

## United States

## EITI Annual Activity Report 2014

### 1. General assessment of year's performance:

*In accordance with requirement 7.2(a)(i), provide a short summary of EITI activities undertaken in the previous year. The multi-stakeholder group may wish to outline how these activities relate to the objectives in the workplan.*

On March 19, 2014, the United States (US) achieved 'Candidate' country status under the Extractive Industries Transparency Initiative (EITI). This highlights the US's commitment to implementing EITI and to enhance transparency and good governance of extractive sector revenues, both domestically and globally.

As part of the ongoing effort, the USEITI MSG met four times in 2014, as well as conducting ongoing work by the USEITI subcommittees: Implementation, Communications, and State and Tribal Opt-In, along with the various working groups of these subcommittees. The MSG meetings were open to the public, with meeting materials posted online two weeks in advance of each meeting, and meeting summary materials posted following each meeting. In addition, members of the public were able to observe and participate in meetings remotely via video conference and telephone, and they were given opportunities on each day of the meetings to provide public comment to MSG members.

Following the creation and the MSG's approval of the Terms of Reference for the Independent Administrator (IA) and a competitive bidding process, the USEITI MSG also secured the services of Deloitte & Touche, LLP, (Deloitte) as the Independent Administrator of the USEITI process. The MSG worked with the IA to make sure that the IA team reflected the capacities and qualifications outlined in the Terms of Reference and endorsed the IA at the December 2014 MSG meeting. After coming on board, the Independent Administrator produced a quality control plan, a program management plan, and the Inception Report.

The MSG and other members of the USEITI team also conducted public outreach to diverse constituencies, as we outlined in the USEITI Communications and Outreach Plan. USEITI's key outreach goals for 2014 included conducting outreach to industry to encourage their involvement in the USEITI process, conducting outreach to States and Tribal governments to encourage their participation in USEITI, keeping Congress informed on U.S. implementation efforts, and educating all stakeholders about the benefits of US implementation of EITI.

The MSG also worked hard to collaboratively make a number of substantive decisions necessary to implement USEITI. Among these, the MSG decided to use company level reporting for its December 2015 report, with the goal of arriving at an agreement to use project-level reporting for its December 2016

report, following the promulgation of rules under Section 1504 of the Dodd-Frank Act by the US Securities and Exchange Commission. A second key decision that the MSG made was that USEITI reporting would include corporate income tax payments for the December 2015 USEITI report and that companies would be encouraged to allow the Internal Revenue Service (IRS) to reconcile those tax payments. A third key decision was reaching consensus on the content of the contextual narrative for the USEITI 2015 Report and the sources that would be used to develop the contextual narrative.

The USEITI MSG also worked hard to develop an opt-in procedure for sub-national entities—States and Tribal governments—to join USEITI reporting. This effort consisted of identifying promising candidates and conducting outreach in the form of correspondence from the Secretary of the Interior and presenting at conferences and other events to provide information about USEITI and its potential benefits. By the end of 2014, this outreach effort succeeded in having two States join the USEITI MSG, establishing contact with six other States, initiating the process to have a Tribal member join the USEITI MSG, and establishing contact with three other Tribes.

Finally, 2014 concluded on a high note for USEITI: the Department of the Interior (DOI) launched the Natural Resources Revenue online data portal (<https://useiti.doi.gov/>) at the December 2014 MSG meeting. The portal provides a valuable resource for data about extractives industry in the US. As part of the initial launch, and for the first time, the US unilaterally disclosed calendar year 2013 revenues paid to and collected by the Office of Natural Resources Revenue (ONRR) by company, revenue type, and commodity. The portal's user-friendly, interactive design allows members of the public to easily navigate and access information and data. The data portal is also a premiere resource for credible data and information on extractive resources published by other Federal agencies, such as the Energy Information Administration (EIA) and the U.S. Census Bureau. The portal's data sets and visualizations can also be reused for strategic reporting, re-posting, and sending through social media, thus further informing the debate on the extractives industry.

The various activities and accomplishments outlined above take important steps to further the US national objectives for implementing the EITI standard, including the objectives stated in the 2014 USEITI Workplan:

- Lead globally by example
- Increase citizen participation
- Increase collaboration
- Increase government transparency
- Enhance public access to information
- Improve management of public resources
- Give the public a more informed voice in shaping policies affecting natural resource policy development

For example, the MSG's collaborative decision-making process and efforts to bring more stakeholders and sub-national jurisdictions into USEITI increased collaboration and citizen participation in government policymaking. The launch of the online data portal is a prime example of how USEITI is already, even before publishing its first report, increasing government transparency and public access to information. Each step that USEITI takes toward implementation is a step forward in improving the management of public resources in the United States.

## **2. Assessment of performance against targets and activities set out in the workplan:**

*Provide an assessment of progress with achieving the objectives set out in its workplan (Requirement 1.4), including the impact and outcomes of the stated objectives (requirement 7.2(a)(iv)).*

*The multi-stakeholder group may wish to*

- List the objectives and targets set out in the workplan, and indicate progress in achieving these.*
- Outline the activities in the workplan, including a description of whether these activities were fulfilled. Include any further activities that were not foreseen in the workplan but contributed to the wider targets.*

The goals of the USEITI 2014 Workplan are listed below, followed by steps that we have taken toward completing each goal:

**Goal: Hold four MSG meetings that are open to the public and that a neutral, third party facilitates (EITI Requirement 1):**

- The MSG held four meetings on the following dates: April 23–24, June 10–11, September 9–11, and December 10–11, 2014. We published advance public notice of the meetings in the Federal Register (Vol. 79, No. 47) on Tuesday, March 11, 2014, and posted on the website ([www.doi.gov/eiti](http://www.doi.gov/eiti)).
- A neutral facilitation firm, the Consensus Building Institute, facilitated each MSG meeting.
- We posted materials for the meetings two weeks in advance of each meeting. We posted these materials on the USEITI website ([www.doi.gov/eiti/FACA](http://www.doi.gov/eiti/FACA)). Following the meetings, we posted the results of the meetings and meeting summaries on the same website.
- Members of the public had the opportunity to observe MSG meetings and to provide public comment at meetings. The public could observe in person or via the use of domestic and international conference lines and the WebEx video conferencing service.

**Goal: Approve the terms of reference for the Independent Administrator (EITI Requirement 5):**

- After the USEITI Program Office published a Request for Information regarding the Independent Administrator in February 2014, the Implementation Subcommittee of the MSG provided a recommended Terms of Reference to the full MSG at the April 2014 MSG meeting. The MSG approved this Terms of Reference at that meeting.

**Goal: Hire the Independent Administrator or reconciler by the September MSG Meeting (EITI Requirement 5):**

- The US Department of the Interior signed a contract with the USEITI Independent Administrator, Deloitte & Touche, LLP, in August 2014.
- At the September 2014 MSG meeting, the MSG provisionally endorsed the IA, contingent on them incorporating core team members with demonstrated experience with development issues.
- Between October and December 2014, the IA produced a quality control plan, a program management plan, and the Inception Report.
- The MSG provisionally endorsed the IA at the December 2014 meeting.

- The IA meets bi-weekly with the USEITI Secretariat staff for regular check-ins and status updates, produces a monthly status report, and actively participates in MSG Subcommittee strategic planning and implementation activities. In addition, the IA provides updates to the MSG Co-chairs, as requested.

**Goal: Develop and begin implementing a 2014/2015 Communications and Outreach plan (EITI Principles of transparency, accountability, and engagement):**

The Communications Subcommittee met regularly throughout 2014 to develop, update, and implement the USEITI Communications and Outreach Plan. An integral part of the implementation process is outreach to encourage industry involvement in the EITI process, to encourage the States and Tribal governments to participate in the process, to keep Congress informed on US implementation efforts, and to educate all stakeholders about the benefits of US implementation of EITI. The following specific activities and types of outreach occurred in 2014:

- Maintain the permanent USEITI website ([www.doi.gov/eiti/](http://www.doi.gov/eiti/)) to enhance public access to information and to increase transparency by providing relevant information for the American public regarding USEITI and MSG meetings
- Outreach to States and Tribes, as described below under “Discuss and decide options for State and Tribal outreach and opt-in processes”
- Outreach to Congress, including to the House Natural Resources Subcommittee, the Senate Committee on Energy and Natural Resources, to personal staff of relevant Senate and House committee members, and to the Congressional Research Service, to promote broader dissemination of information among members of Congress regarding the positive value of USEITI implementation.
- Publishing of *Federal Register* Notices in 2014, including:
  - **March 11, 2014:** Notice of MSG Meetings for 2014: announced the upcoming MSG meetings for the 2014 calendar year, publishing dates, times, and locations
  - **July 8, 2014:** Notice of MSG Meeting Change: published the location and date change of two meetings that we originally published in the March 11, 2014, *Federal Register* publication
  - **July 14, 2014:** Request for Tribal Nominees: solicited nominees to represent Tribal governments and individual Indian mineral owners to fill two vacancies in the Government sector. As a result, the government sector filled one of two vacant tribal government seats in January 2015.
  - **August 21, 2014:** Renewal of the USEITI Committee: certification of the Secretary of Interior that USEITT is necessary and is in the public interest in support of the Open Government Partnership
  - **December 18, 2014:** Revenue Information Collection Request: solicited comments for a proposed collection on revenue information from extractive companies who meet payment thresholds There were no public comments in response to the notice. However, ONRR staff attended several meetings with industry members and the Independent Administrator to discuss the ongoing efforts to meet all EITI requirements in order to ensure the U.S. becomes an EITI Compliant Country. These efforts resulted in an overall agreement of the creation of the USEITI form.
  - **December 24, 2014:** Request for Nominees: sought nominations for individuals to be Committee members or alternates to represent stakeholder constituencies from government, civil society, and industry to fill current vacancies and to create a roster of

candidates in case of future vacancies As a result the USEITI received eight additional nominees.

- **Outreach to extractives industry:**
  - **June 2014:** USEITI sent a “Dear Payor” letter to all extractives companies that make payments to the US Government informing them about USEITI and requesting feedback regarding payor code consolidation. A “payor” is an entity who reports and pays to ONRR. Through the consolidation process, ONRR assigned payors to their parent company.
  - **November 2014:** The US Secretary of the Interior sent a letter to the CEO of every reconciling company encouraging their participation in USEITI, including the reconciliation process. Industry associations represented on the MSG (American Petroleum Institute, Independent Petroleum Association of America, and National Mining Association) conducted further outreach to companies targeted for reconciliation following this letter.

**Goal: Discuss and prioritize options for company and project level reporting, tax disclosure, and contextual information requirements (EITI Requirements 2 and 3):**

In order to develop and prioritize options for company and project level reporting, tax disclosure, and contextual information requirements, the MSG directed the Implementation Subcommittee to develop recommendations. The Implementation Subcommittee, in turn, formed three workgroups: the Company and Project Level Reporting Workgroup, the Taxes and Accounting Period Workgroup, and the Contextual Narrative Workgroup. These three workgroups were made up of members from all three sectors and worked collaboratively to develop recommendations for the Implementation Subcommittee’s and the full MSG’s consideration. Outcomes of those Committees include the following:

- **Company and project level reporting:**
  - The Company and Project Level Reporting Workgroup of the Implementation Subcommittee worked throughout 2014 to develop a recommended definition of “project” that the MSG could agree upon for project-level reporting. With the US Securities and Exchange Commission still deliberating about the rules under Section 1504 of the Dodd-Frank Act, the Company and Project Level Reporting Workgroup did not reach agreement about a definition for “project.” The workgroup will continue its efforts to provide a recommendation on project-level reporting to the MSG in 2015. In the meantime, the MSG agreed to use company level reporting for the December 2015 USEITI Report.
- **Tax disclosure:**
  - The Taxes and Accounting Period Workgroup of the Implementation Subcommittee met in November 2014 for a day-long facilitated discussion to determine how companies would report their corporate income tax payments for reconciliation. During this meeting, the workgroup considered two options. Option one would encourage firms to report and reconcile their aggregated annual Federal corporate income tax payments, while option two would encourage firms to report—but not reconcile—these payments. The Taxes and Accounting Period Workgroup recommended the encouragement of firms to report their federal income taxes (Option 2) for the first US EITI report. In addition, the workgroup recommended that the IA determine the willingness of first-year reporters to participate in an income tax reconciliation process inclusive of authorization to the Internal Revenue Service to release needed corporate income tax payment data.
  - At the December 2014 meeting, the MSG agreed to the following provisions with regard to corporate reporting and reconciliation of income taxes in the December 2015 USEITI Report:

- The USEITI MSG will request companies to report the sum of all corporate income tax payments/refunds made in a calendar year by, or on behalf of, all of the companies included in the annual consolidated Federal income tax return. The IA will report on which companies participated in tax reporting and which ones did not.
  - The USEITI MSG will encourage companies to participate in reconciliation of corporate income tax payments and refunds. The IA will positively highlight those companies that choose to have their participation in reconciliation highlighted.
  - In addition, the MSG asked the Independent Administrator to assess the willingness of companies to reconcile their corporate income tax payments. This outreach began in February 2015 and continued through June 2015.
- **Contextual information requirements:**
    - The Contextual Narrative Workgroup of the Implementation Subcommittee worked through most of 2014 to develop an outline for the Contextual Narrative portion of the USEITI Report, including a full-day facilitated discussion in July of 2014. The USEITI MSG approved the contextual narrative outline at the September 2014 MSG meeting. The Contextual Narrative Workgroup also met with the Independent Administrator to provide the latter with an outline of the contextual narrative, detailing both required and recommended subsections. The IA subsequently advised the MSG as to the feasibility of the “recommended” portions of the contextual narrative, in its Inception Report.

**Goal: Discuss and decide options for State and Tribal outreach and opt-in processes (EITI Requirement 4):**

- At the June 2014 MSG meeting, the State and Tribal Opt-in Subcommittee highlighted the States and Tribes that could be a good fit for USEITI, in terms of the commodities extracted in those jurisdictions and the attendant revenues derived. The list of States and Tribes was developed during the May 22 & 29, 2014, subcommittee meetings.
- The State and Tribal Opt-in Subcommittee collected detailed data to determine the amount of publicly available data that is currently available for target States and presented its findings at the September 2014 MSG meeting.
- The State and Tribal Opt-in Subcommittee drafted a “Dear Governor” letter, which the MSG approved, from Secretary Jewell to 18 key extractive State governors. The letter updated the States on the progress of USEITI and asked for the opportunity to coordinate with a State representative.
- The State and Tribal Opt-in Subcommittee drafted a “Dear Tribal Leader” letter that the MSG approved; the USEITI Program Office sent it to all registered Tribes. This letter was sent to inform Tribes about USEITI and to give them an opportunity to voice their questions and concerns.
- Department of the Interior staff participated in the following events as part of the outreach to States and Tribes in 2014:
  - National Congress of American Indians conferences (June and October 2014)
  - US Energy Information Administration conference (July 2014)
  - Interstate Mining Compact Commission conference (October 2014)
  - Interstate Oil and Gas Compact Commission conference (October 2014)
  - State and Tribal Royalty Audit Committee meeting (November 2014)
- As of December 2014, outreach to States and Tribes resulted in the following types of contact and participation in USEITI:
  - The States of Wyoming and California have representatives who are now members of the USEITI MSG.

- The States of Colorado, Kentucky, Montana, and Pennsylvania formally responded to the Dear Governor letter.
- The States of Alaska and North Dakota have made some contact with at least one MSG member.
- Claire Ware of the Shoshone & Arapaho Tribes was in process to become an MSG member. The Secretary appointed Claire Ware to the MSG in January 2015.
- Representatives from the Southern Ute Tribe, the Ute Tribe, and a Tribal community member from the Three Affiliated Tribes have made contact with MSG members.

**Goal: Develop and deploy an on-line, interactive data pilot for Federal natural resource revenue contextual information and the ONRR unilateral disclosure that will capture 100% of “in scope” revenues including Oil, Gas (including NGLs), Coal, Geothermal, Onshore & Offshore Renewables, Other Leasable Minerals, Non-Fuel (Hardrock) Minerals, and all other revenue reported to ONRR . The publicly sourced narrative and unilateral disclosure are significant improvements to the information that is currently available to the public (EITI Requirement 6):**

- ONRR created a Unilateral Disclosure Report of ONRR revenue data by company and presented this report to the MSG at the April 2014 MSG meeting.
- A team from the US Department of the Interior and the US General Services Administration 18F Program developed an online data portal to provide accurate, reliable, and verifiable data that is accessible and user-friendly. The online data portal was launched for public access in December 2014 and is available at [useiti.doi.gov](http://useiti.doi.gov). The portal currently features unilaterally-disclosed data from ONRR, and leadership from the US Department of the Interior has been conducting outreach to other Interior bureaus (Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, and Office of Surface Mining Reclamation and Enforcement) to include data from those agencies in future updates of the portal.

### 3. Assessment of performance against EITI requirements

<p><i>Provide an assessment of progress in meeting and/or maintaining compliance with each of the EITI requirements (requirement 7.2(a)(ii)). This should include any actions undertaken to prepare for implementation of the EITI Standard, including addressing issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12).</i></p> <p><i>The multi-stakeholder group may wish to conduct a requirement-by-requirement assessment using the table below.</i></p>	
<b>Requirements:</b>	<b>Progress:</b>
1.1 - The government is required to issue an unequivocal public statement of its intention to	On September 20, 2011, while in New York for the United Nations General Assembly, President Barack Obama gave an address to the Open Government Partnership, where he committed to implement the EITI in the US: “We’re continuing our leadership of the global effort against corruption, by building on legislation that now requires oil, gas, and mining companies to disclose the payments that foreign governments demand of them. Today, I can announce that

implement the EITI.	the United States will join the global initiative in which these industries, governments and civil society, all work together for greater transparency so that taxpayers receive every dollar they're due from the extraction of natural resources."
1.2 - The government is required to appoint a senior individual to lead the implementation of the EITI.	On October 25, 2011, the White House announced the appointment of the Secretary of the Interior (Secretary) as the senior US official responsible for successful US implementation of EITI. The Secretary delegated USEITI implementation responsibilities to the Assistant Secretary for Policy, Management and Budget to serve as National Coordinator and Chair of the MSG. The Deputy Assistant Secretary for Natural Resources Revenue Management, Paul Mussenden, who reports to the Assistant Secretary, was appointed Deputy National Coordinator and alternate Chair for USEITI and is tasked with the day-to-day management of USEITI implementation.
1.3 - The government is required to commit to work with civil society and companies, and establish an MSG.	<p>The US Government conducted outreach and established an MSG in 2012 consisting of eight representatives each from the industry and civil society sectors, along with alternates, and five representatives from the government sector, thereby leaving seats open for State and Tribal representatives to join the government caucus. Since that time, two State representatives and a Tribal representative have joined the MSG.</p> <p>During 2014, the USEITI Secretariat filed for the renewal of the USEITI charter under the US Federal Advisory Committee Act. In addition, Ms. Claire Ware of the Shoshone &amp; Arapaho Tribes became the first Tribal representative to the USEITI MSG.</p>
1.4a - The workplan must: a) Set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries. Multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation....	<p>The US national objectives for implementing the EITI standard are rooted in the fundamentals of the Open Government Partnership, predicated on nobody having a monopoly on wisdom; the importance of civil society and the private sector having significant inputs into the decision making that governments do; and predicated on a philosophy that we have a responsibility to advance the interests of our citizens. The national objectives are to:</p> <ul style="list-style-type: none"> <li>• Lead globally by example</li> <li>• Increase citizen participation.</li> <li>• Increase collaboration.</li> <li>• Increase government transparency.</li> <li>• Enhance public access to information.</li> <li>• Improve management of public resources.</li> <li>• Give the public a more informed voice in shaping natural resource policy development.</li> </ul> <p>In addition to reconciliation, the US intends, as part of its EITI process, to provide additional data, where meaningful and feasible. These disclosures are intended to provide an unprecedented level of detail about revenue collections and reporting, demonstrating a robust and credible transparency framework. This additional data will include a publicly-sourced narrative and unilateral disclosure of government revenue collection records.</p>

<p>1.4b - The workplan must: b) Reflect the results of consultations with key stakeholders, and be endorsed by the multi-stakeholder group.</p>	<p>The Workplan Workgroup, a sub-unit of the Implementation Subcommittee, developed and regularly updates the workplan. The workgroup is made up of members from all three sectors represented on the MSG. The USEITI MSG reviews the workgroup's recommended workplan at each MSG meeting, revises it as needed, and endorses the updated workplan.</p>
<p>1.4c - The workplan must: c) Include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired objectives that have been identified during the consultation process. The workplan must: i. Assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation. ii. Address the scope of EITI reporting, including plans for</p>	<p>The workplan is structured around measurable and time-bound activities to achieve the agreed objectives.</p> <p><i>Capacity constraints:</i> In addition to the challenges identified in the 2014 Workplan, the MSG work in the past year has highlighted the following: Because MSG members from the civil society and industry sectors are volunteers, these sectors face significant and ongoing time and budget constraints that impact their ability to sustain meaningful participation levels. Civil society representatives are also having to conduct their EITI work without funding, as the traditional foundation funding sources for EITI internationally are not funding USEITI. In addition, for most government sector members and support staff, USEITI participation is collateral to their full-time duties and hence these members face similar resource constraints. Finally, the ongoing constrained and volatile federal budget environment will continue to impact the government's ability to meet implementation objectives. These circumstances will require continued careful management of resources and constant re-calibration of desired outcomes.</p> <p><i>Scope of USEITI reporting:</i> The commodities deemed to be within the scope of USEITI and to be included in the first USEITI report are oil, gas, coal, other leasable minerals, non-fuel minerals (such as hard rock, sand, and gravel), geothermal, solar, and wind. From this list, payments to the US Department of the Interior for oil, gas, coal, other leasable minerals, and non-fuel minerals, where they meet the materiality definition agreed upon by the MSG, will be independently reconciled. Payments (or payment information) from all in-scope commodities will be unilaterally disclosed by the Department of the Interior. Other resources that have been tabled for further discussion and potential inclusion in the second USEITI report are forestry and fisheries. Government and company disclosure and third party reconciliation will compare data from companies on their payments to the government with data from the government on revenues collected from the companies. USEITI Reports will include a reconciliation of US Federal Government Department of the Interior revenues, such as rents, royalties, bonuses, and fees collected by the Bureau of Land Management (BLM), Office of Natural Resources Revenue, and the Office of Surface Mining Reclamation and Enforcement (OSM) for in-scope commodities within a reporting materiality threshold. The materiality threshold that the MSG established will balance the scale of reconciliation and the feasibility of compliance with the value of the collected</p>

<p>addressing technical aspects of reporting, such as comprehensiveness and data reliability (Requirements 4 and 5).</p> <p>iii. Identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, including, if applicable, any plans to incorporate the EITI Requirements within national legislation or regulation.</p>	<p>data. The reconciliation process is intended to start at a level that will reconcile approximately 80% of all revenues within the scope that DOI received for the first year and to increase to 90% of such revenues in the second year.</p> <p><i>Legal or regulatory obstacles:</i></p> <p>There are a variety of legal obstacles to EITI implementation in the US, and plans to deal with these obstacles were included in the USEITI Candidacy Application. A summary of these obstacles and plans is as follows:</p> <ul style="list-style-type: none"> <li> <p><b>Potential legal obstacle 1:</b></p> <p>The Trade Secrets Act (TSA) governs the types of information that the US government can disclose. So long as MSG proposals for defining company or project-level reporting are consistent with the TSA, DOI may disclose reported revenues at a company or project level to a third-party reconciler, and the information can then be made public.</p> <p><b>Plan to address obstacle 1:</b></p> <p>The first USEITI report, to be published in December 2015, will follow the first part of Section 5.2e of the EITI Standard that states: "It is required that EITI data is presented by individual company, government entity and revenue stream." In addition, the MSG will continue working to prepare a project definition recommendation that satisfies the requirements of Section 5.2e for use in the second USEITI report (to be published in December 2016).</p> </li> <li> <p><b>Potential legal obstacle 2:</b></p> <p>Potential legal constraints were identified with respect to tax reporting: 1.) Section 6103 of the Internal Revenue Code (IRC) provides that tax returns and tax return information are confidential and prohibited from disclosure, unless an exception identified in the IRC applies; 2.) the Privacy Act of 1974 only allows the IRS to gather information that is used for tax administration purposes. If the IRS were to collect information or develop new systems and processes for EITI, these actions would need to support tax administration objectives consistent with the Privacy Act.</p> <p><b>Plan to address obstacle 2:</b></p> <p>For the first USEITI report, to be published in December 2015, the MSG will request that companies report the sum of all corporate income tax payments/refunds made in a calendar year by or on behalf of all of the companies included in the annual consolidated Federal income tax return. In addition, the MSG will encourage companies to participate in reconciliation of their corporate income tax payments.</p> </li> <li> <p><b>Potential legal obstacle 3:</b></p> <p>Rule 4.2(d) and (e) of the May 2013 EITI Standard requires Implementing Countries to report on subnational revenues from oil, gas, and mining. There are, however, significant practical barriers resulting from the size and complexity of the State extractive sector.</p> <p><b>Plan to address obstacle 3:</b></p> <p>USEITI reporting will exceed Rule 4.2(e)'s requirements by reporting 100% of extractives-specific revenues that the Federal government collects and transfers to States, as the law requires. In addition, USEITI reporting will</p> </li> </ul>
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	<p>partially comply with Rule 4.2(d)'s requirement to disclose material extractive revenues that States directly collect through a two-phased approach: under Phase I of USEITI's implementation of Rule 4.2(d), publically-available information about State extractives revenue collection will be included in USEITI reports; Phase II of Rule 4.2(d) implementation involves encouraging States to fully participate in USEITI through a voluntary "opt-in" process.</p> <ul style="list-style-type: none"> <li>• <b>Potential legal obstacle 4:</b> The US has a unique legal and political relationship with Native American Tribes and Alaska Native entities, as provided by our Constitution, Indian treaties, court decisions, executive orders, and Federal statutes. As such, Tribes must independently decide whether and how to participate in USEITI.</li> </ul> <p><b>Plan to address obstacle 4:</b> The MSG intends to continue outreach with Tribal governments and communities and will seek their input on whether and how to design a process for Tribes to voluntarily participate and opt-in to reporting with Tribal data. In the interim, USEITI reporting regarding revenues from Tribal lands will be limited to the unilateral and unreconciled disclosure of the aggregate revenues collected on behalf of the Tribes, which DOI publishes annually under existing authorities.</p>
<p>1.4d - The workplan must: d) Identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan. <a href="#">?</a></p>	<p>Per the USEITI Advisory Committee Charter, ONRR provides the financial support for the Committee. The committee charter specifies available funding of \$775,000 annually. This estimated amount includes funding for:</p> <ul style="list-style-type: none"> <li>• MSG Committee meetings.</li> <li>• Travel of MSG members to MSG meetings.</li> <li>• Use of a process facilitator to support the collaborative nature of the international EITI requirements.</li> <li>• Production of the USEITI report.</li> <li>• The cost associated with the Independent Administrator, as the international EITI requirements mandate.</li> </ul>
<p>1.4e - The workplan must: e) Be made widely available to the public, for example published on the national EITI website and/or other relevant ministry and agency</p>	<p>Regularly-updated versions of the USEITI workplan are available at the US government's website for the USEITI process: <a href="http://www.doi.gov//EITI">http://www.doi.gov//EITI</a>.</p>

websites, in print media or in places that are easily accessible to the public. ②	
1.4f - The workplan must: f) Be reviewed and updated annually. ②	The workplan is updated by the Workplan Workgroup, a subunit of the Implementation Subcommittee of the USEITI MSG, on a continual basis and at least as often as the holding of quarterly MSG meetings.
1.4g - The workplan must: g) Include a timetable for implementation that is aligned with the reporting and Validation deadlines established by the EITI Board (see 1.6), and that takes into account administrative requirements such as procurement processes and funding. ②	The timetable for implementation included in the workplan is consistent with the reporting and validation deadlines that the EITI board established. USEITI will submit its first report to the Board in December 2015.
2.1 - Implementing countries are required to produce their first EITI Report within 18 months of being admitted as an EITI Candidate. Thereafter, implementing countries are expected to produce EITI Reports on an annual basis.	USEITI will produce its first report in December 2015 and its second report in December 2016. The MSG and the Independent Administrator are on track with their 2015 workplan to submit the first USEITI report in December 2015.
2.2 - EITI Reports must cover data no older than the	The first USEITI Report, to be published in December 2015, will cover 2013 data.

second to last complete accounting period.	
2.3 - The multi-stakeholder group is required to agree the accounting period covered by the EITI Report.	The MSG referred for consideration and recommendation the issue of determining the accounting period that the EITI Report will cover to the Taxes and Accounting Period Workgroup of the Implementation Subcommittee. The workgroup recommended that the MSG adopt the calendar year as the accounting period for EITI reporting. The MSG formally adopted the calendar year as the accounting period for reporting at the September 2014 MSG meeting.
3.1 - The multi-stakeholder group should agree on the procedures and responsibilities for the preparation of the contextual information for the EITI Report. The information should be clearly sourced.	<p>The Contextual Narrative Workgroup of the Implementation Subcommittee worked through most of 2014 to develop an outline for the Contextual Narrative portion of the USEITI Report, including a full-day facilitated discussion in July 2014. The USEITI MSG approved the contextual narrative outline at the September 2014 MSG meeting. The Contextual Narrative Workgroup also met with the Independent Administrator to provide the latter with an outline of the contextual narrative, which the MSG approved, that detailed both required and recommended subsections. The IA subsequently advised the MSG as to the feasibility, in terms of time and budget, of including the “recommended” portions of the contextual narrative, in its Inception Report.</p> <p>The agreed-upon outline for the contextual narrative of the 2015 report is available at:  <a href="http://www.doi.gov/eiti/FACA/upload/USEITIMSGContextual_Narrative_matrix_WG_22Julyfinal.pdf">http://www.doi.gov/eiti/FACA/upload/USEITIMSGContextual_Narrative_matrix_WG_22Julyfinal.pdf</a>.</p>
3.2 - The EITI Report must describe the legal framework and fiscal regime governing the extractive industries.	<p>The USEITI report will provide a national overview of the legal framework (statute, regulation, policy) for the US fiscal regime by commodity, including such items as fair market value determination for lease sales, royalty and tax rates, tax expenditures, and revenue policy provisions (royalty relief and other deferred revenues, such as the percentage depletion allowance).</p> <p>The USEITI report will also provide a national overview of the types of legal frameworks and fiscal regimes in the States that the MSG has identified as important for each commodity (including any exemptions for certain commodities). Relevant fiscal regulatory processes and pathfinders (links) to the States that have been identified as important for each commodity (including exemptions for certain commodities) will be provided and will focus on the States that the MSG prioritized. The fiscal regime in the US is quite complex, including many subnational entities. In 2015, the IA and MSG will need to further discuss the scope for this section and the level of detail that will be appropriate.</p> <p>The USEITI report will also provide a general description of the Federal fiscal and legal regime in the Tribal context, including the flow and control of revenues, the approval process for extractive industry agreements on Tribal land, and the processes that the Federal government uses to track production and track and</p>

	<p>manage revenues, Federal databases used to track production and revenues, and the kinds of information held in these databases. The USEITI report will describe the US trust responsibility and confidentiality/proprietary constraints on Tribal data.</p> <p>The USEITI report will also provide details for any State or Tribe that opts-in.</p> <p>The USEITI report will describe the latest status of the rulemaking process under Section 1504 of the Dodd-Frank Act and other laws, as appropriate.</p>
<p>3.3 - The EITI Report should provide an overview of the extractive industries, including any significant exploration activities. ☐</p>	<p>The USEITI report will provide an overview of exploration activities and emerging trends, each in-scope commodity, and each commodity at national and subnational scales.</p> <p>Sector summaries will provide an explanation of terminology and an overview of reputable data sources in a way that is designed for ordinary citizens who lack knowledge about the extractives industries and about governance systems for the extractives industries.</p> <p>Several aspects of the extractive industry overview contemplated by this requirement is already available on the USEITI Data Portal at <a href="http://useiti.doi.gov/sectors/">useiti.doi.gov/sectors/</a>.</p>
<p>3.4a - The EITI Report must disclose: a.) Size of the extractive industries in absolute terms and as a percentage of GDP, including an estimate of informal sector activity.</p>	<p>The USEITI report will disclose the size of the extractives industries in absolute terms and as a percentage of GDP, by commodity, at each of the following scales: National, Federal, Tribal, and Subnational (when publically available). The availability of data will likely vary from State to State and county to county.</p> <p>For illustrative purposes, the report will show the highest government revenue counties (including all Federal, State, and county revenues) for each of oil, gas, coal, copper, iron ore, and gold (six counties in total), as well as the revenue/production data in each of those counties over the last 10 years. The intent is to carry these counties over to subsequent USEITI reports to illustrate trends.</p> <p>The USEITI report will provide an estimate of informal sector activity.</p>
<p>3.4b - The EITI Report must disclose: b.) Total government revenues generated by the extractive industries in absolute terms and as a percentage of</p>	<p>The USEITI report will disclose the extractives industry's public revenues by commodity, including royalties, bonuses, fees, and other payments. It may not be feasible to disclose tax revenue by commodity, as this information is generally not publicly available. Where revenues are associated with more than one commodity or activity (such as corporate income taxes), revenues may be reported at a more aggregate level. Extractive industry revenues will also be reported as a percentage of total government revenues.</p>

total government revenues.	
3.4c - The EITI Report must disclose: c.) Exports from the extractive industries in absolute terms and as a percentage of total exports.	The USEITI report will disclose exports from the extractives industry in absolute terms and as a percentage of national exports.
3.4d - The EITI Report must disclose: d.) Employment in the extractive industries in absolute terms and as a percentage of the total employment.	<p>The USEITI report will disclose the following information about employment in the extractives industry:</p> <ul style="list-style-type: none"> <li>• Direct employment (job numbers) in the extractives industry in absolute terms at the national level, in States that the MSG prioritized, and in the six counties identified by government revenues/commodities (see section 3.4a), and MSG-prioritized Tribal lands, to the extent that this data is available.</li> <li>• Direct employment (job numbers) in the extractives industry as percentage of total employment at the national level, in States that the MSG prioritized, and in the six counties identified by government revenues/commodities (see section 3.4a), and MSG-prioritized Tribal lands, to the extent that this data is available.</li> </ul> <p>There are differences in methodology for collection of employment data at the Federal, State, and county levels. The IA will analyze available data sources and will recommend potential data to be included in the contextual narrative. Direct employment data, defined as per the description of key extractive industry job types/categories, are defined by US government sources (US Census and Bureau of Labor Statistics).</p>
3.4e - The EITI Report must disclose: e.) Key regions/areas where production is concentrated.	The USEITI report will provide a complete breakdown of energy production by State.
3.5 - The EITI Report must disclose production data for the fiscal year covered by the EITI Report, including:	<p>The USEITI report will disclose production data for the calendar year 2013, the year covered by the EITI Report, including:</p> <ol style="list-style-type: none"> <li>a) Production volumes and revenues broken down by States/regions.</li> <li>b) Total export volumes and export revenues Federally and by State.</li> </ol> <p>As a preview of the above information, in 2014, the USEITI Online Data Portal introduced interactive visualizations for royalties (value of production) for the natural resource commodities of oil, natural gas, coal, and geothermal energy</p>

<p>a) Total production volumes and the value of production by commodity, and, when relevant, by state/region. ☐</p> <p>b) Total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin. ☐</p>	<p>sources annually for years 2003 through 2013 and royalties by State for the natural resource commodities of oil, natural gas, coal, and geothermal and wind on Federal onshore and offshore lands for calendar year 2013.</p>
<p>3.6 - Where state participation in the extractive industries gives rise to material revenue payments, the EITI Report must include...</p>	<p>As described in the USEITI MSG request for adapted implementation, State participation in USEITI reporting is encouraged through a voluntary “opt-in” process, and publicly available State-level extractive industry data will be disclosed in USEITI reports. Attached to this Activity Report is the MSG agreed “USEITI Update to the International Secretariat: Subnational Payments.” The purpose of this piece is to provide the EITI International Secretariat with the USEITI MSG’s current thinking with regard to the inclusion of subnational payments in USEITI (EITI Standard Requirement 4.2(d)). The USEITI MSG formed the State and Tribal Opt-in Subcommittee to investigate the question of how USEITI can most effectively treat complicated subnational revenue streams and, more specifically, to design an “opt-in” approach for the engagement of subnational entities (as described in the U.S. Candidacy Application)</p>
<p>3.7 - The EITI Report must describe the distribution of revenues from the extractive industries.</p>	<p>The USEITI report will describe the distribution of revenues from the extractives industry. The report will include links to budget projections and structure, including contributions from the extractives industry. One of the links will include studies and statistics on oil and gas revenues and the effect on the overall economy. The report will reference national revenue classification systems and international standards, including those of the IMF, OECD, and the IRS.</p>
<p>3.8a - The MSG is encouraged to include further information on revenue management and expenditures in the EITI Report, including:</p> <p>a.) A description of any extractive</p>	<p>The USEITI report will provide information about how the US Government Accountability Office and the Office of the Inspector General are responsible for ensuring accountability for responsible and efficient use of revenues from the extractives industry. In addition, a link to the budget of the US government will be provided. Information will be provided pertaining to how oil and gas revenues are used for government programs/public services in the United States.</p> <p>The USEITI Online Data Portal includes an interactive visualization of Federal revenue disbursements by fund for fiscal years 2012 and 2013. For natural resource revenues from Federal offshore locations, 27% of revenues from within 8(g) boundaries goes to the State from which the revenues originate; \$150 million goes</p>

<p>revenues earmarked for specific programs or geographic regions. This should include a description of the methods for ensuring accountability and efficiency in their use.</p>	<p>to the Historic Preservation Fund; up to \$900 million goes to the Land and Water Conservation Fund; some goes to the Federal agency that manages the area; and the remainder goes to the US Treasury. For natural resource revenues from onshore Federal lands, for most parts of the country, 49% goes to the State from which the revenues originate; 40% goes to the Reclamation Fund; some goes to the agency that manages the land; and 11% goes to the US Treasury. For revenues from Alaska, 88.2% goes to the State. For revenues from Indian Country, 100% of revenues are returned to the Tribes or individual Indian mineral owners. The public, through this visualization, is able to understand each of the special funds, the amounts of disbursements, and specifics about projects funded.</p>
<p>3.8b - The MSG is encouraged to include further information on revenue management and expenditures in the EITI Report, including: b.) A description of the country's budget and audit processes and links to the publicly available information on budgeting, expenditures, and audit reports</p>	<p>The USEITI report will provide information that details the budgeting and auditing process for the United States government.</p>
<p>3.8c - The MSG is encouraged to include further information on revenue management and expenditures in the EITI Report, including: b.) Timely information from the government that will further public understanding and</p>	<p>The MSG's approach includes looking at the Federal government and MSG-prioritized States and counties for extractives revenue as a percentage of total government revenues and in terms of trends over 10 years. The USEITI report will, for MSG-selected counties, provide a factual description of revenue sustainability, including USGS/EIA "proven" reserves and fiscal impacts related to public services and infrastructure (for instance, transportation/roads, water, reclamation, emergency services, etc.). The report will explain the definition and the limitations of "proven" reserve estimates.</p> <p>The report will include information on resource management and natural resource assessments in the United States.</p> <p>The report will also include information about future forecasts, such as World bank forecasts, EIA short-term energy outlooks, and forecasts for commodity prices.</p>

<p>debate around issues of revenue sustainability and resource dependence</p>	
<p>3.9 and 3.10 - Register of licenses and Allocation of licenses</p>	<p>For oil and gas development on Federal lands, the USEITI report will provide details about oil and gas leasing laws and regulations. The USEITI data portal links to the Bureau of Land Management’s onshore oil and gas leasing information at <a href="http://www.blm.gov/mt/st/en/prog/energy/oil_and_gas/leasing.html">http://www.blm.gov/mt/st/en/prog/energy/oil_and_gas/leasing.html</a> and Bureau of Ocean Energy Management offshore oil and gas leasing information at <a href="http://www.boem.gov/Leasing/">http://www.boem.gov/Leasing/</a>.</p> <p>The USEITI report will document and explain the legal and practical barriers that exist in the United States to comprehensively disclosing license information and will include a gap analysis of publicly available information and efforts to improve these systems where registers do not exist or are incomplete.</p> <p>The USEITI report will also provide an overview of DOI efforts to improve disclosure and transparency around the extractives industry. For example, the USEITI data portal includes links to regulatory reform efforts as a result of the Deepwater Horizon oil spill (<a href="http://www.boem.gov/Regulatory-Reform/">http://www.boem.gov/Regulatory-Reform/</a> and <a href="http://www.boem.gov/Reforms-since-the-Deepwater-Horizon-Tragedy/">http://www.boem.gov/Reforms-since-the-Deepwater-Horizon-Tragedy/</a>) and the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (<a href="http://oscaction.org/osca-assessment-report-2013">http://oscaction.org/osca-assessment-report-2013</a>). .</p> <p>The USEITI data portal (<a href="https://useiti.doi.gov/">https://useiti.doi.gov/</a>) already includes links to the information on leasing and licenses from Federal agencies. For example, the Bureau of Ocean Energy Management link provides offshore oil and gas lease sale information identifying the area, tract, company name, bid amounts and accepted bids (<a href="http://www.boem.gov/GOMR-Historical-Lease-Sale-Information">http://www.boem.gov/GOMR-Historical-Lease-Sale-Information</a>).</p>
<p>3.11 – Beneficial ownership</p>	<p>The USEITI report will describe applicable Federal and State laws that aim to prevent preferential treatment for private companies by Federal or subnational government entities regarding leasing, terms, etc. These include conflict-of-interest laws, financial disclosure laws, competitive tendering, etc. The USEITI report will also, describe US laws and regulations regarding disclosing ownership of privately held companies.</p>
<p>3.12 – Contracts</p>	<p>The USEITI report will disclose publically available federal contracts and licenses that provide the terms attached to the exploitation of oil, gas, coal, other leasable minerals, non-fuel minerals (such as hard rock, sand, and gravel), geothermal, solar, and wind.</p> <p>In addition, the USEITI report will document the federal government’s policy on disclosure of contracts and licenses that govern the exploration and exploitation of</p>

	oil, gas, and minerals. The report will also discuss possible reforms in this policy.
4.1 - Defining the taxes and revenues to be covered in the EITI Report	<p>Government and company disclosure and third-party reconciliation will compare data from companies on their payments to government with data from government on revenues collected from companies. USEITI Reports will include a reconciliation of US Federal Government Department of the Interior revenues, such as rents, royalties, bonuses, and fees that BLM, ONRR, and OST collect for in-scope commodities within a reporting materiality threshold.</p> <p>For the first USEITI report, to be published in December 2015, the MSG will request that companies report the sum of all corporate income tax payments/refunds made by or on behalf of all of the companies included in the annual consolidated Federal income tax income return. In addition, the MSG will encourage companies to participate in reconciliation of their corporate income tax payments.</p> <p>Revenues from the transportation of oil, gas, and minerals do not constitute one of the largest revenue streams in the extractive sector in the United States. As such, the USEITI report will not disclose the revenues received from transportation activity.</p>
4.2 - Defining which companies and government entities are required to report	<p>Payments to DOI for oil, gas, coal, other leasable minerals, and non-fuel minerals, where they meet the materiality definition that the MSG agreed upon, will be independently reconciled. DOI will unilaterally disclose payments (or payment information) from all in-scope commodities.</p> <p>The materiality threshold that the MSG established will balance the scale of reconciliation and feasibility of compliance with the value of the collected data. The reconciliation process is intended to start at a level that will reconcile approximately 80% of ONRR-collected natural resources revenues based on a materiality threshold of \$50 million total annual revenues that a parent company (including its subsidiaries) reported to ONRR. For the second year, the materiality threshold for reconciliation will be \$20 million total revenues that a parent company (including its subsidiaries) reported to ONRR, which will represent approximately 90% of DOI's natural resources revenues.</p> <p>Based on the materiality threshold that the MSG defined for reconciliation in the 2015 USEITI report, described in Section 3.3.4, ONRR identified 44 companies for inclusion in the reconciliation. A letter was sent to the CEO of each of these companies on November 26, 2014, notifying them of their inclusion in the USEITI reconciliation. Each of these companies meets the minimum materiality threshold of \$50 million in total reported revenues to ONRR in calendar year 2013.</p> <p>The MSG determined that all DOI bureaus that receive extractive-related revenues from companies meeting the materiality threshold are in-scope, and their revenues will be included for reporting and reconciliation. Based on these criteria, the MSG identified the following government entities as in-scope for the USEITI reconciliation:</p>

	<ul style="list-style-type: none"> <li>• DOI bureaus, including: <ul style="list-style-type: none"> <li>○ ONRR</li> <li>○ BLM</li> <li>○ OSMRE</li> <li>○ BSEE</li> <li>○ BOEM</li> </ul> </li> <li>• Treasury Department agencies, including: <ul style="list-style-type: none"> <li>○ IRS</li> </ul> </li> </ul> <p>These entities will provide the data on the revenues collected from company payments for disclosure and reconciliation in the USEITI report. Even though the IRS is listed here, it cannot yet be confirmed that this agency will be providing any data to us for disclosure or reconciliation. Due to Federal privacy laws, this will require companies to authorize the IRS to release any data. It is unknown at this time how many, if any, companies may consent to this activity, and the process for obtaining the authorization is not yet defined.</p> <p>The MSG also determined that all payments that DOI received for in-scope commodities would be reported separately in a unilateral disclosure. ONRR published an initial online unilateral disclosure report in December 2014 as part of the release of a new online USEITI data portal. This unprecedented unilateral disclosure report by DOI included calendar year 2013 revenue data, published by revenue type, commodity and company.</p>
5.1 - Appointment of the Independent Administrator	<p>In August 2014, Deloitte was selected to perform the work of the IA for the USEITI program in a manner consistent with the Terms of Reference (TOR) adopted by the MSG.</p> <p>The MSG endorsed the appointment of Deloitte &amp; Touche, LLC, as the IA during the MSG meeting on September 9, 2014.</p>
5.2 - Agreement of Independent Administrator's Terms of Reference	<p>At the December 2014 MSG Advisory Committee Meeting, both the IA and the MSG agreed upon the Independent Administrator's TOR. The IA also documented their agreement in the Inception Report.</p>
5.3 - Assessment and recommendations from the Independent Administrator	<p>The IA's role, at a high level, is to assist the MSG in producing a 2015 USEITI report. As part of that report, the IA will reconcile 2013 data that companies and government reporting entities submitted. The IA will also obtain the necessary assurances from the reporting entities around the comprehensiveness and reliability of the data. The IA will work with the MSG to agree on the procedures for incorporating and analyzing contextual and other non-revenue information in the USEITI Report; this information must be clearly sourced and attributable. The IA's work will be independent and performed in a manner consistent with the TOR. The report will meet the criteria specified in the EITI Standard and other detailed requirements, as outlined in the TOR.</p>

	<p>In the fall of 2014, the IA drafted the initial Inception Report. The purpose of this report was to conduct a preliminary analysis that confirmed the scope of USEITI implementation and to offer options and recommendations to the MSG for those topics that have yet to be agreed upon. At the end of 2014, the MSG was continuing comments on this report with the target of finalizing the report at the next MSG meeting in February 2015. At the December 2014 meeting, the MSG established an Inception Report Workgroup under the Implementation Subcommittee that would assist the IA in finalizing the report. The workgroup was tasked with holding a full-day facilitated discussion to take a deep dive into the report and ensure that all sectors' views were represented throughout the document so that the report would be acceptable to all of the sectors.</p>
<p>5.4 - The multi-stakeholder group should endorse the EITI Report prior to its publication.</p>	<p>The first USEITI report is still in production. The MSG will review the report upon its completion and, assuming that the report is produced to its satisfaction, will endorse it.</p>
<p>6.1 - The multi-stakeholder group must ensure that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. <sup>2</sup></p>	<p>As part of its communications and outreach efforts, the MSG has begun developing a plan for the release of the 2015 USEITI Report.</p> <p>Key audiences for communications efforts include:</p> <ul style="list-style-type: none"> <li>• Reporting companies</li> <li>• Payor companies</li> <li>• Congress</li> <li>• News media/trade press</li> <li>• The general public</li> <li>• Non-profit organizations</li> <li>• Academics</li> <li>• State governments</li> <li>• Local governments</li> <li>• Tribal governments and native groups</li> <li>• The extractive industry, in general</li> </ul> <p>As part of its communications around the publication of the 2015 USEITI Report, the MSG will:</p> <ul style="list-style-type: none"> <li>• Distribute the report in hard copy and through the USEITI Data Portal.</li> <li>• Ensure that the EITI Report is comprehensible.</li> <li>• Conduct outreach events.</li> <li>• Disseminate letters and press releases to key stakeholders, including a communications package.</li> </ul> <p>The MSG also intends to leverage the release of the first USEITI report to encourage State governments and Tribes to opt-into participating in USEITI.</p>
<p>6.2 - The multi-</p>	<p>The MSG intends to make the first USEITI report machine-readable and to code or</p>

<p>stakeholder group is encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data. [22]</p>	<p>tag EITI Reports and data files.</p> <p>In addition, the MSG will:</p> <ul style="list-style-type: none"> <li>• Produce brief summary reports.</li> <li>• Summarize the distribution of total revenues to various levels of government and special funds consistent with applicable revenue sharing laws.</li> <li>• Continue to develop and make use of the DOI Online Data Portal to make relevant information publicly accessible and user-friendly.</li> </ul>
<p>7.1 - The multi-stakeholder group is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any discrepancies; and to consider recommendations for improvement from the Independent Administrator. [2]</p>	<p>The MSG has begun considering input from the IA as part of its decision-making process. The first formal feedback that the IA provided to the MSG was in the form of the “Final Inception Report For the 2015 USEITI Report,” dated December 31, 2014, which is posted at <a href="http://www.doi.gov/eiti/FACA/upload/USEITI-Inception-Report-02112015.pdf">http://www.doi.gov/eiti/FACA/upload/USEITI-Inception-Report-02112015.pdf</a>.</p> <p>The Inception Report is an integral component of the USEITI implementation process. It defines the scope of the 2015 USEITI report and serves as a confirmation that the scope is in line with both the EITI Standard and the MSG’s agreed-upon objectives and expectations for the USEITI process. The report outlines the work and responsibilities of the IA to help produce the 2015 USEITI report, which are broken into five phases and are performed with guidance provided by the TOR and the MSG. The first phase, preliminary analysis, includes the development of an Inception Report and supports the following objectives:</p> <ul style="list-style-type: none"> <li>• Confirm the scope of the USEITI 2015 Report.</li> <li>• Establish the data reporting templates.</li> <li>• Develop the data collection and reconciliation plan.</li> <li>• Develop the online data/contextual report plan.</li> <li>• Confirm the schedule for publishing the 2015 USEITI report.</li> </ul>
<p>7.2 - The multi-stakeholder group is required to review the outcomes and impact of EITI implementation on natural resource governance. [2]</p>	<p>The MSG is committed to publishing annual activity reports, including this document.</p>

**4. Overview of the multi-stakeholder group’s responses to the recommendations from reconciliation and Validation, if applicable:**

*In accordance with requirement 7.2(a)(iii), provide an overview of the multi-stakeholder group's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with requirement 7.1. The multi-stakeholder group is encouraged to list each recommendation and the corresponding activities that have been undertaken to address the recommendations.*

*The multi-stakeholder group may also wish to identify how the workplan has been updated to incorporate the recommendations.*

Although the USEITI MSG has not yet submitted a report for validation, the MSG has begun soliciting input and feedback from the IA about the USEITI process and, specifically, about reconciliation and validation. Most of these discussions have taken place in 2015. For example, at the February 2015 MSG meeting, the MSG discussed with the IA the following topics related to reconciliation and validation:

- The content and design of a Reporting Template—and accompanying guidelines—that companies will use to report their payments to the IA
- The timeline by which the IA will manage the reporting and reconciliation process
- The margin of variance that the IA will use as part of the reconciliation process

##### **5. Any specific strengths or weaknesses identified in the EITI process:**

*Provide a narrative account of efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders (requirement 7.2(a)(v)).*

*The multi-stakeholder group may wish to include information about*

- *how the scope of EITI reporting has been expanded to meet the objectives set out in the workplan;*
- *efforts to ensure that the EITI Report contributes to increased public awareness in particular regarding the fiscal contribution of the extractives industry and how those revenues are allocated and spent ;*
- *efforts to build awareness and support, and to build capacity of the stakeholders; and*
- *any weaknesses identified in the EITI process and any actions to address these.*

USEITI has expanded the scope of EITI reporting through the use of unilateral disclosure. The MSG has determined that all payments that DOI receives for in-scope commodities will be reported separately in a unilateral disclosure. ONRR published an initial online unilateral disclosure report in December 2014 as part of the release of a new Online Data Portal. DOI's pilot unilateral disclosure report included calendar year 2013 revenue data, which published revenue data disaggregated by company.

Illustrative of the US commitment to the principles underlying EITI and the Open Government Partnership, DOI launched the USEITI online data portal (<https://useiti.doi.gov/>) at the December 2014 MSG meeting. The website provides a valuable resource for data about the extractives industry in the US. As part of the initial launch, and for the first time, the US unilaterally disclosed calendar year 2013 revenues paid to and collected by the ONRR by company, revenue type, and commodity. The website's user-friendly, interactive

Hire Independent Administrator	\$200K-\$375K	OVER*
<b>Total</b>	<b>\$550K-\$885K</b>	<b>WITHIN</b>
* The 2014 USEITI Workplan underestimated the funding for an Independent Administrator by relying on a conservative government cost estimate. However, the Department of the Interior has fully funded the Independent Administrator contract.		

In addition to the direct costs indicated above, the US Government has dedicated four equivalent full-time employees to the USEITI Secretariat for supporting the MSG and the implementation of USEITI. In addition, representatives from multiple government agencies are supporting the USEITI initiative as MSG members, advisors, and subject matter experts.

**7. Any additional comments:**

None at this time.

**8. Has this activity report been discussed beyond the MSG?:**

*In accordance with requirement 7.2.b, all stakeholders should be able to participate in the production of the annual activity report and reviewing the impact of EITI implementation. Civil society groups and industry involved in EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the process and have their views reflected in the annual activity report.*

*This is an opportunity for MSGs to improve ownership of their process and to ensure that the EITI becomes more firmly rooted in broader country reform processes. Countries may wish to outline any broader exercises involving other stakeholders including civil society and companies, and how they were invited to feedback on the process and ensure that their views were reflected in the review.*

All three sectors represented on the USEITI MSG had an opportunity to review and provide input for this annual report. In particular, the USEITI Co-Chairs and the members of the Implementation Subcommittee of the MSG reviewed drafts of the report.

Other stakeholders, including companies, civil society organizations, and members of the public not represented on the MSG, were invited to review a draft of the report after we posted it on the USEITI website in advance of the May 2015 MSG meeting.

**9. Details of membership of the MSG during the period** (including details of the number of meetings held and attendance record):

Many professionals representing the MSG have made valuable contributions to the United States in supporting the implementation of USEITI. We would like to acknowledge their hard work and dedication. The following list provides a full account of membership in the USEITI MSG in 2014, including those who joined and departed the MSG during the year, as well as their attendance at 2014 MSG meetings:

<b>Civil Society Sector</b>			April 2014	June 2014	Sept 2014	Dec 2014
Danielle Brian	Primary Co-Chair	Project on Government Oversight	x	x	x	x
Rebecca Adamson	Primary	First Peoples Worldwide	x			
Paul Bugala	Primary	American University	x	x	x	x
Deborah Lawrence	Primary	Energy Policy Forum				
Michael LeVine	Primary	Oceana		x	x	x
Keith Romig, Jr.	Primary	United Steelworkers	x	x		x
Michael Ross	Primary	Revenue Watch Institute		x		x
Veronica Slajer	Primary	North Star Group	x	x	x	x
Neil Brown	Alternate	The Lugar Center	x		x	
Richard Fineberg	Alternate	Research Associates				x
David Goldwyn	Alternate	Goldwyn Global Strategies LLC	x	x	x	x
Jennifer Krill	Alternate	Earthworks		x		
Rebecca Morse (Resigned in 2014)	Alternate	Revenue Watch Institute		x		
Brian Sanson	Alternate	United Mine Workers of America				
Laura Sherman	Alternate	Transparency International - USA	x	x		x
Betsy Taylor	Alternate	Virginia Polytechnic Institute and State University	x	x	x	x

Industry Sector			April 2014	June 2014	Sept 2014	Dec 2014
Veronika Kohler	Primary Co-Chair	National Mining Association	x	x	x	x
Phil Denning	Primary	Shell Oil Company	x	x		x
Michael Flannigan	Primary	Peabody Energy		x	x	x
Susan Ginsberg	Primary	Independent Petroleum Association of America	x	x	x	x
Aaron Padilla (Re-appointed to alternate in 2014)	Primary	Chevron	x	x		
Johanna Nesselth Tuttle (Appointed in 2014)	Primary	Chevron			x	x
Bob Reynolds	Primary	BP America	x	x	x	x
Jim Roman	Primary	ConocoPhillips			x	x
Brent Roper	Primary	Rio Tinto	x	x	x	x
Chris Chambers	Alternate	Freeport-McMoRan Copper & Gold Inc.	x		x	x
Nicholas Cotts	Alternate	Newmont Mining	x	x	x	x
John Harrington	Alternate	Exxon Mobil Corporation	x	x	x	x
Amanda Lawson	Alternate	Walter Energy Inc.	x	x		x
Walt Retzsch (Resigned in 2014)	Alternate	American Petroleum Institute	x			
Aaron Padilla	Alternate	American Petroleum Institute			x	x
David Romig (Appointed in 2014)	Alternate	Freeport-McMoRan Oil & Gas			x	x
John Sardar	Alternate	Noble Energy Inc.	x	x		
Mark Smith	Alternate	Ultra Petroleum Corp.				
Bob Wilkinson	Alternate	Conoco Phillips				

<b>Government Sector</b>			April 2014	June 2014	Sept 2014	Dec 2014
<b>Sally Jewell</b>	Senior Responsible Government Official	Secretary of the Interior		X		
<b>Rhea Suh (Resigned in October 2014)</b>	Chair/ National Coordinator	Department of the Interior		X		
<b>Kris Sarri (Designated in October 2014)</b>	Chair/ National Coordinator	Department of the Interior				X
<b>Paul Mussenden</b>	Alternate Chair/ Deputy National Coordinator	Department of the Interior	X	X	X	X
Greg Gould	Primary Co-Chair	Department of the Interior	x	x	x	x
Mitch Baer	Primary	Department of Energy				
Curtis Carlson	Primary	Department of the Treasury	x	x	x	x
Greg Conrad (Re-appointed to alternate in 2014)	Primary	Interstate Mining Compact Commission	x	x		
Mike Matthews (Appointed in 2014)	Primary	State of Wyoming - Department of Audit	x		x	x
Mike Smith	Primary	Interstate Oil and Gas Compact Commission	x		x	x
Greg Conrad	Alternate	Interstate Mining Compact Commission			x	x
Mike McDonald	Alternate	Department of the Treasury		x		
Blair Pasalic	Alternate	Department of Energy			x	
Debbie Tschudy	Alternate	Department of the Interior	x	x	x	x
Marina Voskanian	Alternate	California State Lands Commission				

In addition to the USEITI MSG members, many other individuals made valuable contributions to USEITI. Listed below are the individuals who made presentations or led discussions at MSG meetings in 2014 as well as individuals who made public comments.

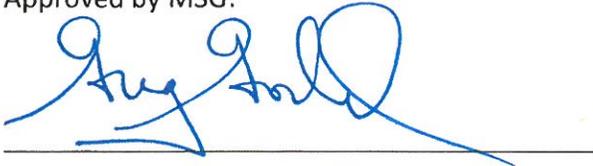
**Presentations and Significant Contributions Made by Non-MSG members:**

<b>April 2014 MSG Meeting</b>	<b>June 2014 MSG Meeting</b>	<b>September 2014 MSG Meeting</b>	<b>December 2014 MSG Meeting</b>
Paul Mussenden, DOI	Rhea Suh, DOI	Paul Mussenden, DOI	Judy Wilson, DOI
Marti Flacks, US Dept. of State	Sally Jewell, DOI	Jennifer Goldblatt, Office of Natural Resource Revenue	Paul Mussenden, DOI
Michelle Herzfeld and Jon Swedin, Office of Natural Resource Revenue	Jerry Gidner, DOI	Marti Flacks, US Dept. of State	Greg Arend, Jane Kapral, Deloitte & Touche
Jerry Gidner, DOI	Mia Steinle, Project on Government Oversight	Jerry Gidner, DOI	Zorka Milin, Global Witness
	Chris Mentasti, Office of Natural Resource Revenue	Chris Mentasti, Office of Natural Resource Revenue	Chris Mentasti, Office of Natural Resource Revenue
	Judith Wilson, DOI	Michelle Hertzfeld, GSA	Jerry Gidner, DOI
	Marti Flacks, US Dept. of State	Bill Blake and Sherri Glover, DOI	Ryan Ellis, IMCC
		Greg Arend, Jane Kapral, and Alex Klepacz, Deloitte & Touche	Kris Sarri, DOI

Public Comments Made:

April 2014	June 2014	September 2014	December 2014
Marinke van Riet	Dominic Eagleton	Diana Withen	(no public comments made)
Jana Morgan	Isabel Munilla	Jane Braham	
Corinna Gilfillin	David Garcia	Lauren Bush	
		Mark Hays	

Approved by MSG:



Gregory Gould  
Government Sector Co-Chair



Danielle Brian  
Civil Society Co-Chair



Veronika Kohler  
Industry Sector Co-Chair

July 17, 2015

Date: \_\_\_\_\_



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## USEITI Update to the International Secretariat: Subnational Payments

### Introduction

The purpose of this piece is to provide the EITI International Secretariat with the USEITI Multi-Stakeholder Group's current thinking with regard to the inclusion of subnational payments in USEITI (EITI Standard Requirement 4.2(d)). The USEITI MSG formed the State and Tribal Opt-in Subcommittee to investigate the question of how USEITI can most effectively treat complicated subnational revenue streams and, more specifically, to design an "opt-in" approach for the engagement of subnational entities (as described in the U.S. Candidacy Application).<sup>1</sup> As noted below, Tribes are not strictly "subnational" governments, but we discuss them in this document, along with States, as a matter of convenience.

Following extensive research, consultation, and discussion, the Subcommittee is considering a three-tiered opt-in approach for subnational governments to engage with and contribute to USEITI. This approach will encourage subnational participation by allowing each subnational government to engage to the level practicable for their unique circumstances, given the complexities of U.S. systems of natural resource management. The Subcommittee believes that this approach will maximize engagement of subnational entities, and achieve EITI's goal of transparency of resource revenue information, without imperiling the forward momentum of USEITI.

The USEITI MSG has concluded that, based on research and consultations with states and tribes, that an effort to reconcile payments at a state or tribal level will not be possible or, in some cases, legal. As an alternative, we plan to achieve the goals and requirements of the EITI Standard by utilizing two new and substantial data sources: the Department of the Interior's online data portal, released in December, 2014; and the Contextual Narrative, which will consolidate, explain and share information about subnational resource revenues.

In the United States, land and mineral rights may be owned privately by individuals or corporations, or by federal, state, local, or tribal governments. In addition to the U.S. federal government, there are 50 state governments. There are also 566 federally recognized American Indian tribal governments, which are sovereign governments, but for which the U.S. federal government has a trust responsibility. There are significant differences in the way that extractives revenues are derived, collected, and allocated depending on the entity exercising stewardship of the land and mineral rights. These complexities will be explained in more detail below.

### Previous Request for Adapted Implementation

The United States Candidacy Application contained a request for adapted implementation for subnational payments (4.2d). The International Board granted this request, which the USEITI MSG believes is necessary due to the significant practical barriers presented by the United States' complex system of governance.

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<sup>1</sup> USEITI Candidacy Application, <http://www.doi.gov/eiti/upload/USEITI-Candidacy-Application-MSG-Approved-2.pdf>

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In its Candidacy Application, the USEITI proposed a two-phased approach for subnational participation:

Due to the significant practical barriers resulting from the size and complexity of the state extractive sector, USEITI reporting will partially comply with Rule 4.2(d)'s requirement to disclose material extractive revenues directly collected by states through a two-phased approach: Under Phase I of USEITI's implementation of Rule 4.2(d), publically-available information about state extractives revenue collection will be included in USEITI reports; Phase II of Rule 4.2(d) implementation involves encouraging states to fully participate in USEITI through a voluntary "opt-in" process.<sup>2</sup>

Phase I of the approach is underway, and the USEITI MSG is very encouraged and excited by its progress.

As noted in the Candidacy Application, a substantial amount of extractive activity and related revenues at the subnational level will be comprehensively covered by USEITI. Much of U.S. federal extractives revenue is derived from federal lands located within the states, in particular in western states where much mineral production is concentrated. It is only those activities and revenues falling under Section 4.2(d) – payments to subnational governments as a result of activities occurring on municipal, state, tribal, or private land – which have proven problematic in the U.S. context and require an adapted solution.

Additionally, through a massive and unprecedented unilateral disclosure by the Department of the Interior, the United States will exceed Rule 4.2(e)'s requirements by representing 100 percent of extractives-specific revenues collected by the federal government and transferred to states and tribes as required by law.<sup>34</sup> In addition, the USEITI Contextual Narrative will include extensive county-level data for approximately a dozen counties or clusters of counties with material extraction.

### **Barriers and Solutions to Subnational Reporting**

The Subcommittee's recommendation for a three-tiered opt-in approach in combination with a robust Contextual Narrative expands on "Phase II" of the opt-in strategy outlined in the Candidacy Application, taking into account further investigation conducted by the Subcommittee into the practical barriers necessitating an adapted approach to implementation of Requirement 4.2(d). The direct input of state and tribal government officials and experts has been invaluable in understanding these barriers. Discussions have centered around complexities in U.S. legal and fiscal frameworks, both generally and as specifically related to natural resource management, such as: the federal structure of the U.S. government, the size and complexity of extractives industries regulation at subnational levels, the array of confidentiality and disclosure laws at various levels, and the unique private vs. public ownership of minerals in the United States.

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<sup>2</sup> USEITI Candidacy Application, p. 14

<sup>3</sup> USEITI Candidacy Application, p. 29

<sup>4</sup> By law, the U.S. federal government is required to return a percentage of revenues collected by the federal government from oil, gas, and mining activities to the states where the extraction occurs. Thirty five (35) states receive transfers from the federal government covered by these requirements, totaling over \$2 billion in FY 2013. USEITI reporting will disaggregate these transfers to disclose revenues to each state and where applicable, by local government unit. – USEITI Candidacy Application, p. 29-30

## ***Implementing EITI in the States***

The USEITI MSG has thoroughly considered what would be required for states to fully comply with EITI requirements. The State and Tribal Opt-in Subcommittee determined that the first step is to focus attention on states with material production. Thirty-three states produce oil, gas, or coal, while almost every state produces some non-fossil minerals. Many individual states have larger mineral extractive sectors than entire EITI implementing countries. For example, the state of Texas produces more natural gas than Norway, and eight U.S. states produce more natural gas than Azerbaijan. Implementing EITI at the state level in the United States would, in magnitude, be akin to one government implementing EITI in 50 different countries simultaneously.<sup>5</sup>

The Subcommittee determined that, of the 33 producing states, there are 18 states that are of particular interest given either the magnitude of their mineral production for the in-scope commodities, or the significance of extractive revenues for their state budgets. Those states are: Alaska, Arizona, California, Colorado, Illinois, Kentucky, Louisiana, Montana, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, Pennsylvania, Texas, Utah, West Virginia, and Wyoming. The MSG is now reaching out to representatives from these states to pursue their participation in USEITI.

## ***Complexities in State Extractives Management***

Under the U.S. constitutional framework, state governments have their own legislature, judiciary, administrative bodies, and set of codified laws. They also maintain ownership of some lands and minerals; develop their own taxation and royalty systems applicable to oil, gas, and mining; and directly collect extractive revenues. Each state has a unique revenue-collection and allocation regime, as well as confidentiality and non-disclosure laws prohibiting the release of sensitive financial information, tax payments in particular. Strict rules and penalties attend the circumvention of accounting and tax processes as well as confidentiality laws. Changing or suspending these laws for the purposes of EITI would require fundamentally altering legal and fiscal frameworks.

Along with existing systems for collecting and allocating revenue, the states also feature extensive accounting and auditing functionalities. These systems vary from state to state but are required to be in accord with U.S. government auditing standards. It is common practice for state auditing programs to consult with one another on standards and best practices to ensure consistency to the extent that states' processes differ. The auditing processes in the states are generally considered to be highly proficient, which is evidenced by the fact that state programs are often asked to audit federal revenue streams.

In addition, the multi-stakeholder requirements under the EITI Standard would require each state to meaningfully engage its diverse set of stakeholders. Each participating state would therefore likely require the establishment of its own multi-stakeholder group, congruent with the USEITI MSG. Each state MSG would require significant amounts of time and funding as they confront the various difficulties attending the EITI effort at the state and local level.

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<sup>5</sup> USEITI Candidacy Application, p. 29

The USEITI MSG remains concerned that the time and resources necessary to fully include subnational participation in the face of the complexities outlined above will unduly imperil the forward momentum of the USEITI effort. After consulting with contacts from the 18 states listed above, the State and Tribal Opt-in Subcommittee is confident that a tiered approach is the best solution to garner subnational participation.

### ***State Extractives Revenue Auditing Case Study: Wyoming***

The Wyoming Department of Audit is an independent state agency. The department director is appointed by the state governor, secretary of state, and state treasurer, with the advice and consent of the state senate. The director can only be removed by two of the three elected officials, and only upon a showing of malfeasance, misfeasance, or nonfeasance.

As an internal control to protect from collusion, the Department of Audit does not: receive revenues; have physical custody or control over extractive industry revenues; or have control over or authority for revenue use or disbursement. It also does not do the accounting for or reporting of mineral revenues. Its job is to audit the companies that report and pay on minerals extracted from the State of Wyoming. By verifying that producers properly report in compliance with statutes, regulations, and reporting requirements, these audits protect the public interest.

The Department of Audit's Mineral Audit Division is subject to reviews, quality controls, and oversight, both internal and external. In terms of internal reviews, all audits are subject to a detail review, a supervisory review, and a managerial review. In the case of tax audits, the Wyoming Department of Revenue reviews the audit as well. In the case of federal royalty audits, a document containing the findings, issues, and supporting rationale is circulated to all the audit teams' supervisors for approval and comment. Finally, the document is submitted to the division administrator for final approval and signature, after a group meeting with the supervisors for discussion of the issues.

Then begins the external reviews of the audits. Tax audits are appealed to the Board of Equalization for a hearing, and then appealed to the Wyoming Supreme Court. In the case of federal royalty audits, the Royalty Appeals Program reviews issues if a company appeals an audit. The company can next appeal to the Interior Board of Land Appeals (IBLA) for a review by an administrative judicial body. Next, the company can appeal to Federal District Court for a review of the IBLA decision on the audit. And then, the Federal Appellate Court provides a judicial review of the Federal District Court's decision on the audit.

There are also external reviews of Wyoming's audit program. The State of Wyoming's audit program undergoes external peer reviews, as required by U.S. government auditing standards. These audits are performed by outside private accounting firms, such as Williams, Adley &

Company-DC, LLP, a private independent certified public accounting firm, that is contracted by the Department of the Interior to perform a peer review of the Mineral Audit Division's federal royalty audit function once every three years, covering the preceding three years, ensuring no gap in coverage.

The Department of the Interior also performs reviews, called Attestation Engagements, of Wyoming's contract and billing. The State of Wyoming is subject to and has been included in reviews by the U.S. Department of the Interior's Office of Inspector General and by the U.S. Government Accountability Office.

### ***Implementing EITI in Tribal Governments***

The specialized relationship between the U.S. federal government and American Indian tribal governments has necessitated special consideration by the State and Tribal Opt-in Subcommittee.

There are 566 tribal governments recognized by the U.S. federal government. With federally recognized status, tribal governments are eligible for services provided by almost all of the federal agencies, including the Department of the Interior's Bureau of Indian Affairs. Of the 566 tribal governments, 337 tribes are located in the lower 48 states and 229 tribes are located in the state of Alaska. According to the most recent federal data, the 337 tribes are either associated with Indian reservations (with land), are Federally Recognized Tribal Entities (without land), have trust lands for which no reservation exists, or have trust lands that are related to recognized Indian reservations. Tribal governments can also own land, either in fee or trust, outside the boundaries of their reservations. In some states, such as Oklahoma, tribes have extensive land interests, but most do not have reservation status. Generally, tribes or individual Native American allottees that own land also own the mineral interests appurtenant to the land. Of tribes with a land base, a smaller subset have appreciable extractive industries.

The relationship between the U.S. federal government and tribal governments is extraordinarily complex. The U.S. Constitution establishes the power for the U.S. Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."<sup>6</sup> This provision confirms that tribes have a distinct status in the political fabric of the United States—a status limited only by the plenary power of Congress. It also establishes that tribes are separate and distinct political entities from the 50 states, which generally do not have jurisdiction within the boundaries of Indian reservations.

Numerous U.S. federal government statutes and Supreme Court cases have further defined and clarified the relationship between the federal and tribal governments. Three major principles have evolved:

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<sup>6</sup> The Indian Commerce Clause, United States Constitution, Article I, Section 8.

1) Tribes existed as political entities prior to the formation of the United States; therefore tribes have pre-existing or inherent sovereignty.

2) The U.S. federal government may reduce or eliminate tribal sovereignty. Individual state governments may not. In addition, tribes retain any sovereignty not expressly reduced or eliminated by the U.S. federal government.

3) Although sovereign, tribes are also “domestic dependent nations.” This status imposes on the United States a trust responsibility to protect tribes, individual Native Americans, and their assets.<sup>7</sup>

Today, the U.S. federal government has a “nation-to-nation” relationship with tribal governments, in which the government balances the tribes’ sovereignty and right to self-determination with the obligation to protect tribal and individual Indian assets. There is considerable disagreement among tribes, individual Native Americans, and the federal government regarding the meaning, boundaries, and responsibilities of the trust responsibility.

In the extractive industries, the federal-tribal relationship is, if anything, more complex. Complicating factors include:

1) Title to the land that makes up tribal reservations is legally owned by the U.S. federal government, in trust, for the exclusive benefit of the tribes.

2) Unlike in many other countries, tribes in the United States own the mineral rights associated with their reservation lands. Title to these mineral rights is also held legally by the U.S. federal government, in trust for the appropriate tribe.

3) Revenues earned from extracting mineral resources are also trust assets that the U.S. federal government has a responsibility to account for and protect.

4) Concomitant to the federal government’s responsibility to protect trust assets is the responsibility to protect information about those assets. This includes protecting information about revenues from extractive activities.

5) The Dawes Act of 1887<sup>8</sup> allotted tribal land to individual Native Americans. Due to generations of intestacy, many of those allotments are now “fractionated,” meaning individual parcels of trust land are owned by dozens, hundreds, or even thousands of individual Native Americans. These individual owners are referred to as “allottees,” and they, jointly and severally, own the mineral rights appurtenant to specific parcels of land. Many reservations include a mix of tribal trust land, individual trust land, and fee land (non-trust).

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<sup>7</sup> See generally, American Indian Law Deskbook. (University Press of Colorado, 1993)

<sup>8</sup> The General Allotment Act of February 8, 1887, 24 Stat. 388, ch. 119, 25 USC 331.

6) Literally dozens of federal statutes, enacted over hundreds of years, regulate the process of leasing tribal or individual trust land for extractive purposes, operating those leases, and paying revenues to the tribal government or individual allottees. Major laws governing this industry on trust land include:

- a) The Indian Mineral Leasing Act<sup>9</sup>
- b) The Indian Mineral Development Act,<sup>10</sup> and
- c) The Energy Policy Act<sup>11</sup>
- d) Act of March 3, 1909<sup>12</sup>

7) Although the U.S. federal government collects most revenue generated by extractive industries on trust land, the federal government has no ownership rights to that revenue. The government disburses 100 percent of trust revenues to the tribes or individual allottees who have the rights to the extracted commodity.

The practical effect of this complicated legal and fiscal regime is that reporting revenues from trust land under the USEITI process is very difficult. The Department of the Interior does report, on an annual basis, the aggregate national total of revenues that it collects from trust land. It does not, and legally cannot, release data regarding revenue generated for specific tribes or individual Native Americans without the express permission of the tribes or individual allottees in question. Nor can the federal government compel a tribal government or an individual allottee to agree to release of this data.

The only practical activity that the USEITI MSG can undertake is outreach to tribal governments and communities to explain the benefits of EITI and provide each tribal council with the information it needs to decide whether or not to participate in EITI. This outreach is a formidable task. There are 35 tribes to which the Department of the Interior distributes extractive revenue, each with its own elected governing body. In addition, the Department of the Interior disburses extractive revenue to more than 34,000 individual allottees.

### ***Complexities in Tribal Extractives Management***

Tribal governments also each have their own governing systems and codified laws. Some tribes have separate executive, legislative, and judicial branches of government; others do not. For most tribes, the U.S. federal government collects, accounts for, and disburses to the tribe, the revenue generated by

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<sup>9</sup> 25 USC §3969, 1938.

<sup>10</sup> 25 USC §§2101-2108, 1982.

<sup>11</sup> 119 Stat §594, Title V, authorizing Tribal Energy Resource Agreements, 2005.

<sup>12</sup> 25 USC 396

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extractive activities on tribal lands. The federal trust responsibility, as well as exceptions to the federal Freedom of Information Act, prohibit the federal government from disclosing data about any tribe's specific extractive revenues.

Nonetheless, there is an extensive auditing regime for tribal extractive activity revenues. The Federal Oil and Gas Royalty Management Act (FOGRMA), Public Law 97-451, authorizes the Department of the Interior to enter into cooperative agreements with the tribes. There are five Native American Indian Tribes that have cooperative agreements funded under FOGRMA Section 202 with the Office of Natural Resources Revenue to perform audits and compliance reviews of the royalties collected from tribally owned oil, gas and coal mineral resources. These tribal royalty audit programs join the Office of Natural Resources Revenue in providing additional audit coverage of revenues derived from oil, gas and other mineral leases located on tribal lands. The 202 Agreements expand auditing coverage and effectiveness. The Native American Indian Tribal Royalty Auditing Programs must comply with generally accepted U.S. government auditing standards.

The goal of Tribal Royalty Auditing Programs is to ensure the payments are accurate, and comply with applicable lease terms, mineral laws and regulations. The Tribal Royalty Auditing Programs perform audits based upon risk or referral. There can be various types of audit coverages – such as property audits, company audits, issue audits or special terms audits.

Tribes that do not have a 202 Agreement solely rely on the Department of the Interior to audit their royalties.

### ***Private Ownership of Land and Mineral Rights***

Private ownership of minerals in the United States differentiates the country from nearly all other countries. Private mineral ownership is widespread in the United States, which means that significant extractives industry revenues flow directly to private citizens and corporations rather than to the Federal or subnational governments.<sup>13</sup> This means that, to the extent that reconciliation of private payments could be legally pursued under current laws, even that effort could not account for a significant portion of revenue in the U.S. system.

### **Contextual Narrative as Partial Solution**

For the variety of reasons described above, reconciliation of payments to subnational governments under the traditional EITI approach is simply not the best solution for increasing transparency and public understanding around extractives in the U.S. system. The marginal value of that reconciliation approach would be grossly disproportionate to the immense effort and commitment it would require to fully implement in the United States. To account for revenues at the subnational level, an unprecedented effort has already been enacted to gather and explain information on revenue from extractives activities at the local, state and Tribal level, through the Contextual Narrative.

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<sup>13</sup> Candidacy Application pg 28

The Contextual Narrative and accompanying data portal is a more practicable solution and will make a more important contribution to USEITI than an intensive reconciliation process through EITI at the subnational level. Many states already provide extensive information about their extractive revenues via state websites and other reporting. However, this information is currently dispersed among a large number of state-specific websites and other information repositories. It is, therefore, difficult for the public to access and compare data from multiple states.<sup>14</sup> Through the collection of state data and accompanying explanation of processes and mechanisms attending the management of extractives activities and revenues throughout the country into one unified, imminently intelligible source for citizen edification, the USEITI Contextual Narrative will bring an immense benefit to U.S. citizens, enabling them to empower themselves to evaluate whether these systems are being fairly managed in the best interest of the American people. This will be made possible through enhanced cooperation with subnational governments through USEITI.

### **Three-Tiered Opt-in Approach**

The approach under consideration by the USEITI MSG would involve three defined tiers of subnational engagement:

- 1) The MSG will establish a point of contact in the subnational government.
- 2) A member of the subnational government will be formally nominated to the USEITI MSG, and
- 3) The subnational government will undertake enhanced Opt-In.

The first tier would involve the subnational government designating an official point of contact for consultation with the USEITI MSG, which would allow the MSG to keep the state or tribe apprised of developments in USEITI, especially with regard to the treatment of subnational governments. The State and Tribal Opt-in Subcommittee has determined that establishing a line of communication with subnational governments is a critical first step.

At the second tier of engagement, a state or tribal official would be formally nominated to the USEITI MSG as a representative of their subnational government. The MSG is encouraged by and has benefited greatly from the appointment of MSG members from the states of Wyoming and California and the Shoshone & Arapaho Tribes (in addition to several MSG members who represent state and tribal interests at-large.)

The third tier of subnational engagement would involve the state or tribe directly assisting the MSG and Independent Administrator in identifying sources of existing data on extractives activities within their state or tribal boundaries, as well as providing their expertise in creating comprehensive but digestible textual explanations of the unique legal and fiscal frameworks governing extractives industries and revenue management in each state. This third tier would not require the state or tribe to fully comply with the reconciliation component of EITI, but would entail a formal commitment from a state official to work with

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<sup>14</sup> Candidacy Application pg 30

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USEITI to collect that state’s legally available data and integrate it into the USEITI report. The State and tribal Opt-In Subcommittee has determined that leveraging the expertise of state and tribal government personnel in identifying existing data sources and regulatory frameworks will prove to be a substantial and critically important contribution to the quality, breadth, and meaningfulness of the Contextual Narrative and the USEITI report more generally.

The State and Tribal Opt-in Subcommittee is optimistic that many states and tribes will opt-in to “third-tier” engagement, but anticipates that securing this level of engagement for all of the 18 material states and 35 material tribes will be exceedingly difficult due to the significant practical barriers identified in the U.S. Candidacy Application and expanded upon in this thought-piece. The hope and expectation is that using this tiered opt-in approach will garner the maximum possible voluntary engagement by subnational entities.

### **Conclusion**

In light of all the complexities described above, the Subcommittee concluded that the three-tiered opt-in, in combination with a robust Contextual Narrative as described, represents the best possible solution for the inclusion and treatment of subnational extractives activities. USEITI MSG believes that the approach outlined in this update will allow USEITI to successfully contend with the complexities of the U.S. system, mitigate potentially adverse outcomes, and provide a framework under which USEITI at the subnational level can flourish.

The United States understands well that EITI is an intensive initiative requiring a strong willingness and commitment to implement. It is as a result of the United States’ dedication to open government and transparency that the USEITI MSG has endeavored to find a workable solution to implement EITI in the context of the U.S. It is the sincere hope of the MSG that this approach will allow the benefits of EITI to be extended to the United States and that by joining the initiative, the United States will contribute to openness and transparency in the world as an equal partner with our fellow EITI implementing countries.

If the EITI Secretariat has any questions or comments, we are happy to discuss them with you.