

Impacts of the SEC's 2020 Rule implementing Section 1504 on Payment Data Transparency
Consultancy Terms of Reference

BACKGROUND

Publish What You Pay (PWYP) is a global civil society coalition campaigning for an open and accountable extractives sector in which all people are able to benefit from natural resources. The global coalition is made up of over 1000 organizations operating in more than 70 countries. The US coalition was founded in 2004 and consists of 40 members, including anti-corruption, financial transparency, anti-poverty, tax justice, environmental, faith-based, and human rights organizations that advocate for greater transparency and good governance in the oil, gas, and mining sectors.

Throughout much of our history, PWYP-US has championed and pushed for the full implementation of a strong regulation for a 2010 payment transparency law, Section 1504 of the Dodd-Frank Act. This landmark law requires all publicly-listed oil, gas, and mining companies to report the payments - like royalties, taxes, license fees - made to governments in all countries of operation. By requiring companies to publish what they pay to governments, Section 1504 makes valuable information accessible to civil society groups and communities impacted by natural resource extraction, who can scrutinize transactions, question suspicious payments, and judge whether extraction projects are beneficial.

In the 12 years since Section 1504 was passed, similar laws requiring payment to government reporting has been adopted in the European Union, the United Kingdom, Norway, Canada, Ukraine, and Switzerland, where hundreds of companies have been reporting publicly on their payments for several years. Payments-to-governments data has allowed for a more robust conversation about what's actually being paid and has allowed governments and civil society to ask questions about and revisit existing fiscal regimes so that they generate more revenue from their extracted resources.

However, progress in the US has stalled. The US Securities and Exchange Commission (SEC) finalized a weak rule implementing Section 1504 in December 2020 that fails to align with the international standard in several key ways. In particular, the Final 2020 Rule's Modified Project Definition (MPD) requires that payments be reported at a subnational political jurisdiction level as opposed to the contract- or lease-based project definition that is used in every other jurisdiction and the 2019 EITI Standard. The Final 2020 Rule also contains overly broad exemptions that would eliminate large swaths of data that Congress intended to provide to investors and the public.

In April 2023, the SEC is scheduled to engage in limited rulemaking for Dodd-Frank 1504. As part of that rulemaking, PWYP-US and its allies will provide comments to the SEC advocating for the rule implementing Section 1504 to align with the international standard on payment transparency.

OBJECTIVES

The primary goal of this consultancy is to provide a detailed analysis of the impacts of the Final 2020 Rule. The Consultant will undertake an analysis of the impacts of the MPD on the level of detail reported

by companies as compared to the level of detail disclosed by companies reporting in other jurisdictions. This will include the following activities:

- Activity 1: Generate one or more (quantitative) sample payments-to-governments reports conforming to the SEC’s 2020 Final Rule requirements using an existing report from one or more major US-listed multinational oil, gas, or mining companies that are also subject to a payment-to-governments reporting rule in the EU, UK, Canada, Norway, Switzerland, or Ukraine. The company(ies) selected should demonstrate the gaps created by the MPD and loss of disaggregated data, so companies with multiple projects in at least one major subnational jurisdiction of at least one country are preferred. The sample report will show the discrepancies between the level of detail that is reported under the international standard as compared to what will be reported to the SEC.
- Activity 2: Replicate NRGi’s analysis of the impacts of the MPD on a smaller scale (i.e. 15-20 companies), using NRGi’s methodology in their [2020 analysis](#) of the MDP during the most recent rulemaking to provide examples of how the MDP affects data aggregation. This analysis will also explain how the Final 2020 Rule’s requirement for identifying the subnational payee affects payment data aggregation and whether this requirement would entail more work than what is required in other jurisdictions using the global standard.
- Activity 3: Identify a country, ideally that is not an EITI-Implementing Country, with multiple oil, gas, and mining projects in the same political subnational jurisdiction and develop a short case study to show how project-level data would generate more detailed disclosures under a project-level reporting rule instead of under the MDP.

TIMELINE

This consultancy is expected to take 66-68 hours, and should be completed no later than March 31, 2023. The timeline may be adjusted based on conversation with the consultant, the consultant's start date, and the SEC rulemaking timeline. The following is a suggested timeline:

Phase	Task(s)	Timeline
1	Familiarize yourself with the Final 2020 Rule and PWYP-US’ concerns with the Rule and relevant parts of the SEC’s comment record	10-12 hours
2	Activity 1 will require the consultant to review existing payment transparency reports disclosed in the EU, UK or Canada to determine which report to replicate as a case study. The consultant may also need to seek out guidance from a legal or SEC compliance expert in order to develop a sample SEC filing in line with the Final 2020 Rule. This will include generating a spreadsheet of payments-to-government data for the selected company and drafting an example payment transparency report in line with the Final 2020 Rule to share with coalition members for feedback.	12-14 hours
3	Activity 2 will require the consultant to interview NRGi staff to discuss aspects of the original methodology of the study, including information about the original dataset. The consultant will also need to determine an adequate sample size and sample profile to	12-14 hours

	use in replicating NRGi’s study. This will also include drafting an updated analysis to share with coalition members for feedback.	
4	Activity 3 will require the consultant to review existing payment transparency reports, review resourceprojects.org and speak with extractive sector country experts in order to identify a country to use as a case study. This will also include drafting a country case study analyzing the impact of the MPD on the aggregation of payment data to share with coalition members for feedback.	12-14 hours
5	Finalize deliverables for each activity in line with coalition feedback. The consultant will also draft a 4-6 page final supplementary report summarizing analysis of the impacts of the Final 2020 Rule and illustrating key findings of each activity for feedback from coalition members.	14-16 hours
6	Finalize all deliverables and supplementary report for submission in line with coalition feedback.	6-8 hours
TOTAL		66-68 hours

DELIVERABLES

The Consultant will produce:

- At least one sample payment transparency report (Activity 1);
- An updated analysis of the impacts of data aggregation (Activity 2);
- A country case study examining the impact of the MPD on data aggregation and the level of data disclosed (Activity 3); and
- A final supplementary report that comprehensively analyzes the impact of the Final 2020 Rule on the level of detail disclosed by companies that summarized the main findings from each activity.

BUDGET

The budget will be negotiated with the consultant based on daily rates, but will not exceed \$15,000.

ROLE OF PWYP-US

The Director will be the consultant’s primary point of contact and will manage engagement with specific coalition members as needed. Members of PWYP-US will provide comments and feedback to the consultant, as well as the necessary guidance to facilitate their work. Additionally, members of PWYP-US will review products produced and support the consultant’s search for relevant documents and contacts.

EXPECTED PROFILE OF THE CONSULTANT

The prospective consultant(s) should have:

- Confirmed experience related to extractive industries, transparency, or fiscal justice of at least 5 years

- High proficiency in using search engines and online sources including government websites to access data on current events and payment transparency data
- Strong writing and data storytelling experience; ability to collect information from verbal and written sources and turn it into a compelling narrative

Proposals should include a technical and financial proposal highlighting their understanding of the TOR, their qualifications and the methodologies they seek to implement during the assignment. Additionally, the consultant should include a budget with their daily rate, and likely timing of their work, as well as any other relevant expected expenses.

To apply, please send an expression of interest via email to Carly Oboth at coboth@pwypusa.org by January 31, 2022.