



Denali Commission
510 L Street, Suite 410
Anchorage, AK 99501

907.271.1414 *tel*
907.271.1415 *fax*
888.480.4321 *toll free*
www.denali.gov

SEMIANNUAL REPORT TO THE CONGRESS

FY 2007 – SECOND HALF

OFFICE OF THE INSPECTOR GENERAL

DENALI COMMISSION

ANCHORAGE, ALASKA



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INSPECTOR GENERAL

November 20, 2007

MEMORANDUM FOR FEDERAL CO-CHAIR CANNELOS

From: Mike Marsh, CPA, MPA, CFE, Esq.
Inspector General

Subject: Semiannual report to agency head and Congress for second half of FY 2007

The discussion below constitutes my report to the agency head and Congress, as required by the Inspector General Act, for the second half of FY 2007. This is the third such report for this function here at the Denali Commission.

AGENCY BACKGROUND

1. The Denali Commission

The Denali Commission is an independent federal agency with its office in Anchorage, Alaska. Congress created it in 1998 through the Denali Commission Act.¹

The commission provides rural Alaska with some of the basic local facilities that the rest of the nation has long taken for granted. The agency's "legacy" programs fund the construction of clinics, powerhouses, and fuel tanks in some of the most challenging locations in America.

In these difficult assignments, the agency must reconcile cost control, new technologies, and local preferences. These aspirations are challenged by the logistics of serving tiny, often unincorporated, settlements that are far from any road system. And, given that roughly half of the state's communities have fewer than 300 people, many locations will have an inherently limited capacity to support their own facilities in the years after the commission has given them the keys.

By the end of 2007, Congress will have funded its Denali Commission experiment with close to \$1 billion that has been applied to over 1,000 projects around the state.

The head of the Denali Commission is the "federal co-chair," who is appointed by the Secretary of Commerce. The enabling statute also provides for a seven-member board of specifically-identified state leaders to serve as the panel of "commissioners."

¹ P.L. 105-277, 42 U.S.C. § 3121.

The enabling statute says little about the purpose of this panel of commissioners, beyond its preparation of an annual “work plan” of projects and priorities that is presented for the agency head’s consideration. The further role of this expert group is evolving in practice.

The Denali Commission exemplifies downsized, contracted-out, reinvented government (today’s “hollow state”). It distributes an annual budget of around \$130 million with less than 25 employees of its own.

However, Congress has given the commission considerable operating flexibility compared to the traditional bureaucracies. The commission implements its projects through grants to various state agencies and nonprofits that function as “program partners.” And the commission supplements its limited staff with innovative details of specialists from other entities under the Intergovernmental Personnel Act.

2. Inspector general function

Both the Denali Commission Act and the Inspector General Act require the commission to have an inspector general. The commission is one of around 30 “designated federal entities” that are now statutorily required to have this oversight function.

I am the commission’s first inspector general that is full-time, in-house, and Alaska-based — and the function’s only employee at this point. The function still lacks the necessary separate budget, support staff, and equipment (e.g., fax, server, printer, home page). The commission currently spends less than one-tenth of 1% of its annual \$130 million budget on this statutory oversight function.

OVERVIEW OF ACTIVITIES SINCE LAST REPORT TO CONGRESS

Since my last report to Congress, the activities of my one-person function have been divided among the following: (1) selection and oversight of an independent public accountant to perform the annual financial audit;² (2) technical assistance concerning various accountability controls as requested by the agency head; (3) statutory reviews in anticipation of congressional reauthorization decisions; (4) presentations to the commissioners which the agency head has requested for their meetings;³ (5) pending inspection of a grant suspended by the CFO;⁴ (6) “court leave” taken for compulsory service on a state grand jury.⁵

² Required by OMB Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, secs. 4.2 and 12.

³ IG presentations to the commissioners were made at their meetings on April 9, May 31, and July 26.

⁴ The suspended grant was for construction of 12 facilities around rural Alaska. Three other funders have been reviewing their experience with one or more of these same facilities. The commission’s program staff is internally assessing its “lessons learned” from this grant and has also contracted with a researcher to assess the agency’s impact in the subject area. I am taking care to coordinate the scope and timing of my inspection procedures with these other efforts.

⁵ Alaska law has no automatic exemptions from jury service for professions such as attorneys, CPAs, or inspector generals. Over the past summer, every third week was substantially devoted to my service as a grand juror.

GAO's PENDING GOVERNANCE STUDY

Last August, GAO briefed a meeting of the ECIE inspector generals and indicated that Congress' auditor had started a review of the governance and accountability processes — including inspector generals — of small agencies classified as “designated federal entities.” The Denali Commission is one of around 30 agencies that Congress has statutorily placed in this category.⁶

The designated federal entities encompass a considerable spectrum of legal forms: independent federal agency; government corporation; private for-profit corporation; private nonprofit corporation; regional commission.

GAO indicated that its new review would employ the methodology from its recent study of two of these agencies — private nonprofit corporations known as the Legal Services Corporation and the Corporation for Public Broadcasting.⁷ The studied concepts were defined in that report as follows:

For both governmental and nonprofit entities, governance can be described as the process of providing leadership, direction, and accountability in fulfilling the organization's mission, meeting objectives, and providing stewardship of public resources, while establishing clear lines of responsibility for results. Accountability represents the processes, mechanisms, and other means — including financial reporting and internal controls — by which an entity's management carries out its stewardship and responsibility for resources and performance. . . .⁸

EXHIBIT 1
FACTORS PERTINENT TO
GOVERNANCE AND ACCOUNTABILITY
AT DESIGNATED FEDERAL ENTITIES

Role of multiperson board in agency governance

Ethics regulation and training

Audit committee

Annual financial audit

Transparency statutes: GISA, FOIA, APA

Federal spending controls

Quality of grantees' single audits

Program performance evaluation and reporting

Independence of inspector general function

Core competencies justifying an agency's existence

⁶ The agency head received an engagement letter from GAO on October 12. It says, “During the course of our work we plan to contact the Denali Commission as well as all other designated federal entities.”

⁷ GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, GAO-07-993 (August 2007). Though entitled as a study of the Legal Services Corporation, comparisons to the Corporation for Public Broadcasting are common in the report.

⁸ Page 11.

GAO's insights as to optimal governance structures are of timely interest to the Denali Commission. Statutory changes can be considered by Congress when it addresses the commission's reauthorization.⁹

Given the inspector general's role in reviewing legislation, I consulted GAO's team about their pending study in a visit to their office last October. At my suggestion, management has invited GAO to brief the commission's financial management advisory committee about the pending study when it meets in Washington, DC next month.

My best distillation of GAO concerns about small agencies would be the factors that I list in Exhibit 1.

Last May, the U.S. Comptroller General addressed a coordination meeting between GAO and the federal inspector generals. As a key concept in his recommended oversight, he advised that "[a]ccountability organizations should employ a 'constructive engagement' approach while maintaining their independence." He elaborated that "constructive engagement typically involves GAO sharing its considerable knowledge and government-wide perspective, including related methodologies and best practices to help agencies help themselves."¹⁰

Similarly, a longstanding policy statement by the federal inspector generals notes their aspiration to be "agents of positive change." More specifically, that policy provides:

*The opportunity to facilitate positive change within government is greatest when IGs assist managers by identifying systems deficiencies and making recommendations designed to assure that programs and activities achieve desired results. To this end, we will . . . [o]ffer advice and technical assistance as managers implement IG recommendations and make other changes designed to improve program management and service delivery.*¹¹

Consistent with these aspirations for "constructive engagement" and "positive change," I have provided the Denali Commission with a spectrum of services under the Inspector General Act. The implicit framework for GAO's study of small agency governance (Exhibit 1) doubles as a timely outline for the following discussion of my activities.

1. Role of Multiperson Board in Agency Governance

The Denali Commission functions as an independent federal agency. It directly submits its annual budget request to OMB and receives a direct appropriation from Congress. The U.S. Treasury processes its transactions under an account symbol for independent offices. And OPM has classified it as an independent agency for personnel purposes.

⁹ The Denali Commission is currently authorized through September 30, 2008. See P.L. 108-7, 117 Stat. 158, sec. 504.

¹⁰ Comptroller General David Walker's presentation to the IG-GAO coordination meeting held May 8, 2007 in Washington, D.C. (excerpt from slides) (emphasis added).

¹¹ PCIE/ECIE, *Inspectors General Vision and Strategies to Apply Our Reinvention Principles* (Jan. 1994) (emphasis added).

GAO's recent report notes that "[a] common form of governance for independent federal agencies and U.S. government corporations is a multiperson body consisting of either a board of directors (agencies and corporations) or a commission (only agencies) . . ."¹²

However, though named the Denali *Commission*, this agency is not actually headed by a multiperson body. Rather, the enabling act places it under the sole control of an agency head, known as the "federal co-chair," who is appointed to four-year terms by the Secretary of Commerce.¹³

The enabling act does indeed establish a seven-member panel of "commissioners," which is composed of the agency head, five ex-officio statewide leaders from key organizations,¹⁴ and the state's governor. With the exception of the agency head, they serve the commission on a very intermittent, part-time basis and are physically present at the commission's office only when needed for meetings.

The statutorily-prescribed membership of this board reflects the agency's structure as an experimental collaboration of players from the federal, state, and nonprofit sectors. The agency has historically been partly staffed by technical specialists detailed from these players,¹⁵ and some of these entities have key roles as the commission's implementing "program partners" (major grantees).

But the enabling act actually says very little about Congress' envisioned role for this prescribed panel of highly-respected leaders. Procedurally, the act provides that they will "*meet at the call of the Federal Co-chairperson,*" who will provide them with "*any proposals for discussion and consideration, and any appropriate background materials.*"¹⁶

Substantively, the legislation — literally read — only specifies that the commissioners as a group will recommend an annual "*proposed work plan for Alaska,*" with projects and funding priorities, to the federal co-chair, who acts on behalf of the Secretary of Commerce. The statute directs the federal co-chair to either accept the work plan or return it to the panel for revision.¹⁷

In short, the panel of commissioners does not function as an oversight board that supervises the agency head. The latter has usually accorded great deference to the panel's recommendations over the past decade, but the group is still only an advisory board in practice. And only the federal co-chair has the legal authority to sign grant agreements.¹⁸

¹² Report GAO-07-993, page 13.

¹³ Denali Commission Act (P.L. 105-277, 42 U.S.C. § 3121) § 303(b)(2).

¹⁴ The respective CEOs of the Alaska Federation of Natives, the Alaska AFL-CIO, the Associated General Contractors of Alaska, the Alaska Municipal League, and the University of Alaska.

¹⁵ See Denali Commission Act § 306(d) and Intergovernmental Personnel Act, 5 U.S.C. §§ 3372, 3374.

¹⁶ Denali Commission Act § 303(d).

¹⁷ Denali Commission Act § 304.

¹⁸ Denali Commission Act § 305(d).

To put it another way, the roles of the federal co-chair and the board are structurally reversed from what they would be if the commission was in fact headed by a multiperson governing body.

The Denali Commission is statutorily listed with the Appalachian Regional Commission (and two other entities) as the nation's "regional commissions."¹⁹ Though commonly compared to each other, the roles of the commissioners at the Denali Commission and the Appalachian Regional Commission (ARC) differ significantly. The oversight role of ARC's panel of commissioners is well-defined in its enabling act.²⁰ If commissioners at the Denali Commission are to have that role, Congress will need to specify it with the necessary amendments during reauthorization.

There are other significant structural differences between the Denali Commission and the often-compared ARC. The latter represents 13 states; Denali serves only Alaska. ARC's statute directs that "[a]dministrative expenses of the Commission shall be paid equally by the Government and the States in the Appalachian region . . ."²¹ Denali's statute does not require such a state contribution.

ARC's statute says, with a few exceptions, that "[m]embers, alternates, officers, and employees of the Commission are not federal employees for any purpose . . ."²² In contrast, most of Denali's staff are federal employees, and the Department of Justice has advised that the commissioners themselves have the status of "special government employees." For ARC, the panel of commissioners appoints the CEO. For Denali, the "federal co-chair" functions as the CEO.

There are also some substantive differences. ARC addresses water treatment, the educational system, telecommunications, and the construction of a major highway network. Denali addresses rural electrification.

In short, the historical model for ARC would not seem a ready template for the Denali Commission's permanent statutory structure. The destinies of these two agencies appear to lie on different paths.

The classic governance role for a multiperson body is a corporation's board of directors, and Congress could conceivably restructure the Denali Commission as a government corporation. While, in practice, government corporations have been established for many reasons,²³ GAO recently summarized the ideal, theoretical setting as follows:²⁴

¹⁹ See 42 U.S.C. § 3122(8).

²⁰ See 40 U.S.C. §§ 14302, 14322.

²¹ See 40 U.S.C. § 14306(d) (emphasis added). However, there is an exception to this in ARC's statute: the states do not pay the expenses of the federal co-chair and that position's staff.

²² See 40 U.S.C. § 14301(f).

²³ See GAO, *Profiles of Existing Government Corporations*, GAO/GGD-96-14 (Dec. 1995).

²⁴ GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, GAO-07-808 (July 2007), page 6.

According to public administration experts, a government corporation is appropriate for the administration of governmental programs that

- *are predominately of a business nature,*
- *produce revenue and potentially are self-sustaining,*
- *involve a large number of business-type transaction with the public, and*
- *require greater budget flexibility than a government department or agency.*

The commission's top management seems to have begun a gradual transition that suggests a goal of marshalling funding in the style of large-scale philanthropic foundations. If this is indeed to be the long-term role for the agency, Congress may wish to statutorily convert it to a corporate form that accommodates both non-appropriation self-support and greater operating flexibility.

Despite the comparatively limited role of Denali's multiperson body, I've repeatedly noted that this commission's most untapped resource is the commissioners themselves. They're no ordinary advisory board. In the enabling act, Congress has assembled the most esteemed "dream team" of statewide experts since the drafting of the Alaska Constitution.

Denali's panel of statutory commissioners could collectively evolve into Alaska's think tank that brainstorms breakthroughs — the solutions-in-waiting that lie somewhere beyond the classic federal "just add money." The fact that this has so far not been their role is symptomatic of Congress' need to reconsider the agency's basic statutory structure during reauthorization.

2. Ethics Regulation and Training

Detailed employees from other entities²⁵ and the commission's own employees (including the federal co-chair) understand that they are subject to the federal ethics regulations administered by the U.S. Office of Government Ethics (OGE). These rules²⁶ cover such key areas as conflicts of interest, misuse of position, gifts, and the resolution of ethics questions.

However, the enabling act's combination of a FACA exemption²⁷ and an uncertain role for commissioners previously left the latter in an uncomfortable state of ethical "limbo." On one hand, the statute names them as ex-officio commissioners due to their organizations' presumed abilities to facilitate the commission's work around the state. On the other hand, federal conflict-of-interest rules disfavor serving two masters.

²⁵ See 5 CFR § 2635.102(h) and Intergovernmental Personnel Act, 5 U.S.C. § 3374.

²⁶ 5 CFR parts 2634-2641.

²⁷ Denali Commission Act § 308.

To protect all concerned, the federal co-chair and I jointly asked the Department of Justice (DOJ) in 2006 for clarification of the ethics regulations applicable to the commissioners. DOJ advised that they are “special government employees” subject to the federal rules against conflicts of interest. Exclusion from these restrictions would require explicit guidance from Congress through a statutory amendment.

A longstanding policy statement by the federal inspector generals notes our aspiration to “[c]ooperate with agency officials in developing integrity awareness training.”²⁸ Over the past 18 months, employees and commissioners have received the ethics training listed in Exhibit 2. The agency head has readily accepted my recommendations on this subject without the entry of formal findings.

Through an Economy Act MOU, the regional counsel for the FAA now serves as the commission’s designated agency ethics official.²⁹ The commissioners and top management file their OGE disclosure forms with this ethics official.

A “desk officer” at OGE has also been identified for the commission. This assures that local ethics advice will be coordinated with positions of the agency that writes and interprets the ethics regulations that apply across the federal system.

GAO’s work on small agencies³⁰ emphasizes the need for employee training about the Whistleblower Protection Act enforced by the U.S. Office of Special Counsel (OSC).³¹ I have confirmed with the latter that this statute applies to the Denali Commission.³²

EXHIBIT 2
PUBLIC ACCOUNTABILITY TRAINING
AT DENALI COMMISSION

Management training on federal spending restrictions by GAO attorneys (Washington, DC)

Staff training on federal spending restrictions by a contract trainer (Anchorage)

Staff and grantee training on grant restrictions by OMB technical manager (Anchorage)

Staff training on federal ethics rules by the Department of Commerce ethics division (Anchorage)

Staff training on federal ethics rules by the U.S. Office of Government Ethics (Anchorage)

Staff training on federal ethics rules by the commission’s ethics officer.

Staff training on the Hatch Act by the U.S. Office of Special Counsel (Anchorage)

Commissioner training on federal ethics rules by the U.S. Office of Government Ethics (Juneau)

Observation of a public meeting of commissioners by trainers from the U.S. Office of Government Ethics (Juneau)

Commissioner training on board processes by retired state court judge (Anchorage)

²⁸ PCIE/ECIE, *Inspectors General Vision and Strategies to Apply Our Reinvention Principles* (Jan. 1994).

²⁹ The Commission’s enabling statute (sec. 305(a)) explicitly provides that “[a]gencies may, upon request by the Commission, make services and personnel available to the Commission to carry out the duties of the Commission.” The FAA is one of the largest civilian agencies in Alaska, and its assistance to its tiny neighbor down the street has been exemplary.

³⁰ Report GAO-07-993, pages 63-64.

³¹ 5 U.S.C. § 2302.

³² Chief of OSC’s Washington field office, Oct. 4, 2007.

OSC has previously trained the commission's employees about the Hatch Act and appears willing to assist with future training on whistleblower protections.

3. Audit Committee

Despite the limited formal role of the commissioners, the Denali Commission is a pioneer among small federal agencies in its establishment of a "financial management advisory committee."³³ This group — which includes two of the commissioners — meets to proactively advise the agency head and inspector general on key financial controls related to accountability and governance.

Per tradition, the commission's CFO functions as the committee's coordinator. She and I have actively drawn upon the national expertise of those instrumental in establishing these groups at other federal agencies. We recently attended the committees at GAO and SBA for comparison purposes.³⁴

The commission's financial management advisory committee is fortunate to have expertise from around the country:

- Peter Aliferis, national director of AGA's CGFM program (Virginia)
- Richard Cattanach, PhD / CPA, commissioner (Alaska)
- Mary Heath, assoc. director of VA financial consulting (Texas)
- Joseph Kull, CPA (Virginia)
- Karen Rehfeld, state OMB director and commissioner (Alaska)

Meetings are conducted via live videoconferencing due to the "transcontinental" nature of the group.

The Denali Commission is statutorily exempt from FACA. As this new committee meets in the months ahead, the agency head will need to carefully ration the experts' limited time among technical problem-solving, long-term brainstorming, guest presentations, and "housekeeping" details. Members' perception that advice translates into action will no doubt be critical to their continued participation.³⁵

³³ The concept of these committees is discussed at KPMG, *Financial Management Advisory Committees for Federal Agencies: Suggested Practices* (March 2003) and GAO, *Inspectors General: Enhancing Federal Accountability*, GAO-04-117T (Oct. 8, 2003), pages 11-12.

³⁴ We appreciate the assistance that Ed Mazur, a member of the committees at both GAO and SBA, has provided us in understanding their role in the federal system.

³⁵ The agency head ("federal co-chair") should continue to chair this group for two reasons. First, only he has the authority to issue the administrative orders that will translate the group's advice into decisions implemented by the commission's staff. Second, for purposes of sunshine law interpretations, his role as chair underscores that he is obtaining informal advice from other commissioners on functions that lie within his administrative discretion and do not require their formal approval. See 42 U.S.C. § 15911(c) and Richard K. Berg, Stephen H. Klitzman, and Gary J. Edies, *An Interpretative Guide to the Government in the Sunshine Act*, 2d ed. (American Bar Assn., 2005), page 17.

The new committee should serve as a constructive forum for resolving some important accountability issues — such as grant monitoring, funding suspensions, program impact evaluations, the quality of grantees' single audits and, last but not least, "lessons learned" from the commission's own financial audit. Regulators, grantees, co-funders, and auditors should be invited to the forum as needed to advance these resolutions.

At my suggestion, management has invited GAO to brief the commission's financial management advisory committee about the pending study when it meets in Washington, DC next month.

4. Annual Financial Audit

The Denali Commission records transactions using the accounts prescribed for federal agencies by the *Standard General Ledger*. For the past two fiscal years, the annual financial statements have been reported using the FASAB paradigm for GAAP.

For the past four fiscal years, the Denali Commission has contracted with a CPA firm to audit its financial statements as required by OMB regulation.³⁶ Both contractors have been CPA firms from the Washington, DC area that are listed as qualified on the GSA schedule and have experience in auditing small federal agencies.

All four of these financial audits have resulted in an unqualified opinion. The most recent audit had one finding: a "significant deficiency" (but not a "material weakness") indicating the need for improved policies and procedures concerning the accounting for grants.

In my selection of the current auditor, I assembled a technical review panel of five accountants whose expertise spans both the profession and the country. To maximize the independence of the audit, I also arranged for a contracting officer from a federal agency beyond the one from which the commission regularly obtains its contracting, HR, and payroll services (i.e., key cycles to be audited).

In my oversight of the FY 2007 audit, I went to the CPA firm's office and physically inspected its workpapers using the FAM 650 and FSAN³⁷ monitoring procedures recommended for inspector generals. And I much appreciate the advice that three long-time ECIE inspector general offices³⁸ have offered me as to how to apply these procedures with appropriate rigor.

The FY 2007 audit report has been published within the PAR submitted to OMB within 45 days of the end of the fiscal year. The Denali Commission appears to be the only civilian federal agency that is participating, as I've recommended, in all three of the following voluntary initiatives related to the PAR: (1) OMB's PAR "pilot project" for user-friendly reporting; (2) the CEAR review by an expert panel from the Association of Government Accountants (AGA); (3) the AGA "citizen centric" reporting project for succinctly briefing the public. (The commission

³⁶ OMB Bulletin 07-04 and its predecessors.

³⁷ Financial Statement Audit Network of the Federal Audit Executive Committee.

³⁸ Federal Election Commission; National Science Foundation; Smithsonian Institution.

also explored the availability of a Mercatus PAR review, a process that is currently limited to larger agencies.)

5. The Transparency Trilogy: GISA, FOIA, APA

In 2005, Congress enacted an open meetings law specifically applicable to the commission (42 U.S.C. § 15911(c)).³⁹ The wording of this law is not original; rather, Congress has adapted parts of the Government in the Sunshine Act (GISA)⁴⁰ that has been applied over 30 years to many other agencies. Authoritative interpretations of that act are thus applicable to the statute that Congress enacted specifically for the commission.

Under the direction of the Inspector General Act to review legislation,⁴¹ I issued in 2006 a detailed analysis of the new law's application to the commission's meetings. Based upon the best interpretations available,⁴² I reported the boundaries that define the gatherings of commissioners that require public notice and public access.

However, it is important to remember that the commission-specific statute prescribes only the minimum level of openness required by law. In the context of any particular gathering, the commissioners are usually free to offer the public more access than the legally required minimum.⁴³

The commissioners sometimes struggle with the circumstances and process for closing part of a meeting. Counsel or the inspector general should be encouraged to attend any closed sessions as corroboration of the closure's legality.⁴⁴ This is especially desirable since the commissioners lack certain protections found in the full-fledged Government in the Sunshine Act (advance certification by counsel; a transcript of the closed portion).

The low incidence of FOIA requests at the commission is not surprising. The agency's work simply doesn't involve the processes such as adjudications, regulation, and military security that trigger access restrictions. Financial records and grant files are routinely available to the public during the ordinary business day without backlog, delay, or any formal FOIA request. And the commission's online public database (www.denali.gov) continues to offer extensive detail as to what's been built, where, for whom, and for how much.

³⁹ Though not an amendment to the Denali Commission Act, the commission's open meetings statute is codified as a permanent part of the United States Code at 42 U.S.C. § 15911(c). There is no legislative history available concerning Congress' decision to enact this provision for the Denali Commission.

⁴⁰ 5 U.S.C. § 552b.

⁴¹ Sections 2 and 4.

⁴² Authoritative interpretations of GISA are detailed in Richard K. Berg, Stephen H. Klitzman, and Gary J. Edies, *An Interpretative Guide to the Government in the Sunshine Act*, 2d ed. (American Bar Assn., 2005) (referred to hereafter as *Interpretative Guide*). The key U.S. Supreme Court precedent is *FCC v. ITT World Communications*, 466 U.S. 463 (1984).

⁴³ See *Interpretative Guide* 68-69.

⁴⁴ See *Interpretative Guide* 23, 144.

Nevertheless, the prior lack of an experienced FOIA officer at the commission has now been remedied through an Economy Act MOU with the FAA's regional counsel. A specialist in the latter's local office now serves as the commission's FOIA officer as the need arises. And the commission's CFO has obtained guidance from GAO concerning the required preservation of agency records.

The Administrative Procedures Act (APA)⁴⁵ provides the public with the opportunity to comment on regulations that covered agencies propose to issue. While public testimony is a feature of the commission's meetings, the APA's application to its processes remains uncertain at this point. The agency's management should pursue guidance from its legal counsel as to whether the APA requires a more formal rulemaking process for policies such as grant applications and funding criteria.

6. Federal Spending Controls

The Denali Commission is funded through both a direct congressional appropriation and transfers from other agencies. An annual budget request is processed through OMB, and the commission's CFO regularly meets with OMB's assigned examiner for planning purposes.

The commission's management, certifying officer, and inspector general have attended GAO training on the application of appropriation laws such as the Purpose Statute and Antideficiency Act (see Exhibit 2). And management plans to attend it again in 2008.

As necessary, the commission's CFO has obtained informal guidance from GAO's appropriation law experts. One of those attorneys has assisted the CFO in clarifying the point at which grant funds are considered to be "obligated" under some nuances of the commission's decision-making.

The commission applies the Federal Travel Regulation (FTR), the Prompt Payment Act, and the Federal Acquisition Regulation (FAR) in its control over spending. However, under FAR § 1.404, the agency head may be able to adopt a customized, more-flexible purchasing policy for certain classes of purchases below various thresholds. That possibility should be explored with legal counsel and the GSA official that administers the FAR.

7. Quality of Grantees' Single Audits

Grantees that receive at least \$500,000 in federal assistance are required to have an annual "single audit" from a CPA firm. OMB expects the awarding agency's management to review these audit reports and "[i]ssue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action."⁴⁶ GAO has recently noted some national problems with the quality of these audits.⁴⁷

⁴⁵ 5 U.S.C. § 553.

⁴⁶ OMB Circular A-133 § 400(c)(5).

⁴⁷ GAO, *Single Audit Quality: Actions Needed to Address Persistent Audit Quality Problems*, GAO-08-213T (Oct. 25, 2007).

The commission's management has traditionally cited its reliance on grantee single audits as a monitoring control. However, the commission currently has no system in place for reviewing these audit reports or assuring that the issuing CPAs are covering the commission's funding in their fieldwork.

Last spring, the commission's CFO suspended seven grants to one recipient over various compliance issues. I contacted the recipient's auditor and learned that the commission's funding was not among the federal grants that the auditor had examined.

Future direct communication between the CFO and recipients' CPAs can alert the latter as to any increased risks concerning the commission's grants that the auditors should consider in planning their fieldwork. The following excerpts from OMB Circular A-133 encourage such cooperation:⁴⁸

The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring which could be material to the Federal program. . . [A]s part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency . . .

Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs. . . When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk. . .

Oversight exercised by Federal agencies or pass-through entities could indicate risk. . . [M]onitoring which disclosed significant problems would indicate higher risk. . . Federal agencies, with the concurrence of OMB, may identify Federal programs which are higher risk. . .

Another proactive approach could be an invitation to a recipient and its auditor to review needed coordination with the commission's financial management advisory committee.

A less proactive approach, of course, would be after-the-fact "quality control reviews" of auditor workpapers by myself, or by another inspector general whose agency funds the same recipient.

8. Program Performance Evaluation and Reporting

In the case of the Denali Commission, the most significant deviation from GAO's implicit expectations would seem to be the commission's lack of a program evaluation function. This deficiency repeatedly resurfaces in several contexts.

⁴⁸ OMB Circular A-133 § 525 (emphasis added).

In FY 2006, two conditions caused OMB to rate the commission as merely “adequate” in the publicly-reported PART evaluation:

“The program lacks adequate evaluations that assess program impact.”

“[T]he program's activities are duplicative of other federal programs that address the same needs and provide the same types of assistance.”⁴⁹

In regards to the first condition, OMB elaborated as follows:

The Denali Commission has not created a schedule of independent impact evaluations of its programs. Currently, Commissioners conduct a review on a quarterly basis, the Inspector General conducts project audits and an independent advisory committee reviews energy facility program development and health care issues. However, these do not qualify as evaluations of sufficient quality, scope, and independence. While many of these reviews highlight important issues, they do not assess how Denali's collective activities are improving economic conditions in rural Alaskan communities. Rather, the Denali Commission should look to conduct a program evaluation that assesses the impact of programs on Alaskan communities by focusing on how Denali affects and influences the desired outcomes (e.g., health care, jobs, safety, etc.).⁵⁰

During FY 2007, the commission contracted with a research firm for a \$200,000+ review of the agency's accomplishments. That review detailed the agency's structure, the buildings built, the populations trained, and the interviewees that were pleased to get the commission's funding. The review did not measure the degree to which the commission's projects are making “bush” Alaska a better (e.g., healthier) place to live.

A whole federal “industry” has arisen to investigate perceived abuses of flood-related assistance after recent hurricanes in southern states. Here at the Denali Commission, the lack of an evaluation function invites Katrina-like accountability criticism.

Compounding the issue is the lack of an Alaskan consensus as to the role of evaluation among planners, social scientists, and the commission's own staff. The following are some of the justifications offered by various parties around the state for the lack of outcome measurements for programs like the Denali Commission: (1) outcomes are not measurable; (2) criteria (benchmarks) are not available; (3) assistance is a right (or reparation) given the policy area or the history; (4) data is not available; (5) data collection should be specified up front; (6) grantees should do their own evaluations; (7) Congress funds physical uses rather than results; (8) evaluations are the inspector general's problem.

A further complexity arises when one or more federal agencies are funding a project in addition to the Denali Commission. The co-funders need to coordinate their monitoring to assure that accountability isn't diffused among different tracking systems (or simply doesn't occur).

⁴⁹ OMB, *Program Assessment of Denali Commission*, at www.expectmore.gov.

⁵⁰ OMB, *Program Assessment of Denali Commission*, sec. 2.6, at www.expectmore.gov.

Nevertheless, other rural development agencies — both large and small — have evaluation functions. The Millennium Challenge Corporation (annual budget ≈ \$1.7 billion) has a “department of accountability.” The Inter-American Foundation (annual budget ≈ \$25 million) has an “office of evaluation.” The Denali Commission may be able to share the evaluation expertise of agencies such as these through Economy Act MOUs.

In May 2007, the comptroller general addressed a coordination meeting between GAO and the federal inspector generals. Within his list of accountability challenges were the following two concerns:

“The failure to link resources and authorities to results (outcomes).”

“Rising expectations for demonstrable results and enhanced responsiveness.”⁵¹

In September 2007, OMB alerted federal CFOs and inspector generals that “OMB and agency officials with responsibility for performance management will develop a separate framework for independent verification and validation of performance data starting for fiscal year 2008.”⁵² However, no draft of such a new requirement has been issued so far. It thus remains to be seen whether “independent verification and validation” will translate in practice as new audit procedures by CPAs, expanded oversight by inspector generals, or program evaluations by research contractors. Thus, to the extent possible, the commission should explore the compatibility of any plans for an evaluation function with new OMB requirements that seem to lie just over the horizon.

Here at the Denali Commission, one of the most difficult, uncomfortable, and avoided evaluation subjects concerns the size of community that warrants public support (versus self-support). While national lore may abstractly decry construction to “nowhere,” the choices are very real, and very serious, for rural families that must go without what most of America takes for granted.

The commission’s strategic plan idealistically aspires that “[a]ll Alaska, *no matter how isolated*, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development [emphasis added].” This idealism is challenged by the logistics of serving tiny, often unincorporated settlements that are far from any road system. Given that roughly half of the state’s communities have fewer than 300 people, many locations will have an inherently limited capacity to support their own facilities in the years after the commission has given them the key.

For instance, my inspection reports for FY 2007 recount the commission’s choice to spend \$3.6 million to build four facilities to serve the fuel and electricity needs of approximately 20 households in a tiny, unincorporated, mountain settlement located deep in Alaska’s interior. The commission has also paid for the design of a new clinic there, with construction estimated to cost \$1 million. And the state’s transportation department is planning to spend \$12 million on a new airstrip.

⁵¹ Comptroller General David Walker’s presentation to the IG-GAO coordination meeting held May 8, 2007 in Washington, D.C. (excerpt from slides).

⁵² OMB Bulletin 07-04, transmittal letter.

A similar dilemma can arise when the commission funds a facility that supports a settlement's public school. When schools fall below 10 students in rural Alaska, they lose their lifeblood of state funding and may need to close. My inspections noted one location where the state counted only 11 students. Yet the commission chose to spend around \$450,000 to provide the school with a new fuel tank.

These tensions concerning serviceable size are not isolated anecdotes. Other examples of small settlements with Denali-funded energy facilities are Tenakee Springs (est. pop. 98), Chuathbaluk (est. pop. 95), Sleetmute (est. pop. 92), Atka (est. pop. 90), Hughes (est. pop. 69), Stevens Village (est. pop. 68), Clark's Point (est. pop. 65), Stony River (est. pop. 42), Alatna (est. pop. 41), Nikolski (est. pop. 31), and Lime Village (est. pop. 28).

The commission's grants for clinics are also challenged by the effort to serve such "micro-settlements." The commission's home page publicly presents its goal to build over 200 clinics around the state. This paradigm of a clinic in every village is based upon a 2000 study by other agencies that assumes a need for settlements from 20 to 100 people to have a 1,500 square-foot clinic, complete with pharmacy and morgue.⁵³

Examples of small settlements that have received Denali grants to construct clinics are Sleetmute (est. pop. 92), Egegik (est. pop. 81), Twin Hills (est. pop. 71), Clark's Point (est. pop. 65), Stevens Village (est. pop. 68), Beaver (est. pop. 64), and Alatna (est. pop. 41).

Despite the small population served by such clinics, diagnostic code data is commonly collected by the regional health corporations in the ordinary course of treating patients. Analysis of this data for a sample of small clinics could reveal whether the paradigm of a clinic in every village results in better care and better health. The commission has so far, though, declined to attempt any analyses of diagnostic and treatment data.

As the commission builds away, it would be invaluable to know whether such "infrastructure" is making rural Alaskans any freer of past physical scourges and modern behavioral ones. The third world conditions of the "other Alaska" are still out there in the land beyond the tourism commercials.

9. Independence of Inspector General Function

Both the Denali Commission Act and the Inspector General Act require the commission to have an inspector general. The commission is one of approximately 30 "designated federal entities" (DFE) that are now statutorily required to have this oversight function.

The "federal co-chair" functions as the agency head per the enabling act. As envisioned by the Inspector General Act and OMB memo M-93-01 (the "Hodsoll letter"), the inspector general here is appointed by, and subject to the "general supervision" of, the federal co-chair rather than the panel of commissioners.

⁵³ See Alaska Native Tribal Health Consortium, Alaska Dept. of Health & Social Services, and Indian Health Service, *Alaska Rural Primary Care Facility Needs Assessment Project Final Report*, vol. I (Oct. 2000), pages 10, 23-25.

The agency head and I concur that the commission's inclusion among DFEs signals Congress' intent that the agency have its own full-time, Alaska-based, onsite inspector general. Such oversight for this agency is not surprising given the annual spending of around \$130 million for projects totally within a remote state far from Washington, DC. In fact, I appear to be the only DFE inspector general that is not based in Washington, DC.

Congress could have instead specified the Denali Commission as just a "federal entity," and thereby left it to management's election to obtain inspector general services as needed.⁵⁴ Or Congress could have specified that the inspector general for a particular cabinet-level department would serve the agency — as Congress did in linking the Delta Regional Authority to the USDA inspector general.⁵⁵

I am the commission's first inspector general that is full-time, in-house, and Alaska-based — and the function's only employee at this point. The function still lacks the necessary separate budget, support staff, and equipment (e.g., fax, server, printer, home page). The commission currently spends less than one-tenth of 1% of its annual \$130 million budget on this statutory oversight function.

In June 2007, GAO reported to Congress concerning various legislative proposals to improve the Inspector General Act.⁵⁶ An appendix to that report lists the budget of all inspector general offices, and shows the function at the Denali Commission to lack its own budget.

I have discussed this deficiency with GAO and ECIE members. The agency head and I are working to correct this shortcoming in the interest of improving both the function's independence and its service level.

10. Core Competence Justifying An Agency's Existence

The federal system is populated with many small, specialized agencies. Implicitly lurking in GAO discussions is the perennial issue of whether it would be more efficient and effective "governance" for any given task to be directly accomplished by a cabinet-level department.

To draw upon the popular saw, the above nine factors all consider whether the studied agency is "doing things right" (playing by the rules). But this final factor asks the tougher question whether an agency is "doing the right things" (producing public value).

Uncomfortable as the issue is for any small agency, a proposed amendment to the Inspector General Act that recently passed the House of Representatives signals that Congress likes to see the matter considered. Section 11 of H.R. 928 instructs inspector generals to recommend "*whether an abolishment, reorganization, consolidation, or transfer of existing Federal programs and agencies is necessary.*"

⁵⁴ See 5 U.S.C. Appendix — Inspector General Act §§ 8G(a), 8G(h).

⁵⁵ See 7 U.S.C. § 2009aa-10.

⁵⁶ GAO, *Inspectors General: Proposals to Strengthen Independence and Accountability*, GAO-07-1021T (June 20, 2007).

By the end of 2007, Congress will have funded its Denali Commission experiment with close to \$1 billion. The omnipresent question thus looms as to what Alaskans have received through this experiment that they would otherwise have gone without. In other words, what outcomes made the commission more than a ceremonial layer?

Three possibilities have traditionally been assumed, and argued, as the “value added” over the commission’s short history: (1) synergies from interagency coordination; (2) innovative solutions that would have been left undiscovered by traditional agencies; (3) enhanced mechanisms of accountability to the American public for what was done with what was given.

On the other hand, two commentators on governmental coordination observed over 30 years ago:

*To coordinate is not necessarily to simplify. The innovations that have been introduced over the past decade for purposes of coordination have given us a more complicated federal system — one with five, six, or even seven levels of government where three or four sufficed before. . .*⁵⁷

The commission provides rural Alaska with some of the basic local facilities that the rest of the nation has long taken for granted. The agency’s “legacy” programs fund the construction of clinics, powerhouses, and fuel tanks in some of the most challenging locations in America.

Nevertheless, scrutiny for a distinctive core competence suggests the broader issue of whether the commission’s “legacy” programs should be defined in terms of innovative rural electrification and health care — or just the methodical addressing of longstanding state lists of needed clinics, generators, and tank farms.

But Alaska has six opportunities-in-waiting if the commission wants to distinguish itself.

First, in-river turbines may be a potent antidote to the paradigm of diesel dependency (basically a generator and a fuel tank in every village). The commission has funded the state’s first demonstration project of this invention (Eagle on the Yukon). Given the diversity of our rivers, it should try some more. And the commission should consider the potential for training rural Alaskans to build and market these devices to the world.

Second, geothermal sources of various heat levels exist around the state. The commission has funded a resort’s power plant (near Fairbanks) that innovatively demonstrates the ability to harness lower-temperature hot springs in a small setting. Again, the commission should try some more to offset the skyrocketing cost of shipping fuel into bush Alaska.

Third, Alaska has just opened one of 20 national quarantine stations operated by the U.S. Public Health Service.⁵⁸ To the extent that the network of rural health clinics can partner with this facility as a “biological DEW line,”⁵⁹ those clinics will have significance to the Lower 48.

⁵⁷ James L. Sundquist & David W. Davis, *Making Federalism Work: A Study of Program Coordination at the Community Level* (1969), page 242.

⁵⁸ See www.cdc.gov/ncidod/dq/quarantine_stations.htm. The Alaska quarantine station is at the Anchorage International Airport.

⁵⁹ The DEW line was an early Cold War radar network in Alaska and Canada that was designed to detect Soviet bombers heading toward the Lower 48.

Fourth, another new “DEW line” may be the hundreds of self-sustaining, satellite-linked, data sensors that various agencies are installing for various purposes around rural Alaska. They guide aircraft, report the weather, predict wildfires, watch highway traffic, register earthquakes, and will track climate warming over the next 50 years. Rural students may be inspired to careers in technology to the extent that the Denali Commission can expand its training efforts to include the servicing of these facilities by local residents.

Fifth, I note again that an entire federal “industry” has arisen to investigate perceived abuses of government assistance after recent natural disasters in the Lower 48. Alaskans can certainly argue that their state has been comparatively more accountable (and less controversial) in its application of federal aid to some of its natural disasters (e.g., earthquakes, wildfires, volcanic eruptions). To the extent that the Denali Commission can export the “lessons learned” to other states, the agency’s value to the rest of the nation is demonstrated.

Sixth, the local public school is often the dominant structure and the dominant employer in Alaska’s rural settlements. Exhibit 3 lists eight ways in which the commission can potentially partner with the local school when implementing a remote project. The agency head should found an interagency coordinating council for this purpose.

FINALE

No matter how the commission evolves, it should never forget its foundation to serve the “other Alaska” that most visitors never see.

I agree with GAO that the question of the optimal governance and accountability structure is a timely one for the Denali Commission. The combination of statutory framework, funding, and management ingenuity will decide the commission’s fate as the little agency that *could* — or the little agency that *could have been*.

EXHIBIT 3

EIGHT SCENARIOS FOR COORDINATION BETWEEN THE DENALI COMMISSION AND RURAL SCHOOLS

Concurrent construction mobilization for separate projects by school and Denali Commission in same remote community

Collocation of new non-school facility (clinic, community center) within a school building

School contributions of “in kind” equipment or services

School as major beneficiary of local facility (tank farm, power plant, teacher housing)

Risk of school closure due to low attendance after Denali funds associated facility

Use of former school buildings, rather than new construction, for Denali projects

School’s management of construction of associated Denali-funded facility

School’s operation of associated Denali-funded facility after construction

Mike Marsh

MIKE MARSH, CPA, MPA, CFE, ESQ.
INSPECTOR GENERAL