



November 23, 2021

The Hon. Samantha Power
Administrator
U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, D.C. 20523

CC: USAID Climate Strategy Group

RE: National Whistleblower Center Comment on 2022-2030 Draft Climate Strategy.

Dear Administrator Power and Climate Strategy Group:

Thank you for the opportunity to comment on your 2022-2030 Draft Climate Strategy. ¹ [National Whistleblower Center](#) hereby submits our formal recommendations to the U.S. Agency for International Development (“USAID”) regarding the USAID Call for Comments on the agency’s 2022-2030 Draft Climate Strategy (“USAID’s Draft Climate Strategy” or “Draft Climate Strategy”),² and we are eager to discuss and support your climate efforts around the world.

National Whistleblower Center (“NWC”) has long engaged in important work to advance whistleblower protections and would like to take this opportunity to highlight how climate whistleblowers and improved protections for climate whistleblowers is integral to the effective implementation of your Draft Climate Strategy. Our recommendations are briefly as follows: USAID would benefit greatly from including whistleblower protections in its climate strategy to safeguard its programs from the misappropriation of funds and encourage a culture of transparency, accountability, and good governance in partner organizations.

In alignment with the elements outlined in your proposal we recommend the following ways in which USAID can incorporate whistleblower protections into the agency’s Draft Climate Strategy and bolster the success of your long-term goals.

¹ See USAID’s November 3, 2021 call for comments available at <https://www.usaid.gov/climate/strategy>; and *USAID Climate Strategy 2022-2030 – Draft for Public Review*, USAID, available at <https://www.usaid.gov/sites/default/files/documents/USAID-Climate-Change-Strategy-2022-2030-Official-Draft.pdf>.

² Available at <https://www.usaid.gov/climate/strategy>.

I. Whistleblower Protections are Being Adopted Globally to Bolster Climate Protections.

Climate protection is an issue of concern around the world. Whistleblowers are key to effective climate protection strategies and the enforcement mechanisms that enable these strategies to succeed. NWC has been actively involved in developing whistleblower protections in Europe, with a focus on developing protections for climate whistleblowers. USAID's Draft Climate Strategy is an encouraging development, helping bring the United States up to speed with an aggressive approach to protecting our environment, and enabling essential transnational collaboration to protect our environment. The time is ripe for action to incorporate climate whistleblower protections.

Resolution 8/12 of the UN Convention Against Corruption on "Preventing and combating corruption as it relates to crimes that have an impact on the environment" adopted in 2019 contains a specific reference on whistleblower protection:

"Encourages State parties [...] of the Convention and in conformity with national legislation, to consider establishing and developing, where appropriate, confidential complaint systems, whistle-blower protection programmes, including protected reporting systems, and effective witness protection measures, and to increase awareness of such measures."³

NWC was active throughout the IUCN Marseilles World Conservation Congress process in successfully promoting whistleblowers in the new four-year IUCN Program and resolutions like resolutions 115 on environmental defenders and whistleblowers and 38 on organized crime and the environment. In addition, NWC has collaborated with Whistleblowing International, a German based whistleblower advocacy non-profit in promoting in collaboration with other European NGOs, advancing protection of climate whistleblowers in EU member states and supporting the implementation of legislation for the EU Whistleblower Directive.

II. The False Claims Act will be the Best Tool to Safeguard Significant Spending Proposed in the USAID Draft Climate Strategy.

USAID's Draft Climate Strategy includes a proposed \$150 billion in spending.⁴ This large scale and widely disbursed funding will likely attract fraudsters who will attempt to take advantage of USAID programs and derail the agency's climate objectives. The False Claims Act (FCA) is a highly successful enforcement tool available to whistleblowers, regardless of the country they reside or where the fraud occurs—so long as the fraud relates to government spending.

³ See Eighth session of the Conference of the States Parties to the United Nations Convention against Corruption, United Nations, available at <https://www.unodc.org/unodc/en/corruption/COSP/session8-resolutions.html>.

⁴ USAID, 2022-2030 Draft Climate Strategy, page 3.

The specter of fraud in connection with foreign aid expenditures is not merely hypothetical. Just this past March, the International Rescue Committee (IRC) agreed to pay \$6.9 million to settle allegations that it engaged in procurement fraud in violation of the FCA after it misused USAID funds intended for humanitarian assistance. The USAID OIG found that IRC staff received kickbacks, steered bid procurement tenders, allowed conflicts of interest between staff and suspect vendors, and procured goods at unreasonably high prices, which were subsequently invoiced to USAID.

Unfortunately, the IRC matter is only the latest in a series of cases exposing fraud and corruption in humanitarian relief programs the United States government funds, in Syria and around the world. Considering the substantial spending outlined in the Draft Climate Strategy, the FCA will undoubtedly be an essential mechanism for deterring fraud, and it is critical that USAID implements policies intended to educate and empower FCA whistleblowers.

III. Whistleblower Protections Fortify Every Step of USAID’s Anticipated Strategic Shifts.

Emphasizing:

Systems-level Work; Mobilizing Finance; Private Sector Engagement; Locally-led Action; Governance; Equity and Inclusion; Leverage Non-Climate Funding; Partnerships with Key Populations; Humanitarian, Development & Peace Coherence.⁵

Continuing:

Renewable Energy; Reducing Emissions from Land Use; Government Partnerships; Climate Smart Agriculture; Climate Services; Disaster Risk Reduction; Implementation of Nationally Determined Contributions and National Adaptation Plans.⁶

Whistleblower Protections can be an integral part of USAID’s “holistic approach to climate change programming”.⁷

The need for such protections comes from the simple fact that well-meaning environmental policies can often have unintended consequences by inviting fraud and corruption. For instance, in September of 2021, San Diego Gas & Electric (SDG&E) agreed to a \$57 million settlement relating to fraudulent activity in connection with a California energy efficiency program. SDG&E sought to encourage households to purchase energy efficient lightbulbs, for which it could receive financial incentives; however, the utility failed to correct invoices for lightbulbs that were never actually sold, despite numerous complaints from employees. NWC supported The Utilities Reform Network in negotiating the settlement winning the inclusion of language requiring SDG&E to implement whistleblower training for all employees. The settlement demonstrates

⁵ USAID, 2022-2030 Draft Climate Strategy, page 4.

⁶ USAID, 2022-2030 Draft Climate Strategy, page 4.

⁷ USAID, 2022-2030 Draft Climate Strategy, page 5.

that whistleblower training and receptivity to employee concerns can be highly effective in preventing fraud in connection with environmental programs. Much of the misappropriated money would have been detected and intervened had SDG&E taken action on employee concerns before the lawsuit.

The success of a whistleblower program requires three elements: anonymity, anti-retaliation, and awards. However, a basic element at the foundation of any successful whistleblower program is trust. This trust is built through shifting culture from one focused on efficiency and outcomes, to one that allows space for concerns to be safely raised and whistleblowers appreciated as an integral part of the genuine (not merely perceived) success of programs. For this reason, whistleblower protective elements should be infused into every aspect of the Draft Climate Strategy as part of USAID's holistic approach and by doing so USAID will bolster the likelihood that the planned substantial monetary and intangible investments are put to their best use and yield real results. The following is a goal-by-goal description of how whistleblower protections and educating stakeholders about whistleblowing can advance USAID's Draft

A. Whistleblowers can scale targeted climate actions, by identifying and interrupting fraud, waste, and abuse.

In the section on “**Intermediate Result 1.1: Catalyze urgent emissions reductions (mitigation)**” you describe two objectives that are particularly ripe for whistleblower intervention: (1) “Launch new partnerships with the private sector to **reduce deforestation and increase native forest restoration** in commodity supply chains”; and (2) “Incentivize energy efficiency to enable economic growth at lower cost and emissions intensity”.⁸ Both of these objectives, reduce deforestation and incentivize energy efficiency can be advanced by whistleblowers under existing US law. The IUCN Marseilles Congress also adopted Resolution 108 on deforestation and agricultural commodity supply chains which references climate change and corruption and includes supporting, protecting and rewarding whistleblowers.⁹

Using the Lacey Act, whistleblowers can report illegal timber trade which accelerates deforestation and threatens native forests. As USAID acknowledges in IR 1.1, protecting vulnerable forestlands is critical to the global effort to reduce planet warming emissions. Moreover, reducing deforestation plays an essential role in mitigating the impacts of climate change by providing a buffer against sea level rise and severe weather events. Many of the countries in which USAID operates contain sensitive forest ecosystems that are essential to overall planetary health and that are already threatened by illegal timber operations and other forms of resource extraction. The Lacey Act is a vital mechanism to combatting these harmful practices. Local communities and indigenous peoples often suffer the most from illegal resource extraction, and empowering private citizen whistleblowers in these areas to report

⁸ USAID, 2022-203 Draft Climate Strategy, page 7.

⁹ See WCC-2020-Res-108-EN, *Deforestation and agricultural commodity supply chains*, IUCN Library, available at https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2020_RES_108_EN.pdf.

environmental harms has proven to be one of the most important factors in stopping illegal activity.

Under **Intermediate Result 1.3**, USAID seeks to “[i]ncrease the flow of and equitable access to finance to support adaptation and mitigation.” To achieve this IR, USAID proposes actions including enhancing “the ability of entrepreneurs and [USAID’s] partners to seek financing” and “advanc[ing] strong standards of transparency and accountability.”¹⁰

Direct financing for green development projects is an important component of USAID’s goal of helping developing countries respond and adapt to climate change. However, history has shown that federal expenditures, whether domestically or internationally, creates the opportunity for fraudulent actors to misappropriate these funds. Whistleblowers can help police the use of USAID incentives using the False Claims Act to protect the agency’s interests where there are not agency employees on the ground to determine whether funds are being used appropriately or reporting submitted in an honest manner. As discussed in Part II of this Comment, the FCA has already proven to be an effective means of deterring fraudulent use of USAID funds. Educating and supporting FCA whistleblowers is therefore necessary to promote the “strong standards of transparency and accountability” that USAID seeks to implement.¹¹

Accordingly, as part of the “Strategic Objective I: Facilitate Targeted Direct Action,” we urge USAID to develop and implement policies that empower and encourage whistleblowers to come forward.

B. Whistleblowers Must Be Included in USAID’s Mission to “Drive Systems Change.”

NWC supports USAID’s Strategic Objective II, which looks beyond targeted action to focus on “transformational and systemic change.” Meaningfully addressing the climate crisis will require a fundamental shift in how economies operate. As USAID states, “[g]overnments need to demonstrate commitment and capacity to implement systems that are transparent, legal, and mitigate corruption to enable full participation and investments that are sustainable and benefit local communities.”¹² NWC believes that this goal cannot be achieved unless whistleblower protections are fully implemented in all USAID policies and actions.

Under **Intermediate Result 2.1**, USAID seeks to “[a]dvance transformation of key systems and essential services” and proposes a range of actions including: (1) “support[ing] partner governments in reforming national agricultural subsidy programs to shift market incentives towards climate-smart agriculture practices and (2) “support[ing] application of open government approaches and **anti-money laundering** tools . . . to address the ways in which

¹⁰ USAID, 2022-2030 Draft Climate Strategy, page 10.

¹¹ USAID, 2022-2030 Draft Climate Strategy, page 10.

¹² USAID, 2022-2030 Draft Climate Strategy, page 13.

political finance and financial secrecy contribute to the overexploitation of natural resources and the neglect of greener energy sources.”¹³

These are important steps to fostering systems level change; however, to achieve them, NWC believes that USAID must adopt a two-part strategy. First, encouraging the use of existing U.S. anticorruption whistleblower laws; and second, urging governments to adopt whistleblower laws as part of their broader climate-related governance reforms.

Whistleblowers also have an important role to play in implementing IR 2.3 on strengthening responsive, transparent governance and citizen engagement for effective climate action including increasing accountability and transparency of government and private sector climate efforts. Under Annex II on “Evolving Policy Considerations”, whistleblowers have an important role to play on deforestation and commodity production including the integrity of supply chains.

1. Using Existing U.S. Laws

The most important existing transnational anticorruption law is the Foreign Corrupt Practices Act (FCPA) which prohibits individuals and businesses from bribing foreign officials and provides for civil and criminal penalties for FCPA violations. The Security and Exchange Commission (SEC) allows whistleblowers to report FCPA violations and provides for monetary awards to whistleblowers whose information leads to a successful prosecution.

Driving systems change—as part of USAID’s Strategic Objective II—necessarily requires cooperation among private industry, government actors, and international organizations. And with this interaction comes the ever-present threat of bribery that undermine USAID’s goal of fostering open and transparent government. Using the FCPA’s whistleblower provision is therefore vital to stemming corruption. What makes this law particularly effective is its international scope: the SEC has broad enforcement authority to pursue misconduct around the world. Since the inception of the SEC whistleblower program, the Commission has received whistleblower tips from individuals in 133 countries outside the United States, with FCPA violations constituting a significant portion of overall tips.¹⁴ Accordingly, the FCPA has proven to be an indispensable tool in combatting foreign corruption, and USAID must ensure that its policies allow for and encourage the detection, deterrence, and reporting of FCPA violations.

2. Encouraging Governments to Adopt Whistleblower Laws

The U.S. whistleblower laws previously discussed, such as the FCA and FCPA, have been immensely successful in bringing corrupt actors to justice. Unfortunately, other countries do not have similar meaningful whistleblower laws thereby complicating USAID’s effort to foster effective climate-related governance reforms. USAID must work with government partners to

¹³ USAID, 2022-2030 Draft Climate Strategy, page 14.

¹⁴ SECURITIES AND EXCHANGE COMMISSION, *2021 Annual Whistleblower Program Report to Congress*, p. 31 (Nov. 15, 2021)

encourage the enactment of strong whistleblower laws that provide incentives for individuals to report fraud and environmental violations.

Effective whistleblower regimes include anonymity and anti-retaliation provisions as well as monetary rewards for whistleblowers whose information leads to successful enforcement actions. NWC has already worked with international organizations and governmental bodies to strengthen international whistleblower protections and was closely involved in the European Union's recent enactment of the landmark Whistleblowing Directive, which was the first effort to create a common minimum whistleblower standard across the EU. Review for flow with the earlier discussion on the EU advocacy work which is where the first mention of the Directive should come.

NWC urges USAID to push for similar whistleblower protections within partner countries. Such an effort should also include education programs that inform individuals of their rights as well as their ability to report climate and environmental crime.

IV. Global Whistleblowers are Incredibly Valuable and Well Supported

The Chairman of the SEC, the agency responsible for FCPA whistleblower cases, has heaped lavish praise on the whistleblower program.¹⁵ Under the Act to Prevent Pollution on Ships, representatives from the U.S. Department of Justice have, for years, praised the role of international whistleblowers, and explained the unique problems they face outside the United States, and that compensating them through monetary rewards is essential. [A full accounting of these numerous APPS cases, and the Justice Department motions supporting international whistleblowers, are linked here.](#) Likewise, the Organization for Economic Co-operation and Development ("OECD") has specifically praised the Dodd-Frank Act's whistleblower law in its report on the U.S. implementation of the OECD's anti-bribery convention.

Despite these successes, the actual state of transnational whistleblowing is in disarray. Whistleblower protections are ineffective or non-existent in most countries outside the United States.¹⁶ Although major U.S. laws have proven to be highly successful, there are still gaps in

¹⁵ These sentiments were recently echoed by the new Biden-appointed [Chairman of the SEC, Gary Gensler](#): "Whistleblowers provide a critical public service and duty to our nation. The tips, complaints, and referrals that whistleblowers provide are crucial to the Securities and Exchange Commission as we enforce the rules of the road for our capital markets. . . . Investors in our capital markets have benefited from the critical information provided by whistleblowers. . . We must ensure that whistleblowers are empowered to come forward when they see misbehavior [and] that they are appropriately compensated." The SEC's commitment to paying rewards to qualified whistleblowers who are non-U.S. citizens has been made clear in numerous public statements by the leadership of the SEC. As explained by the SEC's Deputy Secretary in an order awarding a non-U.S. citizen whistleblower: "[I]t makes no difference whether . . . the claimant was a foreign national, the claimant resides overseas, the information was submitted from overseas, or the misconduct comprising the U.S. securities law violation occurred entirely overseas."; and See [Order](#) Determining Whistleblower Award.

¹⁶ See [WHISTLEBLOWER NETWORK NEWS coverage of transnational whistleblowing](#) for an excellent survey of the current state of international whistleblowing

coverage, whistleblower programs lack resources, and the potential contributions whistleblowers can make to fight international corruption have barely been tapped.

The Organization for Economic Co-operation and Development (OECD) carefully studied the United States' international anti-corruption program and issued a highly detailed "Phase IV Report" covering every aspect of the U.S. anti-bribery program.¹⁷ They issued a series of recommendations, among them was to "enhance protections for whistleblowers." The recommendation should be fully implemented.¹⁸

The OECD study was comprehensive. Based on a peer monitoring process that followed a year-long review, the study was conducted by international officials with expertise in fighting corruption. These officials interviewed government, private sector, academic, and civil society experts and reviewed all the prosecutions undertaken by the United States over a ten-year period

In its report the OECD recognized the vital role the Dodd-Frank Act whistleblower provisions play in enhancing the ability of the United States to detect and prosecute foreign corruption. They directly praised "Dodd-Frank Act's multi-faceted protections," including its "powerful incentives for qualified whistleblowers to report foreign bribery allegations" as among the U.S. government's best practices.¹⁹

Consistent with the OECD's recommendations the United States needs to work with countries to enact or enhance their whistleblower laws to be consistent with the major pillars of the Foreign Corrupt Practices Act to effectively fight international corruption. USAID can play a major role in this process, assisting in the educational efforts among government officials, Members of Parliament, NGOs, and other international actors with whom USAID has forged effective relations.

By collaborating with the OECD in their efforts to support global whistleblowers, US AID can bolster efforts to empower whistleblowers to ensure the effective administration of its Climate Strategy programs and prevent misappropriation of program funding.

The growing international interest in whistleblower laws is exemplified by the recent adoption by the European Union of a Directive requiring all EU nations to enact whistleblower laws. This repeats reference to the EU Directive above. Likewise, as part of its 2021 World Conservation Congress in Marseilles, the International Union for Conservation of Nature (IUCN), included as part of its official program for 2021-24, a member-approved plan of action to "promote

¹⁷ See *Implementing the OECD Anti-Bribery Convention: Phase IV Report*, OECD, available at <https://www.justice.gov/criminal-fraud/file/1337591/download>.

¹⁸ *Implementing the OECD Anti-Bribery Convention: Phase IV Report*, OECD, at 22, 112, available at <https://www.justice.gov/criminal-fraud/file/1337591/download>.

¹⁹ *Implementing the OECD Anti-Bribery Convention: Phase IV Report*, OECD, at 7, available at <https://www.justice.gov/criminal-fraud/file/1337591/download>.

whistleblower protection and reward laws.”²⁰ This action is consistent with numerous resolutions enacted by the IUCN promoting environmental defenders strong whistleblower resolution adopted in Marseilles September 2021 by a vote of 106 to 6 (government members of IUCN) and 586 to 6 (NGO members of IUCN).²¹ Even without U.S. support, a growing number of international organizations are sponsoring training by leading U.S. whistleblower NGO organizations, such as NWC.²² The United States must exploit the current (and significantly growing) interest in whistleblowing and help nations develop effective programs and train NGOs how to work effectively with whistleblowers who are reporting corruption.

V. An International Whistleblower Office would Support Climate Whistleblowers

The SEC’s Office of the Whistleblower is a model on how a federal agency can create a whistleblower office to educate the public concerning whistleblower rights, create an easy-to-use anonymous online reporting structure, centralize whistleblower intakes so they can be properly shared with appropriate offices, ensure confidentiality, and assist in the adjudication of any whistleblower reward application.²³

An International Whistleblower Office (IWO) can perform a similar function. These functions should include: (a) becoming a clearinghouse for whistleblower intakes, ensuring that the intake is referred to the appropriate agency for review; (b) facilitating interagency cooperation when more than one law is impacted by the corrupt activities; (c) providing online resources and information about whistleblower laws and programs for reporting international corruption; (d) create a confidential reporting process similar to the SEC’s process; (e) create an administrative process for managing the whistleblower intakes and review process; (f) facilitate educational programming and publish materials in relevant languages.

VI. Conclusion

USAID’s ambitious climate strategy would benefit from implementing widespread education programs about U.S. whistleblower laws, cooperation with OECD efforts, and the establishment of an international whistleblower program. Adopting these measures would create the foundation for an effective global climate whistleblower regime and would ultimately further USAID’s important mission set forth in its Draft Climate Strategy.

²⁰ Approved the IUCN Programme 2021–2024, available at https://www.iucncongress2020.org/sites/www.iucncongress2020.org/files/iucn_programme_2021_2024_0.pdf.

²¹ The IUCN has [previously passed four resolutions](#) supporting whistleblowers and their contributions toward fighting organized crime.

²² See e.g., Keynote Address, [International Annual Conference on Integrity](#) (premier regional [anti-corruption](#) conference sponsored by governments of South and Central America); [Belgrade Anti-Corruption Conference](#); the [Regional Anti-Corruption Initiative](#) (sponsored by the EU and eight countries in South Eastern Europe including Albania, Bulgaria, Moldova, and Romania), [TNRC trainings](#) sponsored in part by AID, and the [Sarajevo Whistleblower Week](#) conference focused on the use of the DFA-FCPA program.

²³ The SEC’s Whistleblower Office’s highly useful website is [linked here](#).

Accomplishing the Strategic Objectives, Intermediate Results, and Embedded Principles that underly USAID's proposal will require governments and their citizens to work towards a common goal of environmental sustainability. USAID's plan designates substantial resources, including \$150 billion in projected spending, which are vulnerable to misappropriation and abuse. These important public investments would be safeguarded by USAID placing an emphasis on whistleblower protections, transparency, and a culture of anti-retaliation, in every aspect of its programming. Whistleblower education about U.S. laws that support effective oversight and reward whistleblowers around the world and work with local governments and organizations like the OECD to build whistleblower protective infrastructure and local protections worldwide will help safeguard our shared environment and enable climate programs to run efficiently. Strong international whistleblower regimes are essential to ensuring that climate adaptation and mitigation programs are fully realized in a sustainable and equitable manner, and NWC urges USAID to adopt these recommendations when implementing its climate strategy.

NWC has robust experience working with whistleblowers around the world. By helping these whistleblowers bring claims in the United States under Federal laws like the False Claims Act, the Dodd-Frank Act, and the Foreign Corrupt Practices Act, our experts are well positioned to advise on and support educational efforts around the world. Further, our experience working with legislators and regulators around the world, helping them understand the value of anti-retaliation, anonymity, and rewards, positions NWC to continue this work with USAID in support of your climate strategy. Our commitment to supporting climate whistleblowers and the development of infrastructure that enables these brave individuals to help protect our most precious resources is unrelenting.

We would be grateful for the opportunity to further discuss and support the inclusion of whistleblower protections and whistleblower education in your final 2022-2030 Climate Strategy.

Please feel free to be in touch at info@whistleblowers.org with any questions or comments.

Sincerely,

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