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March 19, 2020

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

Mr. William Hinman, Director, Division of Corporate Finance
Mr. Barry Summer, Associate Director, Division of Corporation Finance
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance
Mr. Elliot Staffin, Special Counsel, Division of Corporation Finance

Re: File No. S7-24-19, Resource Extraction

Dear Ms. Countryman,

I am grateful for the opportunity to comment on the proposed Dodd-Frank 1504 rule. In the span of my career, I have worked in more than 70 countries on topics such as development finance, impact investing, clean energy, and trade and investment facilitation. I've worked in the private sector and as a senior leader of the US Agency for International Development (USAID), which is responsible for the implementation of US government development projects globally. My years of experience working abroad to implement US development assistance programs spurs me to write to you today to **urge you to pass a stronger implementing rule for Dodd-Frank Section 1504 than the one currently proposed.**

I have been engaged on this topic since the Dodd-Frank 1504 rule was first proposed and I sent the Commission comments on behalf of USAID in [2011](#) and again in [2016](#). Those comments are still germane today and attached.

In my past work at USAID and in my current work, I've worked on US-funded programs to support stable and democratic governments. Some of these programs provided assistance to resource-rich countries in support of their economic growth, good governance, transparency, and work to build strong civil societies. This work is crucial because, from what I have witnessed and as research bears out, corruption and instability, abetted by a lack of transparency in natural resource deals and revenue management, can lead to violence and conflict. Through a strong implementing rule for Section 1504, we have the opportunity to reinforce our aid efforts, to combat corruption and contribute to peace and economic development in resource-rich countries by providing citizens with access to critical information and by modeling transparency.

Corruption Inhibits Development

It's no secret that corruption inhibits development. Good governance is indispensable to the positive development of people, markets, and nations. When governance is weak or corrupt, resources are allocated unfairly, which has ripple effects throughout society: it hinders the

provision of public services, reduces economic growth by deterring foreign investment, and weakens the rule of law. This, in turn, creates greater potential for conflict, organized crime, and transnational threats.

Low- to middle-income countries rich in natural resources tend to suffer worse governance outcomes as a direct result of their export of these commodities. While this has been the case throughout history, it doesn't have to be in the future: when citizens are armed with payment and revenue data regarding the income from their natural resources, they can demand that government spends the money on the nation's development and can hold officials to account when they fail to do so.

Elevated risks also raise costs and can sometimes threaten the safety of American companies which do business abroad, both inside and outside the energy sector. Unstable countries are less likely to attract non-resource sector development, which leaves more people around the world jobless, poor and desperate. These circumstances provide fertile breeding grounds for the emergence of extremist groups, gang violence, and other social ills. Companies can lose huge amounts of money due to work stoppages as a result of conflict. Such volatility and instability hurts investors and accordingly, makes it harder for companies to raise capital.

The United States has long demonstrated a commitment to ending extreme global poverty and supporting the development of resilient, democratic societies. To that end, our country has invested heavily and has often led the world in the fight to combat corruption globally. A strong Dodd-Frank 1504 rule is directly in line with these goals.

Transparency Reduces Corruption

Anticorruption programming is part of the efforts funded every year from USAID's nearly \$20 billion annual budget. In executing anticorruption programs, USAID and its implementers promote freedom of information and monitoring government processes through budgets, expenditures, and procurements. A strong implementing rule for Dodd-Frank Section 1504 that provides disaggregated, granular project-level data aligns with our government's broader efforts to promote transparency and access to information in order to minimize corruption. In resource-rich countries, these efforts would be bolstered significantly by the data on payments to governments that a strong rule would generate. Indeed, this type of disclosure mechanism is essential to U.S. government interests, as the U.S. has limited other means to address the other forms corruption takes in extractive deals beyond the classic quid pro quo payments prohibited by the Foreign Corrupt Practices Act or to advance accountability in revenue management.

In addition to helping USAID's anticorruption work, the availability of such data supports and complements programming aimed at improving public financial management by host governments. In fledgling democracies and post-conflict states, extractives revenues are of high value to budget planners. However, their efforts are often stymied by poor or outdated financial management systems and oversight processes. A stream of high-quality payment information for specific extractives projects, identified clearly by payee and contract, will enhance a government's ability to plan and protect budgets, and more accurately assess incoming revenue streams. It will also help to ensure oversight of corruption-prone subnational transfers, which are calculated on the basis of project payments.

Rules requiring public reporting of disaggregated project-level payments in the extractive sector will also complement US government programs that help countries achieve targets under the United Nations Convention Against Corruption (UNCAC), the Financial Action Task Force

(FATF) rules to combat money laundering, and the Extractive Industries Transparency Initiative (EITI). While there are many countries already engaging in EITI reporting, this rule could not only help generate additional data in a more timely manner, but also allow for transparency in those countries that are not members or struggle to remain compliant with the EITI's voluntary standards.

The United States' Role in Ending Corruption

When the United States first introduced Dodd-Frank Section 1504, the world was encouraged by our commitment to reduce corruption in the oil, gas, and mining industries. Through our leadership, we inspired 30 countries around the world to pass parallel legislation that is now in effect and has led to more than \$800 billion of payments being disclosed. It is time for the United States to once again lead on pushing for a more transparent, less corrupt world.

A rule that falls short of – and would be inconsistent with – the international standard reflected in these other countries, however, would not only undermine U.S. leadership abroad, but would also fail to advance the United States' foreign policy interests of combatting corruption, supporting stable and democratic governments, promoting good governance and transparency, and energy security.

I'd like to emphasize the importance of fully public disclosure, including of the company payor and the government recipient, and address four key areas in which the proposed rule should be improved: the definition of "project" and level of aggregation, the reporting threshold, disclosure deadlines, and the scope of the proposed exemptions.

1. Project Definition

In removing license and contract levels from the proposed project definition, we lose essential data. Corruption occurs at the license and contract level, and without this level of transparency, it will be much more difficult to detect corruption, questionable practices, and for citizens to see whether a particular deal provides adequate benefits in exchange for their natural resources. **It is precisely the disaggregated, granular reporting that would make this regime effective as an anti-corruption and accountability tool.** Not requiring this data allows companies to nominally disclose without providing the detailed information necessary to ensure accountability and deter malfeasance.

I am not aware of any government or company that uses a definition of "project" like the Modified Project Definition, which appears to be specifically intended to combine multiple projects as though they are one. This new definition would make much of the data rendered by the rule essentially useless to citizens. By aggregating payments by type and requiring companies to simply disclose the government type that received the payment past the major subnational level, rather than identify the particular sub-national government payee, citizens cannot know whether payments are reaching or benefiting their communities. For example, if an oil company operating in a country reports that it paid a total of \$1 million to a "county," this does nothing to enhance the ability of citizens within an administrative subdivision closest to the oil project to see how much revenue was paid to their locality. Therefore, they cannot assess whether the payment was correctly distributed to their community from national or county governments and to demand proof of payment in the form of government services from their local community government. This type of project definition would make tracking payments into specific government agencies' bank accounts impossible and would prevent extraction-affected

communities from knowing whether companies operating in their local area are meeting their fiscal obligations and if their central government is upholding revenue-sharing agreements.

Moreover, the lumping of several projects together, many of which may not involve corruption, would likely have an averaging effect that would minimize or possibly entirely hide the instances of corruption that are specifically meant to be identified through payment disclosures.

Asymmetrical access to information plays a major role fueling and enabling corruption. This is why so many USAID and other government efforts focus on providing access to information for citizens, journalist and others. My experience with these efforts consistently shows that it is access to detailed information that makes the difference in empowering citizens to play the watchdog role Congress intended. **Without access to which company is making the payment, which government is receiving it, and which project it relates to, citizens will not be able to play the role needed to advance the statute's objectives.**

This definition also differs significantly from the one used in other markets, and now in the EITI Standard. This will substantially complicate the U.S. Government's efforts to encourage expansion of EITI country coverage and promote consistent fiscal transparency norms in the countries where we work. The U.S. cannot effectively advance the government's international transparency promotion efforts if it is itself setting a lower standard that threatens to undermine international consensus and unnecessarily complicates the ability to understand information, and especially limits its comparability to data already available from companies reporting in other markets and in EITI countries. This will significantly limit and complicate the rule's ability to further the government's foreign policy priorities.

2. Not De Minimis Payment Definition

I strongly disagree with the SEC's proposal to introduce a project payment threshold of \$750,000. This is an arbitrary concept with no basis in other laws or standard industry practice that will allow many payments that should be disclosed to remain hidden. In fact, using the database ResourceProjects.org, it appears that more than half of the project company combinations for which payments were disclosed between 2014 to 2018 under other reporting regimes fell under \$750,000.¹ **I strongly urge the SEC to approach this issue in a manner consistent with the rules in Canada and Europe, which use only a per payment threshold, roughly equivalent to \$100,000.**

3. Reporting Deadline

Information is often only as useful as it is timely, especially when it comes to holding officials accountable for corruption and recovering lost assets. The new proposed Dodd-Frank 1504 rule creates the potential for long delays in disclosure of information: up to 456 days in some cases. Delayed access to data is one of the shortcomings of the EITI regime that the U.S. has sought to supplement. **I strongly recommend the Commission adopt a reporting deadline of no later than 150 days after the end of a company's fiscal year, which is in line with the standards used by our Canadian and European counterparts. As a former CFO, I am quite confident that all extractive companies can produce this information within five months of the end of their fiscal year.**

I understand that the SEC believes it must change aspects of the rule to address the Congressional Review Act. These features summarized above are what I consider to be the minimum necessary requirements to carry out Dodd Frank 1504's intended objectives, and to

¹ Data is available at <https://resourceprojects.org/>.

ensure the rule enables, rather than risks undermining, the US government's ability to advance its foreign policy objectives. If these basic features are present in the final rule, I believe the Commission can make sufficient other modifications to other parts of the rule that would make the rule different, while still ensuring it complies with 1504 and appropriately adopts the transparency lessons from the last few years of implementation in other markets.

4. Issuer Exemptions

The intent of the original Dodd-Frank Section 1504 rule was to subject all issuers to disclosure, without exemption, in order to establish a uniform global standard. The newly-proposed rule subverts this intent by allowing broad exemptions for foreign law prohibitions and pre-existing contract terms.

Historically, government officials wanting to engage in corrupt practices have created numerous workarounds so that extractive companies can make payments that become opaque revenues for governments entities, trusts, private companies, or NGOs controlled or influenced by government officials, family, associates, or political parties. To minimize the corrosive effects of such corrupt payments on countries' development and democracy, payments to governments must be reported publicly and without exemption.

A good Dodd-Frank Section 1504 rule presents the opportunity for the U.S. to mandate disclosure and thus provide data in countries that do not participate in transparency frameworks such as the Extractive Industries Transparency Initiative (EITI) or do not otherwise voluntarily disclose payment information to their citizens. **However, in allowing overly broad exemptions for foreign law prohibitions, the proposed rule would allow the most transparency-averse countries' energy sectors to continue to operate in secrecy.** Indeed, by including future laws in its scope, I worry that this exemption may create an incentive for countries or even sub-national governments who wish to hide their revenue streams to pass such laws, encouraging regress where we mean to spur progress. This would essentially make a country's participation voluntary, one of the key shortcomings with EITI that Congress specifically sought to address through a mandatory transparency regime.

Similarly, **exempting all small reporting companies would eliminate a significant portion of the industry coverage that the statute seems to clearly envision,** and for entities that are particularly susceptible to corruption. While I do not believe that compliance concerns warrant such an exemption, and would encourage the Commission not to adopt any such exemption, at minimum, if the commission has such concerns, it should strongly consider a more tailored balance between such concerns and the potential loss of transparency benefits, such as a period of transitional relief to begin compliance, rather than through sweeping exemptions that would categorically and permanently eliminate significant transparency benefits.

Resource Wealth Doesn't Have to Be a 'Curse'

If managed well, resource revenue can allow governments to provide their citizens with infrastructure, better public health outcomes, education, and alleviate poverty. It can have a dramatically transformative effect on our world. However, in low- and middle-income countries, an influx of resource wealth too often results in corruption, repression, and consolidation of power—so that discovery of oil and mineral wealth has come to be known as the 'resource curse.' But the resource curse doesn't need to be a self-fulfilling prophecy; we can, through targeted reforms such as Dodd-Frank 1504, help change how oil and mining revenues manifest in the countries where aid revenues flow and American companies work.

To create this change, we need to promote and practice transparency. Disclosing key data will allow citizens to hold their governments accountable for the funds that they are taking in, rooting out corruption, and demanding that resource revenues are spent equitably to lift up their communities. This strategy will complement US foreign policy, which strives to promote transparent and accountable government.

In my long career working on development issues throughout the world, I have seen time and again the corrosive effects of corruption and the massive loss of human potential that it causes. We have a chance to help make resource revenues work for the betterment of all people, thereby strengthening our aid efforts and promoting our foreign policy goals. The SEC has the opportunity to utilize the lessons of the US government, as well as the EITI and other jurisdictions already implementing mandatory disclosure laws. There is a reason why such robust international consensus has formed around the key features of effective disclosure rules: because detailed public reporting is the most effective way to deter and detect corruption and the best way to empower citizens of resource rich countries to demand the accountability necessary to see natural resource wealth turn into positive development outcomes. I strongly urge you to utilize these lessons and incorporate them into a strong Dodd-Frank 1504 rule that meaningfully advances the statute's objectives and the broader interests of the US government abroad.

Thank you for soliciting comments on this proposed rule and for taking my thoughts into consideration in your decision.

Sincerely,

Eric G. Postel



USAID
FROM THE AMERICAN PEOPLE

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Ms. Murphy:

Thank you for the opportunity to comment on Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. I am writing to express the U.S. Agency for International Development's (USAID) support for, and suggested enhancements to, the proposed rules associated with Section 1504.

The proposed rules are a significant step toward greater energy industry transparency and, correspondingly, strengthened governance and civil society in anti-corruption efforts. To ensure that the information disclosed in resource-rich countries contributes towards positive development efforts, we believe that parts of Section 1504 need to be further clarified. In addition, we would like to address some of the concerns raised by stakeholders as we believe that certain suggested changes could potentially undermine the intent of the provision.

Our overarching belief is that the enforcement of the proposed rules contributes towards U.S. Government foreign policy goals of supporting stable and democratic governments, with a particular emphasis on USAID's role in providing assistance to resource-rich countries in support of economic growth, good governance, transparency, and building civil society.

The proposed rule identifies a number of issues for comment. This letter addresses three broad areas: the importance of avoiding exemptions, the need to define information to be reported in a manner consistent with the intent of the provision, and the best form of disclosure to maximize accountability.

Issuer Exemptions

The language of the provision is clear that all companies required to report to the SEC are subject to disclosure, without exemption. We urge the Commission to uphold this standard and not provide exemptions for issuers regardless of their size, ownership, extent of their business, or any other factor. Issuers should not be excluded from these reporting obligations for fear that this will then create avenues for avoiding the intent of Section 1504.

Information to be Reported

Human ingenuity being what it is, numerous workarounds have been created over the years to extract revenues from extractive industries in order to create opaque revenues for government entities, government controlled or influenced entities, trusts, private companies or NGOs controlled or influenced by government officials, family, associates or political parties; investment capital in entities or donations to non-profit entities created by any of these interested parties. To minimize the corrosive effects of such payments on countries' economic development efforts and/or democracy, we urge the Commission to define all the areas referenced below in a manner that minimizes the chances that payments made in order to conduct business in or with each country, in cash or in-kind, go unreported. Specifically, we recommend the Commission consider the following:

- **Activities to be reported:** We recommend the Commission to define “commercial development of oil, natural gas, or minerals” broadly so that it captures all commercial activities associated with the full life cycle of oil, gas, and mining industry undertakings in host countries. The definition of the provision is clear that these activities include exploration, extracting, and export, and that none of these activities should be excluded. In addition, we welcome specific language from the Commission to further define “other significant activities” so as to capture any activities which may be intentionally or unintentionally excluded from reporting requirements.
- **Types of payments:** We support the Commission’s proposed definition of “payment” without exclusions for any payment types. In addition, we urge the Commission to further strengthen the definition by: a) including specific definitions for other material benefits and social and community payments; b) ensuring that payments in-lieu and in-kind are included in all reporting areas; and c) considering other types of payments that should be included in line with the nature of the provision.
- **Project requirement:** We recommend that the Commission define “project” for the purposes of the new disclosure requirement for two reasons: a) to ensure that the fullest amount of information is disclosed; and b) to maximize comparability of reports. As above, we urge the Commission to adopt a meaningful definition of project that covers the full breadth of oil, gas, and mining activities without exemption for scope, size, or ownership.
- **Entities subject to disclosure:** Section 1504 is clear in its intent to capture the broadest array of issuers as possible, while minimizing the possibility for extractive companies to change their ownership or reporting structure in order to avoid disclosure. We urge the Commission to define “subsidiary,” “control,” “entity under the control of,” and “consolidated” in a manner consistent with both of these intents.

- **Exemptions:** No reporting exemptions should be granted if the laws of the host countries or concession contracts prohibit disclosure of this information. If such exemptions are granted, the intent of Section 1504 will then be easily thwarted by every opaque government seeking to hide some or all of its revenue streams.
- **Foreign government:** We support the clear language proposed by Congress and the Commission to define “foreign government” to include departments, agencies, instrumentalities, companies or subnational governments, including states, provinces, counties, districts, municipalities, or other levels. This definition aligns with the intent to capture the broadest array of payments possible.

Form of Disclosure

We recommend the SEC require that resource extraction payment disclosures be filed as exhibits, rather than furnished. The filed form of disclosure would signal the importance of accountability for the information provided and help to ensure that the intent behind disclosure is not undermined.

To support the intent of Section 1504 of improving accountability of governments to their citizens for payments received from oil, gas and mining companies, information should be disclosed in a manner that allows for public oversight and enforcement. Information filed, rather than furnished, provides the public the right to file claims related to information found to be materially false or misleading. On the other hand, enforcement and oversight of disclosures that are furnished would solely depend on the priorities and resources of the SEC to enforce the provisions of Section 1504. As such, the intent for government and civil society accountability would be undermined.

Background

USAID is the principal U.S. agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms. The oil, natural gas, and mining industries make critical contributions to global economic stability and prosperity. Unfortunately, these industries often operate in countries with autocratic, corrupt, or unstable governments. Indeed, some economists have found that the surplus arising from natural resource exports has sometimes significantly reduced economic growth in resource-rich countries. This is why having resources can be a “curse” for some countries. And, unfortunately, “the heart of this resource curse is that resource rents make democracy malfunction. It lets in the politics of patronage.”¹ As an Agency whose mission includes focusing on economic growth and the reduction of poverty, anything which relates to reducing this curse and increasing the transparency of revenues from resource exports is of strong interest to USAID.

Increased transparency regarding payments made by extraction industries to government officials, by country and by project, will provide critical information about country-specific, regional, and project-by-project activities. Citizens seeking to hold their governments

¹ Collier, Paul, *The Bottom Billion*, Oxford: Oxford University Press, 2007, pp 42-44.

accountable for effective management of their countries' resources need transparent information about the revenues relating to those resources. Implementation of Section 1504 will also complement other existing efforts, such as the Extractive Industries Transparency Initiative.

Vigorous implementation of Section 1504 could contribute to the efficient and effective use of U.S. development dollars and complement U.S. development strategies by ensuring resource extraction dollars benefit the developing country rather than increase the wealth of particular individuals. As President Obama stated at the United Nations on September 22, 2010, "So we are leading a global effort to combat corruption, which in many places is the single greatest barrier to prosperity, and which is a profound violation of human rights. That's why we now require oil, gas and mining companies that raise capital in the United States to disclose all payments they make to foreign governments."

USAID is the lead U.S. agency supporting our nation's national security strategy and priorities abroad through sustainable development efforts. We work in developing countries around the world in coordination with host country governments and civil society partners to address extreme poverty and democratic reforms. As noted by President Obama and Administrator Shah, these efforts better not only the lives of the citizens of developing countries, but also our own citizens through more secure and stable global economies and partnerships.

When managed properly, the wealth arising from natural resources – oil, gas, and mining – can make significant positive contributions towards poverty reduction, economic development, and effective governance. Effective management of resource wealth can also contribute towards global economic security and prosperity. USAID is committed to supporting effective resource management in resource-rich countries through good governance, transparency, and civil society building efforts. Specifically, USAID bilateral assistance targets the following areas:

- **Anti-corruption:** strengthen transparency, oversight, and accountability for natural resource management;
- **Financial Management:** support governments in effectively managing natural resource revenues and translating funds into tangible social benefits at the national, regional, and local levels;
- **Governance and Civil Society Strengthening:** strengthen local governments and civil society interactions and local government responsive to community concerns and requests related to resource management;
- **Public-Private Partnerships:** establish alliances with extractive companies to build their capacity to effectively partner with governments and civil society and promote sustainable development efforts;
- **Support to Extractive Industry Transparency Initiative (EITI):** USAID contributes \$6 million to the multilateral EITI trust fund (the single largest donor) aimed at technical and capacity building for civil societies, governments, and energy regulatory countries in EITI countries.
- **Economic Growth:** USAID works with countries around the world to help create the conditions necessary to grow economically.

The recommendations in this letter are based on USAID's extensive experience in resource-rich countries and in support of EITI. Indeed, USAID's Anti-Corruption strategy recommends "foster[ing] industry-specific transparency initiatives that help reduce the risks of the 'resource curse' and level the playing field for economic competition." Likewise, our best practices identify transparency as a core component to effective governance, and enhanced transparency and civil society strengthening as a first step towards accountable, democratic governance.

Thank you for the opportunity to comment on the proposed rules. If you have any questions or comments, please contact Eric G. Postel, Assistant Administrator, Bureau for Economic Growth, Agriculture, and Trade.

Sincerely,



Eric G. Postel
Assistant Administrator
Bureau for Economic Growth,
Agriculture, and Trade

February 16, 2016

VIA EMAIL (rule-comments@sec.gov)

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**RE: Disclosure of Payments by Resource Extraction Issuers;
File No. S7-25-15**

Dear Mr. Fields:

Thank you for the opportunity to comment on the Security and Exchange Commission's (SEC) proposed rule effectuating Section 13(q) of the Securities Exchange Act of 1934. I am writing to express the U.S. Agency for International Development's (USAID) support for the proposed rule, which is a significant step toward greater energy and mineral industry transparency and, correspondingly, strengthened governance and civil society anti-corruption efforts. The proposed rule also represents a critical step toward providing governments and citizens with more detailed and timely information about the payments being made by individual extractive companies on a project-by-project basis. Accurate, comprehensive, and timely information about such payments is needed for countries to monitor, analyze, and build their tax revenues, improve their tax collection practices, combat corruption, and begin to reduce reliance on foreign aid.

Our overarching belief is that the enforcement of the proposed rule would contribute towards U.S. Government foreign policy goals of supporting stable and democratic governments, and in particular towards USAID's goal of providing assistance to resource-rich countries in support of economic growth, good governance, transparency, and building civil society.

USAID would like to acknowledge that the proposed rule takes greater notice of the anti-corruption goals that helped spur enactment of the law and emphasize that the proposed rule is consistent with the U.S. Government's commitment to combat corruption through greater transparency. Furthermore, the proposed rule's requirements for public disclosure of payments that issuers make to foreign

governments and its greater specificity about the need for project level disclosures are consistent with other initiatives that USAID supports. Public disclosure of detailed payment information is needed to effectively empower citizens and civil society to demand accountability from their governments with regard to specific projects, minerals, and geographic locations.

Combatting Corruption

A strong global consensus has formed that fighting corruption and supporting good governance are essential for the development of people, markets, and nations. Corruption - the abuse of entrusted authority for private gain - undermines social cohesion and broad participation in economic and political life by distorting the allocation of resources and the delivery of public services, usually in ways that particularly harm the poor. It also damages prospects for economic growth by reducing foreign direct investment, skewing public investment toward unproductive projects, encouraging firms to operate in the informal sector, and weakening the rule of law and protection of property rights. In doing all this, corruption fundamentally weakens the legitimacy and effectiveness of new democracies and creates conditions for conflict, organized crime and other transnational threats. And, in the case of U.S. investors, overseas corruption can increase the risks they face and/or the returns they realize.

It is also well recognized that countries blessed with natural resources such as timber, minerals, natural gas, and oil are often cursed with significant corruption. The proposed rule, which requires public disclosure of detailed, disaggregated information on payments made by extractive industry companies to government agencies, can play a strong role in combatting corruption in those countries.

As the lead U.S. Government agency that works to end extreme global poverty and enable resilient, democratic societies to realize their potential, USAID has invested heavily in the fight against corruption internationally, and therefore is uniquely positioned to comment on the proposed rule, which is required by statute to "support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals."

During the prior round of rulemaking on this topic, USAID submitted comments to express its support for, and suggested enhancements to, the proposed rules associated with Section 1504. Since then, USAID has continued to follow this issue with interest, as it impacts USAID's anticorruption work, which is an important part of the Agency's mandate. Initiatives dedicated to combating corruption amount to approximately \$60 million of USAID's annual budget. In addition, many of USAID's programs in other

sectors have anti-corruption elements embedded in them -- an additional \$6.7 billion in 330 USAID programs from 2007-2013. This work reduces opportunities and incentives for corruption through public sector reform, support for oversight and watchdog activities, and education of citizens about their roles in preventing corruption. Yet corruption remains a tremendous obstacle to political, social, and economic development. The SEC's proposed rule would be another important piece of the U.S. government's strategy to fight against the multi-faceted threat posed by corruption.

Public disclosure furthers the U.S. Government's foreign policy priority of reducing corruption

USAID's approach to combating corruption internationally is consistent with and would be enhanced by the approach taken in the proposed rule to make extractive industry payment information publicly available in reports that can be accessed online. USAID's anticorruption programs promote freedom of information and the monitoring of government processes such as budgets, expenditures, and procurement. Such efforts obviously are significantly enhanced when information about sources of revenue -- like the payment information required to be disclosed under SEC's proposed rule -- is publicly available.

The availability of such information also increases the effectiveness of USAID's related civic education, media, and advocacy programming. One example of such a program is a joint USAID-Millennium Challenge Corporation¹ project in Ukraine in which more than 700 journalists and media representatives were trained in investigative-journalism techniques. As a result, more than 11,000 corruption stories were published or broadcast, leading to a 63% increase in official investigations and 46% increase in administrative sanctions that were based on media reports. USAID supported a similar project in Guatemala. The increased access to information about funds being provided to government actors by private interests, like the information required to be disclosed by issuers via SEC's proposed rule, clearly would enhance the ability of these USAID-supported journalists to investigate and expose corruption in their country.

Requiring public disclosure of extractive industry payment information would also complement USAID programs helping emerging democracies meet their obligations under the United Nations Convention against Corruption, the Financial Action Task Force rules to combat money laundering, and the Extractive Industries Transparency Initiative (EITI) to bring greater transparency to the extractive industries sector. The entire focus of EITI, in particular, is to ensure that governments publicize the revenues

¹ The Millennium Challenge Corporation (MCC) is an independent U.S. foreign aid agency that is helping lead the fight against global poverty.

that they receive from extractive industry corporations. EITI sets international standards that governments and extractive industry companies must adhere to in order to be recognized as “EITI compliant.” The standards include reporting activities in the oil, gas, and mining sectors on a project-by-project and country-by-country basis and ensure that this information is available to the public. At the same time, EITI standards are voluntary, as shown by the recent U.S. EITI report in which most extractive industry participants declined to disclose the tax payments they made to the U.S. government. EITI’s voluntary standards would greatly benefit from the mandatory reporting required by the proposed rule, which is directly aligned with this important U.S. Government supported initiative.

Public disclosure at a detailed, disaggregated level is necessary for impact

USAID also supports the decision in the proposed rule to require extractive industry payment information to be presented in a detailed, disaggregated format that provides information on a country-by-country and project-by-project basis.

To understand why the commitment to extractive industry transparency that the proposed rule represents is so important to achieving the U.S. Government’s objective of fighting corruption internationally, it is necessary to recognize the role that access to information plays in anticorruption efforts. Information that is aggregated or provided at a very high level, without specificity as to the places, actors, and minerals involved simply does not serve the needed transparency function to ensure government accountability.

The principles of promoting democratic governance, fostering transparency and accountability at all levels, supporting inclusive economic growth, reducing poverty, and building civil society are best achieved through public disclosures of disaggregated information by resource extraction issuers. Aggregated information that contains numerous companies’ payment histories does not allow for citizens to understand or engage with extraction companies operating in their geographical area. It is through disaggregated, publically available information on payments made by oil, gas, and mining companies that the rule will meet the intent of the statute to increase transparency and availability of information in order to allow citizens to hold their governments accountable. Aggregate information that groups together payments and operations of companies in the same area would make establishing the supply chain more difficult. It is through disaggregated data, which includes the identity of the payer and the location and type of the project, that transparency will be promoted.

Definition of Project

To obtain the detailed level of information required for meaningful impact, USAID supports defining the term “project” in the proposed rule. USAID supports the proposed rule’s definition of “project” “as operational activities governed by a single contract license, lease, concession, or similar legal agreement, which forms the basis for payment liabilities with a government” over the two alternatives of leaving “project” undefined or using the definition suggested by the American Petroleum Institute (API). Not only would leaving the term undefined create issues of comparison across reports, as the SEC points out, but it would also isolate the United States from the approaches taken by the European Union, Canada, and EITI, all of which define the term. Using the API suggested definition, which allows for the combination of projects under major subnational political jurisdiction, would not produce the level of increased transparency envisioned by Congress in enacting Sec. 13(q). Rolling up all projects into major subnational political jurisdictions would not serve the goal of increasing transparency at the local level, where resources are extracted. Only through more granular, project-level reporting will disclosures produce meaningful data for citizens, civil society, and local groups that seek to break cycles of corruption that involve government and corporations.

One way that the proposed rule could be improved is by increasing its consistency with the European Union and Canadian definitions of “project.” Both the European Union and Canadian rules make clear that, in order for a corporation to combine two projects together for reporting purposes, the projects must be geographically and operationally interconnected and have “substantially similar terms.” The SEC’s proposed rule, however, omits the “substantially similar terms” requirement, which could lead to corporations combining projects that do not have substantially similar terms. Including that requirement in the proposed rule would promote international comity, reduce reporting discrepancies, and encourage disaggregated results.

The experiences of a number of USAID programs illustrate the principle that traceable, attributable information is necessary for accountability. For example, with the assistance of USAID, the government of Paraguay has made significant advances in increasing transparency, which has, in turn, promoted accountability and decreased corruption. For instance, with USAID assistance, the National Procurement Agency has developed an Open Data Portal that allows citizens to view the status of all competitive procurements including how much ministries are spending on contracts, details on vendors, and other important data to enable citizens to hold the government accountable for the use of public funds. Like the SEC’s proposed rule, this project is

built on the fundamental premise that access to detailed disaggregated financial information is necessary for effective citizen engagement in the fight against corruption.

It is also worth mentioning the U.S. Government's support for a Central American initiative called the "Plan for Prosperity". The plan seeks to effectively implement access to information laws and detailed open data standards. Support for this initiative is enshrined in the U.S. Government's "Strategy for Engagement in Central America", in which "improved governance," including targeting corruption and supporting increased government transparency is a key pillar. This is yet another example of a situation in which the U.S. and international actors have agreed that detailed disclosures and citizen access to specific data about government financial actions is necessary for good governance and prosperity.

A review of USAID's programs also provides real-life examples of the impact that can be obtained in solving corruption problems when detailed local information is provided to civil society groups leading reform at the local level. For instance, in FY 2014, USAID trained and provided coaching to journalists and other media practitioners in the Democratic Republic of the Congo. Part of this effort focused on improving investigative journalism and information gathering techniques. These efforts strengthened the capacity of community radio stations to produce quality programming that highlighted issues directly related to corruption. In Maniema Province, effective reporting from a community radio station led local business community members, civil society organizations and provincial authorities to come together to discuss corruption and the unfair distribution of stands in a newly rehabilitated market. The USAID-trained journalists uncovered that bribes had been paid to the market administrator to illegally obtain stands. Other vendors, the majority of whom were women, were then forced to rent from these individuals. Local stakeholders mobilized to solve the problem, resulting in more equitable access to market stands for the local population. In this example, detailed local information provided through investigative journalism led to solution of a difficult development problem. Armed with the detailed information that will result from the disclosures required by the SEC's proposed rule, other journalists and citizens can similarly have an on-the-ground impact in addressing grievances that may be caused by otherwise unaccountable governments or multinational corporations.

In still another example, USAID worked in Mozambique with other donors to assist local civil society organizations to strengthen their capacity to advocate for increased transparency and accountability in government budget processes. Organizations now use social audits, community score cards and other budget monitoring tools to serve as effective budget watchdogs. In responses to civil society efforts, targeted local communities have increased their budget transparency, including providing access to

information on application, selection and approval processes for government expenditures. Civil society organizations have also become more involved in the budget process and advocated for funds to be used positively to benefit communities. For example, in one community, a donor-supported civil society organization successfully advocated for the local government to fund the rehabilitation of the water system, an improvement that will benefit approximately 64,500 inhabitants. Again these efforts that benefit citizens and contribute to a reduction in poverty and suffering were enabled by the availability of detailed information about government funding and budgeting processes, similar to what is contemplated by the SEC rule.

In Peru, USAID has worked specifically to increase transparency of the flow of revenues generated by extractive industries. USAID has supported oversight committees comprised of citizens that monitored the government's spending of funds from extractive activities, resulting in reports on compliance with spending regulations. Reports were shared with government officials and publicly circulated through a variety of mechanisms. The detailed disclosures provided through the SEC rule would allow citizens of other countries to similarly monitor government funds from extractive activities so as to ensure that they are used in a responsible manner.

The focus of each of these projects on detailed information and open access to data at a disaggregated level is consistent with research that shows that data provided in the meta-context can often hide or obscure corruption. For instance, if a company has several projects, some of which are corrupt and others not, the averaging effect of aggregated data might downplay or hide those instances of corruption where they do occur. Requiring the reporting of data on a project level helps to identify actual costs/expenses of that project and allow comparisons to identify patterns or other evidence of corruption.

Studies examining corruption in exports, including natural resources, have shown that disaggregating the data by types of exports revealed that levels of corruption varied by the type of resource, something that was not apparent when reviewing aggregated data². In summary, then, there is a clear consensus that in order for initiatives like the implementation of section 13(q) to have the intended impact of exposing and preventing corrupt payments between industry and governments, the data needs to be disclosed to the public in detailed and non-aggregated format.

² See for example "[Exports and Cross-National Corruption: A Disaggregated Examination](#)"

Definition of Payment

We support the SEC's proposed definition of "payment." In addition, we urge the Commission to further strengthen the definition by: a) including specific definitions for other material benefits and social and community payments; b) ensuring that payments in-lieu and in-kind are included in all reporting areas; and c) considering other types of payments that should be included in line with the nature of the provision. Payments that cover government expenses in completely different arenas, in-kind provision of jobs or tuition to related persons, and investments in companies created by officials or related persons are all among the many sorts of practices that should be disclosed to ensure there is no corruption involved.

Detailed public disclosure is consistent with USAID's existing commitment to international transparency promotion efforts that incorporate access to disaggregated and particularized information.

Consistent with the premise that disaggregated detailed public disclosure is necessary to effective anticorruption efforts, it is important to note that the various international initiatives which the U.S. Government supports through USAID call for detailed data disclosure, including disclosure of many of the same data elements included in issuers' reports.

As mentioned above, USAID provides substantial support to EITI. This support is provided both at the global level to the EITI Multi-Donor Trust Fund and for country-specific projects to assist countries in complying with the EITI standard, such as in the Philippines, Mozambique, and Peru. Under EITI, countries must report production volumes and the value of production and exports *by commodity*, and, when relevant, *by state/region*³. This level of transparency is consistent with the SEC's proposed requirement that issuers report payments made to *each government*, regarding the *particular resource that is the subject of commercial development*, and the *subnational geographic location of the project*.

In fact, the EITI standard -- which, again, is already publicly supported by USAID and the U.S. Government more generally -- also encourages implementing countries to go so far as to publicly disclose the details of contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. The requirement proposed by the SEC for companies to publicly disclose the type and amount of payments on a project-by-project basis is just a small subset of the information that could be expected to appear in such contract and license documents. The EITI process also requires public

³ https://eiti.org/files/English_EITI_STANDARD.pdf

information regarding government revenues to be broken out by revenue stream type, such as the host government's production entitlement; national state-owned company production entitlement; profits taxes; royalties; dividends; bonuses; and license and /rental/entry fees. A comprehensive reconciliation of government revenues and company payments, including disclosure of company payments to sub-national government entities, where material, is also part of the process. This level of company- and location-specific disclosure also aligns with the SEC's proposed requirement that issuers disclose payments by company, subnational geographic location, and specific payment type.

The U.S. government's own [report](#) on compliance with the EITI standard in fact includes sections on federal revenue by location and by company. Unfortunately, this type of information is not available to citizens of countries that are not members of EITI. The detailed EITI-like disclosure requirements proposed by the SEC are consistent with the U.S. Government's support for EITI-type disclosure and can help to close the gap for citizens of those countries with respect to the overseas activities of issuers subject to SEC jurisdiction.

EITI is just one example of an international transparency standard that the U.S. government has previously welcomed and with which USAID objectives are aligned. Other examples referenced in [USAID's "Alliance Industry Guide" for the Extractives Industry sector](#) include the World Economic Forum's Partnering Against Corruption Initiative, Transparency International's Business Principles for Countering Bribery, and Investor-Driven Frameworks such as the FTSE4Good52, Dow Jones Sustainability Index, and Jantzi Social Index. Several of these initiatives require participating companies to disclose detailed information about political contributions and similar payments, consistent with the SEC's proposed reporting regime.

Similarly, the USAID-supported "Making All Voices Count" initiative states in the manual for its [2016 Global Innovation Competition](#) that one of its main themes is Extractive Industries. The selection of this theme is based on the premise that "[c]itizen participation and engagement in natural resource management and extractives is central to ensuring transparency, accountability and effective governance." The competition seeks projects that "improve citizen access to natural resource information so that we increase citizen awareness and government responsiveness to citizens' needs." This USAID-supported approach is consistent with the SEC's proposed requirement for publication of detailed information about specific companies, projects, resources, and geographic location, each of which is critical to citizens' ability to use the information and effectively engage with government. This is just one more example of USAID's commitment to international transparency promotion and underscores the

importance of the outcome of the rulemaking's consistency with this important U.S government objective.

The Sanso Morila Mine Alliance in Mali is a country-specific example of a project in which USAID has supported the provision of detailed transparent information about extractive industry revenue flows to government. This project was born out of a growing concern that the local revenue flows to the local government were being severely mismanaged, causing rising tension with local communities.⁴ The initiative strengthened the transparency and capacity of the local government to manage the revenue, and produced a model development action plan that had strong community (and civil society) involvement.

USAID's approach to engagement with extractive industries companies in a variety of contexts recognizes and emphasizes the need for transparency on specific types of payments at each point in the process of planning for and carrying out mining operations. For example, [USAID's "Alliance Industry Guide" for the Extractives Industry sector](#) emphasizes the potential for corruption relating to license fees in the absence of strict accountability measures:

"As a number of studies have pointed out, companies are also increasingly aware of the fact that transparency, corruption, and governance are all key issues as early as the exploration phase. Resource-rich countries usually maintain licensing boards or institutions that grant companies the right of exploration. As a recent USAID study has pointed out, these licensing boards can be nodes of corruption when composed of political insiders or elites that are not held to a strict standard of accountability or transparency. In terms of alliances, there is great potential for companies and USAID to work with government partners to build transparency and anti-corruption approaches into the licensing phase."

The detailed data about license payments required to be made public by the proposed rules will support initiatives such as those supported by USAID to promote transparency in the exploration and licensing phases of natural resource development.

⁴ For more information, please see https://www.usaid.gov/sites/default/files/documents/1880/Extractives_Guide.pdf.

Background

USAID is the principal U.S. agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms. The oil, natural gas, and mining industries make critical contributions to global economic stability and prosperity. Unfortunately, these industries often operate in countries with autocratic, corrupt, or unstable governments. Indeed, some economists have found that the surplus arising from natural resource exports has sometimes significantly reduced economic growth in resource-rich countries. This is why having resources can be a “curse” for some countries. And, unfortunately, “the heart of this resource curse is that resource rents make democracy malfunction. It lets in the politics of patronage.”⁵ As an agency whose mission includes focusing on economic growth and the reduction of extreme poverty, anything that contributes to reducing this curse and increasing the transparency of revenues from resource exports is of strong interest to USAID.

Vigorous implementation of Section 1504 could contribute to the efficient and effective use of U.S. development dollars and complement U.S. development strategies by ensuring resource extraction dollars benefit the developing country rather than increase the wealth of particular individuals. As President Obama stated at the United Nations on September 22, 2010, “So we are leading a global effort to combat corruption, which in many places is the single greatest barrier to prosperity, and which is a profound violation of human rights. That’s why we now require oil, gas and mining companies that raise capital in the United States to disclose all payments they make to foreign governments.

USAID is the lead U.S. agency supporting our nation’s national security strategy and priorities abroad through sustainable development efforts. We work in developing countries around the world in coordination with host country governments and civil society partners to address extreme poverty and democratic reforms. As noted by President Obama, these efforts better not only the lives of the citizens of developing countries, but also our own citizens through more secure and stable global economies and partnerships.

⁵ Collier, Paul, *The Bottom Billion*, Oxford: Oxford University Press, 2007, pp 42-44.

Conclusion

Fundamentally, it is indisputable that transparency about corporate payments to governments is a prerequisite to the effective engagement of citizens to ensure that such revenues are managed responsibly and for the benefit of a country's citizens. Such engagement is only possible if the citizens know which company is paying what kind of payment to which government entity relating to which project in which location. Aggregate data about multiple resources, projects, or geographic locations does not allow citizens of a particularly region impacted by a particular project to speak up and insist that the revenues associated with the project impacting them be used for their benefit, rather than to personally benefit potentially corrupt government officials.

Thank you for the opportunity to comment on the proposed rules. If you have any questions or comments, please contact the undersigned.

Sincerely yours,



Eric G. Postel
Associate Administrator