

April 15, 2021,

The Honorable Deb Haaland
Secretary of the Department of the Interior
1849 C Street, NW
Washington DC 20240

VIA ELECTRONIC MAIL (energyreview@ios.doi.gov)

Re: Comments for Department of the Interior Interim Report

Dear Madam Secretary:

As one of the leading representatives of the surety bond industry, The Surety & Fidelity Association of America (SFAA)¹ is writing to provide comments for the upcoming interim report (Report) of the Department of the Interior (DOI) based on the DOI's March 25, 2021 virtual forum (Forum) regarding oil and gas development on public lands and waters. SFAA understands the Report will include initial findings on the state of federal conventional energy programs and provide recommendations to improve stewardship of public lands and waters, create jobs, and build a just and equitable energy future. During the Forum, there was a brief discussion regarding reclamation bond requirements. Specifically, it was noted that the minimum bond amounts were set generally in the 1950s and '60s, for reclamation bonds, thereby raising questions about whether those amounts are appropriate. Coincidentally, there is legislation in the House of Representatives (HR 1505) that proposes to increase the bond amounts.

Members of SFAA provide important surety bonding services to mining, oil, and gas lease operators to protect taxpayers and the environment by guaranteeing those operators fulfill their governmental obligations. SFAA appreciates DOI's efforts to review its energy development programs, and requests that DOI include SFAA in any discussion regarding changes to the surety bond requirements for DOI's mining, oil, and gas development programs. SFAA believes it is important to carefully consider changes to bond amounts and other requirements to prevent unnecessary or unintended negative impacts to the availability and affordability of the critically important bonds.

While HR 1505 has not been published, we understand from previous versions, the legislation would:

1. Change the required bond amount for a single lease from \$10,000 to \$150,000;
2. Set the amount for a set of leases in a single state from \$25,000 to \$500,000; and

¹ SFAA is a trade association of more than 425 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.

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3. Provide discretion to require higher bonds where necessary and give the U.S. Fish and Wildlife Service the same statutory authority as Bureau of Land Management, the National Park Service, and the U.S. Forest Service to retain bonds for oil and gas operators to address onsite damages.

SFAA members generally do not take issue with higher bond limits. Financially viable and responsible operators should have no issues obtaining the increased bonding levels being required. However, HR 1505 fails to address the implementation of the new limits, which should be addressed prior to establishing new requirements. For example, it is unclear what happens in the event a current lessee is unable or unwilling to provide a bond with the new amount in terms of the lessee and its surety. Specifically, this would raise questions as to whether the existing lease would be terminated, and the existing surety bonds be called upon. Additional issues may arise because existing bonds cannot be increased without the prior express consent of the surety, thus it is unclear if the existing bond would be grandfathered, and allowed to stay at the current level, or does the failure to increase the limit trigger a claim against the bond.

In addition to impacts on existing lessees and sureties, there are issues related to setting the appropriate level of coverage. The levels in HR 1505 may need additional study. The legislation proposes a new limit of \$150,000 for a single site, but the \$500,000 amount will cover all sites in a state, which may not be adequate. Thus, the methodology for establishing the amount for a master bond should be evaluated carefully since all sites are not equal and the number of sites per state vary.

Based on the issues outlined above, SFAA requests DOI include in the Report the need to carefully evaluate any changes to DOI-required bonds and the impact of those changes on the surety bond market. Additionally, SFAA has been working with the Bureau of Ocean Energy Management (BOEM) to ensure the proper treatment of surety bonds in bankruptcy to prevent adverse impacts on bonds provided for BOEM programs. Those issues also should be addressed in the Report.

SFAA appreciates the opportunity to provide comments for the Report and stands ready to answer any questions you may have or provide additional information you may need.

Sincerely,



Stephen Taylor

Director of Policy and Assistant General Counsel