

[Repeal of Disclosure of Payments by Resource Extraction Issuers Rule \(Public Law 115-4\)](#)

Repeals an Obama-era Securities and Exchange Commission rule designed to increase transparency in transactions between US oil, gas, and mining companies and foreign governments.

Updated last **December 6, 2017**

for Public Law 115-4.



WHAT IT DOES

On February 14, 2017, [Public Law 115-4](#) nullified a Securities and Exchange Commission rule requiring certain public companies, primarily oil, gas and mining companies, to publicly disclose payments they make to governments during the course of business negotiations if those payments total more than \$100,000 in a year.

The nullified rule was part of the [Dodd-Frank](#) financial reform legislation passed in the wake of the 2008 financial crisis and was intended primarily to make oil, gas and mining rights transactions with foreign governments more transparent and discourage corruption. The nullification is in response to [concerns](#) that the rule puts US companies at a competitive disadvantage vis-à-vis foreign firms who are not required to disclose such payments.

BACKGROUND

Dodd-Frank Wall Street Reform and Consumer Protection Act

HR 4173, the so-called “Dodd-Frank Act”, was passed and signed into law in July 2010 ([12 U.S.C. 53 et seq.](#)). The Act was created as a direct response to the [2008 US financial crisis](#), and establishes an extensive set of regulations to identify and address future financial risks to the US economy. The Act [was designed](#) to regulate the “too big to fail” financial institutions in the U.S. to prevent practices that were excessively risky and speculative.

Disclosure of Payments by Resource Extraction Issuers

Section 1504 of the Dodd-Frank Act instructs the Securities and Exchange Commission (SEC), through the Securities and Exchange Act ([17 CFR 240.13q-1](#)), to generate a rule requiring the discloser of payments to foreign and domestic governments made by private companies during the process of resource extraction. The intension of this rule is to prevent unscrupulous dealings between private companies and governments when mining for valuable resources in developing countries.

Pursuant of Section 1504, the SEC issued a Final Rule on July 27, 2016 titled “Disclosure of Payments by Resource Extraction Issuers” ([81 FR 49359](#).) In this Rule, US and foreign companies engaging in commercial development of oil, natural gas, or minerals must publically disclose any payments made equal to or greater than \$100,000 to the U.S. or a foreign government.

Public Law 115-4 repeals this Rule.

RELEVANT SCIENCE

Resource Economics: US Industry

The SEC [conducted an economic analysis](#) in their final *Disclosure of Payments* Rule, and estimated that a total of 128 issuers may bear the full cost of compliance. This final estimate excluded issuers that were already required to disclose payments under similar regulation, or were not expected to have made government payments greater than \$100,000. The average total assets of an affected issuer in 2015 was [nearly \\$6.5 billion](#), and the SEC estimated initial average compliance costs to range between approximately \$129,000 and \$1.5 million.

Costs of disclosure are not necessarily limited strictly to the administrative costs of compliance. The SEC economic analysis received several [comments](#) indicating that financial disclosures may put US industry at a competitive disadvantage. In response, the SEC highlighted similar legislation in the European Union (EU) and Canada, while acknowledging that some companies may still be at a competitive disadvantage with respect to firms based in the EU or Canada that are not subject to the Rule.

Resource Economics: Developing Nations

Developing nations that are rich in natural resources like oil and gas often face what some scholars have referred to as the “[resource curse](#).” In this economic paradox, countries with potentially lucrative natural resources are plagued with political and financial crises, as well as corrupt and authoritarian government regimes. The [Democratic Republic of the Congo](#)’s globally contentious mining industry (and its associated corruption and human rights violations) is a classic example of the resource curse.

Some scholars [suggest](#) that foreign intervention and investment play a role in a developing country’s inability to turn lucrative resources into a lucrative economy. Foreign investment [may increase](#) the levels of government corruption and worker exploitation.

ENDORSEMENTS & OPPOSITION

Endorsements:

The natural resource extraction industry praised the repeal, noting that it would have impacted US industry international competitiveness.

- American Petroleum Institute (petroleum industry organization), [press release](#), February 1, 2017: “Today’s House vote is a necessary step by Congress to establish sensible regulations that balance increasing transparency without diminishing our industry’s competitive advantage.”

Opposition:

Anti-poverty and human rights organization opposed the repeal of the rule, claiming it would continue to allow corruption practices for international resource extraction.

- Oxfam America (international anti-poverty group), [press release](#), February 14, 2017: “President Trump is turning his back on people all around the world who have clamored for American leadership to stand up for democratic values, transparency and good governance. Signing this bill is a stain on America’s reputation around the world.”

RELATED POLICIES

[77 FR 56273](#): Final Rule promulgated through the SEC under the Dodd-Frank Act Section 1502 to require issuers to disclose if any conflict minerals (cassiterite, columbite-tantalite, gold, wolframite, or derivatives) used in the manufacturing process originated from the Democratic Republic of the Congo or an adjoining country. If the minerals were from such countries, the issuer must provide evidence that they exercised due diligence during the mineral’s chain of custody.

POLICY HISTORY

- July 21, 2010: [Public Law 111-203](#), the Dodd-Frank Wall Street Reform and Consumer Protection Act, was signed into law by President Barak Obama.
- July 27, 2016: SEC issues the “Disclosure of Payments by Resource Exchange Issuers” [Final Rule](#).
- January 30, 2017: [HJ Res 41](#) Introduced in House
 - February 1, 2017: Passed in House
 - February 3, 2017: Passed in Senate

February 14, 2017: HJ Res 41 was signed into law by President Donald Trump and became Public Law 115-4.

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ENERGY SUBCATEGORY

[Source](#)
[Production, Conversion, Distribution](#)

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