



## Testimony

Before the Subcommittee on the Interior,  
Energy, and Environment, Committee on  
Oversight and Government Reform,  
House of Representatives

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For Release on Delivery  
Expected at 2:00 p.m. ET  
Wednesday, February 15, 2017

# HIGH RISK

## Federal Management Challenges Related to Indian Energy Resources

Statement of Statement of Frank Rusco, Director, Natural  
Resources and Environment

# GAO Highlights

Highlights of [GAO-17-434T](#), a testimony before the Subcommittee on the Interior, Energy, and Environment, Committee on Oversight and Government Reform, U.S. House of Representatives

## Why GAO Did This Study

Indian tribes and their members hold considerable energy resources and may decide to use these resources to provide economic benefits and improve the well-being of their communities. However, according to a 2014 Interior document, these resources are underdeveloped relative to surrounding non-Indian resources. Development of Indian energy resources is a complex process that may involve federal, tribal, and state agencies. Interior's BIA has primary authority for managing Indian energy development and generally holds final decision-making authority for leases, permits, and other approvals required for development.

GAO's 2017 biennial update to its High Risk List identifies federal management of programs that serve tribes and their members as a new high risk area needing attention by Congress and the executive branch.

This testimony highlights the key findings of three prior GAO reports (GAO-15-502, GAO-16-553, and GAO-17-43). It focuses primarily on BIA's management of Indian energy resources and development. For the prior reports, GAO analyzed federal data; reviewed federal, academic, and other literature; and interviewed tribal, federal and industry stakeholders.

## What GAO Recommends

In the past 2 years, GAO issued three reports and made 14 recommendations to BIA to improve its management of Indian energy resources, such as to track its review process, improve collaboration, and conduct workforce planning. BIA agreed with most recommendations and identified some steps it intends to take to implement them.

View [GAO-17-434T](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov)

February 15, 2017

## HIGH RISK

### Federal Management Challenges Related to Indian Energy Resources

## What GAO Found

In three prior reports on Indian energy development, GAO found that the Department of the Interior's (Interior) Bureau of Indian Affairs (BIA) has inefficiently managed Indian energy resources and the development process and thereby limited opportunities for tribes and their members to use those resources to create economic benefits and improve the well-being of their communities. GAO has also reported numerous challenges facing Interior's Bureau of Indian Education and BIA and the Department of Health and Human Services' Indian Health Services in administering education and health care services, which put the health and safety of American Indians served by these programs at risk. For the purposes of this testimony, GAO is focusing on the concerns related to Indian energy.

GAO categorized concerns associated with BIA management of energy resources and the development process into several broad areas, including oversight of BIA activities, collaboration, and BIA workforce planning.

- **Oversight of BIA activities.** In a June 2015 report, GAO found that BIA review and approval is required throughout the development process. However, BIA does not have a documented process or the data needed to track its review and response times—such as data on the date documents are received, the date the review process is considered complete, and the date documents are approved or denied. GAO recommended that BIA develop a documented process to track its review and response times. Interior generally agreed and stated it would try to implement a tracking and monitoring mechanism by the end of fiscal year 2017 for oil and gas leases. Interior did not indicate whether it intends to track and monitor its review of other energy-related documents that must be approved before tribes can develop resources.
- **Collaboration.** In a November 2016 report, GAO found that BIA has taken steps to form an Indian Energy Service Center that is intended to, among other things, help expedite the permitting process associated with Indian energy development. However, BIA did not coordinate with key regulatory agencies, including Interior's Fish and Wildlife Service, the Environmental Protection Agency and the U.S. Army Corps of Engineers. GAO recommended that BIA include other regulatory agencies in the Service Center so that it can act as a single point of contact or lead agency to coordinate and navigate the regulatory process. Interior agreed with our related recommendation and described plans to address it.
- **BIA workforce planning.** In June 2015 and in November 2016, GAO reported concerns associated with BIA's long-standing workforce challenges, such as inadequate staff resources and staff at some offices without the skills needed to effectively review energy-related documents. GAO recommended that BIA assess critical skills and competencies needed to fulfill its responsibilities related to energy development, and that it establish a documented process for assessing BIA's workforce composition at agency offices. Interior agreed with our recommendations and stated it is taking steps to implement them.

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Chairman Farenthold, Ranking Member Plaskett, and Members of the Committee:

I am pleased to be here today to discuss a new area we added to our High Risk List this year—Improving Federal Management of Programs that Serve Tribes and Their Members.

We are adding this high-risk area in response to serious and long-standing problems in federal management of Indian energy resources and administration of Indian education and health care programs, which are highlighted in several of our prior reports, along with reports and testimony from Inspectors General, tribal nations, special commissions, and others.<sup>1</sup> In particular, we have found that the Department of the Interior's Bureau of Indian Affairs (BIA) has inefficiently managed Indian energy resources and the development process and thereby limited opportunities for tribes and their members to use those resources to create economic benefits and improve the well-being of their communities.<sup>2</sup> In addition, we have found numerous challenges facing Interior's Bureau of Indian Education (BIE) and BIA<sup>3</sup> and the Department of Health and Human Services' (HHS) Indian Health Services (IHS) in administering education and health care services, which put the health

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<sup>1</sup>See, for example, GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, [GAO-15-502](#) (Washington, D.C.: June 8, 2015); Elizabeth Ann Kronk Warner, *Tribal Renewable Energy Development Under The HEARTH Act: An Independently Rational, But Collectively Deficient, Option*, 55 *Ariz. L. Rev.* 1031, 1041 (2013); Department of the Interior, *Report of the Commission on Indian Trust Administration and Reform*, Approved Dec. 10, 2013; Statement of Chairman Mark Fox, Mandan, Hidatsa and Arikara Nation, before the U.S. House of Representatives' Committee on Appropriations, Subcommittee on Interior, Environment and Related Agencies, on American Indian/Alaska Native Programs, March 24, 2015; Office of Inspector General, Department of the Interior, *Oil and Gas Leasing in Indian Country: An Opportunity For Economic Development*, Report No. CR-EV-BIA-0001-2011 (Washington, D.C.: 2012).

<sup>2</sup>For the purposes of this report, we use the term Indian energy resources to include energy resources that are held in trust by the United States for the benefit of tribes and their members. See [GAO-15-502](#).

<sup>3</sup>Both of these bureaus are under the Office of the Assistant Secretary for Indian Affairs (Indian Affairs).

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and safety of American Indians served by these programs at risk.<sup>4</sup> For the purposes of this testimony, I will focus on our prior work related to Indian energy.

As you know, the United States has recognized the sovereign status of tribes since its formation and currently recognizes 567 Indian tribes as distinct, independent political communities that possess certain powers of sovereignty and self-government. Some tribes and their members hold abundant energy resources and have decided to develop these resources to meet the needs of their community, in part because energy development provides opportunities to improve poor living conditions, decrease high levels of poverty, and fund public services for tribal members. While tribes and their members determine how to use their energy resources, if the resources are held in trust or restricted status, BIA—through its 12 regional offices, 85 agency offices, and other supporting offices—generally must review and approve leases, permits, and other documents required for development.<sup>5</sup> BIA’s management of Indian energy resources and oversight of development is to be conducted pursuant to federal law, in a manner that is consistent with the federal government’s fiduciary trust responsibility to federally recognized Indian tribes and their members.

In 2016, Congress found in the Indian Trust Asset Reform Act that “through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians.”<sup>6</sup> As further stated in that act, the fiduciary responsibilities of the United States to Indians arise in part from

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<sup>4</sup>See, for example, GAO, *Indian Affairs: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, [GAO-16-313](#) (Washington, D.C.: March 10, 2016); GAO, *Indian Affairs: Preliminary Results Show Continued Challenges to the Oversight and Support of Education Facilities*, [GAO-15-389T](#) (Washington, D.C.: February 27, 2015); GAO, *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, [GAO-13-774](#) (Washington, D.C.: September 24, 2013); GAO, *Indian Health Service: Actions Needed to Improve Oversight of Quality of Care*, [GAO-17-181](#) (Washington, D.C.: January 9, 2017); and GAO, *Indian Health Service: Actions Needed to Improve Oversight of Patient Wait Times*, [GAO-16-333](#) (Washington, D.C.: March 29, 2016.)

<sup>5</sup>Trust resources are held for the beneficial interest of the tribe or a member, and restricted resources are owned by the tribe or a member but subject to restrictions on alienation. Trust and restricted resources generally cannot be leased without approval of the Secretary of the Interior, who has generally delegated this authority to BIA.

<sup>6</sup>Pub. L. No. 114-178, § 101 (2016)(codified at 25 U.S.C. § 5601).

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commitments made in treaties and agreements, under which Indians surrendered claims to vast tracts of land, and this history of federal-tribal relations and understandings has benefitted the people of the United States and established “enduring and enforceable [f]ederal obligations to which the national honor has been committed.” Through improvements to federal management of programs that serve tribes and their members, agencies can improve the efficiency of federal programs under which services are provided to tribes and their members. This would be consistent with the expressed view of Congress as to the federal government’s trust responsibilities, and strengthen confidence in the performance and accountability of our federal government.

In this context, my testimony today primarily discusses the findings from three of our prior reports on Indian energy development.<sup>7</sup> Accordingly, this testimony identifies our findings about federal management of programs that serve tribes and their members concerning management and oversight of Indian energy resources and development. In addition, I will highlight several key actions that we recommended in those reports that federal agencies can take to help overcome challenges associated with the management of Indian energy resources.

This testimony draws on findings from reports issued from June 2015 through November 2016. To conduct our prior work, we reviewed relevant laws, regulations, and policies; reviewed and analyzed federal data;<sup>8</sup> and interviewed tribal, federal, and industry officials, among others. More detailed information on our scope and methodology can be found in each of the three reports.

We conducted the work on which this testimony is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

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<sup>7</sup>GAO, *Indian Energy Development: Additional Actions by Federal Agencies Are Needed to Overcome Factors Hindering Development*, [GAO-17-43](#) (Washington, D.C.: Nov. 10, 2016); *Indian Energy Development: Interior Could Do More to Improve Its Process for Approving Revenue-Sharing Agreements*, [GAO-16-553](#) (Washington, D.C.: June 13, 2016); and [GAO-15-502](#).

<sup>8</sup>To assess the reliability of these data, we verified key dates and other information with relevant and knowledgeable officials.

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provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Management and Oversight of Indian Energy Resources and Development

In our prior work, we identified concerns associated with BIA management of energy resources and categorized them into five broad areas: (1) oversight of BIA activities; (2) collaboration and communication; (3) BIA workforce planning; (4) technology; and (5) BIA's data. In the past 2 years, we issued three reports on Indian energy resources and development in which we made 14 recommendations to BIA. BIA agreed with most of these recommendations, and has identified steps it will take to address some of the recommendations.

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### Oversight of BIA Activities

In a June 2015 report, we found that BIA review and approval is required throughout the development process, including the approval of leases, right-of-way (ROW) agreements, and appraisals.<sup>9</sup> However, BIA does not have a documented process or the data needed to track its review and response times—such as data on the date documents are received, the date the review process is considered complete by the agency, and the date documents are approved or denied.<sup>10</sup> However, a few stakeholders we interviewed and some literature we reviewed suggested that BIA's review and approval process can be lengthy and increase development costs and project development times, resulting in missed development opportunities, lost revenue, and jeopardized viability of projects.<sup>11</sup>

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<sup>9</sup>A ROW is an authorization to a qualified individual, business, or government entity to use a specific area of land for a specific amount of time for a certain purpose and with certain restrictions.

<sup>10</sup>For example, BIA approves seismic exploration permits for operators to identify oil and gas resources, maintains surface and mineral ownership records, identifies and verifies ownership of land and resources, and reviews and approves a number of energy-related documents—such as surface leases, mineral leases for the right to drill for oil and gas resources, and right-of-way agreements. [GAO-15-502](#).

<sup>11</sup>See, for example, Hearing on the Indian Tribal Energy and Self-Determination Act Amendments (S. 2132), 113th Cong. (April 30, 2014). Statement of the Honorable James M. Olguin, Acting Chairman, Southern Ute Indian Tribal Council on behalf of the Southern Ute Indian Tribe; and Prepared statement of Hon. Nathan Small, Chairman, Fort Hall Business Council, Shoshone-Bannock Tribes. Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities, Field Hearing Before the Committee on Indian Affairs, United States Senate 112th Cong. 1st sess. (Aug. 17, 2011).

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For example, in 2014, the Acting Chairman for the Southern Ute Indian Tribe reported that BIA's review of some of its energy-related documents took as long as 8 years. Specifically, as of April 30, 2014, the tribe had been waiting for at least 5 years for BIA to review 81 pipeline ROW agreements—11 of these 81 ROW agreements had been under review for 8 years. According to the tribal official, had these ROW agreements been approved in a timely manner, the tribe would have received revenue through various sources, including tribal permitting fees, oil and gas severance taxes, and royalties. The tribal official noted that, during the period of delay, prices for natural gas rose to an historic high but had since declined. Therefore, the official reported that much of the estimated \$95 million in lost revenue would never be recovered by the tribe.

In another example from our June 2015 report, one lease for a proposed utility-scale wind project took BIA more than 3 years to review and approve and according to a tribal official, the lease was only reviewed and approved after multiple calls and letters from the tribe to BIA headquarters. According to a tribal official, the long review time contributed to uncertainty about the continued viability of the project because data used to support the economic feasibility and environmental impact of the project became too old to accurately reflect current conditions.

We recommended in our June 2015 report that Interior direct BIA to develop a documented process to track its review and response times. Interior agreed with the recommendation and stated it would try to implement a tracking and monitoring mechanism by the end of fiscal year 2017 for oil and gas leases. However, Interior did not indicate whether it intends to track and monitor its review of other energy-related documents that must be approved before tribes can develop resources. Without comprehensively tracking and monitoring its review process, BIA cannot ensure that documents are moving forward in a timely manner, and lengthy review times may continue to contribute to lost revenue and missed development opportunities for Indian tribes.

Further, in a June 2016 report, we found that BIA took steps to improve its process for reviewing revenue-sharing agreements but still had not

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established a systematic mechanism for monitoring or tracking.<sup>12</sup> We recommended, among other things, that BIA develop a systematic mechanism for tracking these agreements through the review and approval process. Interior concurred with this recommendation and stated that BIA would develop such a mechanism and in the meantime would use a centralized tracking spreadsheet.

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## Collaboration and Communication

In June 2015, we reported that the added complexity of the federal process, which can include multiple regulatory agencies, prevents many developers from pursuing Indian energy resources for development.<sup>13</sup> In a November 2016 report, we reported that Interior has recognized the need for collaboration in the regulatory process and described the creation of the Indian Energy Service Center as a center point of collaboration for permitting that will break down barriers between federal agencies.<sup>14</sup> We found that BIA had taken steps to form an Indian Energy Service Center that was intended to, among other things, help expedite the permitting process associated with Indian energy development. We reported that the Service Center had the potential to increase collaboration between BIA and BLM on some permitting requirements associated with oil and gas development.<sup>15</sup> However, we found that BIA did not coordinate with other key regulatory agencies, including Interior's Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Environmental Protection Agency. As a result, the Service Center was neither established as the central point for collaborating with all federal regulatory partners generally involved in energy development, nor did it serve as a single point of contact for permitting requirements. Without serving in these capacities, the Service Center was limited in its ability to improve efficiencies in the federal regulatory process. We also found that in forming the Service Center, BIA did not involve key stakeholders, such as the Department of

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<sup>12</sup>The federal government, tribes, Indian mineral owners, state governments, and private landowners can lease land to companies for the development of oil and gas resources. A revenue-sharing agreement, known as a communitization agreement—may be necessary for royalty allocation when federal or Indian leases are involved that cannot be independently developed.

<sup>13</sup>[GAO-15-502](#).

<sup>14</sup>Testimony of Lawrence S. Roberts, Principal Deputy Assistant Secretary, Indian Affairs, Department of the Interior, before the Committee on Indian Affairs, United States Senate, on "The GAO Report on Indian Energy Development: Poor Management By BIA Has Hindered Development on Indian Lands" on Oct. 21, 2015.

<sup>15</sup>[GAO-17-43](#).

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Energy (DOE)—an agency with significant energy expertise—and BIA employees from agency offices. By not involving key stakeholders, BIA was missing an opportunity to incorporate their expertise into its efforts.

We recommended that BIA include other regulatory agencies in the Service Center so that it can act as a single point of contact or a lead agency to coordinate and navigate the regulatory process. We also recommended that BIA establish formal agreements with key stakeholders, such as DOE, that identify the advisory or support role of the office, and establish a process for seeking and obtaining input from key stakeholders, such as BIA employees, on the Service Center's activities. Interior agreed with our recommendations and described its plans to address them.

In addition, in 2005, Congress provided an option for tribes to enter into an agreement with the Secretary of the Interior that allows the tribe, at their discretion, to enter into leases, business agreements, and ROW agreements for energy resource development on tribal lands without review and approval by the Secretary. However, in our June 2015 report, we found that uncertainties about Interior's regulations for implementing this option have contributed to deter tribes from pursuing such agreements.<sup>16</sup> We recommended that Interior provide clarifying guidance. In August 2015, Interior stated the department was considering further guidance. As of December 2016, however Interior had not provided additional guidance.

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## BIA Workforce Planning

In our June 2015 report, we found that BIA's long-standing workforce challenges, such as inadequate staff resources and staff at some offices without the skills needed to effectively review energy-related documents, were factors hindering Indian energy development.<sup>17</sup> Further, in November 2016, we found that some BIA offices had high vacancy rates for key energy development positions, and some offices reported not having staff with key skills to review energy-related documents.<sup>18</sup> For example, BIA agency officials in an area where tribes are considering developing wind farms told us that they would not feel comfortable

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<sup>16</sup>See Tribal Energy Resource Agreements (TERA) as discussed in [GAO-15-502](#).

<sup>17</sup>[GAO-15-502](#).

<sup>18</sup>[GAO-17-43](#).

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approving proposed wind leases because their staff do not have the expertise to review such proposals. Consequently, these officials told us that they would send a proposed wind lease to higher ranking officials in the regional office for review. Similarly, an official from the regional office stated that they do not have the required expertise and would forward such a proposal to senior officials in Interior's Office of the Solicitor. The Director of BIA told us that BIA agency offices generally do not have the expertise to help tribes with solar and wind development because it is rare that such skills are needed.

Through the Indian Energy Service Center, BIA plans to hire numerous new staff over the next 2 years, which could resolve some of the long-standing workforce challenges that have hindered Indian energy development in the past. However, BIA is hiring new staff without incorporating effective workforce planning principles. Specifically, BIA has not assessed key skills needed to fulfill its responsibilities related to energy development or identified skill gaps, and does not have a documented process to provide reasonable assurance its workforce composition at agency offices is consistent with its mission, goals, and tribal priorities. As a result, BIA cannot provide reasonable assurance it has the right people in place with the right skills to effectively meet its responsibilities or whether new staff will fill skill gaps.

We recommended in our November 2016 report that BIA assess critical skills and competencies needed to fulfill its responsibilities related to energy development and identify potential gaps. We also recommended BIA establish a documented process for assessing BIA's workforce composition at agency offices taking into account BIA's mission, goals, and tribal priorities. Interior agreed with our recommendations and stated it was taking steps to implement them.

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## Technology

In June 2015, we found that BIA did not have the necessary geographic information system (GIS) mapping data for identifying who owns and uses resources, such as existing leases.<sup>19</sup> Interior guidance states that efficient management of oil and gas resources relies, in part, on GIS mapping technology because it allows managers to easily identify resources available for lease and where leases are in effect. According to a BIA official, without GIS data, the process of identifying transactions, such as

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<sup>19</sup>[GAO-15-502](#).

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leases and access agreements for Indian land and resources, can take significant time and staff resources to search paper records stored in multiple locations.

We recommended BIA should take steps to improve its GIS capabilities to ensure it can verify ownership in a timely manner. Interior stated it will enhance mapping capabilities by developing a national dataset composed of all Indian land tracts and boundaries in the next 4 years.

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## Incomplete and Inaccurate Data

In June 2015, we found that BIA did not have the data it needs to verify who owns some Indian oil and gas resources or identify where leases are in effect.<sup>20</sup> In some cases, BIA cannot verify ownership because federal cadastral surveys—the means by which land is defined, divided, traced, and recorded—cannot be found or are outdated. The ability to account for Indian resources would assist BIA in fulfilling its responsibilities, and determining ownership is a necessary step for BIA to approve leases and other energy-related documents.

We recommended that BIA identify land survey needs. Interior agreed with the recommendation and stated it will develop a data collection tool to identify the extent of its survey needs in fiscal year 2016. As of December 2016, Interior had not provided information on the status of its efforts to develop a data collection tool.

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In conclusion, our reviews have identified a number of areas in which BIA could improve its management of Indian energy resources. Interior has stated that it intends to take some steps to implement our recommendations, and we will continue to monitor its efforts. We look forward to continuing to work with this committee in overseeing BIA, BIE, and IHS to ensure that they are operating in the most effective and efficient manner, consistent with the federal government's trust responsibilities, and working toward improving service to tribes and their members.

Chairman Farenthold, Ranking Member Plaskett, and Members of the Committee, this concludes my prepared statement. I would be pleased to answer any questions that you may have at this time.

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<sup>20</sup>[GAO-15-502](#).

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## GAO Contacts and Staff Acknowledgement

If you or your staff members have any questions about this testimony, please contact me at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Christine Kehr (Assistant Director), Richard Burkard, Jay Spaan, and Kiki Theodoropoulos made key contributions to this testimony.

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