine (D, Va.) introduced into the record a 2008 report prepared by Sen. Lugar’s Senate Foreign Relations Committee staff: “***The Petroleum and Poverty Paradox: Assessing U.S. and International Community Efforts to Fight the Resource Curse***.” The 125-page report was the launch pad for the drafting and eventual passage of the Cardin-Lugar amendment aimed at fighting corruption in mineral-rich developing countries.

Cardin-Lugar, enacted as Section 1504 of the Dodd-Frank Wall Street reform bill, was pioneering legislation that requires all oil, gas and mineral companies listed on U.S. stock exchanges (whether or not they are U.S.-based) to disclose the royalties, bonuses, fees, taxes and other payments they make to foreign governments. For the first time, it gave citizens of oil-rich poor countries the ability to “follow the money” and hold their governments accountable for the often vast sums they receive from natural resource extraction, including oil, gas, gold, copper, etc. This kind of disclosure, or transparency, is a key tool for fighting corruption, waste and mismanagement. By passing the bill, the U.S. asserted its traditional role as a global leader in opposing corruption.

The strength of this leadership was quickly demonstrated as the European Union promptly moved to enact legislation patterned directly after the U.S. law, which was passed in 2013, as did Canada, home to some of the world’s most important mining companies.

But a key question was left hanging over the Tillerson hearing: **Will the Trump administration lead a retreat from this position of global leadership by repealing Cardin-Lugar? Will it signal to the international community that America no longer**

cares so much about corruption? Will the new administration undermine the very corruption-fighting structure the U.S. helped build?

Tillerson was never asked directly whether he would oppose repeal of Cardin-Lugar, but as head of the world's largest oil company, he personally lobbied against the legislation when it was being considered. So did Big Oil's trade group, the American Petroleum Institute (API). When the implementing regulations were first issued by the SEC, API sued to overturn them, and new, improved regulations were released last summer. President-elect Trump campaigned on getting rid of regulations generally, and some in Congress say they want to target Cardin-Lugar early in this session, even though extractive industries disclosure has become the international norm.

Ironically, events since Cardin-Lugar passed have further undercut Big Oil's two biggest concerns, namely, that U.S. firms would be at a competitive disadvantage to drillers that didn't have to disclose payments, and the reporting would be too burdensome. With the passage of the E.U. and Canadian legislation, most of the important oil and gas firms that operate across borders, including the Russians, are now covered. And the new SEC regulations are quite flexible—because the other laws are so similar to ours, the companies can file the same report with the SEC that they file with other jurisdictions, so there's no needless duplication.

There are compelling reasons to combat the "resource curse." As Sen. Lugar noted in his introduction to the committee report, "Paradoxically, history shows that rather than a blessing, energy reserves can be a bane for many poor countries, leading to fraud, corruption, wasteful spending, military adventurism and instability. Too often, oil money that should go to a nation's poor ends up in the pockets of the rich, or it may be squandered on the trappings of power and massive showcase projects instead of being invested productively and equitably. In some countries, national poverty has actually increased following the discovery of oil."

Moreover, he said, “This ‘‘resource curse’’ affects us as well as producing countries. It exacerbates global poverty which can be a seedbed for terrorism, it dulls the effect of our foreign assistance, it empowers autocrats and dictators, and it can crimp world petroleum supplies by breeding instability.” And tighter oil supplies, of course, mean higher prices at the gas pump for American motorists.

Cardin-Lugar was bipartisan legislation. Fighting corruption and promoting transparency is, or should be, a bipartisan issue. Both Republicans and Democrats want to reduce poverty in developing countries, and both want to see our foreign aid dollars used more effectively. Extractives transparency costs the American taxpayer virtually nothing but can have high impact.

Tillerson sidestepped Sen. Kaine’s question about the resource curse, passing up an opportunity to endorse Cardin-Lugar. Before inserting the committee report, Sen. Kaine asked, “…how will you work with [nations that have suffered under the resource curse] to make sure they respect human rights, the rule of law and our longstanding commitment to transparency and anti-corruption interests?”

TILLERSON: “Well there's a lot of opportunity through our USAID programs to strengthen the institutional capacities and set standards of expectation in the developing part of the world including those that have resource wealth.”

Clearly, other committee members were concerned about the Trump administration’s commitment fighting corruption overseas. A Republican from Georgia, Sen. Johnny Isakson, highlighted the problems of oil-rich countries even in the Middle East: “They decided not to invest that money in their people and in infrastructure and instead kind of bought their people off with the money they had and had kingdoms and palaces where they lived. And now we're suffering today because they have no medicine, they have no educational system, they have no infrastructure.”

And Sen. Ben Cardin (D, Md.), the co-sponsor of Cardin-Lugar, said he had discussed extractives industry transparency with Tillerson during their pre-hearing confab last week. Cardin seemed to suggest that Tillerson the nominee retained the same views as Tillerson the oil titan. Said Cardin: “And we also talked about transparency in the extractive industries, and I appreciate your candor there as to the usefulness for that, to make sure the resources actually get to the people, rather than to corrupt leaders.”

Let’s hope that Tillerson the Secretary sees the overarching importance of maintaining American’s role as an anti-corruption champion and argues against repeal of Cardin-Lugar. In his opening statement, Tillerson acknowledged, “Our role in the world has also historically entailed a place of moral leadership.” And he lamented that, “In recent decades, we have cast American leadership into doubt.”

What could be worse, then, than to undo a clear act of moral leadership by taking away a key tool for fighting corruption? Not only would it betray our own principles, it would severely undercut our allies in Europe and Canada. With the Americans out of the extractives transparency system, they would face pressure from their industries to pull out as well. Having followed us up to the high ground, they might well join us in a race to the bottom.

Simply put, America can’t lead if it retreats. We led the world in setting up a disclosure system for oil and mineral payments, a system that became the moral and practical model that others are following. We shouldn’t back away from it now. Let’s maintain American leadership and retain Cardin-Lugar.

Jay Branegan is a senior fellow at The Lugar Center. Read his description of the Cardin-Lugar anti-corruption amendment in this E&E News article.

PRESS RELEASES

PWYP-US - Trump Administration Further Erodes US Leadership on Combatting Corruption

11/2/2017 - http://www.pwypusa.org/pwyp-news/trump-administration-further-erodes-us-leadership-on-combatting-corruption/

Trump Administration Further Erodes US Leadership on Combatting Corruption

United States Withdraws from Global Transparency Initiative

Washington, D.C. – Today the Department of the Interior (DOI) announced its decision to withdraw from the Extractive Industries Transparency Initiative (EITI) as an implementing country. The DOI's letter to the chair of the EITI board erroneously blames US law for the US' inability to comply with the disclosure standard. This move comes on the heels of the repeal of a critical anti-corruption safeguard earlier this year and further weakens US leadership in combatting corruption.

"We are disappointed with the Department of Interior's unilateral decision to withdraw from USEITI. We are dismayed by the DOI's characterization that meeting the EITI validation standard is somehow stymied by US law. In reality, the refusal of all but a handful of the involved companies to disclose tax payments – not US law – rendered the US unable to meet the basic level of transparency required by the EITI. To be clear, US law **does not** prevent oil, gas or mining companies from voluntarily disclosing their taxes – common practice in the dozens of EITI implementing countries," said Jana Morgan, Director of Publish What You Pay – United States. "In fact, Houston-based oil company Kosmos Energy voluntarily disclosed their tax payments to the US government last year. However, with the support of the American Petroleum Institute (API) companies like Chevron and ExxonMobil have consistently refused to comply with the EITI requirement to disclose their federal tax payments."

Efforts to implement USEITI were dealt a direct blow in the earliest days of the Trump administration, when Congress passed a bill to repeal the implementing rule for the Cardin-Lugar anti-corruption provision. The regulation required all US-listed oil, gas and mining companies to publicly disclose their project-level payments in every country of operation, including the United States. Chevron and ExxonMobil have long touted their participation in the EITI as evidence of their commitment to transparency, even sitting on the International Board. Yet these companies, along with Big Oil's lobbying arm, API, have fought for years to undermine Cardin-Lugar. These efforts amounted to an act of bad faith according to USEITI multi-stakeholder group by-laws and should have resulted in the the removal of API and others from the multi-stakeholder group.

"It is apparent that companies like Exxon and Chevron, along with API, support transparency in name only," Morgan continued "If companies want to demonstrate their commitment to transparency and the EITI, they should report taxes and other payments consistent with the international transparency standard that they not only agreed to, but helped establish."

The Obama Administration demonstrated groundbreaking leadership in 2010 by passing the Cardin-Lugar provision as part of the Dodd-Frank Act. The rest of the world soon followed, and now similar laws are being implemented in 30 countries around the world. “This latest move by the Trump Administration further deteriorates US influence in this space, and represents another embarrassing backwards step for an Administration that has proven to be weak on combatting corruption,” said Morgan.

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Note to Editors

(1) November 2, 2017 Department of the Interior letter announcing withdraw al .
(2) The EITI is a global anti-corruption initiative that requires oil, gas, and mining companies to report payments, including taxes, for access to natural resources, and that governments report the revenues they receive from the sector. Individual countries sign on to the initiative, and implementation of the EITI standard is carried out in consultation with a multi-stakeholder group that consists of representatives from government, industry, and civil society. In the United States, the implementing agency for the EITI is the Department of the Interior.

(3) First Quarter 2017 Lobbying Disclosures show USEITI industry members lobbying for the repeal of the Cardin-Lugar regulation. (ExxonMobil) (Chevron) (American Petroleum Institute); see e.g. lobbying activities related to H.J. Res. 41 (link), and S.J. Res. 9 (link)
(4) Other major oil, gas and mining companies that have disclosed their tax payments to the US government include BHP Billiton, Shell, Statoil, Total and BP.
(5) Letter from USEITI Civil Society representatives to the DOI requesting the resumption of MSG meetings after they were cancelled and civil society silenced in a February MSG meeting.
Civi l Society critique
of June 2017 Department of the Interior’s Inspector General report on US implementation of the EITI Standard.

USEITI Civil Society Organizations - Administration Sounds Death Knell for Transparency Initiative

3/20/2017 - **http://www.pwypusa.org/pwyp-news/useiti-cso-statement-march-20-2017/**

Administration Sounds Death Knell for Transparency Initiative

WASHINGTON — The Department of the Interior has halted U.S. efforts to seek validation by the Extractive Industries Transparency Initiative (EITI), a global anti-corruption effort to bring openness and accountability to the oil, gas and mining sectors. As civil society members of the U.S. EITI, we are saddened and alarmed that the United States will no longer comply with the standard of a crucial transparency initiative that it has supported since 2003.

A Department of the Interior official confirmed in a March 9 phone call that the United States is withdrawing its efforts to be validated under the EITI Standard. The standard requires companies and governments to disclose the payments they make and receive for extracting oil, gas and minerals. The goal of the initiative is to ensure citizens and governments are getting their fair share of revenues from natural resource extraction. The United States had been working towards complying with the standard since 2012, when it established a multi-stakeholder group of civil society, industry and government members to guide the process.

This grave news comes on the heels of action by Congress and President Trump to use the Congressional Review Act to void an anti-corruption rule that complemented the EITI Standard. The rule, which implemented the Cardin-Lugar Provision of the Dodd-Frank Act, set out how U.S.-listed companies were to disclose tax and project-level payments they make to governments for the commercial development of oil, gas, and minerals. Many U.S.-based oil and gas companies have refused to voluntarily make tax payment disclosures under the U.S. EITI that would have been required by the now-voided rule.

In the spirit of cooperation, consensus, and transparency, we have worked closely with government and industry members of the U.S. EITI multi-stakeholder group since it was established. We are proud of the work we accomplished as a consensus-based body, and are particularly proud of the U.S. EITI website (https://useiti.doi.gov/), which we hope will continue to be a valuable tool for citizens seeking unbiased information about the U.S. extractive industries.

Though we are deeply disappointed the United States is no longer a candidate for validation under the EITI Standard, we, the civil society members of the U.S. EITI, remain committed to the principles of openness and accountability in the extractive industries, and we will continue to support our allies around the world in their efforts against corruption.

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This statement has been endorsed by the U.S. EITI civil society members:

Rebecca Adamson (First Peoples Worldwide), Danielle Brian (Project On Government Oversight), Neil Brown (The Lugar Center), Paul Bugala, David Chambers (Center for Science in Public Participation), Daniel Dudis (Public Citizen), Lynda Farrell (Pipeline Safety Coalition), Jennifer Krill (Earthworks), Michael LeVine (Oceana), Zorka Milin (Global Witness), Jana Morgan (Publish What You Pay – US), Isabel Munilla (Oxfam America), Keith Romig (United Steelworkers), Michael Ross (UCLA), Brian Sanson (United Mine Workers of America), Veronica Slajer, and Betsy Taylor (Livelihoods Knowledge Exchange Network).

PWYP-US - Transparency coalition denounces Trump signing of ' *Kleptocrat Relief Act'*
2/14/2017 - **- http://www.pwypusa.org/pwyp-news/transparency-coalition-denounces-trump-signing-of-kleptocrat-relief-act/**

Transparency coalition denounces Trump signing of ' *Kleptocrat Relief Act'*
Resolution voids groundbreaking anti-corruption regulation

Publish What You Pay – United States Director, Jana Morgan's, statement in response to President Trump's signing of a Congressional Review Act resolution of disapproval (HJ Res 41) voiding the implementing regulations for the bipartisan Cardin-Lugar anti-corruption provision, also known as Section 1504 of the Dodd-Frank Act:

"We are disappointed today that President Trump has signed legislation repealing the regulation implementing the landmark Cardin-Lugar provision, which requires oil, gas and mining companies to publish their payments to governments. This regulation would have combatted grand corruption by shining a light on billions of dollars in illicit payments, helped to cut-off the flow of money to terrorist networks , given investors a better understanding of their investment risks, and empowered civil society groups around the world to hold their governments accountable for how their natural resource wealth is being managed."

"This rule was widely supported by investors , civil society , government officials , academics , think tanks , and the majority of extractives companies . By signing the " Kleptocrat Relief Act " President Trump has sent the message that the US is weak on combatting corruption, and has allowed the regulation's few detractors, Chevron, ExxonMobil and ConocoPhillips (backstopped by the deep-pocketed lobbying group the American Petroleum Institute) to continue to keep their payments to the US and foreign governments secret."

"Despite this set-back, Section 1504 remains the law, and the Securities and Exchange Commission is mandated to produce a regulation in line with Congressional intent. Furthermore, the Cardin-Lugar provision sparked the passage of similar laws now being implemented in 30 countries around the world. The international transparency standard in here to stay."

PWYP-US - Gutless Congress Votes Yes to Corruption

2/3/2017 - http://www.pwypusa.org/pwyp-news/gutless-congress-votes-yes-to-corruption-february-3-2017/

Gutless Congress Votes Yes To Corruption

Congress Repeals Transparency Rule by Passing "Kleptocratic Relief Act"

Washington, D.C. – Today Congress passed a resolution that voids a critical anti-corruption rule for oil, gas and mining companies. The 40 member Publish What You Pay – United States coalition strongly condemned this action. By scrapping an important measure to combat graft in one of the world's most corrupt industries, lawmakers sided with Big Oil lobbyists and voted against American energy and national security interests.

The rule, which implemented the bipartisan Cardin-Lugar anti-corruption provision, required US-listed extractive companies to publish their project-level payments to US and foreign governments, such as taxes and royalties. By bringing transparency to oil, gas and mining payments, the Cardin-Lugar rule, also known as Section 1504 of the Dodd-Frank Act, aimed to help break the devastating cycle of corruption and poverty that breeds public resentment and instability in resource-rich countries.

"Instead of taking on corruption as they had promised, Congress and the new administration have gutted an important anti-graft measure that helps keep Americans safer and more informed," said Jana Morgan, Director of Publish What You Pay-US. "The Cardin-Lugar rule is critical for ensuring that authoritarian regimes around the world cannot treat oil and mining revenues like state secrets, breeding corruption, distrust, and conflict that harms U.S. security and energy interests. Many of the terrorist threats faced by the US and its allies originate in resource-dependent regions, where corrupt elites have looted natural resource revenues to line their own pockets and fund extremist groups."

US leadership in this field led to the creation of a global standard of transparency for the extractive industries. Since the Cardin-Lugar provision was adopted in 2010, 30 other countries including the UK, France, Canada and Norway have followed suit, passing their own versions of the legislation. As a result, European extractive companies have disclosed around $150 billion in payments to governments over the past year, with no harmful effects on their competitive position. This includes state-owned Russian companies Rosneft and Gazprom, which are listed on European exchanges and thus required to report their payments under EU law.

Despite the rhetoric used by the American Petroleum Institute (API), the shadowy lobbying arm of Big Oil, to misinform Congress, the voided rule would have required state-owned Chinese companies to report their payments, as well as other state-owned companies like Brazil's Petrobras, which was recently embroiled in a corruption scandal that damaged the country's economy. Today's action enables those state-owned companies to continue to operate in secrecy.

"Today, Congress has given a gift to Big Oil and kleptocratic governments around the world." said Morgan, "It is clear that the interests of the American public have taken a backseat to those of deep-pocketed lobbyists and secretive corporations. However, despite this shockingly misguided decision by the Republican-led Congress, the global mandatory disclosure standard remains intact."

The rule has received widespread support from the majority of the world's major extractive companies, including Dallas-based Kosmos Energy, Nevada-based Newmont Mining, BHP Billiton, Rio Tinto, Total, and Statoil. The regulation was also lauded by global civil society groups, foreign governments, and investors with $10 trillion dollars in assets under management. Public opposition to this law came only from ExxonMobil, Chevron and API. Morgan continued, "A small number of bad actors have spent millions of dollars lobbying members of Congress to block the law so that their payments can remain secret." From 2014-2016 the oil industry spent nearly $350 million on lobbying and campaign contributions to Congress.

Late Thursday night, Democrats on the Senate floor spoke passionately in defense of the regulation, with Senator Brown (D-OH) calling the repeal effort the "Kleptocratic Relief Act." Senator Cardin (D-MD), the original sponsor of the provision along with retired Senator Richard Lugar (R-IN), and long-time supporter Senator Leahy (D-VT) were joined on the floor by Senators Kaine (D-VA), Schatz (D-HI), Merkley (D-OR) and Warren (D-MA). Democrats criticized Republicans for voting to repeal the regulation, but refusing to show up to the debate. This morning, the resolution to repeal the Cardin-Lugar rule passed, with no Republican Senators willing to stand up against corruption.

On Wednesday, the House Financial Services Committee Ranking Member Maxine Waters (D-CA) and Rep. Gwen Moore (D-WI) strongly defended the regulation. The House vote to repeal was largely along party lines, with a handful of Texas-based Democrats voting in favor. Notably, Chair of the House Foreign Affairs Committee Ed Royce (R-CA), Rep. Chris Smith (R-NJ), Rep. Walter Jones (R-NC) and Rep. Brian Fitzpatrick (R-PA) voted against repeal.

PWYP - Senate Republicans Urge SEC to Align U.S. Transparency Efforts With Existing Global Standard

Feb 3, 2017 - **http://www.pwypusa.org/pwyp-news/senate-republicans-urge-sec-to-align-u-s-transparency-efforts-with-existing-global-standard-february-3-2017/**

Senate Republicans Urge SEC to Align U.S. Transparency Efforts With Existing Global Standard

Transparency Coalition Responds

On February 2, Senators Corker, Collins, Rubio, Isakson, Graham and Young sent a letter to the Securities and Exchange Commission (SEC) alerting the agency of their decision to vote to disapprove the SEC's anti-corruption rule to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The letter emphasized their commitment to combatting corruption and ensuring that a new SEC rule to implement Section 1504 aligns with an existing global standard adopted by 30 countries around the world.

While we welcome these Senators' commitment to increased transparency in the oil, gas and mining sectors, and look forward to working with them and others to achieve it, we are disappointed by the oil industry's reliance on long-debunked myths to mislead Congress into voiding this important rule. The reality is that the now-void rule did precisely what these Senators urge in their letter, and the inappropriate use of the Congressional Review Act in this instance only served to undermine the anti-corruption outcomes they – and we – desire.

The oil industry – led by the American Petroleum Institute – advanced two false arguments to deceive Congress, both of which have been invalidated by 31 governments, including in the U.S. during two SEC rulemakings on Section 1504. First, the oil industry alleged that the 1504 rule placed U.S. companies at a "competitive disadvantage" vis-a-vis other companies. That claim is easily discredited by the fact that the vast majority of direct competitors of U.S. oil, gas and mining companies are covered by U.S. or similar transparency rules in other countries. This includes the major state-owned oil companies from Russia, China, and Brazil. The reality is that the abrogation of the U.S. rule will enable the payments of three large U.S.-listed Chinese state-owned oil companies to remain hidden.

Secondly, the oil industry falsely claimed that host country laws exist that would prevent disclosure, thus forcing U.S. firms to stop doing business there. That argument too has been repeatedly debunked in robust regulatory rulemakings in the U.S., EU, and Canada, and the oil industry has yet to provide credible evidence to support its assertion.

The irony is that the act of invalidating the SEC's rule actually **does** place U.S. companies at a competitive disadvantage. A robust body of research concludes that corruption has negative financial impacts on companies. Corruption acts like a massive tax on the private sector and impedes broad-based economic growth. Estimates show that the cost of corruption equals more than 5 percent of global GDP ($2.6 trillion), with over $1 trillion paid in bribes each year. The cost of private sector corruption in developing countries alone is estimated to be more than $500 billion per year. Furthermore, well-established evidence finds that increased transparency lowers the cost of capital for firms, with positive impacts on both companies and their investors. Given these realities, U.S. companies and the investment community have been done a disservice by Congress's action this week to void the SEC's rule.

These facts were well-established, with considerable supporting evidence, in two lengthy SEC rulemaking processes to finalize a rule for Section 1504. Sadly, the inappropriate use of the Congressional Review Act failed to allow sufficient time or perspective for Congressional offices to understand and appreciate this evidence or the decade of Congressional legislative history of Section 1504. The Section 1504 rule was very clearly not a "midnight rule", which is the type of rule the Congressional Review Act is purportedly designed to undo. A self-interested oil lobby cynically took advantage of Congressional momentum and inexperience on this issue to misguide Congress into undermining U.S. leadership in the fight against global corruption in the oil, gas and mining sectors.

This inappropriate and rushed Congressional process stands in stark contrast to years of high-quality work by the SEC. It will result in a substantial waste of taxpayer dollars from unnecessarily mandating a new regulatory process to revisit points that have already been thoroughly vetted. Furthermore, in using the Congressional Review Act to unravel the rule, Congress failed to take into consideration the voices from the investor community, including investors with $10 trillion assets under management who publicly supported the SEC's rule, or the many oil, gas and mining companies that supported the rule, including some of the world's largest mining companies (e.g. BHP Billiton, Newmont Mining), and oil companies (e.g. Total, ENI, StatOil, Kosmos Energy).

This week, Congress was misled by a small number of oil companies that placed their own short-sighted concerns ahead of long-term interests, the interests of their investors, U.S. national and energy security, and those impacted by corruption in some of the world's poorest countries.

Global Witness - REPUBLICAN ATTACK ON LANDMARK ANTI-CORRUPTION LAW POSES GRAVE THREAT TO U.S. NATIONAL SECURITY

1/30/2017 https://www.globalwitness.org/en/press-releases/republican-attack-landmark-anti-corruption-law-poses-grave-threat-us-national-security/

Moves by the Republican-controlled House of Representatives to undo a landmark law designed to stop corruption in the oil industry pose a grave threat to U.S. national security, said Global Witness today.

The oil industry is the most corrupt on the planet, according to the OECD. Yet today the House of Representatives will introduce a resolution to void the rule implementing the bipartisan Cardin-Lugar anti-corruption provision, which requires oil, gas and mining companies to disclose details of the hundreds of billions of dollars they pay to governments across the world in return for rights to natural resources.

“Rolling back this law will enable the corruption President Trump told us all he would end,” said Corinna Gilfillan, Head of U.S. Office at Global Witness. “The oil industry has been striking backroom deals with dictators and tyrants for decades, wrecking developing economies and the environment in the process. This is what first drove people to the streets in countries like Libya and Ukraine, triggering a rise in extremism that the world is still dealing with. This law helps prevent it by making sure people can see how much money is changing hands for their resources, and who is really benefitting from those deals.”

This resolution is being introduced in the House on the same day as the full Senate begins to consider the nomination of Rex Tillerson, former ExxonMobil CEO, to lead the State Department. ExxonMobil is spearheading industry efforts to gut the Cardin-Lugar anti-corruption provision, which would bring much needed transparency to the secret deals that ExxonMobil and other resource companies do with corrupt regimes, fuelling instability around the world.

This comes just days after Nigeria’s anti-corruption law enforcement agency seized a billion dollar oil block from Shell and Eni during a corruption investigation. Had the U.S. anti-corruption rule been in place in 2011, this crooked deal would never have gone through, leaving the companies’ investors and the Nigerian people much better off. The deal itself deprived Nigeria’s people of a sum worth 80% of its

2015 healthcare budget. Given that the block in question is estimated to hold as much as 9.23 billion barrels in probable reserves, investors face substantial losses from a backroom deal they knew nothing about.

“On the same day as the Senate is considering the nomination of former Exxon CEO as next Secretary of State, the House of Representatives is deciding whether or not to vote to licence the bribery and corruption that the oil industry has lived off for decades” said Gilfillan. “We cannot stand by while the interests of a few powerful oil companies trump the safety and values of our country. We need this law to protect investors, developing countries and our own national security interests.”

Global Witness recently highlighted how a questionable oil deal between ExxonMobil and the Nigerian government is currently being investigated by Nigerian law enforcement.

The House is expected to vote on the resolution on Wednesday and send the resolution to the Senate for a vote as early as the end of this week. The news follows President Trump’s signing of executive orders designed to force through the environmentally devastating Keystone XL and Dakota Access pipelines last week.

Earth Rights International – Congress takes steps to gut anti-corruption rules and enable crony capitalism

1/26/2017

JANUARY 26, 2017, WASHINGTON D.C. – In the latest boon to big oil, Congress is planning to introduce a resolution next week to undo landmark anti-corruption rule that shines a light on the revenues foreign governments receive from oil, gas and mining companies. The extractive transparency rule, known as "Section 1504," was passed in the bipartisan Cardin-Lugar Amendment in 2010. One of its key purposes is to deter corruption and crony capitalism in business deals with foreign governments, leveling the playing field for American businesses.

The Securities and Exchange Commission (SEC) finalized the disclosure rule in June 2016, supported by a wide coalition of interests. Members of Congress, investors worth nearly $10 trillion in assets under management, anti-corruption watchdogs, and citizens of resource-rich countries all voiced support for a strong rule, emphasizing the need for detailed information about the payments foreign governments receive. Executive branch agencies also emphasized the rule's important national security functions, explaining the role it would play in preventing corruption, secrecy and foreign government abuse that has catalyzed conflict, instability and the growth of violent extremism.

Most importantly, the rule applies to all companies listed on U.S. exchanges – including foreign companies like PetroChina and Sinopec, Petrobras (Brazil), Ecopetrol (Colombia), and more than 30 foreign mining companies. Without this rule, U.S. companies who act responsibly, and refuse to line the pockets of foreign leaders, may be at a disadvantage to these foreign competitors.

But the resolution introduced today by Representative Bill Huizenga (R-MI), if passed, would void the rule, accelerate the opportunities for global corruption and poor governance, and encourage crony capitalism in countries like China, Russia and Saudi Arabia, who could keep information about the billions of dollars they receive from extractive companies – and what they do with it - secret.

"It's time to ask who Congress is really working for. This resolution will only benefit undemocratic and corrupt foreign governments that pose a threat to the United States and the few oil and mining companies that seek to profit off crony capitalism rather than honest business practices," said Michelle Harrison, Staff Attorney at EarthRights International. "Congress should not be making it easier for companies – especially foreign companies – to profit from sweetheart deals and corrupt governments."

The Cardin-Lugar provision inspired similar disclosure laws in Europe and Canada, further leveling the field for U.S. businesses. While the U.S. rule faced delay, the European Union and Canada plowed ahead, adopting similar laws. Many European companies, like Shell, BP, Total and Statoil, are thus already reporting on their payments in all countries of operation, and still others have voluntarily disclosed their payment information. But companies like PetroChina are not listed in Europe, and not subject to these disclosure rules.

"A handful of oil companies have been fighting to keep their relationships with foreign governments secret. They want special treatment," said Harrison. "Congress should think twice before handing out anymore corporate favors."

ERI has submitted numerous comments to the SEC during the 6 year rulemaking process on its own and as part of the U.S. Publish What You Pay Coalition (PWYP-US).

Natural Resources Governance Institute - PROPOSED REPEAL OF U.S. EXTRACTIVES TRANSPARENCY RULE WOULD INCREASE CORRUPTION AND POVERTY

26 January 2017, NEW YORK—A flagship U.S. anticorruption rule is under acute threat. Confirmation came yesterday that Republican members of Congress plan to introduce a Congressional Review Act resolution seeking to eliminate the June 2016 rule implementing the bipartisan Cardin-Lugar extractive industries payment transparency provision.

Daniel Kaufmann, president and CEO of the Natural Resource Governance Institute (NRGI), said: “We are deeply concerned at the attempt to gut this trailblazing U.S. law, which deters corruption and improves governance in the notoriously opaque natural resource sector. Legislators in both houses should abandon this plan immediately. Failure to do so would essentially be an endorsement of the kind of corruption and secrecy found in resource-rich dictatorships. This pro-inequality, pro-corruption move by legislators runs counter to the leadership exhibited by U.S. lawmakers when they pioneered global progress by passing this law over 5 years ago. It would make a mockery of the tough talk on fighting graft which we heard throughout the recent presidential campaign.”

The Securities and Exchange Commission rule, which implements Section 1504 of the Dodd-Frank Act, requires oil, gas and mining companies listed on U.S. stock exchanges to publicly disclose the billions of dollars in payments that they make to governments around the world for the right to extract natural resources. The Republican legislators who seek to dismantle the rule, in language closely mirroring past arguments made by major oil companies, claim that it harms the competitiveness of U.S companies but have failed to provide any evidence of such harm.

The U.S. law, passed in 2010 but only implemented last year after legal delays, was the first of its kind and has been replicated by 30 other countries, including Canada and many in Europe. It has equipped citizens in resource-rich nations to fight corruption and hold their own governments to account for the management of revenues from the sector. Investors with trillions of dollars under management also support these laws as a means to manage risk in the volatile commodities sector.

Company reporting, including by majors like BP, Royal Dutch Shell and Total, has begun in Canada, France, Norway and the U.K. Companies have already disclosed payments of over $150 billion to governments of over 100 countries to date. None of the reporting companies has claimed that business has been negatively impacted through such disclosures.

U.S. oil giants such as ExxonMobil have opposed these transparency laws for years. “The motivation for repeal of the rule is highly suspect,” said Kaufmann. “With former ExxonMobil CEO Rex Tillerson poised to be confirmed as the next Secretary of State, together with this sudden legislative attempt to undermine the fight against oil-sector corruption, it is reasonable to question whether ExxonMobil is exercising undue influence over the levers of power. The company claims to support transparency, yet it is completely undermining it by challenging this law in the courts and now apparently through its influence in Congress.”

Global Witness - TRUMP AND REPUBLICANS USE FIRST DAYS IN POWER TO TRY TO ROLL BACK HISTORIC MEASURES TO CLEAN UP THE CORRUPT OIL SECTOR AND GREEN LIGHT KEYSTONE XL AND DAKOTA ACCESS PIPELINES

1/25/2017 - https://www.globalwitness.org/en/press-releases/trump-and-republicans-use-first-days-power-try-roll-back-historic-measures-clean-corrupt-oil-sector-and-green-light-keystone-xl-and-dakota-access-pipelines/

The past 24 hours have seen an unprecedented number of gifts to Exxon and the oil industry, said Global Witness today. Yesterday, the Senate Foreign Relations Committee approved former CEO of Exxon, Rex Tillerson, to lead the State Department. Today, it is expected that Republicans in the House of Representatives will introduce a resolution to wipe out an historic oil transparency reform, while President Trump signed executive orders designed to force through the environmentally devastating Keystone XL and Dakota Access pipelines despite years of opposition.

“Just one day after the committee vote in support of former Exxon CEO as next Secretary of State, the oil industry is enjoying an unprecedented free for all,” said Corinna Gilfillan, Head of U.S. Office of Global Witness. “Today, Trump issued executive orders to advance the Dakota and Keystone Pipelines while Republicans are expected to attempt to gut a law designed to curb corruption, despite Trump’s signature campaign promise to root out corruption. Exxon has been trying to rip up this law for years, it’s not a coincidence.”

The resolution would roll back a landmark anti-corruption law, known as the bipartisan Cardin-Lugar anti-corruption provision, which requires oil, gas and mining companies to disclose details of the hundreds of billions of dollars they pay to governments across the world in return for rights to natural resources. The rule is a key part of U.S. efforts to curb the corruption that keeps poor countries poor and threatens U.S. national interests and global security around the world.

“Given the long-standing egregious record of the oil and gas industry, and now the likely confirmation of the former Exxon CEO as the top U.S. diplomat, it is difficult to not conclude that these pro-corruption moves by the Trump Administration and the Republican-controlled Congress are a sign that not only do they think corruption is perfectly acceptable but that they intend to become pro-active enablers of corruption,” said Simon Taylor, co-founding director of Global Witness.

ExxonMobil is spearheading industry efforts to gut the Cardin-Lugar anti-corruption provision, which would bring much needed transparency to the secret deals that ExxonMobil and other resource companies do with corrupt regimes, fueling instability around the world.

Global Witness recently highlighted how a questionable oil deal between ExxonMobil and the Nigerian government is currently being investigated by Nigerian law enforcement.

Oxfam - Oxfam condemned today’s expected introduction by Representative Bill Huizenga (R-MI) of a bill that would roll-back the bi-partisan Cardin-Lugar anti-corruption law known as “Section 1504.”

Oxfam condemned today’s expected introduction by Representative Bill Huizenga (R-MI) of a bill that would roll-back the bi-partisan Cardin-Lugar anti-corruption law known as “Section 1504.”

This landmark law, which requires oil and mining companies to publish the payments they make to the US and governments around the world for access to natural resources, is a well-established hallmark of United States global leadership in fighting corruption in poor countries. It was spearheaded by former Senator Lugar (R-IN) and Senator Ben Cardin (D-MD). The law covers the vast majority of the world’s largest oil, gas and mining companies, including ExxonMobil, Chevron, BP and Shell, as well as leading state-owned companies from China and Brazil.

“A vote to roll back Cardin-Lugar is a vote for corruption,” said Isabel Munilla, Senior Extractive Industries Policy Advisor with Oxfam America. “There is absolutely no benefit to nullifying this common sense law unless your objective is to make it easier for corrupt elites to steal money. More than 30 countries around the world followed the US lead and passed similar laws, but rolling this back would turn the US from a transparency leader to a laggard overnight.”

Since the law was passed in 2010, Oxfam estimates that oil company payments to governments of some of the world’s poorest countries surpassed $1.5 trillion. This money could have helped governments pay for schools, roads, hospitals and other critical measures to fight poverty without needing a dime of US foreign aid. While disclosures are emerging from sister laws abroad, a generous phase-in period in the final rule adopted by the Securities and Exchange Commission (SEC) last year means citizens will have to wait until 2019 to follow the money. In the meantime, secrecy puts these funds at risk of waste or even worse they can be funneled to corrupt officials without any accountability.

“With payments out in the open, citizens can hold their governments accountable for how the billions of dollars companies are shelling out are spent, and companies can be held accountable for paying what is due,” continued Munilla. “Armed with this information, citizens can ensure these funds are spent to help fight poverty by building roads, schools, and hospitals. This is the type of direct foreign investment that would lift poor countries out of poverty, and help countries graduate from foreign aid. By rolling back this anti-corruption law, Members of Congress would be fueling corruption, waste, and keeping poor countries dependent on US foreign aid.”

The law was also a huge victory for investors. Investors worth $10 trillion in assets under management publicly endorsed the law and the strong rules adopted by the SEC. The law was also endorsed by some of the world’s largest mining companies including

BHP Billiton, Rio Tinto, and Colorado-based Newmont Mining, and oil companies such as Dallas-based Kosmos Energy, Shell, BP, and Total.

Today's bill was introduced as the Senate moves to confirm former ExxonMobil CEO Rex Tillerson to be the next Secretary of State.

"The timing of this bill is perhaps no surprise given Tillerson's and ExxonMobil's vocal opposition to this anti-corruption rule and their efforts, along with the American Petroleum Institute, to try to block it," continued Munilla. "Oxfam and anti-corruption advocates across the developing world have been campaigning for this law and its implementation for more than a decade and we will not rest as US leadership on fighting corruption is threatened. The fact that some in Congress have put rolling-back anti-corruption rules so high on their list of priorities raises serious questions about whose interests these members are serving."

United States: Don’t Cancel Oil Transparency Rule
Congressional Resolution Would Help Shield Corruption

Republicans introduced joint resolutions in the US Senate and House of Representatives today that would gut efforts to carry out a key law for fighting corruption in resource-rich countries. Senator Jim Inhofe of Oklahoma introduced the resolution in the Senate, co-sponsored by Senate Majority leader Mitch McConnell of Kentucky and Senator Mike Rounds of South Dakota. Congressman Bill Huizenga of Michigan introduced the resolution in the House.

The House majority leader, Kevin McCarthy, said in an op-ed on January 24, 2017, that the House “will take the ax” to this rule. It is expected to vote on the measure as soon as Wednesday, February 1. That is the same day the Senate is expected to vote on whether to confirm Rex Tillerson, former CEO of ExxonMobil, as secretary of state. ExxonMobil opposed the anti-corruption rule during Tillerson’s tenure at the company.

“Tillerson bent over backward during his confirmation process to reassure Congress he’d be a champion for transparency,” said Arvind Ganesan, business and human rights director at Human Rights Watch. “If Tillerson is to make good on his commitments, he should publicly oppose the effort to undermine the anti-corruption law while there is still time to make a difference.”

The Cardin-Lugar Transparency Rule requires US-listed oil, gas, and mining companies to publicly disclose what they pay governments for natural resources production in those countries. It represents the culmination of a hard-fought, years-long rulemaking process to carry out the anti-corruption provisions of the Dodd-Frank financial reform law. Its repeal would for all practical purposes gut that section of the law. The proposed resolution would nullify the rule by using the Congressional Review Act, which allows Congress to invalidate any executive agency rule by simple majority within 60 legislative days.

Governments in many countries have misused natural resource revenues, contributing to massive corruption, conflict, and human rights abuses. The rule some members of Congress want to repeal was meant to inject transparency into the system by ensuring that companies disclose what they pay governments so that there can be some accountability over the use of public funds. The resolution’s supporters say they are seeking to invalidate the rule because it burdens American businesses with regulations that do not apply to their foreign competitors. The European Union, Canada, and Norway have similar laws.

Canceling this rule would hurt important initiatives to stop corruption, the opposite of what Tillerson promised to do during his confirmation process. It would send a message to corrupt leaders everywhere that their misdeeds are no longer a serious US foreign policy priority.

Arvind Ganesan

Business and Human Rights Director at Human Rights Watch

While the Dodd-Frank Act was passed in 2010, the rule was only carried out by the Securities and Exchange Commission in June 2016, following bitter opposition by the American Petroleum Institute, a petroleum industry trade group that includes ExxonMobil. Tillerson reportedly personally lobbied against it.

Measures to roll back anti-corruption and transparency measures are more troubling because Tillerson's nomination as secretary of state has raised broader concerns that he would oversee a rollback of US anti-corruption and transparency efforts. Senator Jeff Merkley of Oregon, for example, said he opposed Tillerson's nomination in part due to concerns over ExxonMobil's activities in countries like Equatorial Guinea "in which they had channeled enormous amounts of money to the president's family instead of back to the people of the country."

During his confirmation process, Tillerson sought to reassure lawmakers that he could be a trusted advocate for strong transparency rules that make it more difficult for corrupt leaders to steal their citizens' wealth. He insisted that he could effectively put his long history as a champion of ExxonMobil's global interests behind him and that "if confirmed, human rights, the rule of law, and anti-corruption, and transparency measures would be high priorities."

"Canceling this rule would hurt important initiatives to stop corruption, the opposite of what Tillerson promised to do during his confirmation process," Ganesan said. "It would send a message to corrupt leaders everywhere that their misdeeds are no longer a serious US foreign policy priority."

Publish What You Pay global coalition - open letter to EITI-supporting companies
2/1/2017 - https://www.publishwhatyoupay.org/pwyp-news/open-message-from-pwyp-global-coalition-to-us-listed-eiti-companies/

Open Message from PWYP Global Coalition to US-listed EITI Companies

NEWS

February 1, 2017

Open message from Publish What You global coalition

To US-listed EITI-supporting companies:

Anglo American, AngloGold Ashanti, ArcelorMittal, Barrick Gold, BHP Billiton, BP, Chevron, Conoco Philips, Eni, Exxon Mobil, Freeport-McMoran, Glencore, Goldcorp, Gold Fields, Hess Corporation, Hudbay, Iamgold, Kinross, Kosmos Energy, Marathon Oil, Newmont Mining, Noble Energy, PEMEX, Petrobras, Rio Tinto, Royal Dutch Shell, Statoil, Teck Resources, Total, and Vale SA

Help defend the Cardin-Lugar anti-corruption rule and the global extractive industry transparency standard

Certain US legislators are seeking to use the Congressional Review Act to void the Cardin-Lugar anti-corruption rule (Dodd-Frank Act 2010, Section 1504). To roll back this rule would be a retrogressive step for oil, gas and mining industry transparency and for the global battle against corruption.

Country- and project-level reporting of extractive industry payments is essential for citizens in resource-rich countries to hold their governments accountable for how they use the massive revenues they receive for their finite natural resources from companies. Oil, gas and mining companies need payment disclosure to maintain their social license to operate.

Without payment transparency, citizens cannot know how much money extractive companies pay to dictatorial and non-transparent governments such as in Angola, Equatorial Guinea, and Kazakhstan.

Fredrik Reinfeldt, Chair of the global Extractive Industries Transparency Initiative (EITI), stated this week:

“The [US Securities and Exchange Commission] took great care in drafting these rules in consultation with industry to ensure that they complement the EITI’s efforts and avoid unnecessary duplication.

I would urge Congress to consider this matter thoroughly and to ensure that any action does not undermine the hard-won gains in this arena.” (http://bit.ly/2kn50RL)

The US Government has recognized that anti-corruption measures such as Dodd-Frank 1504 are es sential to fighting terrorism.

As a responsible US-listed and EITI–supporting extractive company, please help defend the Cardin-Lugar rule by speaking out publicly in its favor and urging the US Congress and Senate to maintain the rule intact.

We look forward to seeing your company statement. Please send statements to wmardini@pwypusa.org and cc to Business & Human Rights Resource Centre, which is tracking US-listed EITI-supporting companies that do and do not make statements, at regaignon@business-humanrights.org

Faithfully yours

Publish What You Pay International Secretariat

Publish What You Pay United States

NGO Coalition on EITI Azerbaijan (Publish What You Pay-affiliated)

Publish What You Pay Cameroon

Publish What You Pay Canada

Publiez Ce Que Vous Payez Guinée

Publiez Ce Que Vous Payez Payez Senegal

Publish What You Pay (NGO Consortium on EITI Promotion) Kyrgyzstan

Publish What You Pay Malawi

Publish What You Pay Mozambique

Publish What You Pay Netherlands

Publish What You Pay Norway

Publish What You Pay South Africa Coalition

Publish What You Pay Uganda

Publish What You Pay United Kingdom

Publish What You Pay Zambia

Publish What You Pay member organisations:

Africa Network for Environment and Economic Justice (ANEEJ), Nigeria

HDC “Tree of Life”, Kyrgyz Republic

Luta Hamutuk Institute, Timor Leste

Lumiere Synergie pour le Developpement, Senegal

Mineral Policy Institute, Australia

Partnership Africa Canada

Public Association for Assistance to Free Economy, Azerbaijan

Public Eye (formerly Berne Declaration), Switzerland

SWISSAID, Switzerland

Publish What You Pay
United States

Myth Busting: The Truth About the Cardin-Lugar Anti-Corruption Provision

The Cardin-Lugar Provision requires US-listed oil, gas and mining companies to publicly disclose the project-level payments they made to the US and foreign governments for the extraction of oil, gas and minerals.

The Cardin-Lugar provision is a landmark piece of bipartisan legislation. The final anti-corruption rule implementing the Cardin-Lugar provision passed by the SEC in June 2016 significantly advances international efforts to curb corruption and has been applauded by investors, companies and governments around the world. However, a great deal of misinformation has been spread about the rule. Below you will find evidence correcting the most glaring inaccuracies put forward.

But before getting into the myths, here are some hard facts.

- Research concludes that increased transparency resulting from the disclosures required by the Cardin-Lugar Rule **could lower the cost of capital for covered companies by $6.3 billion to $12.6 billion**.
- The international norm of resource sector payment transparency, built on strong American leadership, is estimated to have **increased predicted global GDP by $1.1 trillion.**
- **Investors representing nearly $10 trillion** in assets under management support of the Cardin-Lugar Rule.
- Between 2011-2014 conflict linked to corruption in Libya led to five US-listed companies **missing out on an estimated $17.4 billion** due to production disruptions.

Myth 1: Compliance costs for disclosure could reach as high as $591 million per year.

Facts: The only comprehensive cost analysis submitted to the SEC concluded that the total aggregate compliance cost to industry in the first year would amount to $181M and would not exceed $74 million per annum in subsequent years.

The $591 million number comes from an outdated SEC estimate from the 2012 version of the final rule. The reason the number is so high is because API claimed that there were countries that prohibited disclosure and if companies were forced to disclose they would have to hold a 'fire-sale' of all of their assets in that country – this number comes from the assumption that every company would lose their assets in these countries where disclosure was supposedly prohibited. It is 1) disingenuous to quote this cost estimate from the 2012 regulation, instead of quoting form the 2016 regulation, and 2) irrelevant because the SEC now allows for companies to apply for an exemption if they believe disclosure is prohibited in a country, therefore the above estimate is wildly inaccurate.

(See Claigan Environmental comment to SEC Feb 16, 2016)
(See Final SEC rule pp. 189-192)

Myth 2: US companies are at a competitive disadvantage because non-US companies do not have to make the same disclosures, and the rule applies only to public companies.

Facts: The US law covers all oil, gas and mining companies listed on US stock exchanges not simply companies based in the United States. Thus, the rule covers all companies filing an annual report with the SEC both foreign and domestic. This includes foreign oil majors BP, Shell, and Total as well as leading state-owned oil companies from China and Brazil, such as PetroChina and Petrobras. But a significant number of foreign companies are already required to make the same type of disclosures under the rules in other jurisdictions.

Since the passage of Cardin-Lugar in 2010, important US allies have followed our leadership in payment transparency and now 30 countries have adopted their own mandatory disclosure rules for companies listed on their stock exchanges. And while in many ways, the Canadian and EU requirements are more stringent (and also cover private companies), the laws in all jurisdictions have been deemed equivalent by the SEC. Companies are allowed to submit the same reports in all jurisdictions. These laws already cover the vast majority of companies that compete with American firms including Russia's state-owned companies, Gazprom and Rosneft which are required to report in the UK.

(See Rosneft Payments to governments report 2015)
(See Lukoil Payments to governments report 2015)
(See Gazprom Payments to government report 2015)
(See PWYP Factsheet on the EU Accounting and Transparency Directives 2013)
(See PWYP Factsheet on Canada's Extractive Sector Transparency Measures Act 2014)

Myth 3: The SEC rule is burdensome.

Facts: The Cardin-Lugar Provision is a reporting requirement, which is not onerous and does not limit the operations of oil, gas, and mining companies; the rule simply requires companies to publicly report payments that companies would track in the normal course of doing business. The rule is a straightforward requirement to make that data transparent and usable by investors and citizens. Leading global oil and mining majors such as Shell, BP and Total, along with Russian state-owned companies, are entering their second year of reporting under EU rules without any negative impact or reported issue. In fact, many major companies have publicly endorsed this type of reporting and have called on the U.S. to ensure our rules are harmonized with those other markets.

(See Kosmos comment to SEC Oct. 19, 2015)
(See BHP Billiton comment to SEC Jan, 25, 2015)
(See Total SA comment to SEC Jan. 13, 2016)

Myth 4: The rule requires companies to disclose proprietary information that could help foreign competitors.

Facts: The SEC rule requires companies to disclose payment information; it does not mandate the disclosure of proprietary, confidential or commercially sensitive information by companies. Numerous companies are already reporting under the similar rules in other markets, such as Shell and BP, and none have reported any competitive harm from payment transparency. However, the SEC's rule nonetheless contains safeguards. To the extent a company legitimately believes that disclosure will risk exposing proprietary information, they can apply to the SEC for exemptive relief on a case-by-case basis.

Furthermore, a competitor cannot use payment data to "reverse engineer" a company's return on investment or the contract terms of a specific project. Complex factors such as access to technology and finance determine a company's success in winning bids with host governments – not transparency of payments. Extractive companies that are covered by payment disclosure requirements in other jurisdictions have continued to win bids.

(See comment from Economist Robert Conrad to SEC July 17, 2015 p. 4)
(See comment from Publish What You Pay-US to SEC March 14, 2014 p. 35-37)

Myth 5: This rule was not properly vetted by Congress.

Facts: The Cardin-Lugar Amendment enjoyed bipartisan support and was subject to extensive review in both the House and Senate, and it was unanimously supported in conference. It is based on underlying legislation with a long Congressional history that was the subject of multiple hearings in both the House and Senate. In fact, the first precursor was a Republican House resolution on oil and mining transparency from 2006. For this reason, propositions to repeal the rule signify an inappropriate use of the CRA. The intent of the CRA is to address midnight rules, not rules like 1504 that have undergone years of extensive regulatory development.

Myth 6: **The SEC rule will cause companies to lose out on foreign contracts.**

Facts: Opponents of the Cardin-Lugar anti-corruption provision have claimed that companies could be placing themselves at odds with legal or contractual prohibitions on reporting in countries like Angola, China, Qatar, and Cameroon and may subsequently lose out on business in those countries due to the transparency rule. In the six years since this law was passed, no company has produced evidence that any country prohibits this type of disclosure, and numerous submissions to the SEC have demonstrated no such prohibitions exist. The experience of companies already reporting under the parallel disclosure rules in other countries likewise confirms the absence of any prohibition on reporting; companies like BP and Shell have disclosed project-level payments made in Angola, China, and Qatar with no repercussions. Nor have these companies lost out on bids because of payment disclosure requirements. Nonetheless, the Cardin-Lugar provision contains safeguards to ensure that companies that face a legitimate problem can apply for an exemption from disclosure on a case by case basis.

(See BP 2015 Payments to governments report)
(See Shell 2015 payments to governments report)

Myth 7: **The Cardin-Lugar provision has nothing to do with the SEC or investors.**

Facts: It is important to note that the SEC extractives transparency rule is not a case of agency overreach. Congress specifically mandated the SEC issue this rule in Section 1504 of the 2010 Dodd-Frank Act, and by issuing the 2016 rule the SEC complied with the will of Congress. Both Senator Cardin and Senator Lugar, the original sponsors of the bill, along with Senators Leahy, Durbin, Brown, Warren, Baldwin, Markey, Coons, Shaheen, Whitehouse, Menendez and Merkley, expressed explicit support for the SEC's interpretation of Section 1504 during the rulemaking process.

(See Senator Ben Cardin comment to SEC Feb. 5, 2016)
(See Senator Richard Lugar comment to SEC February 4, 2016)

The rule has significant benefits for investors. Throughout the rulemaking process, investors worth nearly $10 trillion of assets under management repeatedly emphasized their support for payment disclosures under the rule. The rule provides investors with critical information for assessing risk in the often murky and unstable oil, gas and mining sectors, with positive follow-on impacts for firms that benefit from increased investor confidence and certainty. The increased transparency resulting from this provision has been estimated to lower the cost of capital for covered US-listed firms by $6.3 billion to $12.6 billion.

(See Stu Dalheim comment to SEC Feb 16, 2016)
(See Cannizzaro & Weiner comment to SEC Feb 11, 2016)

Myth 8: We don't need Cardin-Lugar because we have the Foreign Corrupt Practices Act.

Facts: While the Foreign Corrupt Practices Act (FCPA) remains an important statutory tool critical to fighting global corruption, its scope is confined to bribery. Bribery is only one tool used to facilitate corruption. All too often, it is the legal payments made to governments that are misused, or siphoned off to the bank accounts of a country's corrupt elites. However, the fact that companies are already subject to the FCPA does mean the burden of reporting payments to comply with the Cardin-Lugar rule is minimal; companies are already required to collect and track payment information as part of the books and records provision of the FCPA. In this way, the two laws work very well together in creating a strong regulatory foundation to prevent corruption.

Myth 9: This rule is the same as the one sent back to be revised by the courts in 2013 and did not incorporate the Court's or industry concerns.

Facts: The American Petroleum Institute filed suit to challenge the original rule issued by the SEC in 2012, despite its largest member companies claiming to support transparency. The earlier version of the rule was vacated by the court and sent back to the SEC in 2013 on narrow procedural grounds, not on the substance of the rule. Since then, the SEC has had another two years of public consultations and internal analysis, resulting in an even more robust record with substantial evidence supporting each aspect of the 2016 rule. That evidence also includes the experience of companies already reporting on their payments under similar rules in other jurisdictions. The SEC's final rule strikes an appropriate balance by requiring the level of transparency Congress intended, while also accommodating industry concerns by providing companies with the opportunity to apply for case-by-case exemptions when they face reporting challenges and a generous phase-in period. Reporting will only begin at the end of 2018.

Myth 10: Sections 1504 (extractives transparency) and 1502 (conflict minerals) are the same thing/substantially similar.

Facts: Section 1504 requires US-listed oil and mining companies to annually disclose the company's major payments made to the US and foreign governments. It is simply a financial disclosure of payments companies already track.

Section 1502 mandates that a certain set of companies using tin, tungsten, tantalum or gold in their products undertake supply chain due diligence and report annually to the SEC regarding the source of the minerals used in their products and whether the minerals are sourced in conflict areas in the Democratic Republic of Congo.

Myth 11: The Cardin-Lugar rule poses a security risk for American companies and their employees working abroad.

Facts: There is no evidence justifying the claims that the Cardin-Lugar rule would have any negative impacts on security. In fact, all available evidence points to the contrary. The United Steelworkers explicitly argue that the Cardin Lugar anti-corruption rule will enhance employee safety. Generally, 1504 helps protect US national security interests by preventing the corruption, secrecy, and government abuse that has catalyzed conflict, instability, and violent extremist movements in Africa, the Middle East and beyond. As ISIS demonstrated, non-state actors can benefit from trading natural resources in order to finance their operations; project level reporting will make hiding imports from non-state actors more difficult, thereby limiting their ability finance themselves with natural resource revenues.

(See Sarah Sewall 2016 CNN article)
(See Sarah Peck & Sarah Chayes comment to SEC Feb. 16, 2016)
(See 2017 article by Kleptocracy Initiative)
(See 1504 Support letter from the United Steelworkers)

Myth 12: This law increases prices at the pump and takes capital away from other business opportunities.

Facts: All of the data suggests that transparency actually helps company balance sheets by lowering the cost of capital and increasing investor confidence. On the other hand, corruption costs oil and mining companies millions of dollars every year from instability and fragility in resource-rich countries, which contributes to increased operating risks, waste, inefficiency, and delays. For instance, between 2011 and 2014, the conflict in Libya fueled in part by citizens' frustration with corruption and poor governance caused five U.S.-listed oil companies to miss out on more than $17 billion in revenues due to production disruptions in the country.

(See Sarah Peck & Sarah Chayes comment to SEC Feb. 16, 2016)
(See ONE Campaign comment to SEC March 2016)

For more information, please visit www.pwypusa.org
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