

**United States Extractive Industries Transparency Initiative  
Federal Advisory Committee  
Terms of Reference**

**I. Introduction**

The terms of reference described herein are adopted by the U.S. Extractive Industries Transparency Initiative Federal Advisory Committee (Committee) in order to set forth protocols for how the Committee will organize itself, conduct business and reach decisions, in fulfillment of its mission as described in the attached Committee Charter.

**II. Background**

The Extractive Industries Transparency Initiative (EITI)<sup>1</sup> is a voluntary, global effort designed to increase transparency, strengthen the accountability of natural resource revenue reporting, and build public trust for the governance of these vital activities. Participating countries publicly disclose revenues received by the government for resource extraction, while companies make corresponding disclosures regarding these same payments to the government, and both sets of data are reviewed and reconciled by a mutually agreed upon independent third party. Results are then released in a public report. The design of each nation's EITI Report is country-specific and developed jointly by a Multi-Stakeholder Group composed of representatives of government, industry and civil society stakeholders through a consensus-based process.

On September 20, 2011, President Obama declared the U.S. intention to implement EITI as a signature initiative of the U.S. National Action Plan for the Open Government Partnership. On October 25, 2011, President Obama appointed the Secretary of the Interior as the senior U.S. official to lead the U.S. effort to implement EITI. On that same day, the Secretary committed to working with civil society, industry, and the American public to implement EITI. On July 26, 2012, following a stakeholder assessment which included several months of public outreach and comment, the Secretary established a Federal Advisory Committee Act (FACA) committee to serve as the initial Multi-Stakeholder Group for United States EITI (USEITI) implementation, and sought nominations for committee membership from government, industry and civil society stakeholders. On December 21, 2012, the Secretary appointed 21 members and 20 alternates to serve on the Committee.

**III. Objective**

The Committee will serve as the USEITI Multi-Stakeholder Group, and will provide collaborative and consensus-based oversight of USEITI implementation, by acting as a forum for consultation among stakeholder representatives. The Committee's advice to the Secretary will be made available to all other interested parties and the public. Its duties will include

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<sup>1</sup> See Appendix 1 for EITI Principles and Criteria

consideration and fulfillment of the tasks required to achieve candidate and compliant status in the EITI. In that capacity, the Committee will:

- Develop and recommend to the Secretary a fully-costed work plan, containing measurable targets and a timetable for implementation, and incorporating an assessment of capacity constraints. The plan shall be developed in consultation with key USEITI stakeholders and published upon completion.
- Provide opportunities for collaboration and consultation among USEITI stakeholders.
- Advise the Secretary and post for consideration by other stakeholder's proposals for conducting long-term oversight and other activities necessary to achieve EITI candidate and compliant status.

#### **IV. Scope**

- A. Approve a draft USEITI fully-costed work plan for the USEITI Candidate Application, containing measurable targets and a timetable for implementation, and incorporating an assessment of capacity constraints. This plan shall be developed in consultation with key EITI stakeholders, posted for public comment, and published upon approval by the MSG.
- B. Analyze and map established data collection and reporting mechanisms, and governance and compliance arrangements operating in the United States.
- C. Identify any material knowledge and transparency gaps with respect to extractive industry revenues and payments and assess the costs and benefits of the reporting process and outcomes.
- D. Oversee the USEITI reporting and validation processes, including but not limited to: developing future annual workplans for U.S. implementation of EITI, USEITI reporting templates and annual activity reports.
- E. Agree on an appropriate definition of “extractive industries” and “materiality” for the purpose of EITI implementation.
- F. Develop and agree on the format of the report.
- G. Comply with U.S. laws and regulations.
- H. See that outreach activities occur, including communications with citizens, civil society groups, and companies, informing them of the governments' commitment to implement USEITI, the central role of companies and civil society, and by widely disseminating the public information that results from the USEITI process.

## **V. Membership**

Consistent with the Committee Charter, Committee membership will consist of representatives from government, industry and civil society appointed by the Secretary of the Interior. Twenty-one primary members and 20 alternates were initially appointed to the Committee and will serve a 3-year term. The members and alternates are appointed as individuals. Any changes in membership will require a new appointment by the Secretary under the FACA nomination process as described in the Charter. Committee membership has been developed to reflect the EITI requirement to include representation from government, industry, and civil society stakeholder sectors (Sectors). Any vacancy on the Committee will be filled in the same manner in which the original appointment was made.

Alternates have an important and valuable role in the process. Alternates should attend in person or via teleconference as many Committee meetings as possible to ensure that they are informed and up to speed on issues that have been discussed, ongoing deliberations, and agreements reached on recommendations. A Committee member may, as appropriate, give their proxy to any alternate in their Sector to participate in the Committee's discussions and deliberations "at the table" in lieu of that member's participation from that seat, for any meeting or portion of a meeting. Such proxy may be given when a member is absent and/or when an alternate has unique knowledge or perspective regarding a particular agenda item for which the member does not have the same expertise. The designation of proxies should be determined prior to each meeting or as soon as practicable during the meeting.

## **VI. Committee Leadership**

In the Committee Charter, the Secretary has appointed the Assistant Secretary of Policy, Management and Budget as the Designated Federal Official (DFO). The Committee will report to the Secretary through the DFO. The DFO or her designee serves as the Committee Chair, and accordingly in consultation with Co-chairs will approve all Committee and subcommittee meetings, prepare and approve all meeting agendas, attend all Committee and subcommittee meetings, and adjourn any meeting when she determines adjournment to be in the public interest. The DFO or her designee will serve as the principal Chair for the Committee and for the government sector. The Committee will also designate Co-Chairs from the industry and civil society sectors. The responsibility of the Co-Chairs will be to assist the Chair with agenda development, help the Committee keep on track with its work plan, help move discussions forward in meetings, and to collaborate with the full Committee to resolve impasses, tensions, and conflicts among members or sectors.

The Chair and Co-Chairs will periodically review and assess the Committee's progress to determine if the process is meeting the Committee's needs and the goals of the Charter, and ensure compliance with these operating procedures.

## VII. Decision-making

- A. Quorum: In order for the Committee to reach decisions, there shall be at least a majority of members present from each Sector (alternates stand in equally for any missing primary member as previously noted).
- B. Consensus: The Committee will strive to operate by consensus.
1. Consensus is defined as *unanimous* consent of the members, or in the absence of a primary member, his alternate, after Committee discussion. Granting consent means a member *accepts*, even if reluctantly, the agreement that emerges. Members may choose to “abstain.” Abstention is a non-vote, and therefore does not count against consensus.
  2. If a representative disagrees with a proposal, he or she should make every effort to offer an alternative satisfactory to all members.
  3. In the rare occurrence where a member is absent from a meeting in which consensus will be deliberated or decided, and no alternate is present on their behalf, the absences will be equivalent to not withholding consent.
  4. Changes or modifications to these operating procedures may be made by an affirmative vote of a majority of members within each sector (as noted under sector-based voting below). All changes or modifications will be reflected in writing in an updated Terms of Reference.
- C. Agreement:
1. Recommendations should be made by consensus wherever possible. Recommendations may cover more than one topic and these will likely be issued throughout the term of the Committee in order to attain EITI candidacy and compliance as defined by EITI rules.
  2. When the Committee reaches consensus on a recommendation or group of recommendations, it will transmit such to the Secretary through the DFO.
  3. If the Committee does not reach consensus, in order to move the implementation of EITI forward, it will use the sector-voting procedure detailed below in the section titled “Addressing Impasse.”
- D. Addressing Impasse.
1. If the Committee is unable to reach consensus as noted above, the Committee shall appoint at least one member from each Sector to deliberate on the issues outside of or between meetings, develop a recommendation or options for resolution, and bring such recommendations or options back to the current or following Committee meeting.

2. If the Committee remains unable to reach consensus, the Committee can use a sector-based voting procedure to resolve the impasse. If the vote occurs at an in-person meeting, the vote of a designated alternate shall count as the vote of the designating member. The sector-based voting procedure shall operate as follows:
  - a. All 21 primary Committee members will be represented in decision-making
  - b. The Committee will first attempt to achieve modified consensus consisting of two-thirds or greater majority of exercised votes within each sector (i.e., minus abstentions).
  - c. Simple majority voting within each sector is the least desirable preference and will only occur as a last resort. An issue shall be deemed passed if a simple majority of members from each of the three Sectors (government, industry, and civil society) votes in the affirmative. Decisions made by simple majority will be identified in the minutes as such, with recognition that simple majority decision-making is the least-desirable and lowest grade of decision, reflecting dissent by the MSG sector members.
  - d. If one Sector cannot reach a majority vote in favor of the issue in question, then the proposal or resolution is considered not passed and the Committee must work to develop alternative approaches to satisfy the interest of the Sectors in order to move the issue forward.
3. On matters of process (agenda setting, changing the agenda, sequencing issues, and other process decisions), should the Committee reach an impasse, the Chair, after consultation with the other Co-Chairs, will render a decision as to whether to move the proceedings forward. If there is a dispute about whether a matter is one of process or policy, that dispute will be resolved by a vote according to the sector-based voting outlining in section D.2 above.

## **VIII. Committee Meetings**

- A. Meeting Frequency: Meetings will be held at least quarterly until the first USEITI report has been published. Meetings will be organized by the DFO and her staff. All meetings will be conducted in accordance with the Federal Advisory Committee Act (FACA).
- B. Notification and Public Attendance: All meetings of the full Committee will be announced at least 15 business days prior to the meeting date in the Federal Register, the USEITI Committee website, and other outlets as determined by the Committee prior to the meeting. All Committee meetings will be open to the public, and alternatives such as dial-in numbers or webcasts will be made available whenever possible and provided to the public in advance of the meeting via the notification mechanisms listed above. All members of the public are welcome to attend Committee meetings.

- C. **Public Comment:** Opportunities for oral public comment will be provided at least once per Committee meeting. The Chair and Co-Chairs shall determine the time allotted for and procedure governing these comments. The Committee is not expected to respond to these comments during the oral public comment period. Members of the public will be permitted to file written comments to the Committee through the DFO, before or after meetings. Written comments will be reviewed and discussed by Committee members in the meeting as appropriate. Comments provided to the Committee will become part of the public record.
- D. **Agenda and other Committee meeting materials:** The Chair, in consultation with the Co-Chairs, is responsible for developing and distributing an agenda for all Committee meetings. The target timeframe for distribution of the Agenda and other Committee meeting materials is preferably two weeks but no less than one week prior to the meeting date. Paper copies of all documents will be supplied to all members. Meeting agendas and supporting documents will be developed in accordance with FACA and posted prior to each meeting for the public. The meeting agendas will lay out clear times for convening and adjourning each day and for major agenda items.
- E. **Caucuses:** Members may caucus by and among subgroups of Committee members outside of the meeting at any time, such as by sector. No Committee decisions, however, can be reached outside of full and public Committee deliberations.
- F. **Sector Protocols:** Each sector (civil society, government, and industry) may develop its own internal protocols for sharing information, meeting to develop positions, obtaining technical assistance and so forth.
- G. **Subcommittees:**
1. The Committee, with approval of the DFO and in consultation with the Co-Chairs, may form subcommittees or work groups to advance discussion, generate options, and develop preliminary proposals. Subcommittees or work groups must be created by the full Committee and have a clear purpose stated in the Committee meeting minutes when the Subcommittee or group is formed. The purpose of the Subcommittee cannot be modified, altered or expanded without full Committee consensus and opportunity provided to each Sector to modify its Subcommittee representatives in light of the revised Subcommittee purpose. A subcommittee or work group is not a decision-making body. Alternates may participate actively in subcommittees and work groups. Others may be invited to participate on subcommittees by agreement of the Co-Chairs.
  2. Each Subcommittee or work group must include at least one Committee primary member or alternate from each of the. Subcommittees and workgroups are not subject to the meeting notice or records requirements of the Committee. However, to encourage transparency, when the subcommittee reports out to the full Committee, it should summarize its meetings and activities for incorporation into the public record and should provide agendas, notes of meetings, and lists of attendees for the public record.

- H. **Technical Assistance:** Upon approval of the DFO, the Committee may accept technical assistance from its members' own organizations and may also seek technical assistance from representatives of other organizations. Technical advisors have no authority to make decisions on behalf of the Committee, nor can they report directly to the Department of the Interior. The Committee may invite technical advisors to make presentations at Committee meetings. Sectors may also choose to retain their own technical assistance.
- I. **Meeting Summary:** A summary or minutes of each Committee meeting as mandated by FACA will be prepared by the DFO or her designee and, after review and approval by the Committee, will be circulated to the MSG and made available to the public on the USEITI Committee website. A draft will be prepared by the DFO or her designee and distributed to the Committee within three weeks of a Committee meeting. Committee members will provide comments to their respective Committee Co-Chair within two weeks of receiving the draft and vote to approve the minutes at the next Committee meeting. accept change
- J. **Communication with and submittals to the EITI International Secretariat and Board:** The Committee notes that any official transmittals to the International Secretariat and/or Board (for instance, documents to meet timelines and compliance) from the Committee are conducted through the Secretary of Interior, the DFO or their designee. However, members or Sectors may communicate with the International Secretariat and/or Board directly as they feel necessary to seek clarity or better understanding of EITI.

## **IX. Committee Member Responsibilities**

All Committee members and alternates:

- A. Must act in good faith in all aspects of their deliberations. Good faith requires that individuals not represent their own personal or organization's views as the views of the entire Committee, and that the views and opinions they express in the Committee deliberations are consistent with the views they express in other forums.
- B. Commit to engage and participate productively with the MSG and work collaboratively in line with the USEITI requirements and workplan.
- C. Commit to the principles of consensus building, collaboration, decency, civility, and tolerance. Committee representatives must exercise leadership within their respective constituencies to foster a climate of joint problem solving on the Committee. Members should publicly engage with their constituencies to keep them informed and to seek their constituents' alignment and support, rather than to undermine the process. accept change
- D. Are expected to be present for the full meeting times and to be active and engaged. Cell phone calls, emails, and other unrelated activities should take place outside of Committee business at breaks, at lunch, and in the evenings. All cell phones and electronic communication devices should be turned off while the Committee is in session at the request of the Chair.

- E. Members will not attribute statements to individuals involved in this process, seek to present or represent the views or position of individual members or alternates, nor attempt to speak on behalf of the Committee as a whole without the consent of said members, alternates or the Committee.
- F. Will coordinate with the Chair and Co-Chairs on any media requests that require official information about Committee business or seek comment on behalf of the Committee. Such requests will be addressed by the Committee Chair, in consultation with the Co-Chairs. “Media” for these purposes includes: print; television and radio; websites; social media sites (Facebook, Twitter, etc.); and any other public information distribution mechanism. This does not restrict members or alternates from communicating their views of the views of their Sector.
- G. Will engage in orderly conduct of meetings.
  - 1. Poor attendance, lack of participation, not participating in good faith, or other significant violations of these operating procedures are grounds for the DFO to recommend to the Secretary that a member or alternate be removed from the Committee. If a member is removed, that seat may be filled by an alternate from the Sector, or with a newly appointed member, as recommended by the Sector. In replacing an alternate from the relevant Sector, the Sector may recommend a replacement, and the Secretary will make every effort to fill the seat to represent that interest within the FACA approval process for membership.
  - 2. Committee business will focus on EITI and revenue transparency. Committee members will not utilize Committee meetings as a venue for resolving disagreements or other concerns about non-EITI matters.

## **X. Committee Duration and Termination**

These operating procedures may be amended by the Committee and are subject to biennial review and will terminate two years from the date the Committee’s Charter is filed unless, prior to that date, the Charter is renewed under the provisions of Section 14(a)(2) of FACA. The Committee’s Charter is currently scheduled to end on August 13, 2015.

## **XI. Consistency**

These operating procedures are intended to be consistent with the Committee Charter, the Federal Advisory Committee Act, and all other applicable laws and regulations. In the event of any inconsistency or conflict FACA, other applicable laws and regulations, and the Committee’s Charter shall prevail.

In no event shall these Terms of Reference impair the legal right of any party to comment on any rulemaking to implement USEITI or seek to influence any legislation or other legal requirement to implement USEITI. These Terms of Reference do not impair any legal right of any party to seek judicial redress of any violation of any law, regulation, or other legal requirement associated with the implementation of USEITI.

## Appendix I

### **The EITI Principles as of November 1, 2011.**

The EITI Principles, agreed at the Lancaster House Conference in June 2003, provide the cornerstone of the initiative. They are:

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business,
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations.

### **The EITI Criteria**

Implementation of EITI must be consistent with the criteria below:

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

For more information on EITI requirements please see the EITI Rules:

[http://eiti.org/files/2011-11-01\\_2011\\_EITI\\_RULES.pdf](http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf)