

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

December 20, 2023

Howard Cantor
Director
Office of Natural Resources Revenue
PO Box 25165
Denver, CO 80225-0165

Dear Director Cantor:

The House Committee on Natural Resources (Committee) seeks information from the Department of the Interior (DOI)'s Office of Natural Resources Revenue (ONRR) regarding ONRR's methodology for calculating federal royalties from energy production on federal lands and waters. Recently, the Committee was alerted to a potential lack of internal controls at ONRR. The Committee is concerned that the purported conduct may encourage conflicts of interest and uncertainty in the calculation of federal royalties. Moreover, the Committee is concerned with ONRR's overall audit goals, lack of commitment to prior audits, guidance provided to energy producers on federal lands, and interpretation of existing regulations.

As you are aware, in May 2019, the U.S. Government Accountability Office (GAO) released a report¹ critiquing ONRR's royalty compliance efforts. Specifically, the GAO concluded that ONRR's compliance goals for 2017 were "(1) to obtain a return of \$2 of additional royalties for every dollar spent on compliance activities and (2) to collect a defined amount of additional royalties."² The GAO also found that "[ONRR's] goals may not align with the agency's mission to collect, account for, and verify royalty payments and other statutory requirements because the goals do not address accuracy."³ In response to this finding, ONRR adopted a new "accuracy" goal in August 2023 that is based on "payor coverage," which is calculated from the percentage of payors subject to data mining, compliance review, or audits completed in a given fiscal year.⁴ It is seemingly unclear whether this new goal is replacing the previous, quantitative goals or if the new goal is in addition to those quantitative goals.

¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-410, *Federal Oil and Gas Royalties: Additional Actions Could Improve ONRR's Ability to Assess Its Collection Efforts* (May 2019), <https://www.gao.gov/products/gao-19-410>.

² *Id.* at Highlights.

³ *Id.*

⁴ *Id.* at Recommendations for Executive Action.

As such, the Committee has significant concerns with ONRR basing its compliance goals on enforcement results. Doing so may encourage behavior that is contrary to ONRR’s statutory mission and differ from other agencies that are tasked with overseeing federal revenue.

Under the Royalty Simplification and Fairness Act (RSFA), ONRR “shall allow a credit or refund” to a payor when an “overpayment is identified during an audit.”⁵ However, the Committee has received reports that ONRR has repeatedly refused to accept overpayments that were identified during audits on ONRR’s CMP-2014 form, utilized by ONRR to track progress towards ONRR’s goals. Allegedly, ONRR employees may have attempted to skew their audit results to meet ONRR’s enforcement goals.

The potential for conflicts of interest are why other federal agencies exclude enforcement results from quantitative compliance goals.⁶ Likewise, many states utilize taxpayer bills of rights or statutes that exclude enforcement results from quantitative compliance goals because of the potential for conflicts of interest by auditors.⁷ Hence, the Committee is troubled that ONRR’s adoption and implementation of these enforcement-related metrics may encourage auditor malfeasance.

Additionally, the Committee has also received reports of ONRR reversing guidance to payors and conducting excessive and repeated audits for certain locations. Per ONRR’s website and “Dear Reporter” letters, ONRR encourages payors to contact ONRR’s Royalty Valuation with questions regarding how to calculate royalties and with questions about valuation regulations.⁸ As such, payors frequently do so, purportedly seeking informed instructions on interpreting ONRR’s complex regulations. Despite payors’ good faith reliance on the valuation group and ONRR’s direction to seek assistance, ONRR takes the position that “ONRR does not have an obligation to provide guidance, and industry does not have a right to expect or rely on guidance.”⁹ Similarly, ONRR has asserted to payors that guidance “is not binding on either the government or industry.”¹⁰ But it’s not a two-way street. Per ONRR’s own “Dear Reporter” letters, ONRR explicitly reiterates that “if [payors] knowingly or willfully misreport royalties, ONRR may assess civil penalties . . . Of up to \$25,000 per day, per violation.”¹¹ ONRR continues, “if ONRR finds a lessee to not be in compliance with the guidance provided in this letter, that lessee may be subject to civil penalties.”¹²

⁵ 30 U.S.C. 1721a(a)(3).

⁶ See 26 C.F.R. 801.6(b) (Internal Revenue Service regulations prohibiting the inclusion of information regarding the tax enforcement result reached in any case from the IRS’s quantitative goals).

⁷ See Department of Audit, *Taxpayer Bill of Rights*, STATE OF WYOMING, <https://audit.wyo.gov/excise-tax/taxpayer-bill-of-rights> (last visited Dec. 19, 2023), (“A right to assurance that no employee of the state shall receive a bonus, be promoted or in any way rewarded on the basis of the amount of assessments or collections from taxpayers”).

⁸ See *Valuation & Pricing, Contacts*, ONRR, <https://www.onrr.gov/references/valuation?tabs=contacts> (last visited Dec. 19, 2023).

⁹ Source on file with the Committee.

¹⁰ *Id.*

¹¹ ONRR, *Rescinding the August 8, 2013, Reporter Letter titled Royalty on Gas Used or Lost Along a Pipeline Prior to the Point of Sale*, DEP’T OF THE INTERIOR (Dec. 18, 2014), <https://www.onrr.gov/reporter-letters/20141218.pdf>.

¹² *Id.*

In other words, payors and lessees are bound by guidance ONRR elects to publish, but ONRR refuses to hold itself to the same standard when industry seeks guidance.

The double standard is amplified in the audit arena. The Committee received reports of circumstances where one audit office's conclusions differ from another audit office's conclusions for the exact same period and location. Such inconsistency and uncertainty underscores ONRR's potentially arbitrary approach towards enforcing its regulations and highlights the potential opportunities for auditor malfeasance.

To assist the Committee in ensuring the appropriate management of federal royalty rates and revenue, we seek the following documents, information, and responses by January 5, 2023:

1. Documents sufficient to show the compliance goals of ONRR and whether ONRR met those goals.
2. Documents sufficient to show how ONRR's compliance employees were trained on ONRR's goals, whether ONRR's employees' own performance reviews were based in any part on meeting those goals, and the individual role each employee played in meeting such goals.
3. All documents and communications regarding any employee at ONRR who was promoted, received a bonus, or received other recognition based on the amount the employee assessed or collected.
4. Documents sufficient to show that ONRR adopted a policy, or communicated as such, that ONRR refused to accept identified overpayments on form CMP-2014.
5. Documents sufficient to show how many overpayments made by payors were identified by auditors during audits, including the total amounts of overpayments, by payor.
6. Documents sufficient to show how many civil penalties or orders to perform restructured accounting or orders to pay were issued by ONRR to payors for failure to follow guidance. This includes, but is not limited to, guidance from Dear Reporter letters.
7. Documents sufficient to show how guidance is developed, including how ONRR responds to payors' requests for assistance.
8. A written description on whether ONRR allows for the re-auditing of the same location for the same periods and all documents sufficient to show ONRR's adopted policy on re-audits.

An attachment to this letter provides additional instructions for responding to the requests from the Committee. Please contact the Majority staff for the Oversight and Investigations Subcommittee at (202) 225-2761 or HNRR.Oversight@mail.house.gov with any questions. Under House Rule X, the Committee has “general oversight” of any matter relating to its jurisdiction, including the management of federal royalties from energy produced on federal lands. Thank you for your cooperation.

Sincerely,



Bruce Westerman
Chairman
Committee on Natural Resources



Paul A. Gosar, D.D.S.
Chairman
Subcommittee on Oversight and Investigations



Pete Stauber
Chairman
Subcommittee on Energy and Mineral Resources

Enclosure