

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