



SUPPORT THE CONGRESSIONAL REVIEW ACT DISAPPROVAL RESOLUTION FOR THE DODD-FRANK SECTION 1504 RULE

The Section 1504 rule, as required by the Dodd-Frank law, undermines the Securities and Exchange Commission’s (SEC) mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

The Congressional Review Act allows Congress to reset the regulatory process when agencies fail to develop balanced rules.

By passing the resolution to disapprove the Section 1504 rule, Congress can reclaim its authority, and in the process, protect American companies, workers, and investors.

- Congress included the controversial Section 1504 in the Dodd-Frank Act although the provision had no relation to the housing and financial crisis that the underlying legislation was intended to remedy. Specifically, Section 1504 requires companies registered with the SEC to report, on an annual basis, payments made to a foreign government or the U.S. federal government relating to the commercial development of oil, natural gas, and minerals.
- In Section 1504, Congress delegated its own power to the SEC, a federal agency that lacked any experience with the subject matter, to write the rule. The SEC ignored the suggestions of issuers to shape a rule that achieved Section 1504’s intended purpose without overburdening U.S.-publicly listed energy producers with a new, costly regulation that placed them at a competitive disadvantage to state-owned competitors around the world and that could endanger the safety of American employees working abroad.
- The SEC’s initial final rule to implement Section 1504 was vacated by the U.S. District Court for the District of Columbia in July 2013, in response to an API lawsuit, due to “two substantial errors.” Specifically, the district court found that the SEC had “misread [Section 1504] to mandate public disclosures of the reports,” and had arbitrarily and capriciously declined to provide an exemption for countries that prohibit disclosure. In June 2016, the SEC issued a new rule, substantially similar to the original August 2012 rule that was vacated by the district court.
- API supports transparency. API and many of our member companies are longstanding supporters of global transparency initiatives such as the [Extractive Industries Transparency Initiative \(EITI\)](#).
- API proposed reporting requirements for the rule that would have substantially reduced its costs while more effectively promoting Section 1504’s statutory purposes. Unfortunately, the SEC still ignored the court and industry input.

- The revised rule continues to undermine global payment transparency, is inconsistent with other major international reporting agencies, and hurts American companies, their workers, and shareholders.
- Submitting the SEC's Section 1504 rulemaking to the Congressional Review Act will ensure that Congress reclaims its authority and in the process, protects American producers, workers, and investors.

Specifically, the 2016 Section 1504 rule:

- ***Places SEC-listed companies at a competitive disadvantage;***
- ***Raises conflict of laws concerns;***
- ***Could increase security risks for U.S. citizens working abroad for reporting companies; and***
- ***Imposes unnecessary and significant costs on U.S.-publicly listed companies.***

Section 1504 Major Issues

Put U.S.-Publicly Listed Companies at a Competitive Disadvantage to Foreign Competitors

- Government-owned National Oil Companies (NOCs) control [75 percent](#) of the world's oil reserves.
- Many NOCs, which compete with U.S.-listed companies for contracts and energy resources around the globe, are not covered by the Section 1504 rule.
- The Section 1504 rule forces U.S. publicly-listed companies to disclose project-level payments, forcing them to reveal highly confidential sensitive information thereby putting them at a competitive disadvantage to NOCs and other foreign competitors.
- Thousands of jobs support the overseas operations of U.S. listed companies.

Creates Conflict of Law Issues and Risks for U.S. Citizens Abroad

- The Section 1504 rule fails to provide a blanket exemption for payment disclosures to host countries whose laws prohibit such disclosures.
- Requiring publication of detailed information could cause U.S. registrants to violate the laws of the countries where they operate as well as binding contracts stipulating non-disclosure.
- Requirements for detailed information would disclose the exact size and importance of particular projects, thereby increasing safety and security risks for U.S. registrants and host governments.

Imposes Significant Compliance Costs on U.S. Issuers Subject to Section 1504

- The [SEC estimates](#) that the new rule will:
 - **Impose total initial compliance costs between \$239 million and \$700 million and annual ongoing total compliance costs between \$96 million and \$591 million;** and
 - **Require a total of over 217,000 hours** to comply with the rule over a three year period.

API Supports Transparency

API supports transparency. Many of our member companies are longstanding supporters of global transparency initiatives such as the [Extractive Industries Transparency Initiative \(EITI\)](#). API itself has been heavily involved in the implementation of U.S. EITI through our membership on the U.S. EITI's multi-stakeholder group. API also believes that the SEC can promote transparency via Section 1504, while remaining true to its core mission to protect investors, competition, and the efficiency of capital markets.

Industry Supports the Extractive Industries Transparency Initiative (EITI)

- EITI is a multi-lateral, multi-stakeholder global initiative composed of energy companies, civil society organizations, and host governments. Once implemented, the EITI rules apply equally to all companies operating in a country, including NOCs, ensuring a level playing field for all companies.
- EITI provides mechanisms for independent verification and reconciliation of the reported payments with the host government's receipts. The Section 1504 rule does not.
- Currently, there are 51 implementing countries of EITI, including the United States.

The API 1504 Transparency Model

- API member companies seek to play a constructive and collaborative role in the development of new rules by the SEC and developed a [model](#) to establish a high degree of industry transparency related to payments made to governmental entities within a country.
- The benefits of this model include, but are not limited to, the following:
 - A highly standardized data set that includes information by type of resource, type of operation, country, province or state, payment type, and governmental entity.
 - The ability for any interested party to easily aggregate or disaggregate payment data by the parameters listed above.
 - A standardized definition of "project" that facilitates the aggregation and analysis of payment data in ways not possible under other approaches.
- Unfortunately, the SEC rejected the API proposed model to provide meaningful payment disclosures and chose instead to issue a final rule that does little to inform ordinary citizens of government revenues from extractive activities while putting U.S. publicly-listed companies at a competitive disadvantage.
- Moreover, the Section 1504 rule is inconsistent with how payments are actually made by businesses. This approach creates burdensome system adjustments and over- or under-calculations of total payments paid to various countries and undermines the purpose of the statute.

Solutions for Promoting Transparency and Global Competitiveness

- Adopt API's proposed model for issuer filings which will reduce the risks and harms associated with forcing companies to disclose sensitive, contract-level information that can be exploited by competitors while serving the law's transparency objectives by making the disclosed information more accessible to and usable by the public.
- Make available, online, a compilation of payment information, instead of requiring issuers to disclose publicly payments made to the U.S. and foreign governmental entities.
- Exempt disclosures that would violate a host country's laws and existing contracts, reveal commercially sensitive information, or jeopardize the safety of an issuer's personnel.