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Testimony

Before the Special Committee on Aging,  
U.S. Senate

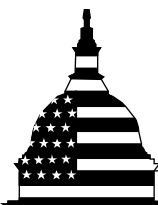
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# VETERANS' PENSION BENEFITS

## Improvements Needed to Ensure Only Qualified Veterans Receive Benefits

Statement of Daniel Bertoni, Director  
Education, Workforce, and Income Security Issues



**G A O**

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Chairman Kohl, Ranking Member Corker and Members of the Committee:

I am pleased to be here to discuss the Department of Veterans Affairs' (VA) pension program, which provides economic benefits to wartime veterans age 65 and older or who have disabilities that are unrelated to their military service, as well as to their surviving spouses and dependent children. To qualify for VA pension benefits, a claimant must have limited income and assets. Recently, concerns have been raised that some organizations are marketing financial products and other services to help individuals whose assets exceed the program's financial eligibility thresholds qualify for these benefits. These organizations may charge substantial fees for products and services that may not always be in claimants' best long-term interests.

In our report released today on VA's pension program, we identified vulnerabilities in VA's procedures for assessing financial eligibility. We also found that there is no prohibition on claimants transferring assets prior to applying for benefits, and some claimants do so.<sup>1</sup> Other means-tested programs, such as Medicaid, conduct a look-back review to determine if an individual has transferred assets for less than fair market value, and if so, may deny eligibility for benefits for a period of time. This control helps ensure that only those in financial need receive benefits.

My testimony is based on our report and focuses on what is known about organizations that are marketing financial products and services to veterans and survivors to enable them to qualify for VA pension benefits. To conduct this work, we reviewed relevant federal laws and regulations, and VA policies and procedures. We interviewed officials from VA headquarters, as well as staff at VA's three Pension Management Centers (PMC).<sup>2</sup> We also conducted Internet research and interviews with veterans' advocacy groups, VA officials, and state and local officials to identify organizations that market financial and estate planning services to help claimants qualify for VA pension benefits. We contacted some of these organizations to learn about the types of products and services provided. Moreover, our investigative staff posed as the son of an 86-

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<sup>1</sup>GAO, *Veterans' Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits*, [GAO-12-540](#) (Washington, D.C.: May 15, 2012).

<sup>2</sup>VA's three PMC's are located in Milwaukee, WI; Philadelphia, PA; and Saint Paul, MN.

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year-old veteran and contacted 25 judgmentally selected organizations which included both financial planners and attorneys. We had discussions with representatives of 19 of these organizations. A more detailed explanation of our methodology is available in our full report. Our audit work was conducted in accordance with generally accepted government auditing standards. Our investigative work was conducted in accordance with Quality Standards for Inspection and Evaluation published by the Council of the Inspectors General on Integrity and Efficiency.

In summary, we identified over 200 organizations that market financial and estate planning services to help pension claimants with excess assets qualify for pension benefits. These organizations consist primarily of financial planners and attorneys who offer products such as annuities and trusts. All 19 organizations our investigative staff contacted said a claimant can qualify for pension benefits by transferring assets before applying, which is permitted under the program. Two organization representatives said they helped pension claimants with substantial assets, including millionaires, obtain VA's approval for benefits. Some products and services provided, such as deferred annuities, may not be suitable for the elderly because they may not have access to their funds within their expected lifetime without facing high withdrawal fees. Also, such asset transfers may result in ineligibility for Medicaid coverage for long-term care for a period of time. The majority of the 19 organizations contacted charged fees, ranging from a few hundred dollars for benefits counseling to \$10,000 for establishment of a trust. In our report we asked Congress to consider establishing a look-back and penalty period for pension claimants who transfer assets prior to applying for pension benefits, similar to other federally supported means-tested programs, such as Medicaid. We also recommended that VA obtain timely information on asset transfers, strengthen income and asset verification processes, and provide clearer guidance to claims processors. VA concurred with our recommendations and agreed that a look back and penalty period for asset transfers was needed.

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## Background

In fiscal year 2011, VA provided about \$ 4.3 billion in pension benefits for about 517,000 recipients. These benefits are available to low-income wartime veterans who are 65 and older, or who are under age 65 but are permanently and totally disabled due to conditions unrelated to their military service.<sup>3</sup> Surviving spouses and dependent children may also qualify for these benefits. Average annual payments in fiscal year 2011 were \$9,669 for veterans and \$6,209 for survivors.

VA provides pension benefits through its Veterans Benefits Administration (VBA), and claims processors assess claims at VBA's three PMCs. VA also accredits representatives of veterans service organizations, attorneys, and claims agents to assist claimants with the preparation and submission of VA claims at no charge.<sup>4</sup> To become accredited, an individual must meet certain requirements set forth in federal law.<sup>5</sup>

To qualify for pension benefits, claimants' countable income must not exceed annual pension limits that are set by statute.<sup>6</sup> These income limits are also the maximum annual pension payment that a beneficiary may receive and may vary based on whether claimants are veterans or survivors, their family composition, as well as whether they need enhanced

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<sup>3</sup>VA currently administers three pension programs, commonly referred to as Improved Law Pensions (Pub. L. No. 95-588, 92 Stat. 2497), Prior Law Pensions (Pub. L. No. 86-211, 73 Stat. 432), and Old Law Pensions (Pub. L. No. 73-2, 48 Stat. 8). About 95 percent of all pension recipients are under the Improved Pension program, and new beneficiaries can only accede to this program. We focus on the Improved Pension program in this testimony. For veterans with service-connected disabilities, VA provides cash benefits through its disability compensation program.

<sup>4</sup>See 38 U.S.C. §§ 5901-5904.

<sup>5</sup>Id.

<sup>6</sup>See 38 U.S.C. §§ 1521, 1541, and 1542

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benefits, such as aid and attendance or housebound benefits.<sup>7</sup> For example, to qualify for pension benefits in 2012 a veteran with no dependents and who is in need of aid and attendance benefits cannot have income that exceeds \$20,447. In determining if a claimant's income is below program thresholds, VA includes recurring sources of income such as Social Security retirement and disability benefits, but not income from public assistance programs such as Supplemental Security Income (SSI).

VA's policy manual specifically states that the VA pension program is not intended to protect substantial assets or preserve an estate for a beneficiary's heirs. In assessing financial eligibility, VA also considers net worth or the total value of claimants' assets, such as bank accounts, stocks, bonds, mutual funds, and any property other than the claimant's dwelling, a reasonable lot area, a vehicle, and personal belongings.<sup>8, 9</sup> According to VA's policy manual, claims processors are generally required to formally determine if claimants with assets worth over \$80,000 have financial resources that will last a reasonable period of time to pay for their basic expenses. In making this determination, claims processors consider net worth, income, expenses, age, and life expectancy to

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<sup>7</sup>As part of the pension program, VA provides enhanced pension benefit amounts to veterans and surviving family members who demonstrate the need for aid and attendance, or who are considered permanently housebound. Veterans may be eligible for Aid and Attendance benefits if they demonstrate an inability to perform everyday personal functions such as bathing, dressing, eating, adjusting prosthetic devices, and protecting themselves from hazards or dangers in their daily environment. They may also be eligible for these benefits if they are a patient in a nursing home, bedridden, or are blind or nearly blind. Veterans may be eligible for Housebound benefits if they have a disability rated at 100 percent and, as a result, are permanently or substantially confined to their homes, or have a disability rated at 100 percent and at least one other disability rated at 60 percent or more (although these individuals are legally classified as Housebound, they may be capable of leaving their homes). See GAO, *VA Enhanced Monthly Benefits: Recipient Population Is Changing, and Awareness Could Be Improved*, [GAO-12-153](#) (Washington, D.C.: Dec. 14, 2011).

<sup>8</sup>See 38 C.F.R. § 3.275. For claimants who are veterans, VA also assesses the net worth of the veteran's spouse to determine financial eligibility.

<sup>9</sup>There are no thresholds on the value of a claimant's assets that are defined in statute. The relevant statute states that a veteran's pension shall be denied "when the corpus of the estate of the veteran or, if the veteran has a spouse, the corpus of the estates of the veteran and of the veteran's spouse is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance." 38 U.S.C. § 1522(a).

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determine if claimants' financial resources are sufficient to pay for their expenses without assistance from VA.

VA pension claimants may also be eligible for other means-tested programs, such as Medicaid, a joint federal-state health care financing program that provides coverage for long-term care services for certain individuals who meet specific income and resource thresholds. Each state administers its Medicaid program and establishes specific income and resource eligibility requirements that must fall within federal standards.<sup>10</sup> Similarly, the SSI program provides cash benefits to individuals who are 65 or older, blind, or disabled who have limited income and whose resources are \$2,000 or less.<sup>11</sup>

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## Organizations Help Veterans Transfer Assets to Qualify for Pension Benefits

We identified over 200 organizations located throughout the country that market their services to help veterans and their surviving spouses qualify for VA pension benefits by transferring or preserving excess assets. These organizations consist primarily of financial planners and attorneys offering products and services such as annuities and the establishment of trusts, to enable potential VA pension claimants with excess assets to meet financial eligibility criteria for VA pension benefits. For example, one organization's website advertised that it develops financial plans which include various insurance products, and that its specific area of expertise is to help VA pension claimants with hundreds of thousands of dollars in assets obtain approval for these benefits. Under current federal law and regulations, VA pension claimants are allowed to transfer assets and reduce their net worth prior to applying for benefits, so services being marketed and provided by these organizations to qualify for VA pension benefits are legally permissible under program rules. In contrast, for Medicaid—another means tested program—federal law explicitly restricts eligibility for coverage for long term care for certain individuals who

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<sup>10</sup>We reported in 2007 that in most states, an individual must have \$2,000 or less in countable financial resources to be eligible for Medicaid (\$3,000 for a married couple). See GAO, *Medicaid Long-Term Care: Few Transferred Assets before Applying for Nursing Home Coverage; Impact of Deficit Reduction Act on Eligibility Is Uncertain*, [GAO-07-280](#) (Washington, D.C.: Mar. 26, 2007).

<sup>11</sup>Financial resources must be less than \$3,000 if the individual lives with their spouse. Also, individuals in some states who require long-term care services can become eligible for Medicaid benefits through participation in the SSI program.

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transfer assets for less than fair market value prior to applying.<sup>12, 13</sup> As a result, when an individual applies for Medicaid coverage for long-term care, states conduct a look-back—a review to determine if the applicant transferred assets for less than fair market value prior to applying. Individuals who have transferred assets for less than fair market value during the 60 months prior to applying may be denied eligibility for long-term care coverage for a period of time, known as the penalty period.<sup>14</sup> For example, gifting assets would generally be considered a transfer of assets for less than fair market value and result in a penalty period. Also, under the SSI program, claimants who transfer assets for less than fair market value prior to applying may become ineligible for these benefits for up to 36 months.<sup>15</sup>

During our investigative calls, all 19 organizations correctly noted that pension claimants can legally transfer assets prior to applying. They indicated it is possible to qualify for VA pension benefits despite having excess assets, and almost all provided information on how to transfer these assets. (See figure 1 for transcript excerpts of calls with organizations on services they provide to qualify for VA pension benefits.)

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<sup>12</sup>42 U.S.C. § 1396p(c).

<sup>13</sup>An asset transfer for less than fair market value would occur when the claimant gifts or sells an asset and gets in return an amount that is less than the value of the asset on the open market at the time of the transfer.

<sup>14</sup>The penalty period is calculated by dividing the uncompensated dollar value of the assets transferred by the average monthly cost of private nursing home care in the state (or in the community, at the option of the state). The penalty period generally begins on the later of (1) the first day of the month during or after which the individual transferred assets at less than fair market value, or (2) the date on which the individual would have been eligible for Medicaid coverage for long-term care if it were not for these asset transfers. Certain asset transfers are exempt from Medicaid penalty provisions such as assets transferred to an individual's spouse or disabled child. Asset transfers would also not be penalized if the individual can demonstrate that the transfer was carried out exclusively for purposes other than qualifying for Medicaid, or when the state determines that the penalty would result in undue hardship. 42 U.S.C. § 1396p(c).

<sup>15</sup>42 U.S.C. § 1382b(c)(1)(A).

**Figure 1: Transcript Excerpts of Calls with Organizations Providing Products and Services to Help Claimants Qualify for VA Pension Benefits**

A GAO investigator phoned multiple companies on behalf of a fictitious father, who was portrayed as a veteran seeking VA pension benefits, to learn about the services provided by the companies. Below are excerpts from three calls in which a company representative told the investigator that VA beneficiaries may qualify for benefits by transferring assets.



Company representative:

"...I will just tell you this: The VA allows you to qualify, regardless of what your assets are. And **I've had people with over a million dollars qualify for this benefit.**"



Company representative:

"It is a means-tested and an asset-tested benefit, but essentially there are legal work-arounds. And if you know, it's **basically you have to put together a good presentation for the Veterans Administration.** And that's what we do. We help people position assets and coordinate the presentation effort to the VA."

Later in the call:

"**Yeah, I've qualified people with that — beyond \$700,000 worth of liquid assets.** So that's not the issue."



Company representative:

"What that means is basically repositioning the assets to where again, the software tells us what we can and can't do. But I'm just going to give you kind of a hypothetical: For example, **you may be able to reposition, reallocate those funds into a trust... And we're allowed to apply for VA benefits the day after,** by reallocating those funds, so that dad can qualify."

Source: GAO and company representatives.

Note: For a complete transcript of all three calls, see [GAO-12-540](#).

A number of different strategies may be used to transfer pension claimants' excess assets so that they meet financial eligibility thresholds. Among the 19 organizations our investigative staff contacted, about half advised transferring excess assets into an irrevocable trust with a family member as the trustee to direct funds to pay for the veteran's expenses. A similar number also advised placing excess assets into some type of annuity. Among these, several advised placing excess assets into an immediate annuity that generates income for the client. In employing this strategy, assets that VA would count when determining financial eligibility for pension benefits are converted into monthly income. This monthly income would fall below program thresholds and enable the claimant to still qualify for the benefits. About one-third of the organizations recommended strategies that included the use of both annuities and trusts. For example, one organization we contacted advised repositioning some excess assets into an irrevocable trust, with the son as the trustee,



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and placing remaining excess assets into a deferred annuity that would not be completely accessible, since most of the funds could not be withdrawn without a penalty. In addition, several organization representatives we interviewed also told us they may advise using caretaker agreements to enable a client to qualify for VA pension benefits. Organizations told us this strategy generally involves the pension claimant transferring assets to family members as part of a contract, in exchange for caretaker services to be provided by these family members for the remainder of the claimant's lifetime.

Some organization representatives we interviewed told us that transferring assets to qualify for VA pension benefits is advantageous for elderly pension claimants because it enables them to have more income to pay for care expenses and remain out of a nursing home for a longer period of time. For example, representatives from one organization said the use of immediate income annuities allows pension claimants to increase their monthly income that, combined with the VA pension, could help pay for assisted living or in-home care costs. Other financial planners and attorneys said if claimants do not conduct financial or estate planning to qualify for the VA pension and instead spend down their assets prior to applying, the monthly amount of the pension benefit they eventually receive may be insufficient to pay for their long-term care. They said that, as a result, these claimants may decide to seek Medicaid coverage for nursing home care because of their lack of financial resources, when they could have remained in an assisted living facility or at home with the aid of the VA pension. Some of these organizations told us that nursing home care financed by Medicaid is more costly for the government than if the veteran had received the VA pension benefit and obtained care in a lower-cost assisted living facility.

Many organizations we identified also conduct presentations on VA pension benefits at assisted living or retirement communities to identify prospective clients. According to attorneys and officials from state attorneys general offices we spoke with, managers of assisted living facilities or retirement communities may have an interest in inviting organization representatives to conduct presentations on VA pension benefits because these benefits allow them to obtain new residents by making the costs more affordable. For example, we obtained documentation indicating that one retirement community paid an organization representative a fee for a new resident he helped the facility obtain. Another community in another state paid organization representatives fees to assist residents in completing the VA pension application.

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## Some Products and Services May Adversely Affect Claimants

Some products may not be suitable for elderly veterans because they may lose access to funds they may need for future expenses, such as medical care. To help elderly clients become financially eligible for VA pension benefits, some organizations may sell deferred annuities which would make the client unable to access the funds in the annuity during their expected lifetime without facing high withdrawal fees, according to some attorneys we spoke with. An elderly advocacy organization representative we spoke with also noted that elderly individuals are impoverishing themselves by purchasing these products when they may need the transferred assets to pay for their long-term care expenses. As part of our investigative work, one organization provided a financial plan to qualify for VA pension benefits that included both an immediate annuity as well as a deferred annuity for an 86-year-old veteran that would generate payments only after the veteran's life expectancy.

Some organizations that assist in transferring assets to qualify people for VA pension benefits may not consider the implications of these transfers on eligibility for Medicaid coverage for long-term care. Individuals who transfer assets to qualify for the VA pension may become ineligible for Medicaid coverage for long-term care services they may need in the future. For example, asset transfers that may enable someone to qualify for the VA pension program, such as gifts to someone not residing in a claimant's household, the purchase of deferred annuities, or the establishment of trusts, may result in a delay in Medicaid eligibility if the assets were transferred for less than fair market value during Medicaid's 60-month look-back period. According to several attorneys we spoke with, some organization representatives are unaware or are indifferent to the adverse effects on Medicaid eligibility of the products and services they market to qualify for the VA pension. As a result, potential pension claimants may be unaware that the purchase of these products and services may subsequently delay their eligibility for Medicaid.

In addition to the potential adverse impact of transferring assets, we heard concerns that marketing strategies used by some of these companies may be misleading. According to several attorneys we spoke with, some organization representatives market their services in a way that may lead potential pension claimants and their family members to believe they are veterans advocates working for a nonprofit organization, or are endorsed by VA. As a result, they may fail to realize these representatives are primarily interested in selling financial products. For example, some organization representatives may tell attendees during presentations at assisted living facilities that their services consist of providing information on VA pension benefits and assisting with the application, and do not

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disclose they are insurance agents selling annuities to help people qualify for these benefits. One elder law attorney we spoke with said many attendees at these presentations may have Alzheimer's disease or dementia and are not in a position to make decisions about their finances. Therefore, they are vulnerable to being convinced that they must purchase a financial product to qualify for these benefits.

Concerns have also been raised that VA's accreditation of individuals to assist with applying for VA benefits may have unintended consequences. According to attorneys and officials in one state, organization representatives use their VA accreditation to assist in preparing claims as a marketing tool that generates trust and allows them to attract clients. Claimants may not understand that this accreditation only means that the individual is proficient in VA's policies and procedures to assist in preparing and submitting VA benefits claims and does not ensure the products and services these individuals are selling are in claimants' best interests.

Finally, some organizations may provide erroneous information to clients, or fail to follow through on assisting them with submitting the pension application, which can adversely affect pension claimants. For example, one veteran said he was told by an organization representative to sell his home prior to applying for the VA pension and that he did not have to report the proceeds from the sale on the application. He followed this advice and was approved for benefits, but VA later identified these assets, which caused him to incur a debt to VA of \$40,000 resulting from a benefit overpayment. Organizations may also promise assistance with the application process to any interested pension claimant but, unbeknownst to the claimant, may not follow through in providing this service if the claimant does not want to transfer assets. For example, the daughter of a veteran we spoke with, who sought application assistance from an organization representative, told us the representative never submitted her father's pension claim to VA as promised. She learned of this about a year after she thought the claim was submitted and had to reapply through a county veterans service officer. Her father was approved 2 months later but passed away less than a month after his approval. She believes her father could have received benefits for a year if the representative had submitted the claim, and believes the representative did not do so because she did not want to use his services to transfer assets.

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## Costs for Services to Transfer Assets Varied, but Some Organizations May be Charging Prohibited Fees

The costs of services provided by these organizations to assist in qualifying for VA pension benefits varied, but organizations may be charging prohibited fees. Among the 19 organizations our investigative staff contacted for this review, about one-third said they did not charge for their services to help qualify claimants for VA pension benefits. For example, financial planners told us that, generally, there are no direct costs associated with transferring assets into an annuity, but that costs would be included in the terms of the annuity, such as the commission earned by the insurance agent. Among organizations that did charge for services, fees ranged from a few hundred dollars for benefits counseling up to \$10,000 for the establishment of a trust. Also, although federal law prohibits charging fees to assist in completing and submitting applications for VA benefits,<sup>16</sup> representatives from veterans advocacy groups and some attorneys we spoke with raised concerns that these organizations may be charging for fees related to the application, or find ways to circumvent this prohibition, such as by claiming they are charging for benefits counseling. For example, one organization our investigative staff contacted charged \$850 to have an attorney work on the application process, a \$225 analysis fee, and \$1,600 for the establishment of a trust. Another organization representative indicated he charged a “long term planning fee” of \$1,200 to be paid prior to services being provided. The organization representative asked that someone other than the veteran pay this fee, claiming that only disinterested third parties can be charged fees but not the veteran. Also, in a case identified by officials in one state, a veteran was charged \$3,000 by an individual for assistance in applying for VA pension benefits which were ultimately denied. In addition, concerns have been raised that fees charged may be excessive for the services provided. For example, in July 2011, California enacted a law generally prohibiting unreasonable fees from being charged for these services.<sup>17</sup>

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## Concluding Observations

The VA pension program provides a critical benefit to veterans, many of whom are elderly and have limited financial resources to support themselves. Current federal law allows individuals to transfer assets prior to applying for VA pension benefits and still be approved. As a result,

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<sup>16</sup>See 38 U.S.C. §§ 5902(b)(1)(A), 5903(a)(1), and 5904(c)(1).

<sup>17</sup>See Cal. Civ. Code § 1770(a)(24). An “unreasonable fee” is defined as a fee that is exorbitant and disproportionate to the services performed.

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claimants who have sufficient assets to pay for their expenses can transfer these assets and qualify for this means-tested benefit. This arrangement circumvents the intended purpose of the program and wastes taxpayer dollars. A number of organizations help claimants with these asset transfers, but some of the products and services provided may have adverse implications for the claimant such as delaying eligibility for Medicaid coverage for long-term care or causing claimants to lose access to their financial resources. Accordingly, we asked Congress to consider establishing a look-back and penalty period for pension claimants who transfer assets at less than fair market value prior to applying for pension benefits, similar to other federally supported means-tested programs.

Chairman Kohl, Ranking Member Corker, 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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## GAO Contact and Staff Acknowledgements

For further information about this testimony, please contact Daniel Bertoni at (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Other key contributors to this testimony include Jeremy Cox, Paul Desaulniers, Alex Galuten, Nelson Olhero, Martin Scire, and Walter Vance.

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