

**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) 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 comprised 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 USEITI Committee (Committee).

III. Objective and Scope

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

- A. Develop 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 completion.
- B. 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.
- C. Undertake outreach activities, including through 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.

IV. 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 **have been 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 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 should be given only** 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, **and must be coordinated within each sector and communicated via the Co-Chairs to the Chair.**

V. 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 will approve all Committee and subcommittee meetings, prepare and approve all meeting agendas, attend all Committee 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.

VI. Decision-making

- A. Quorum: In order for the Committee to reach decisions, there shall be at least a majority of members present and at least three members 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* concurrence of the members, or in the absence of a primary member, his alternate, after Committee discussion. 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. Members should not block or withhold consensus unless they have serious objections to the proposal. Consent means that members can *accept*, even if reluctantly, the agreement that emerges. The goal of the Committee is to reach consensus, recognizing that not all members will be equally satisfied with the outcome.
 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 dissenting.
 4. 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 to move the proceedings forward.
 5. 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. The goal of the Committee is to develop recommendations to the Secretary on the implementation of USEITI. Recommendations should be made by consensus wherever possible. Recommendations may include a range of topics 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. On issues where consensus is reached, in the spirit of collaboration, and respecting the integrity of the Committee and its decision-making process, Committee members will refrain from intentionally and publicly undermining that consensus by opposing or commenting negatively on that consensus and will encourage their constituents to do the same.
4. If the Committee does not reach consensus, in order to move the implementation of EITI forward, it will use the sector-voting procedure detailed later in the section titled "Addressing Impasse."

D. Addressing Impasse.

1. If the Committee is unable to reach a consensus as noted above and is unable to move the issue or issues forward, the Committee shall appoint at least one member from each Sector, or the Chair and Co-Chairs, to deliberate on the issue outside of or between meetings, develop a recommendation or options for resolution, and bring such recommendations back to the current or following Committee meeting.
2. If the Committee remains unable to reach a final consensus and is unable to move the issue or issues forward, the Committee will use a sector-based voting procedure to resolve such impasses. The sector-based voting is as follows:
 - a. 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.
 - b. If one Sector cannot reach a majority vote on 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 parties in order to move the issue forward.
3. If the Committee cannot reach a decision either through consensus or sector voting, it may ask the DFO to forward to the Secretary the issue, a narrowed range of options, the

disadvantages and advantages of each, and the range of views on the matter. The Secretary, as the Senior Official for USEITI, may then make a decision within his/her authority in order to move the EITI process forward to meet the requirements for EITI candidacy and compliance.

VII. Committee Meetings

- A. Meeting Frequency: At least quarterly meetings will be held 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 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 and manner of 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 as appropriate. Comments provided to the Committee will become part of the public record.
- D. Agenda: The Chair, in consultation with the Co-Chairs, is responsible for developing an agenda for all meetings of the Committee that will be distributed ahead of time. Any papers to be discussed at the meeting will be circulated to Committee Members by email at least one week in advance of meetings. Paper copies of all documents will be supplied to all members. Each agenda 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 beginning and start times each day and major agenda items.
- E. Caucuses: Members may request caucuses by and among subgroups of Committee members at any time, such as by sector. No decisions, however, can be reached outside of full and public Committee deliberations.
- F. Sector Protocols: Each caucus or sector (civil society, government, and industry) may develop its own internal protocols for sharing information, meeting to develop positions, obtain technical assistance and so forth, as long as those protocols are in keeping with the intent and spirit of the Committee and EITI.
- G. Subcommittees:

1. The Committee, in consultation with the Chair and 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.** A subcommittee or work group is not a decision-making body. Alternates may participate actively in subcommittees and workgroups. Others may be invited to participate on subcommittees by agreement of the Co-Chairs.
2. **At least one Committee primary member** or alternate from each of the sectors **must be selected to serve in a subcommittee and workgroup.** 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.**

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, which will be fully within the purview of the Sector, and not the Committee as a whole.**

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 made available** to the public on the USEITI Committee website. The minutes will generally be written without attribution to particular individuals. 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 within** two weeks of receiving the draft **and approve** the minutes at **or before** the next Committee meeting.

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) are conducted through the Secretary of Interior, the DFO or their designee.**

VIII. Committee Member Responsibilities

All Committee members and alternates:

- A. Must act in good faith in all aspects of their deliberations. **Members agree that proposals made and ideas discussed in Committee meetings and candid problem solving conversations will not be used against any other member in future litigation or public relations.** 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 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 **ensure their constituents support, rather than undermine**, the process.
- C. 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**.
- D. **Will not attribute statements to others involved in this process, seek to present or represent the views or position of other 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.**
- E. 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. **Committee members will abide by these operating procedures in all communications during this process in and out of Committee meetings.**
- F. 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 will be filled by an alternate from the Sector, 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, **and is not intended to serve as a forum for other tangential issues**. Committee members will not utilize Committee meetings as a venue for resolving disagreements or other concerns about non-EITI matters.
 - 3. **The Committee may recommend to the DFO or Co-Chairs sanctions for violations of these operating procedures.**
- G. May withdraw from the deliberations at any time by notifying the DFO and Co-Chairs in writing, **as long as the member has made every effort to address the concerns or issues he or she has raised to the Committee.**

IX. Sectoral Responsibilities: While the individual Committee members must adhere to the responsibilities stated above, each sector should recognize that it has sectorial responsibilities and should agree upon the following:

A. The United States Government has the responsibilities to:

1. Lead the USEITI implementation, commit to engage and participate productively with the MSG and work collaboratively in line with USEITI requirements and work plan
2. Commit and manage government funding to the USEITI budget, and mobilize resources to support the USEITI, including creation of a USEITI Secretariat
3. Conduct tribal consultation

B. The Industry sector has the responsibilities to:

1. Commit to engage and participate productively with the MSG and work collaboratively in line with USEITI requirements and work plan
2. Commit to perform in line with the USEITI requirements and work plan
3. Agree to disclose payments to the government with the agreed reporting templates in accordance with U.S. laws and regulations.
4. Agree to commit to work cooperatively with the independent reconciler and respond positively to any request made by the administrator

C. The Civil Society sector has the responsibilities to:

1. Commit to engage and participate productively with the MSG and work collaboratively in line with USEITI requirements and work plan
2. Commit to take a leading role in ensuring the EITI accountability function is exercised in a responsible and constructive manner in the implementation of the initiative
3. Ensure that its members are fully engaged in monitoring the implementation of the USEITI work plan and the overall implementation of the initiative

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 and all applicable laws and regulations. In the event of any inconsistency or conflict, the statute, regulation, or the Committee's Charter shall govern.

XII. Signatures