



Report to the Republican Leader,
Committee on Education and Labor,
House of Representatives

April 2020

BUREAU OF INDIAN EDUCATION

Actions Needed to Improve Management of a Supplemental Education Program

GAO Highlights

Highlights of [GAO-20-308](#), a report to the Republican Leader, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

American Indian and Alaska Native students enrolled in public schools have performed consistently below other students on national assessments from 2005-2019. The JOM program provides academic and cultural supports, through contracts, to meet the specialized and unique educational needs of American Indian and Alaska Native students enrolled in public schools and select private schools. In fiscal year 2019, Interior allocated about \$23 million for the JOM program, according to Interior's budget documentation.

GAO was asked to review issues related to Interior's JOM program, administered by BIE. This report examines the extent to which BIE (1) has key program information, (2) provides training to JOM contractors, and (3) clearly defines and identifies JOM roles and responsibilities. GAO reviewed relevant federal laws, regulations, and both BIE and JOM contractor documents; analyzed existing data and information on JOM; and interviewed agency officials, five JOM contractors of different types, and two nonprofit organizations selected for their knowledge of the JOM program.

What GAO Recommends

GAO is making five recommendations, including that the Director of BIE should maintain an accurate and complete list of JOM contractors, develop JOM training, and clearly define roles and responsibilities and identify staff for carrying out JOM functions. Interior agreed with the recommendations.

View [GAO-20-308](#). For more information, contact Melissa Emrey-Arras at (617) 788-0534 or EmreyArrasM@gao.gov.

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Actions Needed to Improve Management of a Supplemental Education Program

What GAO Found

The Department of the Interior's (Interior) Bureau of Indian Education (BIE) does not have key information to manage the Johnson-O'Malley (JOM) program which provides supplemental education services to meet the specialized and unique needs of American Indian and Alaska Native students. For example, BIE does not maintain a complete and accurate list of all its JOM contractors, who provide services including targeted academic supports, Native language classes, and cultural activities. In May 2019, BIE began to identify all the contractors, but officials acknowledged that their list is still incomplete, and GAO found problems with the list, such as duplicate entries. Federal internal control standards state that an agency should have relevant, reliable information to run its operations. Maintaining a complete list of contractors would improve BIE's administration of the JOM program.

BIE does not provide any training for JOM contractors. For example, BIE does not provide training to contractors on how to effectively manage their JOM programs or meet program requirements. By providing training for contractors, BIE could ensure that contractors understand the program and are equipped to provide services to meet the educational needs of their students.

In addition, BIE has not clearly defined the roles and responsibilities or identified the staff needed to effectively administer the JOM program (see figure). For example, when BIE closed a field office in California, staff were not identified to administer the office's contracts, including helping contractors renew their contracts when they expired. Also, BIE has not identified a role for Interior's attorneys in reviewing the contracts and some contractors have types of contracts for which they are not eligible. Further, BIE has not identified staff to conduct consistent program oversight, which is important to mitigating the risk of misuse and abuse of JOM funds. Until all JOM roles and responsibilities have been defined and identified, challenges may persist.

The Bureau of Indian Education Has Not Defined Roles and Responsibilities or Identified the Staff Necessary for Conducting Critical Johnson-O'Malley Functions, Such As:



Source: GAO analysis of agency documents related to the JOM program. | GAO-20-308

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Abbreviations

BIA	Bureau of Indian Affairs
BIE	Bureau of Indian Education
Indian Affairs	Office of the Assistant Secretary—Indian Affairs
Interior	Department of the Interior
JOM	Johnson-O'Malley
OMB	Office of Management and Budget

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April 9, 2020

The Honorable Virginia Foxx
Republican Leader
Committee on Education and Labor
House of Representatives

Dear Dr. Foxx:

American Indian and Alaska Native students enrolled in public schools have performed consistently below other students enrolled in public schools on national assessments from 2005-2019,¹ and had graduation rates 13 percentage points lower than the national average for the 2016-2017 school year.² Further, these students may have cultural needs, which include learning their Native languages and histories.³ The Johnson-O'Malley (JOM) program, established in 1934, provides supplementary financial assistance to meet these students' specialized and unique educational needs.

The Department of the Interior's (Interior) Bureau of Indian Education (BIE) contracts with tribal organizations, Indian corporations, school

¹U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress (NAEP), 2005, 2007, 2009, 2011, 2013, 2015, 2017, and 2019 Reading and Mathematics Assessments.

²The 2016-2017 school year is the most recently available data. The graduation rate examines the percentage of U.S. public high school students who graduate on time, as measured by the adjusted cohort graduation rate. In this indicator, the United States includes public schools in the 50 states and the District of Columbia, except for BIE schools. U.S. Department of Education, Office of Elementary and Secondary Education, Consolidated State Performance Report, 2016-17. See *Digest of Education Statistics 2018*, table 219.46.

³The Johnson O'Malley Act and implementing regulations use the term "Indian student." We use the term "American Indian and Alaska Native student" in this report instead because BIE uses this term to describe the population of eligible JOM students.

districts, and states to provide JOM programs to eligible students.⁴ According to BIE, JOM funds can be used to support a wide range of initiatives that may include Native language and cultural enrichment programs, academic assistance, dropout prevention programs, and the purchase of supplies for school and extra-curricular programs. According to BIE, these resources benefit eligible students' academics, including helping them stay in school. In fiscal year 2019, Interior allocated about \$23 million for the JOM program, according to Interior's budget documentation.⁵

The JOM program is primarily administered by BIE, but officials within the Bureau of Indian Affairs (BIA) generally disburse JOM funds. Organizationally, BIE and BIA are separate bureaus in the Office of the Assistant Secretary-Indian Affairs (Indian Affairs) within Interior.⁶ BIE's mission is to provide Indian students quality education opportunities starting in early childhood in accordance with a tribe's needs for cultural and economic well-being.

⁴See 25 C.F.R. § 273.110. A tribal organization is defined as the recognized governing body of any Indian tribe or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization. An Indian corporation is a legally established organization of Indians chartered under state or federal law that does not meet the regulatory definition of a tribal organization. For the purposes of this report, we do not distinguish between a tribal organization or an Indian corporation. We refer to tribal organizations and Indian corporations that receive JOM funds as "tribal contractors" and public school districts that receive JOM contracts as "school contractors."

⁵According to BIE's 2020 budget justification, the allocation for the JOM program was approximately \$14.9 million in fiscal year 2019. In addition, the allocation for self-governance compacts also included approximately \$8 million for the JOM program, according to documents provided by Interior officials. Although the budget justification does not specify each individual program included under self-governance compacts, the Office of Self-Governance tracks this information. Interior officials said the total JOM fund amount is calculated by adding the JOM funds provided through self-governance compacts to the JOM funds indicated in the budget justification.

⁶BIE—formerly known as the Office of Indian Education Programs when it was part of BIA—was renamed and established as a separate bureau within Interior in 2006. BIE's and BIA's directors both report to the Principal Deputy Assistant Secretary-Indian Affairs.

For decades, we, along with Interior’s Inspector General, have reported on challenges related to Indian education.⁷ In February 2017, due to long-standing ineffective administration of Indian education and other programs, we concluded that Indian Affairs’ management of these programs was a high risk area, and we added it to our High Risk List.⁸ In light of this history, you asked us to provide information on issues related to the program.

This report examines the extent to which BIE (1) has key information on the JOM program, (2) provides training to JOM contractors, and (3) defines and identifies JOM program roles and responsibilities.

To determine the extent to which BIE has information on the JOM program, we reviewed Interior’s reporting forms used to collect information from JOM contractors. We also obtained and analyzed data from Interior’s Financial and Business Management System and other data collected from BIE program officials on the number of JOM contractors and the amount disbursed to each. We found these data to be sufficiently reliable for the purposes of reporting on the number of JOM contractors that BIE has identified and the amount disbursed to each. However, we did not find those data to be reliable for other purposes. To examine the information BIE collects regarding JOM disbursements, we interviewed BIA, BIE, and other Interior officials knowledgeable about the

⁷GAO, *Bureau of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed*, [GAO-03-692](#) (Washington, D.C.: July 28, 2003); *Indian Affairs: Better Management and Accountability Needed to Improve Indian Education*, [GAO-13-774](#) (Washington, D.C.: Sept. 24, 2013); *Indian Affairs: Bureau of Indian Education Needs to Improve Oversight of School Spending*, [GAO-15-121](#) (Washington, D.C.: Nov. 13, 2014); *Indian Affairs: Key Actions Needed to Ensure Safety and Health at Indian School Facilities*, [GAO-16-313](#) (Washington, D.C.: Mar. 10, 2016); *Indian Affairs: Further Actions Needed to Improve Oversight and Accountability for School Safety Inspections*, [GAO-17-421](#) (Washington, D.C.: May 24, 2017); and *Indian Affairs: Actions Needed to Better Manage Indian School Construction Projects*, [GAO-17-447](#) (Washington, D.C.: May 24, 2017). U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, C-EV-BIE-0023-2014 (Washington, D.C.: Sept. 30, 2016).

⁸The most recent report on the high-risk list was issued in 2019. The relevant high-risk area—Improving Federal Management of Programs that Serve Tribes and Their Members—addresses challenges related to Indian education, energy resources managed by BIA, and health care programs run by the Indian Health Service within Health and Human Services. GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, [GAO-19-157SP](#) (Washington, D.C.: Mar. 6, 2019).

process for disbursing JOM funds. We compared our findings to relevant standards for internal control.

To determine the extent to which BIE provides training to JOM contractors, we interviewed knowledgeable BIE officials. We compared BIE's provision of instruction and training to federal standards for internal control and BIE's strategic plan.⁹ To obtain JOM contractors' perspectives, we travelled to Oklahoma to attend two BIE-hosted consultation sessions designed to solicit feedback from JOM contractors and other interested stakeholders on proposed changes affecting the program.¹⁰ We also met with two tribal JOM contractors and interviewed three school districts serving as contractors in Oklahoma. We selected the tribal contractors by identifying those contractors in close geographic proximity to the consultation session and then prioritizing those contractors receiving the most contract funds. The findings from the visit and interviews with JOM contractors are not generalizable to all JOM contractors, but provide illustrative examples of contractors' experience with the JOM program. We collected and reviewed relevant documents from these contractors, but we did not evaluate contractors' administration of their JOM programs. We also interviewed nonprofit organizations such as the National Indian Education Association and the National Johnson-O'Malley Association, a nonprofit organization focused on JOM programs, both selected for their expertise on the JOM program.

To determine the extent to which BIE clearly defines and identifies JOM program roles and responsibilities, we reviewed relevant federal laws and regulations.¹¹ We also reviewed agency documents related to the JOM program, including relevant position descriptions and internal procedures. We also interviewed officials with various roles and responsibilities related to JOM functions. For example, we interviewed BIE officials in the Office of the Director and the Office of Sovereignty in Indian Education, and received written responses from four BIE field offices—known as

⁹U.S. Department of the Interior, Bureau of Indian Education, *Strategic Direction 2018-2023* (Washington, D.C.: August 2018).

¹⁰See 84 Fed. Reg. 30,647 (June 27, 2019).

¹¹Interior promulgated new, final JOM program regulations, after we provided a draft of the report to Interior for their review. Education Contracts Under Johnson-O'Malley Act, 85 Fed. Reg. 10,938 (Feb. 25, 2020). We have updated our report to reflect the issuance of these new regulations that were effective March 26, 2020.

Education Resource Centers.¹² We also interviewed BIA officials in the Division of Workforce Development, Division of Indian Self-Determination, and Office of Self-Governance; and other Interior officials in the Office of the Solicitor and the Office of Budget and Performance Management. We compared BIE's efforts to define and identify JOM roles and responsibilities to relevant standards for internal control.

We conducted this performance audit from April 2019 to April 2020 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 provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

JOM Program Eligibility and Administration

The JOM program provides supplementary financial assistance, through contracts, to meet the unique and specialized educational needs of eligible American Indian and Alaska Native students. Eligible students, under Interior's regulations, are generally Indian students age 3 through grade 12 who are either a member of an Indian tribe or at least one-quarter degree Indian blood descendant of a member of an Indian tribe.¹³

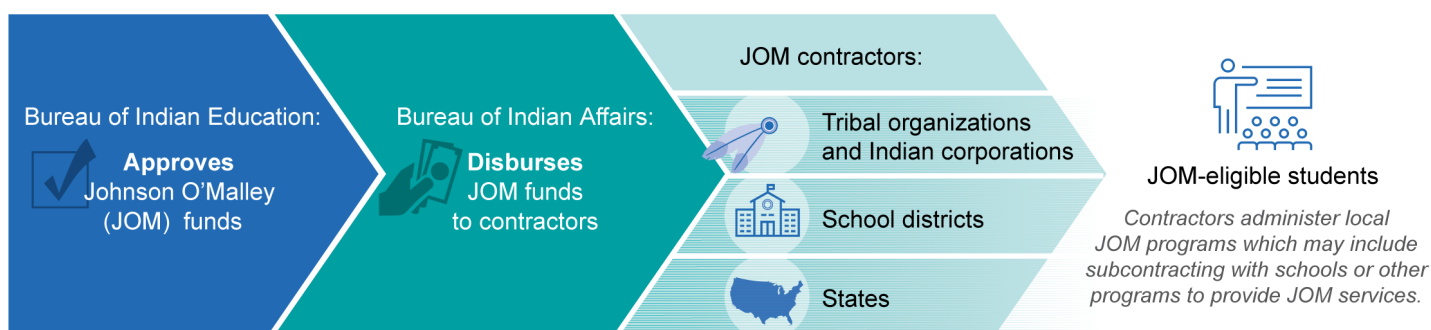
BIE contracts with tribal organizations, Indian corporations, school districts, and states—which we collectively refer to as JOM contractors as that is the term used by Interior—that administer local JOM programs and

¹²We selected knowledgeable staff to interview at these Education Resource Centers by asking the three Associate Deputy Directors responsible for overseeing the offices to identify staff who have a role in overseeing the JOM program. We received written responses from four of the five officials they identified. One official did not respond to repeated requests for information.

¹³25 C.F.R. § 273.112. Students enrolled in sectarian schools or bureau-funded schools that were not previously private schools controlled by an Indian tribe or tribal organization are not eligible for JOM, according to the regulations. Interior documentation states that tribes have discretion in determining criteria for membership and can include such requirements as documented descent from an original member, residency on tribal lands, or a required degree of ancestry from a particular tribe.

disburse funds to schools or other programs providing JOM services.¹⁴ Most JOM funds are distributed through tribal contractors, according to BIE. BIE generally relies on BIA officials to disburse JOM funds, as noted previously (see fig. 1).¹⁵

Figure 1: Overview of Indian Affairs' Typical Process for Funding Johnson-O'Malley Programs



Source: GAO analysis of interviews with Bureau of Indian Education officials and related documentation. | GAO-20-308

BIE's director is generally responsible for directing and managing JOM functions, including establishing policies and procedures, coordinating technical assistance, and approving the disbursement of JOM funds.¹⁶ In 2014, BIE established one centralized position dedicated solely to administering JOM as part of a broader re-structuring initiative and the

¹⁴BIE officials said that they also contract with 16 of the 47 tribally-controlled schools currently in the BIE school system that were previously private, meaning they were not formerly operated by the bureau. According to the JOM regulations, previously private schools are considered to be tribal organizations for purposes of eligibility for JOM contracts. Students that attend other BIE funded schools, both tribally-controlled schools and BIE-operated schools, and sectarian schools are not eligible JOM beneficiaries, according to the regulations.

¹⁵BIA's awarding officials are located throughout BIA's 12 regional and more than 80 local offices.

¹⁶Although BIE is generally responsible for establishing JOM policies and procedures, BIA's policies and procedures can affect how the program operates. For example, BIA is generally responsible for establishing policies and procedures for the primary funding mechanisms through which JOM funds are disbursed to contractors.

position has been consistently staffed since 2018.¹⁷ The current JOM program specialist is responsible for planning, developing, administering, and coordinating the JOM program.

It is the federal government's policy to fulfill its trust responsibility for educating Indian children by working with tribes to ensure that education programs are of the highest quality. In 2016, Congress found in the Indian Trust Asset Reform Act that "through treaties, statutes, and historical relationship with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians."¹⁸ As further stated in the Act, the fiduciary responsibilities of the United States to Indians are also founded in part on specific commitments made in treaties and agreements, in exchange for which Indians surrendered claims to vast tracts of land.

JOM Program Requirements and Implementation

The JOM program is the only federally-funded Indian educational program that allows for student, parent, and community involvement in identifying and meeting the educational needs of American Indian and Alaska Native students, according to the National Johnson-O'Malley Association—a tribally led organization which advocates for JOM programs. The JOM regulations require prospective contractors to formulate an education plan in consultation with an Indian Education Committee, generally made up of parents of American Indian and Alaska Native students, and to submit the plan to BIE. Indian Education Committees have the authority to, among other things, participate fully in planning, developing, implementing, and evaluating their local JOM programs.¹⁹

According to BIE officials, JOM funds can be used to support a wide variety of supplemental education programs. For example, these funds support programs providing Native cultural and language enrichment; academic support; dropout prevention; and the purchase of school

¹⁷In June 2014, the Secretary of the Interior issued an order restructuring BIE to focus its efforts on providing resources, direction, and services to tribes to increase their capacity to directly operate BIE schools. Through the restructuring, BIE also planned to centralize JOM administration by creating a Johnson-O'Malley Center responsible for assisting all contractors, including providing technical assistance and processing funding. Senior BIE officials we interviewed, however, said BIE no longer has plans to create a Johnson-O'Malley Center.

¹⁸Pub. L. No. 114-178, § 101(3), 130 Stat. 432, 432 (2016).

¹⁹Indian Education Committees, if permitted by their organizational documents, can also make an annual assessment of the learning needs of students in the community affected.

supplies, according to BIE (see fig. 2). JOM programs, particularly for students who are not living near tribal land, may be the only way students can access tribal language and cultural programs.

Figure 2: School Supplies Funded by the Johnson-O'Malley Program



Source: GAO. | GAO-20-308

According to BIE officials, JOM funding is primarily disbursed to contractors through three different funding mechanisms: self-

determination contracts,²⁰ self-governance compacts,²¹ and 477 plans.²² Most JOM contractors—over 200—are funded through self-determination contracts, according to data provided by BIE.²³ These three funding mechanisms result in different oversight authority for Interior. However, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (Modernization Act)—enacted on December 31, 2018—requires all JOM contractors to submit annual reports to the Secretary of the Interior with the number of eligible Indian students during the previous fiscal year, an accounting of the amounts expended, and the purposes for which those amounts were expended.²⁴ BIE officials said some contractors can also be subject to site visits to oversee the program.

JOM Program Funding

Under regulations, JOM funds are to be distributed to contractors by a formula that factors in the number of eligible students to be served and average per-student operating costs.²⁵ Interior conducted its most recent official JOM student count in 1995. As a result, subsequent JOM

²⁰Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended, allows tribes to enter into agreements with Interior, known as self-determination contracts, that transfer the administration of programs for the benefit of Indians because of their status as Indians that would otherwise be managed by Interior from the agency to the tribe. See Pub. L. No. 93-638, title I, *codified as amended at* 25 U.S.C. §§ 5321-5332.

²¹Title IV of the Indian Self-Determination and Education Assistance Act of 1975, as amended, allows tribes to enter into agreements with Interior, known as self-governance compacts. These compacts transfer to tribes the administration of certain programs that would otherwise be managed by Interior and also provide tribes with some flexibility in program administration. See Pub. L. No. 93-638, title IV, *codified as amended at* 25 U.S.C. §§ 5361-5368.

²²Pub. L. No. 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992 as amended. 477 plans allow tribes to integrate employment, training, and related services programs and funding from 12 different federal agencies under one plan. Upon tribal request, all program funds transferred to an Indian tribe in accordance with an approved 477 plan can be transferred through an existing self-determination contract or self-governance compact.

²³According to BIE officials, a smaller amount of JOM funds are disbursed through other funding mechanisms, such as grant funding under the Tribally Controlled Schools Act of 1988. See Pub. L. No. 100-297, tit. V, pt. B, 102 Stat. 130, 385.

²⁴Pub. L. No. 115-404, § 2, 132 Stat. 5349, 5350-5351 (2018) (*codified at* 25 U.S.C. § 5348(c)(1)). The statute prohibits JOM contractors from receiving JOM funds in the subsequent fiscal year if they do not submit this required annual report.

²⁵25 C.F.R. § 273.140(a). Specifically, the formula is the number of eligible Indian students multiplied by a weight factor that is the state average cost per pupil divided by the national average cost per pupil, or a default factor of 1.3, whichever is higher.

distributions have been based on the number of students served by contractors in 1995—271,884 students. BIE officials said that the total number of eligible students has increased since 1995, although no official count has been completed.²⁶ As a result, the funding contractors receive may not reflect changes in the number of students served by contractors. The size of JOM contracts currently ranges from less than \$1,000 to nearly \$4 million, according to data provided by BIE.

The Modernization Act requires BIE to determine the number of eligible students served or potentially served and to complete a rulemaking process to, among other things, modernize program rules.²⁷ BIE published a preliminary report on its initial determination of eligible students in October 2019 and is continuing to work on finalizing its count of eligible students. Additionally, in response to the Modernization Act, Interior promulgated new final JOM program regulations that became effective March 26, 2020.²⁸

BIE Lacks Key Information on the JOM Program Needed for Oversight

BIE Does Not Have a Complete and Accurate List of JOM Contractors

BIE does not maintain a complete and accurate list of all JOM contractors. BIE officials said JOM funds are disbursed by awarding officials in various BIA offices in different locations, and there is no systematic process to identify and collect information on all the awarded contracts. BIE began efforts to identify all the contractors and the amount

²⁶BIE conducted incomplete counts of JOM eligible students in 2012 and 2014 that each identified more than 320,000 students. BIE could not verify the 2012 and 2014 counts and formally update the data from the 1995 official count. The counts were incomplete, in part, because BIE did not receive data from all contractors, according to bureau officials.

²⁷Pub. L. No. 115-404, § 2, 132 Stat. 5349, 5349 (2018). The law, among other things, also includes a provision for GAO to review the implementation of the Modernization Act, including any factors impacting the accuracy of the determinations of the number of eligible Indian students. BIE's efforts to conduct a new count are beyond the scope of this report.

²⁸Education Contracts Under Johnson-O'Malley Act, 85 Fed. Reg. 10,938 (Feb. 25, 2020). In this report, any references to JOM program regulations pertain to these recently finalized regulations.

of their awards in May 2019 after we asked for this information. As of December 2019, BIE said they identified more than 340 contractors.

BIE officials said they have not verified the accuracy and completeness of their current list of contractors. According to federal internal control standards, an agency should have relevant, reliable information to run and control its operations.²⁹ BIE officials said their current list of JOM contractors is incomplete because some Interior officials responsible for administering and disbursing JOM funds did not respond to their requests for information. In addition, BIE officials said they may not have contacted all the relevant officials within Interior when they developed the list.³⁰ BIE officials also said they do not know how many contractors may be missing from their list. Further, they said they did not validate the accuracy of the information they received on JOM contractors. Our analysis of BIE's list of JOM contractors identified data reliability concerns. For example, we found 19 contractors that were listed twice, meaning the total number of contractors provided by BIE contained duplicates and was not an accurate count.

BIE officials said that maintaining a complete list of contractors would be very helpful in their efforts to oversee and administer the JOM program, including allowing them to share program information more effectively with all contractors. For example, BIE did not inform all contractors about four consultation sessions it was holding in July 2019 on a proposed rule to change JOM regulations because BIE did not have contact information for all contractors, according to a BIE official. As a result, some contractors may have missed the opportunity to participate in the consultation sessions. Two JOM school contractors we interviewed told us they were not informed by BIE about the consultation sessions that took place in their state. These contractors said they had to create their own networks of contractors to inform each other about JOM-related developments and events because they cannot rely on communication from BIE.

In addition, BIE officials said that a complete and accurate list of contractors would help them determine the number of eligible JOM

²⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

³⁰We sought to identify additional JOM contractors through Interior's Financial and Business Management System. However, officials responsible for managing the system said it cannot be used to reliably identify JOM contractors because there is no indicator to identify JOM contractors.

students, as mandated by the Modernization Act. In the two previous efforts to update the count, BIE relied on contractors to submit the number of eligible students they serve. However, BIE officials acknowledged that the last effort to complete a count in 2014 failed, in part, because some contractors never received any communication that BIE was conducting a count. As a result, these contractors never submitted a count of students. Without a systematic process for maintaining a complete and accurate list of contractors, BIE may continue to face barriers administering the program.

BIE Does Not Routinely Track the Timeliness of Payments to Contractors

BIE does not have a process for tracking and monitoring the timeliness of JOM disbursements to contractors. According to BIE officials, the bureau does not establish a target date for disbursing funds to JOM contractors. JOM contractors and BIA and BIE officials we interviewed said the disbursements of JOM funds to some contractors are routinely provided later than expected based on contractors' past experience. For example, 27 school contractors did not receive a portion of their calendar year 2018 funding until September 2019, according to the BIA official primarily responsible for disbursing the contractors their funds. Further, some of these contractors did not receive any disbursement in the 2019 calendar year until August, months after funds are typically disbursed.

Delays in disbursing funds can hinder contractors' ability to effectively manage their JOM programs and serve students. For example, the three JOM school contractors we interviewed told us that delays in disbursements have negatively affected their ability to plan their JOM activities because they do not know when they will receive their funding. The contractors also said their JOM programs are not as robust as they could be because they regularly delay spending and retain prior disbursements to use in the following year in anticipation of future delays in disbursements. Even with these carry-over funds, contractors said they have had to delay JOM programs for students due to late disbursements of funds, which negatively affect students who depend on JOM for educational support.

We were unable to determine the full extent to which Interior disburses JOM funds in a timely manner because BIE and other Interior offices do not track and monitor the timeliness of JOM disbursements to contractors. Federal internal control standards state that agency management should design control activities to achieve objectives and respond to risks, such as by comparing actual performance to planned or expected results and

analyzing significant differences.³¹ BIE, however, has not established target disbursement dates for contracts and therefore has no standard against which to measure the timeliness of disbursements. Furthermore, BIE does not systematically track the time between receiving its appropriation and the disbursement of contractor funds.

BIE officials acknowledged that establishing a target date for disbursing funds to contractors and tracking progress in meeting that date could help ensure funds are provided in a timely manner. In an effort to monitor the disbursement of contractor funds, BIE officials said they have recently started to track the balance of JOM funds at each Education Resource Center. However, they acknowledged that tracking the balance of funds has limited usefulness in tracking the timeliness of disbursements because the information about fund balances does not include whether or not individual contractors have received their funds. BIE officials said having more detailed information on the disbursement of JOM funds would be helpful to ensure funds are provided in a timely manner.

In addition, we recently reported that funds associated with self-determination contracts and self-governance compacts for tribes, which include JOM funds, are not always disbursed in a timely manner.³² We recommended that the Assistant Secretary of Indian Affairs should establish a process to track and monitor the disbursement of funds to tribes that are associated with self-determination contracts and self-governance compacts.³³ However, this recommendation does not address all JOM contractors because non-tribal contractors are not eligible for self-determination contracts or self-governance compacts, and not all tribal contractors receive JOM funds through these mechanisms. Without also establishing a process for tracking and monitoring the disbursement of JOM funds through multiple funding mechanisms, BIE does not have reasonable assurance that funds will be disbursed in a timely manner.

³¹[GAO-14-704G](#).

³²GAO, *Indian Programs: Interior Should Address Factors Hindering Tribal Administration of Federal Programs*, [GAO-19-87](#) (Washington, D.C.: Jan. 3, 2019).

³³Interior agreed with this recommendation and stated that the department will develop a tracking system that will allow it to monitor the disposition of awards to tribes. As of December 2019, however, Interior has not implemented such a tracking system.

BIE Has Not Formally Assessed the JOM Information It Collects from Contractors or Updated Its Related Forms

BIE has not formally assessed the usefulness of the information it has collected from JOM contractors for over 25 years. One contractor questioned whether the information was useful for the agency's administration of the program because they never received any feedback or comments from BIE about the information they submitted. The contractor said they spent a considerable amount of time completing their annual report, which totaled over 60 pages and included information and signatures from over 40 different Indian Education Committees that oversee local JOM programs funded by the contract. In addition, all four contractors we interviewed that submitted annual reports said the information requested in the forms could be streamlined. For example, BIE's annual report form asks each school or project site to report both the "number of eligible students actually served" and "the number of students actually served." No instructions are provided to distinguish between the two populations, and the contractors said the reported number is identical since students must be eligible to be served by JOM.

All four contractors we met with that said they submitted an annual report and renewal application also told us the information collection forms were burdensome to complete. For example, they said the forms were difficult to fill out, in part because they are not compatible with computer word processing programs, and as a result, responses have to be handwritten or completed with a typewriter.

All of the forms BIE uses to collect information from contractors subject to JOM reporting requirements are also out of date. For example, the JOM renewal application form expired in 1993, meaning the Office of Management and Budget's (OMB) approval to collect the information has lapsed.³⁴ Agencies are required to submit all proposed information collections to OMB for approval. OMB reviews the proposal to assess the need for collecting the information and whether its collection minimizes burden on the public, among other things. Federal internal control standards also state that management should have a process to continually identify information requirements.³⁵

In a 2015 presentation, BIE officials recognized the need to update the outdated forms to reflect technological developments and reduce the paperwork burden for contractors, but no revisions to the forms have

³⁴OMB approval is indicated on associated forms by a control number and a date indicating when the approval to collect the information is to expire.

³⁵[GAO-14-704G](#).

been made. BIE officials said they plan to update the JOM application and reporting documents through the formal OMB review and approval process, but they do not have a timeline for doing so. We have previously reported that outdated forms may not be necessary or useful and may be an unnecessary burden on the public.³⁶ Until BIE updates the forms, some contractors will continue to struggle to complete them. Further, by assessing the usefulness of the information they are collecting from JOM contractors, BIE may identify opportunities to both collect information that could improve program management and streamline information requests.

BIE Has Not Developed JOM Training

BIE has not provided or developed training for JOM contractors, according to BIE officials. National Johnson-O'Malley Association officials told us that BIE and BIA used to provide training that was helpful to JOM contractors on topics such as filling out annual reports and applications for JOM contracts, particularly to new staff managing these programs, but they no longer do so. A nonprofit organization for Indian education we interviewed also said JOM contractors need training on a range of issues, including how to complete JOM annual reports and other documentation, and on how to operate following implementation of the Modernization Act. According to the nonprofit organization, regular training on JOM is particularly important because certain aspects of the program, such as conducting annual assessments to determine the learning needs of Indian children served by the program, can be technically challenging. Officials from one tribal contractor we interviewed said the tribe provides its own training to school staff that implement local JOM programs on such topics as how to conduct Indian Education Committee meetings, how to fill out reimbursement claims, and how to organize and maintain financial records for program administrators and parents on Indian Education Committees. The contractor said that BIE training on topics, including how to conduct and how often to hold Indian Education Committee meetings, would be particularly helpful. Another tribal contractor we interviewed, which BIE data identified as receiving among the largest amount of JOM funds of all contractors, said that other contractors they interact with do not have sufficient program knowledge or resources to provide training and could benefit from BIE training.

According to a BIE official, a former JOM Program Specialist, the need for training for JOM contractors is particularly important as there is frequent

³⁶GAO, *Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on Public*, [GAO-05-424](#) (Washington, D.C.: May 20, 2005).

turnover among contractor staff responsible for administering programs. Officials from the nonprofit organization for Indian education also told us that high turnover rates among administrators of local JOM programs necessitates regular training for new staff. They added that more senior staff working on local JOM programs would also benefit from regular training because they may be implementing their programs inefficiently or ineffectively. BIE officials told us they have provided program updates and answered questions at conferences hosted by organizations representing JOM contractors. Not all contractors, however, are able to attend these conferences given their limited resources, according to three contractors we interviewed. Internal controls standards state that management should develop training based on the needs of individuals' roles.³⁷ BIE officials acknowledged that developing and providing training is needed, but they told us they are currently focused on other aspects of managing the JOM program and have not prioritized training. For example, the agency has set a goal in its strategic plan to develop a JOM program handbook by July 1, 2020. By providing training, BIE can ensure that contractors have the information they need to better serve their students.

BIE Has Not Clearly Defined or Identified All the Roles and Responsibilities of BIE and Other Interior Staff Involved in Administering the Program

BIE has not clearly defined roles and responsibilities or identified the staff necessary for conducting critical JOM functions. According to federal internal control standards, management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.³⁸ BIE's lack of defining or identifying roles and responsibilities related to administering contracts, reviewing the appropriateness of contract types, and conducting program oversight is described in the following bullets.

- **Administering contracts.** BIE did not identify staff to administer some contracts, which has contributed to some JOM programs affected by these contracts going unfunded. According to BIE and BIA officials, BIE did not assign any staff to administer at least 20 contracts in California, including helping contractors renew their contracts when they expired, typically after 3 years.³⁹ As a result, these contracts—totaling over \$300,000—expired and were not renewed, disrupting JOM services. A BIE official informed us there

³⁷GAO-14-704G.

³⁸GAO-14-704G.

³⁹BIE officials said that the contracts they use are typically 3-year contracts that must be renewed and reviewed upon expiration.

were lapses in administering these contracts because BIE closed the office responsible for administering them as a result of its reorganization which began in 2014, and never assigned anyone to assume responsibility for the contracts associated with that office. BIE has not assessed whether similar lapses in coverage may have occurred in other states or regions.

BIE officials identified the unallocated funds from California in September 2019.⁴⁰ In October 2019, BIE officials began efforts to identify and contact officials responsible for all the JOM programs whose contracts lapsed in California due to gaps in BIE's administration of the program and began the process to start new JOM programs in the future.⁴¹ However, without identifying staff to administer all JOM contracts, problems with renewing and awarding contracts may persist.

- **Reviewing the appropriateness of contract types.** Interior's Office of the Solicitor does not have a role in reviewing the issuance of new JOM contracts, according to a senior attorney in that office. The Office of the Solicitor's lack of a role in reviewing JOM contracts increases the risk that contracts are not used appropriately. For example, we found that BIE has been using self-determination contracts to disburse JOM funds to non-tribal contractors, which is not authorized by the Indian Self Determination and Education Assistance Act. Under the Act, only Indian tribes and tribal organizations are eligible to enter into self-determination contracts; these contracts may not be used for non-tribal entities, such as school districts and states. The use of self-determination contracts for contractors that are not eligible to receive them can result in costs to the government. Self-determination contracts include provisions that would not otherwise be included in non-tribal JOM contracts, according to a senior attorney in the Office of the Solicitor. For example, self-determination contracts may include

⁴⁰JOM funds continued to be set aside for the expired contracts, but they could not be sent to the contractors because their contracts had expired. Instead, these funds were disbursed on a pro-rated basis to other contractors with self-determination contracts across the country.

⁴¹Almost all the contractors BIE contacted expressed interest in renewing their JOM programs, according to a senior BIE official knowledgeable about the situation. When contacted by BIE, some of the affected contractors said they tried to contact Interior to renew their contracts, but they did not know whom to contact, including whether the staff would be in BIE or BIA, according to the BIE official. In other cases, the contractor had new staff managing the program who may not have been aware that their contract had expired, according to the official.

contract support costs and extend the Federal Tort Claims Act to tribal government employees administering the federal program(s) under these contracts.⁴² Therefore, school contractors that were disbursed JOM funds through self-determination contracts may have received contract support costs and legal protections they would not have been eligible to receive, according to the senior attorney.

BIE officials told us that they have not determined how long self-determination contracts have been used to disburse JOM funds to non-tribal entities, how many non-tribal contractors were awarded these contracts, or whether the government has incurred costs as a result of using the wrong types of contracts. They said this information will be difficult to obtain because it is not systematically collected. After we found that BIE was using self-determination contracts to disburse JOM funds to school contractors, a senior attorney in the Office of the Solicitor said that her office would provide assistance as requested to BIE in transitioning these contracts to appropriate contracts. By systematically including the Office of the Solicitor in the process for reviewing JOM contracts, BIE can ensure that its contracts are the appropriate type and can minimize the risk of future inappropriate costs to the federal government.

- **Conducting JOM oversight activities.** BIE has not defined the roles and responsibilities related to overseeing JOM programs or identified staff dedicated to this function. For example, BIE has not identified staff at Education Resource Centers or other BIE offices with the capacity to conduct site visits and review JOM annual reports submitted by contractors.⁴³ As a result, the bureau's oversight of JOM contractors is done on an ad-hoc basis and sometimes not done at all, according to BIE officials. For example, in an internal memo

⁴²Contract support costs are reasonable and allowable costs of direct program expenses for the operation of the federal program transferred to the tribe by the contract and any additional administrative or other expenses related to the overhead incurred by the tribal contractor in connection with the operation of the federal program or activity pursuant to the contract. The Federal Torts Claims Act allows individuals injured by tribal government employees administering self-determination contracts to seek compensation from the federal government for injuries they sustain under certain circumstances (wrongful or negligent acts or omissions).

⁴³According to BIE officials, the only JOM contractors subject to BIE site visits are non-tribal contractors and tribal contractors receiving funds through self-determination contracts. BIE does conduct site visits for contractors that receive JOM funds through self-governance compacts and 477 plans, according to BIE officials. These agreements are designed to allow tribes greater control and flexibility over management of tribal programs—including JOM—and are administered by BIA.

addressed to BIE's Director, a senior BIE official said that because the bureau has not identified staff with the capacity to conduct site visits, most Education Resource Centers have not conducted any site visits in at least 5 years. Officials from one tribal JOM contractor that said it is subject to BIE oversight told us that BIE has not conducted a site visit of their program in 10 years. They noted that BIE's past site visits resulted in recommendations that improved their program activities and procedures and changed how they defined student eligibility. In addition, the head of an Education Resource Center said that JOM oversight activities are collateral duties that his staff do not have time to fulfill.

Further, the responsibilities of officials who are charged with overseeing JOM programs have not been clearly defined. For example, BIE has not defined the responsibilities related to conducting site visits, such as what aspects of the program should be reviewed and which contractors should be selected for site visits. This lack of clearly defined responsibilities has resulted in inconsistencies in how officials are conducting oversight activities and potential gaps in coverage of contractors that are subject to oversight. BIE's lack of oversight may also increase the risk of misuse and abuse of JOM funds. According to Interior's Office of Inspector General, there have been three identified cases of theft related to the JOM program that occurred between 2004 and 2010.⁴⁴ For example, a program coordinator of a JOM contract stole program funds as part of an embezzlement fraud scheme and was ordered to pay nearly \$36,000 in restitution.⁴⁵ By identifying staff who have the capacity to carry out oversight activities and clearly defining related responsibilities such as conducting site visits and reviewing JOM annual reports, BIE could provide support to contractors in improving their program activities and procedures and reduce the risk of potential fraud and abuse of JOM funds.

Senior BIE officials acknowledged that they have not identified the staff necessary for conducting these critical JOM functions and, in November 2019, the Director of BIE approved hiring three additional JOM specialists. The core responsibilities of the new specialist positions, according to a knowledgeable BIE official, will be to support the

⁴⁴An official from the Office of Inspector General said they do not have sufficient data to determine the risk of fraud in the JOM program.

⁴⁵U.S. Department of the Interior, Office of Inspector General, *2005 Semiannual Report to the Congress* (Washington, D.C.: April 2005).

administration of contracts, oversee contractors, and provide technical assistance. However, the exact roles and responsibilities for the new employees and the extent to which BIE staff in the Education Resource Centers will continue their role in providing programmatic support have not yet been determined. An official knowledgeable about the new JOM specialist positions added that defining the specific roles and responsibilities for these positions will be an iterative process in which BIE will assess the new staffs' capacity to assume all the JOM responsibilities that are currently assigned to other staff. Until all the roles and responsibilities related to JOM program management have been identified and clearly defined, challenges in administering contracts, reviewing the appropriateness of contract types, and overseeing the program may persist.

Conclusions

American Indian and Alaska Native students have unique educational and cultural needs, which can include learning Native languages, cultures, and histories, and obtaining additional academic support. The JOM program is intended to address these needs that may not otherwise be provided through the public school system.

BIE plays a critical role in administering the JOM program, which is central to the bureau's mission of providing Indian students quality education opportunities starting in early childhood in accordance with a tribe's needs for cultural and economic well-being. However, BIE lacks key JOM program information necessary for effective oversight, including complete information on which contractors are participating in JOM. BIE also has not assessed the usefulness of the information it collects from contractors, and relies on outdated forms to collect data. Without improved program data, BIE cannot effectively oversee the program.

In addition, BIE does not provide training for JOM contractors. This lack of training may result in contractors misinterpreting JOM regulations and managing their programs inconsistently. Further, BIE has not clearly defined the roles and responsibilities of staff involved in administering the JOM program, which has resulted in gaps in program management and oversight. Until staff roles and responsibilities are clearly defined and identified, gaps in managing and overseeing the program may persist, resulting in an increased risk of potential misuse or abuse of JOM funds.

Without taking steps to improve the management and oversight of the JOM program in these key areas, BIE cannot ensure that the program is truly serving the educational needs of eligible American Indian and Alaska Native students.

Recommendations for Executive Action

We are making the following five recommendations to Interior:

The Director of the Bureau of Indian Education should develop a systematic process for identifying JOM contractors and maintaining an accurate and complete list of contractors and other relevant information about contractors, such as the amount of JOM funds they receive and their current points of contact. (Recommendation 1)

The Director of the Bureau of Indian Education, in coordination with the Bureau of Indian Affairs as needed, should establish a process to track and monitor the timeliness of JOM disbursements to non-tribal contractors, including identifying a target date for disbursing funds to these contractors. (Recommendation 2)

The Director of the Bureau of Indian Education should develop a timeline to assess the usefulness of the information they are collecting from JOM contractors and update JOM information collection forms, including converting them to an electronic format to reduce the burden on contractors to complete them. (Recommendation 3)

The Director of the Bureau of Indian Education should develop and provide training to contractors on administering the JOM program. (Recommendation 4)

The Director of the Bureau of Indian Education should clearly define the roles and responsibilities and identify the staff necessary for conducting critical JOM functions, including administering contracts, reviewing the appropriateness of contract types, and overseeing those contractors that are subject to BIE oversight. (Recommendation 5)

Agency Comments and Our Evaluation

We provided a draft of this report to Interior for review and comment. We also provided relevant report sections to and requested technical comments from the National Indian Education Association and the National Johnson-O'Malley Association.

In its comments reproduced in appendix I, Interior concurred with our five recommendations and described actions BIE and BIA plan to take to address them. In our draft report, we recommended that BIE needs to clearly define the roles and responsibilities and identify the staff necessary for conducting technical assistance, among other critical JOM functions. We removed reference to technical assistance from our report because, after we provided our draft report, Interior promulgated new,

final JOM program regulations that include a new process for requesting and providing technical assistance.

We did not receive any comments from the nonprofit organizations.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Interior, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (617) 788-0534 or emreyarrasm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

Sincerely yours,



Melissa Emrey-Arras, Director
Education, Workforce, and Income Security Issues

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 06 2020

Ms. Melissa Emrey-Arras
Director, Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Emrey-Arras:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Bureau of Indian Education: Actions Needed to Improve Management of Supplemental Education Program* (GAO-20-308). We appreciate GAO's evaluation of the Johnson-O'Malley (JOM) program.

The GAO issued five recommendations to the Department as part of its overall findings to enhance the administration of JOM. Below is the Department's response.

Recommendation 1: The Director of the Bureau of Indian Education should develop a systemic process for identifying JOM contractors and maintaining an accurate and complete list of contractors and other relevant information about contractors, such as the amount of JOM funds they receive and their current points of contact.

Response: Concur. Following its 2016 reform, the Bureau of Indian Education (BIE) has actively worked to improve its oversight and management of the JOM program, including the 2016 establishment of the Sovereignty in Indian Education (SIE) Office. As highlighted by the GAO in this draft report, the BIE only recently filled its first ever full-time JOM program position. Immediately upon establishing the SIE Office, the BIE tasked its newly installed SIE and JOM staff with the responsibility of developing and publishing standardized JOM policies and procedures, including policies and procedures regarding the identification of JOM contractors.

However, after an internal workforce analysis BIE leadership determined a single JOM program position would be inadequate to oversee and manage the day-to-day operations of the JOM program and simultaneously develop and establish a comprehensive set of JOM program policies and procedures. As such, the BIE added three (3) additional JOM program positions. The BIE expects that its newly expanded JOM program workforce will quickly and efficiently develop, publish, and implement a comprehensive JOM program policy and procedure which includes a

systemic process for identifying JOM contractors and maintaining a complete and accurate list of such contractors.

Recommendation 2: The Director of the Bureau of Indian Education, in coordination with the Bureau of Indian Affairs as needed, should establish a process to track and monitor the timeliness of JOM disbursements to non-tribal contractors, including identifying a target date for disbursing funds to these contractors.

Response: Concur. As stated in the response to recommendation 1, the BIE has been actively working to improve its oversight and management of the JOM program. To this end, the BIE, the Bureau of Indian Affairs (BIA), and other Indian Affairs (IA) partners will work collaboratively to publish and implement a policy and procedure which accurately tracks and monitors timely disbursement of JOM funds to contractors.

Recommendation 3: The Director of the Bureau of Indian Education should develop a timeline to assess the usefulness of the information they are collecting from JOM contractors and update JOM information collection forms, including converting them to an electronic format to reduce the burden on contractors to complete them.

Response: Concur. The BIE SIE and JOM staff have been actively working to review and improve information collection from contractors. However, as described above, SIE and JOM staffing constraints have prolonged the review's timeline for completion. The BIE expects that its newly expanded JOM program workforce will expedite the BIE's review and information collection reform efforts.

Recommendation 4: The Director of the Bureau of Indian Education should develop and provide training to contractors on administering the JOM program.

Response: Concur. As stated above, the BIE has been actively working to improve its oversight and management of the JOM program, including the development and implementation of a standardized technical assistance framework and training plan. Specifically, SIE and JOM program staff will be tasked with simultaneously developing a technical assistance framework for contractors and a training plan as part of the wider JOM program policy and procedure tasks outlined in the responses to recommendation one and two.

Recommendation 5: The Director of the Bureau of Indian Education should clearly define the roles and responsibilities and identify the staff necessary for conducting critical JOM functions, including administering contracts, reviewing the appropriateness of contract types, providing technical assistance, and overseeing those contractors that are subject to BIE oversight.

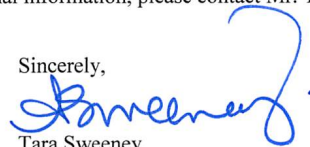
Response: Concur. The BIE, BIA, and other Indian Affairs partners will work collaboratively to develop an inter-bureau policy and procedure which clearly identifies each agency's respective roles and responsibilities. Additionally, as highlighted by the GAO in this report, the BIE is actively working to develop a data-informed workforce analysis for the JOM program.

**Appendix I: Comments from the Department of
the Interior**

As part of this work, the BIE will continue to develop and implement a data-informed workforce strategy which accurately identifies human capital needs, as well as clearly identifies and assigns critical JOM-related functions among BIE divisions, offices and staff.

If you have any questions, or need additional information, please contact Mr. Travis Clark at (202) 208-3612.

Sincerely,



Tara Sweeney
Assistant Secretary – Indian Affairs

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Melissa Emrey-Arras, (617) 788-0534 or emreyarrasm@gao.gov

Staff Acknowledgments

In addition to the contact named above, Beth Sirois (Assistant Director), Brian Schwartz (Analyst-in-Charge), Ben DeYoung, and Alex Galuten made key contributions to this report. Additional assistance was provided by Edward Bodine, Gina M. Hoover, Thomas M. James, Grant M. Mallie, Sheila R. McCoy, Anna Maria Ortiz, Jeanette M. Soares, Joy K. Solmonson, Curtia O. Taylor, and William T. Woods.

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