



**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.”<sup>1</sup> 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

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<sup>1</sup> 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,



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Bureau for Economic Growth,  
Agriculture, and Trade