

May 2000

FEDERAL PENSIONS

Judicial Survivors' Annuities System Costs





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United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-284663

May 25, 2000

The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable Henry J. Hyde
Chairman
The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

This report was prepared in response to the requirements of the Federal Courts Administration Act of 1992 (P.L. 102-572)¹ specifying that we review certain aspects of the Judicial Survivors' Annuities System (JSAS), which is one of several survivor benefit plans applicable to particular groups of federal employees. JSAS provides annuities to the surviving spouses and dependent children of deceased federal judges and other judicial officials who participate in JSAS.

The 1992 Act enhanced the benefits available from JSAS and reduced the amounts that participating judges and other judicial officials were required to contribute toward the plan's costs. The act requires us to review JSAS' costs every 3 years and to determine whether the participants' contributions covered one-half of the costs. If the contributions are less than one-half of these costs, we are to determine what adjustments would be needed to achieve the 50-percent figure. We issued our first such review in June 1997.²

¹H. Rep. 102-1006, 102d Congress.

²Federal Pensions: Judicial Survivors' Annuities System Costs and Benefit Levels (GAO/GGD-97-87, June 27, 1997).

To respond to this requirement, we reviewed JSAS' 1996 to 1998 annual reports submitted by the Administrative Office of the U.S. Courts (AOUSC) to Congress and the Comptroller General.³ Such reports were required by Public Law 95-595 and contain financial and actuarial information that is indicative of JSAS' cost and financial status. The costs we examined were "normal costs." Normal cost is a term used to describe the annual cost of funding a pension or survivor plan, expressed as a percentage of payroll.

Results in Brief

The participating judges did not pay one-half of the JSAS normal cost during fiscal years 1996 through 1998; they paid on average about 40 percent over the 3-year period. However, the participating judges' contributions represented an increasing share of normal costs over the period, starting at about 36 percent in fiscal year 1996 and growing to about 45 percent in fiscal year 1998. On the basis of information contained in JSAS' 1998 actuarial report, to cover one-half of the future costs, we determined that the judges' contribution would need to increase 0.3 percentage points above the 2.2 percent of salary currently paid by active and senior judges and the 3.5 percent of annuities paid by retired judges. However, increasing required contributions could affect the judges' rate of participation, and increasing participation was one of the major reasons for enhancing JSAS' benefits and reducing the judges' contributions in 1992.

AOUSC provided technical comments to this report.

Background

Most federal civilian employees are covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). Both of these retirement plans include survivor benefit provisions. Three separate retirement plans apply to various groups of judges in the federal judiciary, with JSAS being available to participants in all three retirement plans to provide annuities to their surviving spouses and children. AOUSC administers these three plans.

The Judicial Retirement System automatically covers U.S. Supreme Court Justices, federal circuit and district court judges, and territorial district court judges and is available, at their option, to the Administrative Assistant to the Chief Justice, the Director of AOUSC, and the Director of the Federal Judicial Center. The Judicial Officers' Retirement Fund is available to bankruptcy and full-time magistrate judges, and the Court of

³This annual reporting requirement was repealed by the Federal Reports Elimination Act of 1998 (P.L. 105-362) for reports requiring submission to Congress after December 21, 1999. However, officials from AOUSC indicated that they plan to continue to produce this report.

Federal Claims Judges' Retirement System is available to the Court of Federal Claims judges. Also, except for judges who are automatically covered under the Judicial Retirement System, judges and judicial officials may opt to participate in CSRS or FERS or elect to participate in the Judicial Retirement System for Bankruptcy Judges, Magistrate Judges, or Court of Federal Claims Judges.⁴

Judges who retire under any of the three judicial retirement plans generally continue to receive the full salary amounts that were paid immediately before retirement, assuming the judges met the age and service requirements.⁵ Retired territorial district court judges generally receive the same cost-of-living adjustment (COLA) that CSRS retirees receive, except that their annuities cannot exceed 95 percent of an active district court judge's salary. Court of Federal Claims judge retirees continue to receive the same salary payable to active Court of Federal Claims judges.

Those in the Judicial Retirement System and the Court of Federal Claims Judges' Retirement System are eligible to retire when the number of years of service and the judge's age total at least 80, with a minimum retirement age of 65, and service ranging from 10 to 15 years. Those in the Judicial Officers' Retirement Fund are eligible to retire at age 65 with at least 8 years but no more than 14 years of service. The judicial officers under the Judicial Retirement System can retire with 80 percent of full salary at age 65 with 15 years of service. Participants in all three judicial retirement plans are required to contribute to and receive Social Security benefits.

JSAS was created in 1956 to ensure financial security for the families of federal judges. It provides benefits to eligible spouses and dependent children of judges who elect coverage within 6 months of taking office or within 6 months after getting married, if they were not married when they took office. Active and senior judges currently contribute 2.2 percent of their salaries, and retired judges contribute 3.5 percent of their annuities to JSAS. Upon a judge's death, the surviving spouse is to receive an annual annuity that is equal to 1.5 percent of the judge's average annual salary

⁴FERS is open and available to new federal employees. CSRS has been closed to new employees since December 31, 1983.

⁵There is a distinction between retired judges who resign their offices and those who retire to a status designated as "senior." Judges who retire by resignation are entitled for life to the salary of the office at the time of resignation and may engage in private law practice. Judges who retire to senior status receive the current salary of the office—that is, they receive salary increases that are approved for active judges—and generally may perform reduced judicial duties. Senior judges may not engage in private law practice.

during the 3 highest consecutive paid years (known as the “high 3”) times the judge’s years of creditable service. The annuity may not exceed 50 percent of the high 3 and is guaranteed to be no less than 25 percent. Separately, an unmarried dependent child under age 18, or 22 if a full-time student, receives a survivor annuity that is equal to 10 percent of the judge’s high 3. COLAs are paid to surviving spouses and children on the basis of annual increases in the Consumer Price Index (CPI). Spouses and children are also eligible for Social Security survivor benefits. Appendix I provides more details on these and other features of JSAS.

Since its inception in 1956, JSAS has changed several times. Because of concern that too few judges were participating in the plan (74 percent of federal judges participated in 1985, which was down from 90 percent in 1976), Congress made broad reforms effective in 1986 with the Judicial Improvements Act of 1985 (P.L. 99-336).⁶ The 1985 Act (1) increased the annuity formula for surviving spouses from 1.25 percent to the current 1.5 percent of the high 3 for each year of creditable service and (2) changed the provisions for surviving children’s benefits to relate benefit amounts to judges’ high 3 rather than the specific dollar amounts provided by the Judicial Survivors’ Annuities Reform Act of 1976 (P.L. 94-554). In recognition of the significant benefit improvements that were made, the 1985 Act increased the amounts that judges were required to contribute from 4.5 percent to 5 percent of their salaries and retirement annuities.

The 1985 Act also changed the requirements for government contributions to the plan by specifying that the government would contribute whatever amounts were necessary (up to a maximum of 9 percent of participating judges’ salaries and annuities) to keep the plan fully funded. Under the 1976 Act, the government matched the judges’ contributions of 4.5 percent of salaries and annuities. Despite the benefit improvements in the 1985 Act, the rate of participation in JSAS continued to decline. In 1991, the rate of participation was about 40 percent overall and 25 percent for newly appointed judges.

In response to concerns that required contributions of 5 percent may have created a disincentive to participate, Congress enacted the 1992 Act. Under the act, participants’ contribution requirements were reduced to 2.2 percent of salary for active and senior judges and to 3.5 percent of annuities for retired judges. For those already enrolled in JSAS, the new rates were further reduced by 0.5 percentage points for every month, not to exceed 18 months, during which they had contributed 5 percent. In

⁶H. Rep. 99-423, 99th Congress.

other words, the rate for an active judge could be reduced to 1.7 percent and 3 percent for a retired judge for up to 18 months. Another significant change was an increase in benefits for survivors of retired judges. This increase was accomplished by including years spent in retirement in the calculation of creditable service and the high 3 salary averages.⁷

The 1992 Act also allowed the judges to stop contributing to the plan upon divorce or the spouse's death and granted benefits to survivors of any judge who died in the interim between leaving federal service and the commencement of a deferred annuity.⁸ As of September 30, 1998, there were 1,284 active and senior judges, 136 retired judges, and 241 survivor annuitants covered under JSAS. About 68 percent of all eligible judges participated in the system in 1998, including 45 percent of all new judges who began their service in 1998.⁹

One objective of the change in contribution requirements contained in the 1992 Act was to preclude the circumstances that had frequently occurred under the 1985 Act, whereby the participating judges paid all of the plan's cost. In 3 of the 4 years before the 1992 Act, the government made no contributions to JSAS because the active participants' and retired judges' 5 percent of salary and annuity contributions, respectively, were sufficient to cover the costs for those years. In 1991, the cost of JSAS was estimated to be 3.2 percent of salary and annuity. Proponents of lowering the contribution rates contended that participants in CSRS, including Members of Congress, were paying about one-half of the costs of their survivor benefits, and Congress intended to make JSAS comparable to the cost of participation by a Member of Congress.

Scope and Methodology

To determine whether the contributions by the participating judges for the 3-year period ending in fiscal year 1998 accounted for 50 percent of the JSAS' costs, we first identified the costs for plan years 1996 to 1998. We used the normal cost amounts determined by actuarial valuations of the system for each of the 3 fiscal years. Normal cost is the term used to describe the annual cost of a pension or survivor plan. It is expressed as a percentage of payroll and represents the amount of money that should be set aside during employees' working years and that, with investment

⁷Includes senior judges and judges who resign their offices.

⁸A judge who is not entitled to receive an immediate retirement annuity upon leaving office, but is eligible to receive a deferred annuity at a later date, may remain in JSAS by contributing 3.5 percent of the deferred retirement annuity that he or she would be entitled to receive.

⁹Participation has not changed significantly since our last review of JSAS—we reported that 67 percent of eligible judges participated in the system in 1995.

earnings, will be sufficient to cover future benefit payments. Normal cost applies to future benefits being earned during current employment, not payments to current annuitants. Therefore, if participating judges were to pay one-half of the JSAS cost, they would pay one-half of the plan's normal cost.

Information on JSAS' normal cost and other actuarial and financial matters is contained in annual reports submitted by AOUSC to Congress and the Comptroller General. Such reports, which were required by Public Law 95-595 for all federal retirement plans, were due 210 days after the end of each plan's fiscal year. We discussed the contents of these reports with officials from AOUSC but otherwise relied on the data presented in the annual reports for the 3 fiscal years without independent verification.

We performed our review in Washington, D.C., between December 1999 and May 2000, in accordance with generally accepted government auditing standards. We made a draft of this report available to the Director of AOUSC for review and comment. AOUSC's comments are reprinted in appendix II.

Judges Did Not Contribute One-half of JSAS' Cost

For JSAS' plan years 1996 through 1998 under the Federal Courts Administration Act of 1992, the participating judges contributed, on average, about 40 percent of the plan's costs. Over the 3-year period, the participating judges' contributions represented a growing share of the plan's cost, increasing from about 36 percent in fiscal year 1996 to about 45 percent in fiscal year 1998. To cover one-half of JSAS' costs, the participating judges' contribution would have to increase 0.3 percentage points above the current rates. This could be achieved by distributing the increase equally among those contributing 2.2 percent and 3.5 percent or by adding the increase solely to those paying 2.2 percent, because virtually all of the participants are active judges. However, increasing the judges' contribution rates could adversely affect participation in the plan, which would be contrary to one of the major reasons for the changes to JSAS in 1992 (i.e., increase participation in JSAS).

Defining Cost for JSAS

The cost of a retirement or survivor benefit plan is generally not measured by annual expenditures. Such expenditures are not an indicator of the overall long-term cost of a plan. JSAS is financed by judges' contributions and direct appropriations sufficient to fund all future benefits to current participants. For the 3-year period ending September 30, 1998, the participating judges paid \$10.5 million into the fund, while the government's contributions totaled \$21.7 million.

The more complete and acceptable calculation of a plan's cost is the projected outlays to retirees or survivors, considering the current participants and allocating such cost on an annual basis. This annual cost allocation is the normal cost. Normal cost, expressed as a percentage of covered payroll, for JSAS represents the amount of money that should be set aside during the judges' working and retirement years and that, with investment earnings, will be sufficient to cover future survivor benefit payments.¹⁰ Normal cost calculations, prepared by an enrolled actuary, require that many actuarial assumptions be made about the future, including mortality rates, turnover rates, return on investments, salary increases, and COLA increases over the life spans of current and future participants.

There are many acceptable actuarial methods for calculating normal cost.¹¹ JSAS uses the aggregate cost method. Regardless of which cost method is chosen, the total long-term cost of the plan will be the same; however, year-to-year costs may differ, depending on the cost method used. The aggregate method ordinarily incurs higher annual cost in the early years and lower costs in the later years, whereas the more commonly used entry-age normal cost method (used in CSRS and FERS) results in a level annual cost over the ensuing years.

JSAS Costs for Fiscal Years 1996-98

On the basis of data from plan years 1996, 1997, and 1998 under the 1992 Act, the participating judges contributed, on average, about 40 percent of JSAS' normal cost; the government's share amounted, on average, to about 60 percent. Table 1 shows the judges' and government's contribution rates and share of JSAS' normal cost (using the aggregate cost method), for the period covered in our study.

¹⁰The Public Law 95-595 report for plan year ending September 30, 1998, recognizes that the financial condition of JSAS may be affected by the final outcome of *Williams v. United States* (48 F.Supp.2d 52), which is a class action related to the denial of past annual cost-of-living salary adjustments that has been appealed. AOUSC has not requested that its actuary estimate the potential impact; however, they have determined that additional amounts due the Fund, resulting from a final decision on the case, would be paid out of the judgment fund created by 31 U.S.C. 1304.

¹¹Acceptable actuarial cost methods for preparing the annual reports required under Public Law 95-595 include the accrued benefit (unit credit), entry-age normal, individual level premium, aggregate, attained-age normal, and frozen initial liability. AOUSC selected the aggregate cost method for JSAS in 1982.

Table 1: Share of JSAS' Normal Cost Borne by Participating Judges and Government, Fiscal Years 1996-98

Source of contributions	JSAS normal cost rates and shares, by fiscal year						
	1996		1997		1998		1996-98
	Rate ^a	Share ^b	Rate ^a	Share ^b	Rate ^a	Share ^b	Share ^b
Judges	2.26%	36.1%	2.27%	39.3%	2.27%	44.8%	39.8%
Government	4.0	63.9	3.5	60.7	2.8	55.2	60.2
Total	6.26%	100.0%	5.77%	100.0%	5.07%	100.0%	100.0%

^aNormal cost expressed as a percentage of payroll.

^bPercentage of total normal cost.

Source: JSAS actuarial reports, 1996-98.

The judges' and the government's contribution rates for each of the 3 years, shown in table 1, were based on the actuarial valuation that occurred at the end of the prior year. For example, the judges' contribution of 2.27 percent and the government's contribution of 2.8 percent in fiscal year 1998 were based on the September 30, 1997, valuation contained in the fiscal year 1998 actuarial report.

Although outside the scope of our study, the fiscal year 1999 normal cost is estimated at 3.86 percent, a drop of 1.21 percentage points from fiscal year 1998. If this downward trend in aggregate normal costs continues, the judges' contributions will continue to approach 50 percent of normal costs without additional contributions. However, aggregate normal costs could also rise in the future, depending on what economic and demographic assumptions are used.

Adjustment That Would Be Needed in Judges' Contribution Rates

On the basis of the information contained in JSAS' 1998 actuarial report as of September 30, 1998, we determined that the participating judges' future contributions would have to increase a total of 0.3 percentage points above the current 2.2 percent of salary for active and senior judges and 3.5 percent of annuity for retired judges to cover one-half of JSAS' costs. If the increase were distributed equally among the judges, those contributing 2.2 percent would have to increase to 2.5 percent; and those contributing 3.5 percent would have to increase to 3.8 percent.

Because of the relatively small number of judges contributing 3.5 percent (136 compared to 1,284 of those contributing 2.2 percent as of Sept. 30, 1998), the entire increase could be added solely to those contributing 2.2 percent.

Potential Drawback to Increasing Judges' Contribution Rates

A potential impact associated with increasing the contribution rates could be a decline in the participation rate for JSAS. The desire to increase participation was a major reason for the changes made to JSAS over the years. This potential impact appears to be less likely as compared with our findings from 3 years ago, when we reported that an increase of 0.9 percentage points would have been needed to achieve the 50-percent contribution goal. The participation rate has increased from 38 percent before the 1992 Act was enacted to 68 percent as of September 30, 1998. Increasing the contribution rates now, along with the potential for changing them every 3 years, could have an impact on the judges' decision to participate in JSAS.¹² Currently, the only way that participation for an active or retired judge may be revoked is upon the dissolution of the marriage, and there are no contribution refunds until the judges' death, if there are no survivors.

Agency Comments

We requested comments on a draft of this report from the Director of AOUSC or his designee. In a letter dated May 5, 2000, the Associate Director of AOUSC stated that the agency was making no comments on the report other than some technical comments provided separately. We clarified the report where necessary to reflect those comments. The agency's letter is reproduced in appendix II.

We are sending copies of this report to AOUSC. Copies will also be made available to others upon request.

Key contributors to this report are listed in appendix III. If you or your staff have any questions about this report, please call me or Jennifer Cruise on (202) 512-8676.



Mike Brostek
Associate Director, Federal Management
and Workforce Issues

¹²Because 28 U.S.C section 376 (b) governs participant contribution rates, AOUSC has no authority to modify the contribution rate of participants—new legislation would be required. No such legislation has been enacted since our last review of JSAS costs issued in 1997.

Contents

Letter		1
Appendix I		12
Features of the	Contribution Rates	12
Judicial Survivors'	Eligibility Requirements for Survivor Benefit Coverage	12
Annuities System	Participation Election	12
	Revocation or Withdrawal of Participation	13
	Survivor Benefit Formula	13
	Reduction of Annuity for Unpaid Contributions for Prior Service	13
	Children's Benefits	14
	Cost-of-Living Adjustments	14
	Social Security Eligibility and Benefits	14
Appendix II		15
Comments From the		
Administrative Office		
of the U.S. Courts		
Appendix III		16
GAO Contacts and	GAO Contacts	16
Staff	Acknowledgments	16
Acknowledgments		
Tables	Table 1: Share of JSAS' Normal Cost Borne by Participating Judges and Government, Fiscal Years 1996-98	8

Abbreviations

AOUSC	Administrative Office of the United States Courts
COLA	cost-of-living adjustment
CPI	Consumer Price Index
CSRS	Civil Service Retirement System
FERS	Federal Employees' Retirement System
JSAS	Judicial Survivors Annuities System

Features of the Judicial Survivors' Annuities System

Contribution Rates

Employee/Retiree contribution rate. Active and “senior status” judges and other judicial officials contribute 2.2 percent of salary and retired judges and judicial officials contribute 3.5 percent of their retirement annuities to participate in the Judicial Survivors' Annuities System (JSAS). Prior creditable service may be credited to JSAS if deposits equal to 3.5 percent of salary earned during the earlier service plus 3-percent interest are paid. No deposits are required for previous military service.

Government contribution rate. The government's share of contribution is the amount required to reduce the unfunded liability to zero, not to exceed 9 percent of salary or retirement annuity.

Eligibility Requirements for Survivor Benefit Coverage

Years of service. A judicial official must have at least 18 months of judicial service and contributions to JSAS before becoming vested in the plan.

Marriage duration. A surviving spouse must have been married to the judicial official at least 1 year before the official's death or be a parent of a child of the marriage. A former spouse must have been married to the judicial official at least 9 months.

Commencement/Termination of benefits. Benefits commence on the date of the judicial official's death. If a surviving or former spouse remarries before age 55, benefits for that spouse are terminated.

Participation Election

The election must be made within 6 months of taking office or getting married.

Former spouse. The judicial official's election must be in effect at the time of divorce. An election to provide a survivor annuity must be made at the time of retirement or, if later, within 2 years after the marriage was dissolved.

Insurable interest.¹ Not applicable.

Deferred retirement. The judicial official must file a written notification, within 90 days before leaving office, of the intent to remain under JSAS and contribute 3.5 percent of the deferred retirement annuity amount.

¹An insurable interest beneficiary is one who can reasonably expect to receive financial benefit from the continued life of the retiree.

Revocation or Withdrawal of Participation

Participation may be revoked upon the dissolution of the marriage either through divorce or death of spouse. Payroll contributions cease, but previous contributions remain in the JSAS Fund. If there is no eligible surviving spouse or child upon the death of the judicial official, the contributions plus 3-percent interest are paid to the judicial official's designated beneficiaries, or if there is not a designated beneficiary, by the statutory order of precedence.

If a judge resigns from office without entitlement to an annuity, the contributions, plus 3-percent interest, minus those paid at 2.2 percent of salary may be paid to the judge.

Survivor Benefit Formula

After retirement. The annual spousal annuity is 1.5 percent of average salary for (1) each year of creditable judicial service (including years in retirement) plus military service as long as it is not being used for retired pay, years of service as a Member of Congress, and (2) up to 15 years of combined congressional staff and executive branch service plus 0.75 percent of average salary for congressional staff and executive branch service over 15 years.²

Before retirement. Same as after retirement.

Insurable interest. Not applicable.

Deferred retirement. Same as after retirement. Benefit formula includes time between leaving office and starting spousal annuity.

Minimum/Maximum amount of benefit. Spousal annuity may not be greater than 50 percent or less than 25 percent of average annual salary.

Reduction of Annuity for Unpaid Contributions for Prior Service

If no deposit is made for prior creditable service, the annuity of the surviving spouse will either (1) include credit for such service, with the annuity reduced by 10 percent of the outstanding deposit computed as of the date of the judge's death, or (2) not include credit for such service, but be spared the 10-percent reduction, whichever results in a greater annuity. In all cases, however, a surviving spouse is still entitled to the minimum annuity of 25 percent of the judge's average annual salary.

²Average salary is the average annual salary and/or retirement annuity received during the 3 highest consecutive paid years.

Children's Benefits

Age of children. Surviving unmarried dependent children must be under age 18 or age 22, if a full-time student, or incapable of self-support due to a disability incurred before age 18 or age 22, if a student.

Benefit computation. If the judicial official is survived by a spouse, each child's annual annuity is the lesser of

- 10 percent of average salary or
- 20 percent of average salary divided by the number of children.

If the judicial official is not survived by a spouse, each child's annual annuity is the lesser of

- spousal annuity divided by the number of children,
- 20 percent of average salary, or
- 40 percent of average salary divided by the number of children.

Cost-of-Living Adjustments

Survivors' annuities are adjusted annually through cost-of-living adjustments that are based on the rate of inflation, as measured by the Consumer Price Index (CPI). The adjustment measures the yearly change in the third-quarter to third-quarter CPI for urban wage earners and clerical workers.

Social Security Eligibility and Benefits

A surviving spouse with children or children only are generally eligible for Social Security benefits if the employee paid Social Security taxes and worked at least 18 months in the 3 years preceding his or her death. Benefits are paid to the surviving spouse at age 60 (age 50 if disabled) or at any age if there are surviving children under age 16 or children who were disabled before age 22. Benefits are also paid to unmarried children under age 18 and up to age 19 if they are full-time students.

Former spouses, with the marriage lasting 10 years or more, are eligible for benefits similar to those of surviving spouses as well as those former spouses with children who are under age 16 or at any age if disabled before age 22.

A surviving spouse or minor children may receive a one-time payment of \$255 and monthly benefits. The monthly benefit is a percentage of the deceased employee's or retiree's basic Social Security benefit ranging from 75 to 100 percent for each beneficiary. The maximum amount that a family may receive is generally equal to about 150 to 180 percent of the employee's or retiree's benefit rate.

Comments From the Administrative Office of the U.S. Courts



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

May 5, 2000

Mr. Michael Brostek
Associate Director, Federal Management
and Workforce Issues
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Brostek:

Thank you for providing the Administrative Office of the U.S. Courts with a draft of the General Accounting Office's report entitled Federal Pensions: Judicial Survivors' Annuities System Costs for review and comment. We have reviewed the document and have no comments to make other than those technical corrections provided separately to your staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clarence A. Lee, Jr.", written in dark ink.

Clarence A. Lee, Jr.
Associate Director

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GAO Contacts and Staff Acknowledgments

GAO Contacts

Michael Brostek or Jennifer S. Cruise, (202) 512-8676

Acknowledgments

In addition to the individuals named above, Michael G. Valle, Alan N. Belkin, Robert J. Heitzman, and Gregory H. Wilmoth made key contributions to this report.

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