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# SEMIANNUAL REPORT TO THE CONGRESS

FY 2012 – FIRST HALF

OFFICE OF THE INSPECTOR GENERAL

DENALI COMMISSION



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**Memo**

To: Mike Marsh, Inspector General, Denali Commission

From: Joel Neimeyer, Federal Co-Chair, Denali Commission

A handwritten signature in blue ink, appearing to read "Joel Neimeyer".

Subject: FY2012 (First Half) Semi-Annual Report to Congress

Date: June 8, 2012

This memo is written in response to the above referenced document. I appreciate the opportunity to provide input on the document. I have no comments to provide. The routine meetings we have, along with Ms. Corrine Eilo, Denali Commission Chief Administrative Officer, have served me well and provided me significant insight into accessing other Federal partners in addressing the ambiguities of the Denali Commission Act, as amended.

## MEMORANDUM FOR FEDERAL CO-CHAIR NEIMEYER

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

Subject: Semiannual report to agency head and Congress for first half of FY 2012

The Inspector General Act requires the Office of Inspector General (OIG) at the Denali Commission (Denali) to prepare a semiannual report to the agency head and Congress. The discussion below constitutes this report for the first half of FY 2012.

Section 4(a)(2) of the Inspector General Act directs inspector generals to do the following:

*to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations . . .*

Section 4(a)(4) of the Inspector General Act directs inspector generals to do the following:

*to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of . . . programs and operations . . .*

Consistent with these provisions, this report addresses several matters of concern to congressional staff that have inquired of either OIG or the agency head.

POTENTIAL EXPANSION OF DENALI'S  
SELF-SUPPORT FROM NON-FEDERAL SOURCES

*Potential congressional action to authorize non-federal receipts*

Denali has received about \$1 billion in congressional support over the past dozen years — though, in contrast to other “regional commissions,” Denali serves only a single state. This \$1 billion represents a significant federal investment in the establishment of a new agency.

However, Congress’ funding for Denali has waned in recent years through reduced appropriations, discontinued programs, and a \$15 million rescission. In fact, Denali’s new

funding has effectively declined to approximately its startup level. This suggests that the appropriations were intended for the “incubation” of a fledgling agency over its first decade, rather than as the seeds for perpetual congressional support.

Denali should thus expect to pursue substitute funding from other sources. One possibility is money from the state government (since all Denali projects benefit Alaska) or from private organizations around the world (such as charitable foundations concerned about the Arctic).

But the Comptroller General has advised that Denali currently lacks the statutory authority to accept non-federal funding that is conditioned upon any specific use. This effectively discourages any non-federal support since, quite understandably, few funders would send Denali money with no expectation as to its purpose.

Pending legislation in Congress, if enacted, would correct this in conformance with the Comptroller General’s ruling. The Senate recently passed S. 1813, which in pertinent part, would amend Denali’s enabling act to allow it to “accept use, and dispose of gifts or donations of services, property, or money,” even when these are “conditional gifts.”<sup>1</sup> And the House recently introduced H.R. 14, which would make the same changes to Denali’s enabling act.<sup>2</sup>

Denali OIG recommends that Congress adopt the amendment proposed by S. 1813 and H.R. 14 that would expand Denali’s authority to pursue self-support from non-federal sources.

*Potential congressional action to allow board members to waive compensation*

The Comptroller General has recently determined that Denali’s enabling act does not allow its board members to waive the compensation that the statute prescribes for their time devoted to the annual “work plan.”<sup>3</sup>

OIG has now asked the IRS for an authoritative letter ruling<sup>4</sup> on the proper tax treatment of these mandatory payments, since they could conceivably be received as mere agents of their home organizations rather than as income to individual taxpayers.

On the other hand, Congress could conserve public money with brief language that simply makes the payments optional or at least flexible in amount up to a maximum (for instance, use of “may” or “up to,” instead of “shall”).<sup>5</sup>

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<sup>1</sup> See S. 1813, sec. 1531.

<sup>2</sup> See H.R. 14, sec. 1531.

<sup>3</sup> See GAO, *Denali Commission—Statutory Pay for Commissioners*, # B-322832 (March 30, 2012) at [www.gao.gov](http://www.gao.gov).

<sup>4</sup> See Revenue Procedure 2012-4, 2012-1 I.R.B. 125 (Jan. 3, 2012). Denali OIG has the authority to seek the guidance of an IRS letter ruling under Inspector General Act sections 4(a)(4) and 6(a)(3).

<sup>5</sup> See GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, pages 6-97 to 6-102.

Potential reimbursable services to state and local governments

We recently alerted Denali's agency head to the President's statutory authority to offer reimbursable services to a state or local government when "an executive agency is especially competent and authorized by law to provide" such work as "development projects," "technical information," "training activities," and "other similar services."<sup>6</sup> This would seem to complement the authority to detail federal employees to state and local governments under the Intergovernmental Personnel Act.<sup>7</sup>

We recommend that Denali's management explore this statutory authority with the OMB examiner assigned to the agency. For instance, OMB has publicly emphasized its interest in the disposition of excess federal properties around the nation,<sup>8</sup> and Denali has Alaskan expertise in brokering new uses for old facilities.

POTENTIAL RESTRUCTURING OF DENALI  
AS A NONPROFIT CORPORATION

Denali's current structure was appropriate in the agency's early years when congressional appropriations were expected as the dominant support. However, the agency now needs the legal flexibility to pursue self-support through more diversified funding. Denali's position is a difficult one because conflicting federal policies seem to simultaneously encourage and discourage efforts to obtain non-federal contributions.

Traditional federal agencies work within a legal norm that limits their spending to such appropriations as Congress decides to send them. Efforts to circumvent the congressional limits by going elsewhere are prohibited "augmentations" unless Congress gives the statutory blessing. On the other hand, in creating regional commissions such as Denali, Congress seems to assume a federal-state-tribal collaboration that will leverage appropriations with funding from other sources.

Our past OIG reports to Congress have discussed various possibilities for retooling Denali's basic structural form based upon the lessons-learned of the past decade.<sup>9</sup>

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<sup>6</sup> See 31 USC 6505.

<sup>7</sup> See 5 USC 3372-3373.

<sup>8</sup> See [www.whitehouse.gov/issues/fiscal/excess-property-map](http://www.whitehouse.gov/issues/fiscal/excess-property-map).

<sup>9</sup> See Denali OIG, *Semiannual Report to the Congress* (May 2011), pages 6-10; Denali OIG, *Semiannual Report to the Congress* (Nov. 2010), page 4; Denali OIG, *Semiannual Report to the Congress* (May 2010), pages 9-10, 37, 40-42. These reports are published at [www.denali-oig.org](http://www.denali-oig.org).

Potential as a multi-state commission

The federal system is populated with many small, specialized agencies. The service area of the Denali Commission is limited to Alaska. The Congressional Budget Office, OMB, and Denali OIG have in our publications challenged the efficiency of Congress' sole experiment with a "regional" commission that includes only a single state.<sup>10</sup>

OIG's past reports<sup>11</sup> have recommended that Congress consider the potential combination of an expanded regional commission that would serve Alaska, Hawaii, Guam, American Samoa, the Northern Mariana Islands, and the three multi-island former Pacific territories (freely associated states) that receive congressional support through the Department of the Interior and other federal agencies. While the climates are obviously dissimilar, Denali's lessons-learned in serving small, isolated, road-challenged, ethnically-diverse settlements should be quite transferable to such a "Pacific Regional Authority" (e.g., small clinics and power plants).

Potential as an "operating administration"

OIG has also recommended that Congress consider incorporating Denali as an "operating administration" headed by an administrator that reports to the Secretary of Commerce.<sup>12</sup> An existing example of this model is the Saint Lawrence Seaway Development Corporation (SLSDC), an operating administration with a separate corporate existence under the Secretary of Transportation.

SLSDC is governed by a presidentially-appointed "administrator" that reports to the Secretary. The administrator has the benefit of advice from an "advisory board," whose five members are also presidential appointments. The advisory board meets at least quarterly at the call of the administrator and advises the latter on the agency's "general policies." The advisers are paid per diem and travel for their services.<sup>13</sup>

The statutory relationship between SLSDC and a cabinet secretary seems the optimal day-to-day balance between autonomy for a specialized mission and the needed administrative support from practical economies of scale.

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<sup>10</sup> See Denali OIG, *Semiannual Report to the Congress* (May 2010), pages 35-37, 40-42; "Inspector General's Perspective on Management and Performance Challenges Facing the Denali Commission" in the *2009 Performance and Accountability Report*; OMB's recommended "Terminations, Reductions, and Savings," pages 2, 20, 21, 33 in *Budget of the U.S. Government, Fiscal Year 2010* at [www.budget.gov](http://www.budget.gov); OMB, *Program Assessment of Denali Commission*, at [www.expectmore.gov](http://www.expectmore.gov); Congressional Budget Office, *Budget Options*, vol. 2 (August 2009), sec. 450-5, page 106 at [www.cbo.gov](http://www.cbo.gov).

<sup>11</sup> See Denali OIG, *Semiannual Report to the Congress* (Nov. 2010), page 4; Denali OIG, *Semiannual Report to the Congress* (May 2010), page 37. Both reports are published at [www.denali-oig.org](http://www.denali-oig.org).

<sup>12</sup> See Denali OIG, *Semiannual Report to the Congress* (May 2011), pages 7-8, at [www.denali-oig.org](http://www.denali-oig.org).

<sup>13</sup> See 33 USC 981-982; 49 USC 110; 49 CFR 1.3, 1.25.

A recent example of this approach is the First Responder Network Authority, which Congress has established as an “independent authority” within the Department of Commerce.<sup>14</sup> However, unlike Denali, both this new entity and SLSDC offer services that generate user fees from the beneficiaries.

### Potential as a nonprofit corporation

But as OIG’s “final answer” after considering the possibilities for some time, OIG recommends that Congress sunset the Denali Commission as a federal agency — with simultaneous rebirth as a nonprofit corporation under Alaska state law.<sup>15</sup> Once freed from the straitjacket of federal restrictions, the new nonprofit can marshal funding from as many sources as possible to advance “bush” Alaska from a local problem to an international asset. Incorporation as a nonprofit under state law will allow Denali this flexibility that it now lacks in the federal system.

One such possibility would be for Congress to model the agency as the “Denali Consortium,” similar to the Alaska Native Tribal Health Consortium. Congress initiated the latter in section 325 of P.L. 105-83, and the entity then organized as a nonprofit corporation under Alaska law.

Other examples would be Congress’ initiation of the Legal Services Corporation and the Corporation for Public Broadcasting, both of which are nonprofit creations under the law of the District of Columbia. This nonprofit status was designed to foster each entity’s independence in their program choices, a goal that Alaskan beneficiaries of the Denali Commission would presumably appreciate.

But Congress could, of course, still continue to support Denali through annual appropriations to the extent desired — as Congress has done for the Legal Services Corporation. And the working relationships with other agencies that Denali has honed over the years should still remain intact and productive.

Yet another possibility would be for the Alaska State Legislature to restart the “Denali Consortium” as a state-chartered nonprofit corporation. The Special Education Service Agency established by Alaska Statute 14.30.600 as a “public organization” is an example of the latter type of entity.

### POTENTIAL EXPANSION OF DENALI FUNDING TRANSFERRED FROM OTHER FEDERAL AGENCIES

#### Potential congressional action to authorize federal transfers

Transfer of funds between federal agencies is routine and acceptable — so long as authorized by federal appropriation law and consistent with congressional direction. Our past OIG reports have

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<sup>14</sup> See 47 USC 1424(a), P.L. 112-96 sec. 6204(a), 126 Stat. 208.

<sup>15</sup> We have previously discussed this possibility at Denali OIG, *Semiannual Report to the Congress* (May 2010), pages 9-10, at [www.denali-oig.org](http://www.denali-oig.org).

detailed situations in which various statutory ambiguities have hindered Denali's access to transferred funding.<sup>16</sup>

Pending legislation in Congress, if enacted, would correct some of this uncertainty. The Senate recently passed S. 1813 which would add the following new section to Denali's enabling act.<sup>17</sup>

*Sec. 311. Transfer of funds from other federal agencies*

*(a) In General.—Subject to subsection (c), for purposes of this Act, the Commission may accept transfers of funds from other Federal agencies.*

*(b) Transfers.—Any Federal agency authorized to carry out an activity that is within the authority of the Commission may transfer to the Commission any appropriated funds for the activity.*

*(c) Treatment.—Any funds transferred to the Commission under this subsection—*

*(1) shall remain available until expended; and*

*(2) may, to the extent necessary to carry out this Act, be transferred to, and merged with, the amounts made available by appropriations Acts for the Commission by the Federal Cochairperson.*

And the House recently introduced H.R. 14, which would add the same new section to Denali's enabling act.<sup>18</sup>

The proposed new section 311 would confirm the “no year” status of transfers received by Denali. This is important because such transfers may require coordination between the financial bureaucracies of a cabinet-level department and the Treasury before the money is actually available to Denali.<sup>19</sup>

As detailed in our past OIG reports to Congress,<sup>20</sup> Denali has faced funding complications even when Congress has explicitly identified the agency as the destination for a given amount in an appropriation act. Construction seasons are limited in rural Alaska, and Denali's implementation

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<sup>16</sup> See Denali OIG, *Semiannual Report to the Congress* (Nov. 2011), page 7; Denali OIG, *Semiannual Report to the Congress* (May 2011), pages 8-9; Denali OIG, *Semiannual Report to the Congress* (Nov. 2010), pages 16-17; Denali OIG, *Semiannual Report to the Congress* (May 2010), pages 7-9. These reports are published at [www.denali-oig.org](http://www.denali-oig.org).

<sup>17</sup> See S. 1813, sec. 1531.

<sup>18</sup> See H.R. 14, sec. 1531.

<sup>19</sup> See GAO, *Denali Commission—Transfer of Funds Made Available through the Federal Transit Administration's Appropriations*, # B-319189 (Nov. 12, 2010) at [www.gao.gov](http://www.gao.gov).

<sup>20</sup> See Denali OIG, *Semiannual Report to the Congress* (Nov. 2011), page 7; Denali OIG, *Semiannual Report to the Congress* (May 2011), page 9; Denali OIG, *Semiannual Report to the Congress* (Nov. 2010), pages 16-17.

of congressional intent has sometimes been hindered by delays of a year or two before actual availability of the funds to Denali.<sup>21</sup>

Denali OIG recommends that Congress adopt the new section proposed by S. 1813 and H.R. 14 that would expand Denali's authority to accept funding from other federal agencies. This amendment would further their mutual efforts to implement congressional programs in remote Alaska — with economies of scale, local expertise, and minimized duplication.

Potential congressional action to clarify use of Trust Fund payments

We also recommend that Congress refine S. 1813 and H.R. 14 to resolve a troublesome ambiguity in Denali's use of funding from the Oil Spill Liability Trust Fund. Ironically, this may be both the most permanent and the most restricted of Denali's funding sources.

Congress has by permanent legislation directed that certain interest earned on the Oil Spill Liability Trust Fund (Trust Fund) will be used by Denali *"to repair or replace bulk fuel storage tanks in Alaska."*<sup>22</sup> Denali funds the construction of these tank farms in hopes of addressing (1) the availability of reliable electricity, (2) high fuel costs to consumers, (3) winter fuel shortages that require emergency intervention,<sup>23</sup> and (4) the environmental damage from outdated tanks that leak.

However, in addition to the Trust Fund payments, Denali has historically received two other types of funding that could potentially be used for building tank farms: (1) transfers at the discretion of the USDA Rural Utilities Service<sup>24</sup> and (2) Denali's annual "base" appropriation for *"expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses . . ."*<sup>25</sup>

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<sup>21</sup> See GAO, *Denali Commission—Transfer of Funds Made Available through the Federal Transit Administration's Appropriations*, # B-319189 (Nov. 12, 2010) at [www.gao.gov](http://www.gao.gov).

<sup>22</sup> See 42 USC 3121 note, P.L. 105-277, div. C, title III, 112 Stat. 2681-640 to 112 Stat. 2681-641, as amended by P.L. 106-31, title 1, sec. 105, 113 Stat. 63; 43 USC 1653 note, P.L. 105-277, div. A, sec. 101(g), 112 Stat. 2681-470.

<sup>23</sup> A recent example would be a Russian tanker's race to refuel Nome, Alaska (see Jim Carlton, "Fuel Arrives, but Deep Freeze Endures," *Wall Street Journal*, Jan. 14, 2012, at <http://online.wsj.com>). The popular History Channel series, *Tougher in Alaska*, had a "Frozen Freeway" episode about the race to truck fuel along the frozen Kuskokwim River to the Denali-funded tank farm at Kwethluk. Another example would be tiny Telida (pop. 12 at the time) that waited for winter weather to permit a critical fuel flight (see Doug O'Harra, "The Rise and Fall of Telida," *Anchorage Daily News*, Feb. 28, 1993, page D8).

<sup>24</sup> Per 7 USC 918a(a)(2), Congress authorizes the USDA Rural Utilities Service to transfer funding to the Denali Commission *"to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities"* in communities with high energy costs. While such transfers lie within USDA's discretion, Denali has historically received them as a substantial source of its funding.

<sup>25</sup> See P.L. 112-74, div. C, title IV, 125 Stat. 880.

When an agency has an appropriation for a specified purpose, it is usually barred from using a more general appropriation for that same purpose.<sup>26</sup> Congress is considered to have signaled an implicit ceiling on the agency's spending for the specified purpose. To spend more than the specific appropriation for that purpose is considered an unlawful "augmentation" of the general appropriation, that is, a violation of the Antideficiency Act.<sup>27</sup>

At first glance, these rules would appear to both (1) restrict Denali's use of Trust Fund interest to the construction of tank farms and (2) bar Denali's spending on tank farms from other appropriations.<sup>28</sup> However, for several reasons such a result would seem to frustrate — rather than reinforce — congressional direction.

First, Congress' assignment of the Trust Fund's interest seems designed to recover the public costs of harmful externalities from responsible parties.<sup>29</sup> The fund's purpose thus seems to be remedial, rather than a limit on what Congress wants Denali to spend.

Second, in contrast to traditional fixed appropriations, Congress will have a more limited ability to predict how much interest will be generated by the Trust Fund and how much funding USDA will choose to transfer to Denali through the Rural Utilities Service. In other words, Congress has relinquished control over the exact amount that Denali will receive under the funding mechanisms of both the Trust Fund and USDA.

Third, the physical realities of the infrastructure suggest congressional intent for the Trust Fund to serve as a source of supplementary funding rather than a spending limit. For instance, a power plant requires stored fuel to operate. A satellite station for telephone service requires electricity. A sewage treatment plant requires fuel to power its equipment. For such integrated infrastructure, Congress arguably didn't mean to limit the broader goals of Denali's enabling act<sup>30</sup> by restricting a key component (fuel storage) to the Trust Fund.

Fourth, prevention of oil spills will be promoted over the long run by reductions in the amount of fuel that must be brought into the bush in the first place. We recommend that Congress confirm that permissible use of the Trust Fund's interest can evolve in practice as the need to replace tanks is mooted by new energy sources and users' fuel efficiencies.

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<sup>26</sup> See GAO, *Principles of Federal Appropriations Law*, 3<sup>rd</sup> ed., vol. I, pages 2-21 to 2-23, 4-29. The Comptroller General has previously addressed the boundaries of the Oil Spill Liability Trust Fund in two decisions involving the U.S. Coast Guard. Both decisions involved augmentation issues. See GAO decisions # B-289209 and # B-255979 at [www.gao.gov](http://www.gao.gov).

<sup>27</sup> See GAO, *Principles of Federal Appropriations Law*, 3<sup>rd</sup> ed., vol. II, pages 6-162 to 6-164.

<sup>28</sup> Denali OIG has a pending request for a GAO determination of these issues in GAO, *Denali Commission—Use of Oil Spill Liability Trust Fund*, # B-323365 (pending for decision).

<sup>29</sup> See 43 USC 1653(a).

<sup>30</sup> Among the broad purposes provided in Denali's enabling act, the agency has a mission "[t]o promote rural development, provide power generation and transmission facilities, modern communications systems, water and sewer systems, and other infrastructure needs." See Denali Commission Act section 302(3).

POTENTIAL ELIMINATION OF DENALI'S  
REQUIREMENT FOR AN ANNUAL "WORK PLAN"

Congress presumably "reauthorizes" Denali at periodic intervals to revisit what parts of the experiment are worth preserving — and what parts have outlived their usefulness. The enabling act's process for an annual "work plan" is one of the latter, and Congress should amend the statute to remove the requirement at this point in Denali's history.

Denali OIG was alerted to this issue when we recently reviewed the fate of \$1 million that the FY 2010 work plan set aside for a "training program" with little specific guidance. OIG's public inspection report found that less than \$20,000 of this was actually spent, with \$900,000 of the unused balance ultimately sent back to Congress.<sup>31</sup> While the agency head repeatedly solicited stakeholder input, the failure to find a good home for almost \$1 million signaled a question as to the continuing utility of the work plan requirement.

The public process to produce the work plan has been meaningful in the past — so long as Denali's funding stream has been a predictable one that meshed well with both the fiscal year and the seasonal cycle for bush construction. But as the timing and the amounts of this funding stream have become less predictable, the work plan has become more of an obstacle than an opportunity.

The enabling act requires the agency head to consult with numerous stakeholders, including a statutory panel of non-federal statewide leaders<sup>32</sup> and a month of public comment advertised in the *Federal Register*.<sup>33</sup> Though the plan's approval ultimately lies with the agency head and the Secretary of Commerce,<sup>34</sup> stakeholders are encouraged to offer their recommended priorities for spending Denali's money around the state.

But a variety of stakeholder frustrations have surfaced with this process in recent years. To begin with, Congress has reduced the number of programs that it funds through Denali. The two main programs that remain are rural electrification and transportation. Priorities for the former are now well established under a longstanding statewide energy plan. Use of the latter is now controlled by a separate transportation appropriation and a separate selection panel established by Congress in an amendment to Denali's enabling act.<sup>35</sup>

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<sup>31</sup> See Denali OIG, *Inspection of \$1 million grant # 1315 to State of Alaska for Village Resume Project* (Feb. 2012), published at [www.denali-oig.org](http://www.denali-oig.org).

<sup>32</sup> See Denali Commission Act sec. 303(b)(1).

<sup>33</sup> See Denali Commission Act sec. 304(b)(1).

<sup>34</sup> See Denali Commission Act sec. 304(b).

<sup>35</sup> See Denali Commission Act sec. 309, as amended by P.L. 109-59 sec. 1960, 119 Stat. 1144, 1516.

Stakeholders are also frustrated when the funding anticipated during their work plan input does not actually materialize, rendering their efforts a mere abstract exercise. Congress ideally would settle the agency's total appropriation before the start of the fiscal year and, shortly thereafter, the Secretary of Commerce would approve an annual work plan based on those available resources. In practice, though, the actual funding can be scattered throughout the year through such diverse variables as fragmented appropriations, continuing resolutions, interagency transfers,<sup>36</sup> reimbursement for services,<sup>37</sup> cancellation of grants, grants that close under budget, public donations,<sup>38</sup> and congressional rescissions.<sup>39</sup>

Some stakeholders also misunderstand their role in the process, with some even assuming a right to repeatedly revisit the work plan as funding changes throughout the year. However, the statute prescribes a process<sup>40</sup> for an annual planning *conversation*, rather than a finite budget control with regulatory effect. It's the difference between the thoughtful goals of a community's "comprehensive plan" and the binding rules of its zoning code. And the statute's multi-month, multi-level process for the work plan is an *annual* one rather than an iterative one.

Some stakeholders also confuse the broad priorities of the work plan with Denali's ultimate decisions to issue grants for specific amounts for specific facilities in specific places. In fact, Denali's statute, literally read, does not require the work plan to allocate specific monetary amounts to anything. Literally read, one could conceivably do a "plan" that complies with section 304 but contains no specific monetary amounts and identifies no specific funding sources — a descriptive plan that ranks problems and solutions for the purpose of allocating whatever the agency ends up getting that year.

For both the agency and its stakeholders, the work plan process has outlived its usefulness. Congress should update the enabling act by extracting the unworkable section 304 that now fails to trigger the hoped-for participation and problem-solving.

We realize that this work plan is currently the only statutory role for the panel of ex-officio "members" which section 303(b)(1) requires from six identified stakeholder organizations. After removal of the work plan ritual, Congress should update section 303 to instead list such interest groups as examples of potential sources of subject matter experts that the agency head may care

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<sup>36</sup> For instance, see 7 USC 918a (funding for Denali from USDA Rural Utilities Service) and GAO, *Denali Commission—Transfer of Funds Made Available through the Federal Transit Administration's Appropriations*, # B-319189 (Nov. 12, 2010) at [www.gao.gov](http://www.gao.gov).

<sup>37</sup> Agreements between federal agencies for services under the Economy Act (31 USC. 1535, 1536).

<sup>38</sup> See Denali Commission Act sec. 305(c). But see GAO, *Denali Commission—Authority to Receive State Grants*, # B-319246 (Sept. 1, 2010) at [www.gao.gov](http://www.gao.gov).

<sup>39</sup> See GAO, *Denali Commission—Fiscal Year 2011 Rescission*, # B-322162 (Sept. 19, 2011) at [www.gao.gov](http://www.gao.gov).

<sup>40</sup> See Denali Commission Act sec. 304.

to tap for technical advisory committees, or as the “experts and consultants”<sup>41</sup> retained under section 306(e).

POTENTIAL CONSOLIDATION OF  
DENALI’S OIG WITHIN THE USDA OIG

Congress has now created statutory inspector generals at approximately 70 federal agencies. Denali has had its own for the past 6½ years — as required by both the Inspector General Act and Denali’s enabling act.

Denali is the smallest of these federal OIGs, with only 1 FTE at this point (that is, the inspector general himself with no staff). However, regardless of the inspector general’s ability to professionally “multi-task,”<sup>42</sup> the economies of scale simply make it unrealistic to effectively operate an OIG composed of only a single individual.<sup>43</sup>

There are certain things in life that are not designed to be done alone. The inspector general function is one of them.

After considering the possibilities for some time, Denali’s inspector general has concluded that the necessary independence and economies of scale (technical capacity) will only be obtained for the public by having Denali’s OIG services provided by the much larger USDA OIG. And this is exactly what Congress has already done in the enabling acts for two of the seven regional commissions: the Delta Regional Authority (8 states)<sup>44</sup> and the Northern Great Plains Regional Authority (6 states).<sup>45</sup>

The USDA OIG is headed by an inspector general whose independence is protected by presidential appointment and removal. And the USDA OIG has over 500 specialized employees stationed in offices around the nation.<sup>46</sup>

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<sup>41</sup> Section 306(e) of the Denali Commission Act authorizes the agency head to “procure temporary and intermittent services under section 3109(b) of title 5, United States Code . . .” The latter subsection covers the retention of “experts or consultants.”

<sup>42</sup> Denali’s inspector general is a CPA, MPA, certified fraud examiner (CFE), and lawyer.

<sup>43</sup> The 2008 study by the Project on Government Oversight (POGO) stated:

*The number of staff members in IG offices ranges from less than one (a part-time assistant) to hundreds. Of course, size alone is not absolutely determinative of an IG’s ability to accomplish the mission. However, experts consulted by POGO believe that any IG office with fewer than six staffers is incapable of being effective and truly independent of its parent agency; the IG must rely on the agency for too much in the way of resources, whether administrative, legal, or otherwise. . .*

See POGO, *Inspectors General: Many Lack Essential Tools for Independence* (Feb. 26, 2008), page 19, at [www.pogo.org](http://www.pogo.org).

<sup>44</sup> See 7 USC 2009aa-10.

<sup>45</sup> See 7 USC 2009bb-10.

<sup>46</sup> See [www.usda.gov/oig/contact\\_map.htm](http://www.usda.gov/oig/contact_map.htm).

In contrast, the other five regional commissions — *taken together* — have a *total* of less than 3 FTEs currently assigned to the inspector general function. The Denali Commission (1 state), again, has only 1 FTE (the inspector general himself with no staff). The Appalachian Regional Commission (13 states) currently employs its appointed inspector general for less than full-time and provides him with a full-time administrative assistant.

In the 2008 Farm Bill, Congress created three new regional commissions (15 states total)<sup>47</sup> and required that all three “*shall be subject to a single Inspector General.*”<sup>48</sup> But these three “newborns” have a total of only one employee so far — and no OIG.

We initially thought the solution might be to simply consolidate some, or all, of the seven entities under a single OIG of their own.<sup>49</sup> But a careful look at their seven statutes shows a morass of practical and legal problems that would actually derail effective oversight.

For instance, the regional commissions vary greatly in the coverage of federal oversight laws. The Denali Commission has the legal status of an independent federal agency and considers itself subject to the full panoply of federal regulation. The Appalachian Regional Commission, on the other hand, considers itself a federal-state hybrid that is subject to only some federal requirements. And the Northern Great Plains Regional Authority operates in practice through an associated nonprofit corporation.<sup>50</sup>

And the seven regional commissions cover a total of 31 states — that together span from Alaska to Florida and from Maine to California.<sup>51</sup> And they have a total of 56 statutory board members, whose statutory roles vary greatly from traditional governance to one specific advisory task.

For instance, Denali’s enabling act assembles a panel of “members” from particular statewide interest groups that, in practice, either directly implement Denali grants or represent those who do. But the only duty that the statute currently provides for this panel is to annually advise the agency head on a proposed “work plan.”

In short, we recommend that Congress consolidate Denali’s inspector general function with that already provided by the USDA OIG for the Delta Regional Authority and the Northern Great Plains Regional Authority.

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<sup>47</sup> See P.L. 110-246, secs. 15301, 15731-15733 (40 USC 15301, 15731-15733).

<sup>48</sup> See P.L. 110-246, sec. 15704 (40 USC 15704).

<sup>49</sup> We last discussed this possibility at Denali OIG, *Semiannual Report to the Congress* (May 2011), pages 10-11, at [www.denali-oig.org](http://www.denali-oig.org).

<sup>50</sup> See 7 USC 2009bb-4(d) (Northern Great Plains Inc.) and [www.ngplains.org](http://www.ngplains.org).

<sup>51</sup> Five of the regional commissions include states that are divided with coverage by another regional commission.

However, we also recommend that GAO review this arcane oversight issue before Congress considers any changes to existing OIG coverage at the other regional commissions.

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