

State Participation in EITI

As we move forward with next steps in the EITI process, particularly with regard to the development of the first EITI Report and the role of the Independent Administrator in generating that Report, several questions with regard to state participation continue to linger. These will need to be addressed in order to engage the states more fully and effectively in the process. They are as follows:

- A repeated question that is asked by the states concerns the benefits to a state when considering participation in EITI, especially given the robust transparency initiatives and auditing functions that already exist at the state level. More effort in addressing this question will be required to entice state participation.
- With respect to reporting on publicly-available state data, what type of data are we attempting to capture? Revenue data for all extractives that are “in scope” for purposes of federal revenue data collection (i.e. oil, gas, coal, other leasable minerals, non-fuel minerals, geothermal and other renewables)? Will we be using the same materiality definition (i.e. companies that make total payments of \$50 million or more to a state)?
- How will the Independent Administrator (I.A.) collect this data? Will the I.A. do this independently? Will there be a need to coordinate with the states? If so, we will need to determine who the primary contacts within a state will be for the I.A. (There are often several distinct agencies within a state that are responsible for various revenue streams, e.g. Departments of Revenue, Taxation, Environmental Protection, Natural Resources, and State Land Commissions.) Will the states be provided an opportunity to review the data and its presentation before it is included in the draft EITI report, should they choose to do so?
- How will the publicly-available data be presented in the EITI Report? What type of analysis may accompany the data?
- Will state reporting include payments/transfers that are made to localities within a state, much as the federal government will account for transfers to state governments?
- With respect to the opt-in process, will all states be encouraged to participate, or only certain key states? What will the opt-in process look like for those states that choose to participate, particularly with regard to scope and materiality? Who will guide the opt-in process – the national MSG or individual MSG’s for each state?
- What are the key elements of an effective outreach plan to the states to encourage them to seriously consider opting in to the EITI process (identification of benefits, key players, resource constraints, implementation requirements)?
- How do we ensure that a consistent message is being delivered to the states at all levels of government – from Governors’ offices to agencies that will have responsibilities for implementing EITI? How do we coordinate that message among the sectors of the MSG?
- What type of process is needed to address and resolve issues that arise during the state reporting and opt-in process (i.e. role of the MSG vis-à-vis Interior)?
- What will it mean for USEITI if there are no states interested in opting-in after two years (especially if it is determined that the publicly-available data and the contextual information report are not comprehensive enough to satisfy the sub-national reporting requirement)? What will the MSG do if the International Board decides that USEITI becoming compliant is contingent on securing opt-in participation from certain states?



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April 16, 2014

Rhea Suh
Assistant Secretary
U.S. Department of the Interior
1849 C Street, N.W.
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Dear Assistant Secretary Suh,

The Interstate Mining Compact Commission (IMCC) congratulates the Interior Department for its leadership in securing the recent approval of the United States' application for candidacy in the International Extractive Industries Transparency Initiative (EITI). As you know, IMCC has participated in good faith on the Multi Stakeholder Group (MSG) as part of the consensus building approach utilized by the U.S. in developing the Candidacy Application. With the recent approval of the U.S. as a candidate country, USEITI has reached a critical juncture. IMCC commends the MSG for its good work in bringing the initiative this far, especially given notable challenges along the way. However, many ambiguities in how the US will implement EITI remain, as discussed thoroughly in the Candidacy Application¹ and the International Secretariat's Candidature Assessment². Now that the time to be decisive regarding the hiring of the Independent Administrator and the generation of EITI Reports has arrived, IMCC must advocate from the distinct perspective of the state regulators we represent.

While IMCC has taken full advantage of the opportunity to be involved in the process of determining what EITI will mean for the US, there are many questions that still need to be resolved regarding the form and extent of state involvement in the initiative. IMCC is very aware of the substance and nuance of the initiative's plans for implementation in the US, and therefore, offers the following recommendations.

Most importantly, IMCC recommends that the MSG develop a formal proposal for the "opt in" process and, for those states choosing not to fully participate, clarify plans for use of state data more generally. As a member of the MSG, IMCC is aware that these areas are still being developed and that there are many difficulties surrounding them. However, we anticipate the states are likely to be quite circumspect about their willingness to be more fully involved in the process, based on our discussions with them to date. Providing these requested clarifications will be very helpful in stemming growing concerns among the states regarding the imminent scrutiny of their extractives industries governance in the first two years and the MSG's expectations for their involvement beyond the first two years.

¹ US EITI Candidacy Application Form

² Candidature Assessment: United States of America, Board Paper 26-4-C

We understand that our colleagues at Western Governors Association (WGA) have recently submitted a letter outlining similar concerns. We concur with their assessment and their recommendation that the MSG develop and distribute an explanation of the initiative that describes:

- the rationale for state participation and the costs and benefits for a state opting in to EITI reporting;
- the process by which a state can opt-in to formally participate in the U.S. EITI reporting; and
- how state data will be gathered and used for states which do not opt-in

As we have indicated from the outset, state governments are categorically supportive of transparency. This is evidenced by the many state level transparency initiatives already in existence, which have been undertaken independently and to the satisfaction of their respective citizenries. The states also have a robust auditing function, which speaks directly to the credibility of state revenue collection. The level of auditing expertise at the state level is such that states are often asked to audit federal revenues.

The states' commitment to transparency is also manifest in the meaningful amounts of extractives industry revenue data the states already make publicly available, both to improve their citizens' understanding of how extractives are managed in their state, and to ensure that the state agencies remain accountable to their citizens' scrutiny. This demonstrates that states are not concerned about the prospect of increased "sunshine" on their revenue management. Further, as the MSG has acknowledged, there is little if any expectation that EITI will uncover any significant discrepancies in the handling of extractives revenue in this country. Considering the high level of transparency already present in the states and the country as a whole, the MSG should expect the states to be generally wary of additional reporting requirements.

IMCC recommends that the MSG be particularly cautious of promoting inclusion of more analytical or prescriptive treatment of state data. We anticipate that the states will be much less inclined to participate if their information may be used to initiate expanded analysis of their regulation of extractives. Our sensitivity to this issue has been heightened by the following statement in the International EITI Board's guidance regarding sub-national reporting dated December 2013: "These payments and transfers are often of great interest to stakeholders, particularly in discussion regarding the benefits that accrue to local communities, even if these payments may represent only a portion of total revenue at the national level. Revenues captured at local levels or mandated revenue transfers are an important source of income for provincial or local government. Transparency regarding these payments and transfers can be useful in checking whether transfers have indeed occurred and in holding provincial and local authorities to account." (pg 1). The Guidance goes on to note: "A particular challenge relates to ensuring that all sub-national government agencies participate in the process. This may require additional outreach (including by the central government), training and capacity building." (pg 3)

IMCC further recommends that the MSG temper its expectations of the states' involvement in EITI more generally. IMCC understands well that EITI is theoretically a "voluntary" initiative, but now that the US has become a candidate country, things that are "voluntary" in one sense, become things that are required for the US to become EITI compliant. It would be imprudent to anticipate willing state involvement on any significant scale, and even more so to allow the success of USEITI in the future to hinge on the expectation of eventually obtaining expanded state participation. At

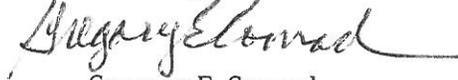
this point, there is simply not a cohesive sense among the states of their willingness to participate in EITI.

The states are beginning to undertake their own initiative to determine the extent to which it is appropriate, practical, legal, and beneficial for the states to be more fully involved in EITI. To that end, clarification on some of the various ambiguities surrounding state involvement discussed above will be necessary. While IMCC has been closely involved with the development of USEITI since the inception of the MSG, we are still not able to grasp a unified sense among the stakeholders of what the states' role should be. Expectations among the various sectors for how the states should be involved, and notions of how practical state involvement is, are all over the board.³ Soliciting input on this point from the various stakeholders only garners equally varying opinions, with no obvious reconciliation. Without a more unified sense of what the MSG expects of the states, they cannot develop a more formal and unified position.

Some disagreement among the sectors will surely persist, but the MSG must nonetheless find consensus and make a proposal specifically outlining plans to involve the states—and the sooner the better. Facilitating the states' ability to form such a position will benefit USEITI by reducing the delays resulting from ambiguity and confusion as states continue to struggle for a clear and concise sense of EITI's expectations of them. This is especially important considering the degree to which the MSG seems to anticipate the states' eventual participation based on the contents of the bid for adapted implementation, as well as the relatively aggressive timeline for implementation ambitiously adopted by the MSG.

We appreciate your attention to these concerns and look forward to hearing about how we can address them.

Sincerely,



Gregory E. Conrad
Executive Director

³ To provide an example, the Department of the Interior, the lead agency for implementation of USEITI, in various unofficial communications with IMCC and other state representatives, has been reassuring of the fact that the first report will merely “repackage” data, manipulating it to a very limited extent. The Candidacy Application, on the other hand, states that the first report will serve as a “useful model and test” for “later inclusion of sub-national reporting”. And in the Candidature Assessment (cited above), the International Board references the fact that the U.S. MSG’s “expected result is that the first EITI report will include a comprehensive and reliable overview of payments at the sub-national level.” (section 3.2) There seems to be a notable amount of discord between these statements.



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April 4, 2014

Rhea Suh
Assistant Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Assistant Secretary Suh:

It has come to my attention that the U.S. application for candidacy in the Extractive Industries Transparency Initiative (EITI) was approved by the EITI Board at its March 18-19 meeting in Oslo, Norway. I understand and appreciate that the application included an opt-in provision for states, as requested in WGA's letter to you last July. I further understand that the Multi-Stakeholder Group (MSG) that is providing input to the Extractive Industries Transparency Initiative plans to gather, collate, and analyze publicly available state revenue data for inclusion in the U.S. EITI report, regardless of whether a state has opted in.

I strongly recommend that the MSG and the Interior Department (as the primary federal government representative to EITI) clarify the proposed use of state data and propose a formal opt-in process for interested states. To better inform state consideration of EITI participation, WGA recommends that our federal partners develop and distribute an explanation of the initiative that describes:

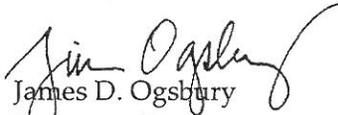
- the rationale for state participation and identifies the costs and benefits for a state opting in to EITI reporting;
- the process by which a state can opt-in to formally participate in U.S. EITI reporting; and
- how state data will be gathered and used for states which do not opt in.

While Governors support the goal of revenue transparency and recognize that the U.S. system of transparency can be a model for the rest of the world, they will react unfavorably to efforts by EITI that create an unfunded federal mandate. Unless states have opted in, DOI, EITI or the "Independent Administrator" contracted to gather and "repackage" existing state data should not expect state agency staff to take time away from their duties to help gather, collect, analyze or interpret data requested by EITI.

Rhea Suh
April 4, 2014
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We look forward to receiving more information about the proposed use of state data and a formal opt-in process for interested states.

Sincerely,


James D. Ogsbury
Executive Director

cc: Multi-Stakeholder Group, U.S. Extractive Industries Transparency Initiative