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March 2015

# DENALI COMMISSION

## Options Exist to Address Management Challenges

# GAO Highlights

Highlights of [GAO-15-72](#), a report to congressional requesters

## Why GAO Did This Study

Since establishment in 1998 by statute, the Denali Commission has awarded over \$1 billion in federal grants to help develop Alaska's remote communities. The Commission has a Federal Cochair and six other commissioners.

GAO was asked to review the management of the Commission. This report examines (1) challenges the Commission has faced in fulfilling its statutory purpose and options to address them; (2) challenges that hindered the Commission's daily operations; and (3) the Commission's policies and procedures for managing grants and the extent of compliance with them. GAO reviewed key laws and policies; interviewed former and current commissioners and such stakeholders as state agencies that received grants; and analyzed a random sample of 100 projects funded by Commission grants for fiscal years 1999 through 2013.

## What GAO Recommends

Congress should consider amending the Denali Commission Act to, among other things, restructure the Commission to better leverage the commissioners' expertise, and create a delegation of authority or holdover provision for the Federal Cochair position. GAO recommends, among other things, that the Commission consider options for fulfilling its statutory purpose and finalize its approach in a new strategic plan; obtain a full-time attorney; and issue grants management policies. The Denali Commission, including its commissioners, agreed with GAO's conclusions and recommendations.

View [GAO-15-72](#). For more information, contact Anne-Marie Fennell at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov).

March 2015

## DENALI COMMISSION

### Options Exist to Address Management Challenges

## What GAO Found

The Denali Commission has faced two key challenges in fulfilling its statutory purpose of providing, among other things, infrastructure and economic development services to rural communities; but options exist to address them. First, a 90 percent decrease in Commission funding from its peak in fiscal year 2007 has raised concerns about whether the Commission can sustain its current approach as primarily a grant-making agency. Given its funding challenge, stakeholders GAO interviewed identified several options for how the Commission could approach fulfilling its statutory purpose in the future, such as shifting its focus to facilitating economic development projects or maintaining existing infrastructure rather than funding new projects. Even though the Commission has taken some steps to reassess its long-term approach, such as conducting statewide listening sessions on how best to assist rural Alaskans in the future, it has not finalized such an approach in a new multiyear strategic plan. Second, the Department of Justice's 2006 determination on the applicability of the principal federal conflict-of-interest law has resulted in a Commission that is, at times, deprived of the expertise of its six commissioners. Concerns about possible criminal prosecution for conflicts of interest have resulted in commissioners regularly recusing themselves from Commission decision-making activities. Based on various sources, GAO identified four options for restructuring the Commission so that it can better leverage the expertise of its commissioners in light of the 2006 determination. Each of the options would require changes to the Denali Commission Act, which established the Commission.

The Commission has faced several challenges that have hindered its daily operations, including having periodic vacancies in the Federal Cochair position and not having an attorney. Having a vacancy in the Federal Cochair position has twice stymied the Commission because only the Federal Cochair is authorized to take certain critical actions, such as approving new grants. The Denali Commission Act does not provide for an acting Federal Cochair and does not allow the Federal Cochair to delegate authority to another person or to remain in office beyond the expiration of his or her 4-year term (holdover). In addition, even in the face of numerous complex legal questions, such as the applicability of the principal federal conflict-of-interest law, the Commission has never had a full-time attorney to provide it with legal advice and support on a routine and consistent basis. Without an attorney to help the Commission identify and navigate risks consistent with federal standards for internal control, the Commission is at increased risk for making legal mistakes.

The Commission has some key procedures in place for administering its grants, but GAO found several shortcomings in how the Commission has managed its grants. Both the Commission's internal checklists and its online grants database meet established criteria for good grant management and oversight. However, the Commission does not have documented grant-making policies in place, leading to inconsistencies in how it awards and manages grants. For example, the Commission's awarding of grants has not always been open or competitive, and its monitoring of grant and project recipients has been inconsistent. Unless it issues grant management policies, the Commission may not be setting clear expectations for grantees, making it difficult to hold them accountable for fulfilling the terms of grant agreements.

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**Abbreviations**

Commerce	Department of Commerce
Commission	Denali Commission
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
FAA	Federal Aviation Administration
FACA	Federal Advisory Committee Act
Federal Cochair	federal cochairperson
Federal Vacancies Act	Federal Vacancies Reform Act of 1998
Justice	Department of Justice
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
OGE	Office of Government Ethics
OMB	Office of Management and Budget

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March 25, 2015

The Honorable Lisa Murkowski  
Chairman  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Don Young  
House of Representatives

About 220 Alaskan communities are accessible only by air or small boat. These remote, often isolated communities are scattered throughout the state, and most of them are not connected to the power grid and must generate their own electricity and provide for their own heating locally. In 1998, the Denali Commission Act established the Denali Commission (Commission) as a federal agency with the statutory purpose of providing to rural areas of Alaska job training and economic development services, rural power generation and transmission facilities, modern communication systems, water and sewer systems, and other infrastructure needs.<sup>1</sup> By statute, there are seven members of the Commission, known as commissioners: a federal cochairperson (Federal Cochair)—a federal employee appointed by the Secretary of Commerce who directs Commission staff—and six additional commissioners from the state of Alaska and specific Alaska business, labor, academic, and native and community organizations.<sup>2</sup> The act requires the commissioners to annually solicit proposals for projects from local governments and other entities and organizations and develop a proposed work plan for projects in Alaska that provides for rural and infrastructure development and necessary job training.

Since its inception, the Commission has provided over \$1 billion in federal grants to help develop Alaska's remote communities. Over its history, the Commission has awarded over 800 grants to fund over 2,300 projects across various program areas, including energy, transportation, and

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<sup>1</sup>Denali Commission Act of 1998, Pub. L. No. 105-277, div. C, tit. III (1998).

<sup>2</sup>In this report, we use the term "commissioners" to refer to the six commissioners designated by the act other than the Federal Cochair; and "Commission" to refer to the federal agency, including its Federal Cochair and commission staff.

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health care. For example, the Commission has funded upgrades to power generation facilities and the construction of village health clinics. In recent years, however, the Commission's funding has decreased 90 percent overall from fiscal year 2007 to fiscal year 2014. In addition, the Commission's former Inspector General and others have raised questions about the Commission's oversight of its grants, such as whether the Commission was ensuring that operators of certain facilities built with Commission grants had set aside funds to cover the projected costs of the facility's major repairs, renovations, renewals, and replacement.<sup>3</sup>

You asked us to review issues related to the management of the Commission. This report examines (1) the challenges, if any, the Commission and commissioners face in fulfilling the Commission's statutory purpose and options to address them; (2) the challenges, if any, that have hindered the daily operations of the Commission; and (3) the Commission's policies and procedures for awarding and managing grants and the extent to which grantees and commission officials complied with these policies and procedures. We reported separately on the Commission's Office of Inspector General in September 2014.<sup>4</sup>

To conduct our work, we analyzed the Denali Commission Act of 1998, as amended, and other relevant federal laws and regulations and agency guidance and documents. We also interviewed Commission officials and staff, including the current Federal Cochair and other Commission officials as well as a former Federal Cochair and selected former Commission staff; all current commissioners and selected former commissioners; the attorney assisting the Commission on ethics and certain other legal matters; and several "stakeholders"—parties affected by the Commission and its decisions, including commissioners and the organizations they work for, program partners (generally, state agencies or other entities that receive grants from the Commission and oversee projects funded by those grants), other grant recipients, and residents of rural Alaskan communities. We visited Anchorage and five selected remote communities in Alaska, where we met with local officials representing municipal government, tribal entities, and grant recipients,

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<sup>3</sup>Denali Commission Office of the Inspector General, *Semiannual Report to the Congress, FY 2012—Second Half* (Anchorage, AK: Dec. 4, 2012).

<sup>4</sup>GAO, *Inspectors General: Improvements Needed in the Office of Inspector General's Oversight of the Denali Commission*, [GAO-14-320](#) (Washington, D.C.: Sept. 18, 2014).

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among others. We selected these communities based on criteria including the number and variety of Commission-funded projects, geographic location, accessibility, and their relative proximity to each other.

To identify and assess challenges faced by the Commission and its commissioners in fulfilling the Commission's statutory purpose, we also analyzed legal opinions and other information related to the role of the commissioners, and the application of the principal conflict-of-interest law. We analyzed the structure and function of other similar agencies, such as the Appalachian Regional Commission<sup>5</sup> and the Delta Regional Authority,<sup>6</sup> and bodies that provide advice to federal agencies, such as regional fishery management councils,<sup>7</sup> focusing on their applicable conflict-of-interest provisions to identify different structures that would better leverage the commissioners' expertise.

To identify and assess specific challenges that hindered the Commission's daily operations, we analyzed legal opinions and other documents and information related to, among other things, the position of the Federal Cochair and the role played by agency attorneys. We analyzed documents related to federal internal control standards, such as risk management, and agency operations. We also interviewed officials from the Department of Commerce (Commerce) and analyzed documents related to the relationship between the Commission and Commerce.

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<sup>5</sup>The Appalachian Regional Commission is an agency established by statute in 1965 to develop comprehensive and coordinated plans, among other things, to foster the Appalachian region's productivity and growth. The Commission is composed of the governors of the 13 Appalachian states and a federal co-chair, who is appointed by the President and confirmed by the Senate.

<sup>6</sup>In 2000, the Delta Regional Authority was established by statute to develop comprehensive and coordinated plans and programs and approve grants for the economic development of the Delta region, among other things. The Delta Regional Authority is composed of the federal co-chairman, appointed by the President and confirmed by the Senate, and the governors of the eight states in the region. The Delta Regional Authority fosters partnerships throughout the region as it works to improve the Delta economy.

<sup>7</sup>The Regional Fishery Management Councils were established in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act. In addition to federal and state government officials, these councils include public members with expertise and experience in commercial and recreational fishing or conservation and management of fishery resources. The councils advise the Secretary of Commerce in developing fishery management plans, among other things.

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To evaluate the Commission's policies and procedures for awarding and managing grants and the extent to which grantees and commission officials complied with these policies and procedures, we selected a random sample of 100 Commission-funded projects from fiscal years 1999 through 2013. We then analyzed project documents to determine the extent to which grantees complied with requirements in the relevant grant agreements and other similar documents and discussed grant requirements and reporting with Commission officials.<sup>8</sup> To assess the reliability of the data in the Commission's Project Database System, we interviewed agency officials and grant managers about the data system and elements, how the system is used, and the method of data input, among other areas. We determined that the data we used were sufficiently reliable for our purposes. Appendix I presents a more detailed description of our objectives, scope, and methodology.

We conducted this performance audit from May 2013 to March 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

This section discusses the unique nature of living in remote communities in Alaska, the history and administrative structure of the Commission, its funding, and its annual work plan and grants program.

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## Unique Nature of Living in Remote Communities in Alaska

Alaska is the largest U.S. state—one-fifth the size of the lower 48 contiguous states combined—but with a small population, the lowest population density in the country, and large travel distances between cities (see fig. 1). About 700,000 people live in Alaska, nearly half of whom reside in the three largest cities of Anchorage, Fairbanks, and the capital of Juneau. The remainder of the population lives in smaller, often isolated communities scattered throughout the state. Most of these remote communities are not connected to the power grid and must

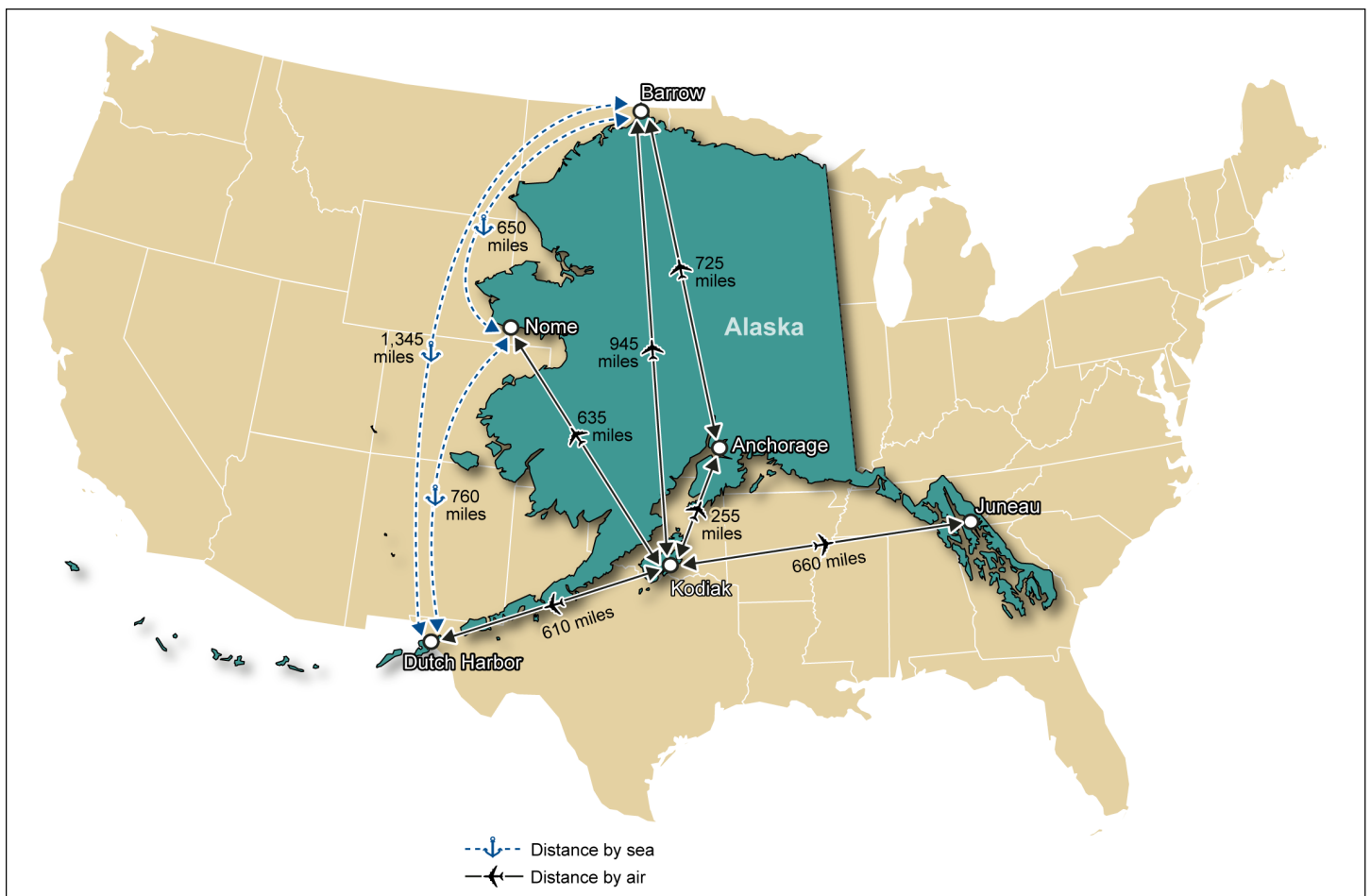
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<sup>8</sup>All percentage estimates from this analysis have margins of error of plus or minus 10 percentage points or less.



generate their own electricity and provide for their own heating locally. In communities that burn diesel fuel to generate electricity and use heating oil to heat their homes, these fuels must be stored in bulk fuel tanks, and fuel delivery to some of these communities can only occur during 3 or 4 months out of the year. In addition, Alaska's mountain ranges, glaciers, and vast wilderness create natural barriers to transportation and communications, including coastal areas of the state that are completely iced-in most of the year.

**Figure 1: Travel Distances within Alaska**

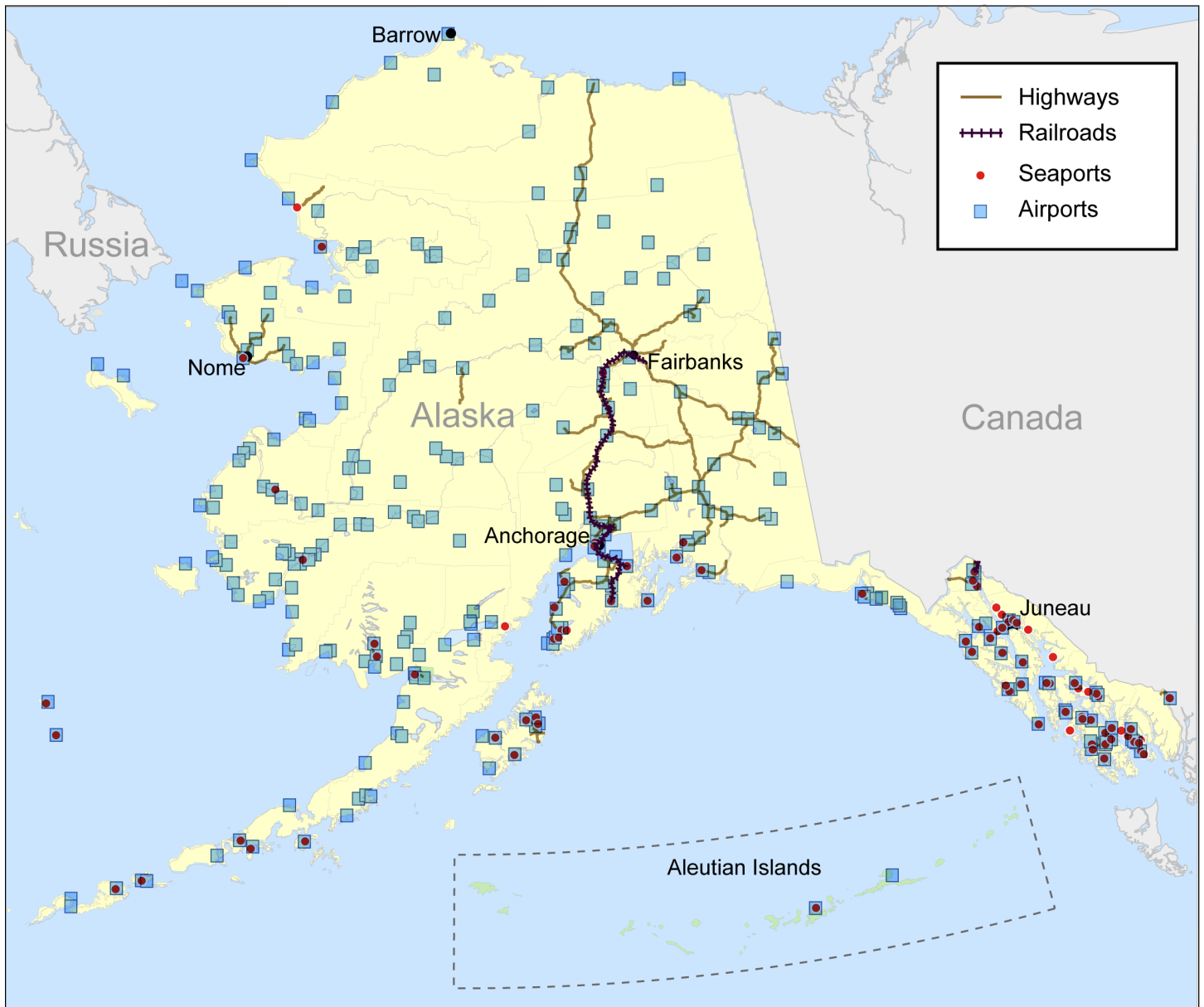


Sources: National Oceanic and Atmospheric Administration, United States Coast Guard, GAO, and Map Resources (map). | GAO-15-72

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Alaska's transportation system is different from that of the contiguous 48 states, with many Alaskan cities and villages accessible only by air or water. Highway and rail infrastructure is primarily located in the south central region of the state, and many communities are not connected to the rest of the state by road or rail. Consequently, the dominant modes of transportation around the state are air and barge services along coastal and inland waterways. (See fig. 2 for a view of Alaska's transportation network.)

**Figure 2: Alaska's Transportation Network**



Source: GAO presentation of Alaska Department of Transportation and Public Facilities maps. | GAO-15-72

Note: Some of the seaports and airports listed on this map are controlled by the state of Alaska and others are controlled by local government entities. Also, some of the highways near Juneau may not be visible on this map.

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Many parts of Alaska have an approximately 4-month summer construction season, due in part to the state's extreme weather conditions. While some types of construction can be done at other times of year, such as excavating in permafrost—ground that is permanently frozen year-round in Arctic regions—and bogs, other types of construction either cannot be done or would be highly inefficient, such as erecting steel structures. In most cases, construction materials and equipment must be transported to the building site by sea during a brief time period in the summer. An exception to this is in the southeast part of the state, where shipping and construction can take place during most of the year.

After the passage of the Oil Pollution Act of 1990, which required the issuance of regulations to establish procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and onshore facilities, among other things,<sup>9</sup> the U.S. Coast Guard declared it would no longer allow fuel delivery to Alaskan communities with fuel tanks that were leaking or otherwise contaminating the soil and water. Meeting the new requirements was well beyond the reach of many rural communities. Nearly 100 villages were in jeopardy, facing winter without electricity or home heating oil. In this context, the Denali Commission was established in 1998 as a federal agency to provide, among other things, infrastructure and economic development services to rural Alaskan communities.

The Denali Commission Act of 1998 established a 3-fold purpose for the Commission: (1) delivering federal services in the most cost-effective manner practicable by reducing administrative and overhead costs; (2) providing job training and economic development services in rural communities; and (3) promoting rural development and providing infrastructure. Since the Commission's inception, the act has been amended several times, to among other things, authorize the Commission to undertake construction of health care facilities, surface transportation infrastructure, and waterfront development projects. Most recently, the act was amended to authorize the Commission to accept certain transfers of funds from other federal agencies, as well as conditional gifts or donations for the purpose of carrying out the act.<sup>10</sup>

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<sup>9</sup>Pub. L. No. 101-380, 104 Stat. 486 (1990).

<sup>10</sup>Pub. L. No. 112-141, div. A, tit. II, § 1520 (2012).

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## Denali Commission Structure and Evolution

The Denali Commission has a Federal Cochair and six other commissioners who are not agency employees. For these six commissioner positions, the following individuals designated by statute, or someone selected from nominations that they submit, may serve:

- the Governor of Alaska, who serves as the State Cochair;
- the president of the University of Alaska;
- the president of the Alaska Municipal League;
- the president of the Alaska Federation of Natives;
- the executive president of the Alaska State American Federation of Labor and Congress of Industrial Organizations; and
- the president of the Associated General Contractors of Alaska.

The Commission office is located in Anchorage, Alaska, and its staff work at the direction of the Federal Cochair to carry out day-to-day operations. Since the inception of the Commission, there have been three Federal Cochairs. On April 21, 2014, the third Federal Cochair began his second 4-year term. Under the Denali Commission Act, a Federal Cochair's term is 4 years but the Federal Cochair can be reappointed.<sup>11</sup> The act states that any vacancy in the Commission shall not affect its powers but must be filled in the same manner as the original appointment. To appoint a Federal Cochair, the act establishes a two-step process. First, the President pro tempore of the Senate and the Speaker of the House of Representatives each submits a list of nominations to the Secretary of Commerce. Second, the Secretary of Commerce appoints the Federal Cochair from among the list of nominations submitted.

The act specifies that the Federal Cochair is an employee of Commerce. Accordingly, Commerce officials review and approve his or her time card. The act also requires the Secretary of Commerce to review the Commission's annual work plan, which includes programs and rural energy projects approved for funding. According to Commerce officials, officials in Commerce's Economic Development Administration generally conduct this review. In addition, the act authorizes, but does not require,

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<sup>11</sup>Pub. L. No. 105-277, div. C, tit. III, § 303 (1998), *amended by* Pub. L. No. 106-31, tit. I, § 105(a) (1999). See 42 U.S.C. § 3121 Note. To be reappointed, a Federal Cochair must first be renominated.

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other federal agencies (including Commerce) to make personnel and services available to the Commission upon the Commission's request.

In October 2006, the Commission's Federal Cochair wrote a letter to the Department of Justice's (Justice) Office of Legal Counsel to request guidance about federal ethics provisions that would be applicable to the commissioners. Specifically, the Federal Cochair wrote that he understood he was subject to the federal statutes and regulations governing employee ethics as a Commerce employee; however, the other six commissioners needed guidance as to which federal ethics provisions applied to them. In late 2006, Justice determined that the six commissioners were special government employees for purposes of ethics laws and regulations and therefore subject to the principal federal criminal conflict-of-interest law.<sup>12</sup> Justice based its determination, in part, on the requirement in the Denali Commission Act that the commissioners receive pay for their work. The principal financial conflict-of-interest law prohibits regular and special government employees from participating personally and substantially in an official capacity in a "particular matter" that may have a direct and predictable effect on their financial interest.<sup>13</sup> Under the law and implementing regulations, the commissioners' financial interest includes the financial interest of their employers.<sup>14</sup> Therefore, commissioners are prohibited from participating in any particular matter that has a direct and predictable effect on the organization that employs them, unless granted a waiver by the Federal Cochair.<sup>15</sup> A waiver—which can only be granted under certain circumstances—permits an employee

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<sup>12</sup>18 U.S.C. § 208. A special government employee is an officer or employee of the executive or legislative branch or an independent agency who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis or a part-time United States commissioner, with or without compensation, for not more than 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a).

<sup>13</sup>A particular matter is one that involves deliberation, decision, or action that is focused on the interests of specific people or a discrete and identifiable class of people. 5 C.F.R. § 2640.103(a)(1).

<sup>14</sup>The financial interests of the organizations or entities where the commissioners are employed disqualify the commissioners to the same extent as if the commissioners had a personal financial interest in the matter. 18 U.S.C. § 208(a); 5 C.F.R. § 2640.103(c)(4).

<sup>15</sup>In May 2007, Commerce delegated authority to the Federal Cochair of the Denali Commission to issue conflict-of-interest waivers for any commissioner.

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to participate in a particular matter that would otherwise be prohibited under federal law.<sup>16</sup>

Under the Inspector General Act, the Denali Commission is a designated federal entity and is required to have an Office of Inspector General. Since the inception of the Commission, there have been three Inspectors General. In December 2013, the third Inspector General resigned and, because he was the only employee in the Office of Inspector General, there was no one to serve as acting Inspector General.<sup>17</sup> Given this vacancy, Commerce's Office of Inspector General agreed in May 2014 to provide oversight services through the remainder of the fiscal year.<sup>18</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) amended the Inspector General Act, providing that, for designated federal entities with a board or commission, the board or commission is the head of the designated federal entity for purposes of Inspector General appointment, general supervision, and reporting under the Inspector General Act.<sup>19</sup> In May 2013, the Commission implemented these Dodd-Frank provisions by making the seven commissioners, rather than just the Federal Cochair, responsible for the general supervision of the Commission's Inspector General.<sup>20</sup> In January 2014, the Office of Management and Budget (OMB) published its list of "Designated Federal Entities," identifying the Denali Commission's commissioners as the head

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<sup>16</sup>18 U.S.C. § 208(b)(1); 5 C.F.R. § 2640.301. For example, to qualify for a waiver, the special government employee must fully disclose any financial interest and receive a written determination in advance that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the government.

<sup>17</sup>For purposes of this report, we refer to this third Inspector General as "the former Inspector General."

<sup>18</sup>The Commission was without Inspector General oversight from the end of December 2013 to the end of May 2014. Commerce's Office of Inspector General agreed in August 2014 to extend the agreement to provide the Commission with oversight services through the end of fiscal year 2015.

<sup>19</sup>Pub. L. No. 111-203, §§ 989B-989D, 124 Stat. 1376, 1945 (2010).

<sup>20</sup>The Inspector General Act requires the Office of Management and Budget (OMB) to annually publish a list of designated federal entities. From 1999 through 2009 (after the creation of the Denali Commission in 1998 but before Dodd-Frank's enactment in 2010), OMB listed the Federal Cochair as the head of the Commission for purposes of the Inspector General Act. OMB did not publish a designated federal entity list in 2010 through 2013.

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of the designated federal entity for purposes of the Inspector General Act.<sup>21</sup>

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## Denali Commission Funding

The Commission receives direct appropriations, which are sometimes referred to as its base funding. In addition to this base funding, the Commission also receives statutorily directed transfers and grants from other agencies and entities. These other agencies and entities have varied over time and have included the following, among others:

- Trans-Alaska Pipeline Liability Fund;<sup>22</sup>
- U.S. Department of Agriculture;
- U.S. Department of Health and Human Services;
- U.S. Department of Transportation;
- U.S. Environmental Protection Agency;
- U.S. Department of Housing and Urban Development;
- U.S. Department of Labor;
- U.S. Department of the Interior;
- Alaska Mental Health Trust Authority; and
- Alaska Department of Transportation and Public Facilities.

Funding for the Commission steadily increased until fiscal year 2005 and peaked in fiscal year 2007 at \$141 million.<sup>23</sup> However, from fiscal years 2008 to 2014, funding steadily decreased, reaching a low of \$14 million in fiscal year 2014—a level below fiscal year 1999 funding and an overall decrease of 90 percent since its peak in fiscal year 2007—with funding

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<sup>21</sup>79 Fed. Reg. 1896 (Jan. 10, 2014).

<sup>22</sup>The Trans-Alaska Pipeline Liability Fund was created in 1973 to pay certain claims for damages caused by oil discharges from vessels transporting Trans-Alaska Pipeline System oil loaded at Alaskan terminals to ports under U.S. jurisdiction. In 2000, the balance of the fund was transferred to the Oil Spill Liability Trust Fund, a repository of petroleum industry taxes and amounts from other oil pollution liability and compensation funds. The Denali Commission receives annual transfers from the Oil Spill Liability Trust Fund—derived from the interest earned on the invested balance transferred from the Trans-Alaska Pipeline Liability Fund—to repair or replace bulk fuel storage tanks in Alaska which are not in compliance with federal or state law.

<sup>23</sup>Dollar figures in this report are nominal and have not been adjusted for inflation.



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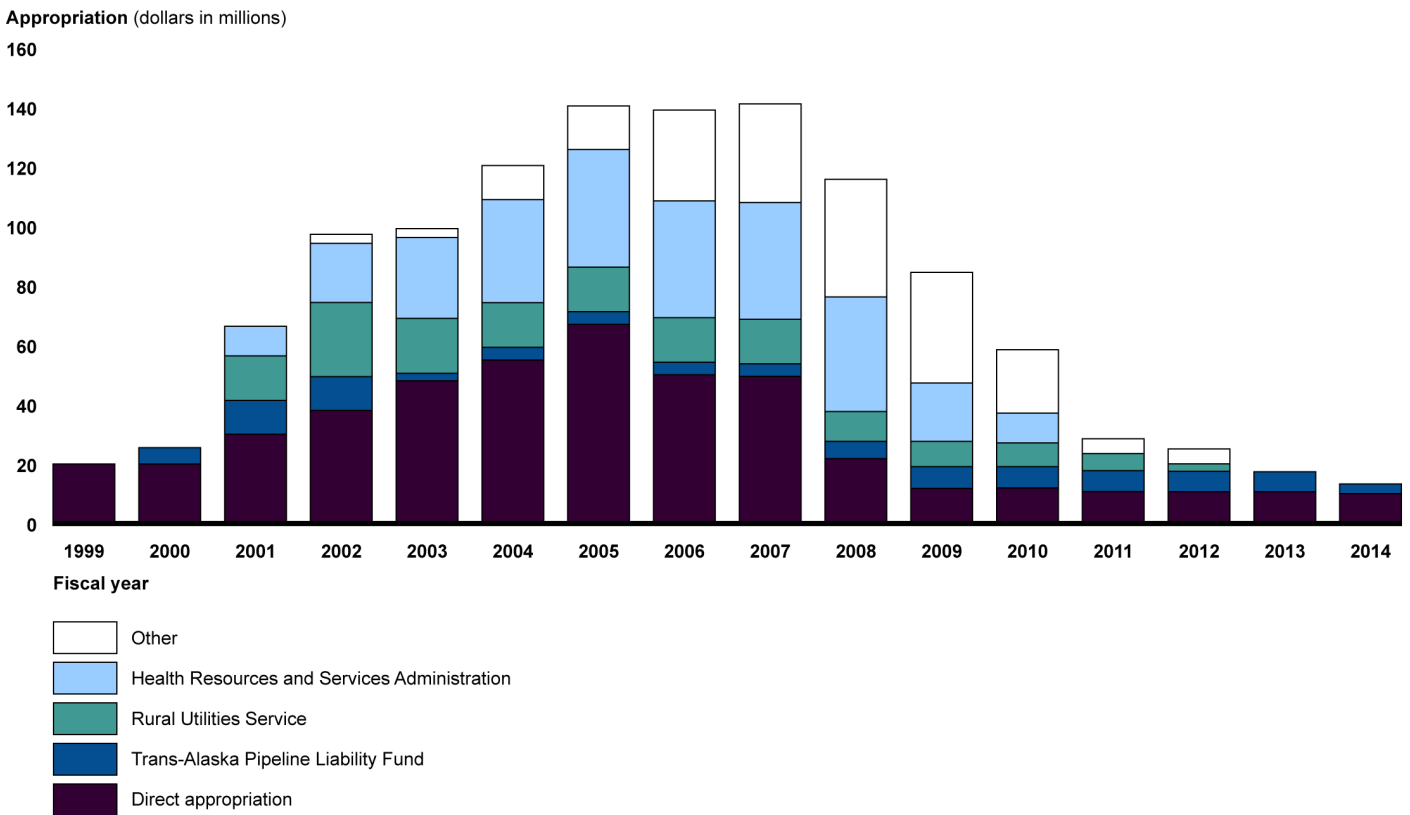
decreases from nearly all of the Commission's funding sources (see fig. 3). For example, the Commission's direct appropriations decreased by more than 50 percent from fiscal years 2007 to 2008 and decreased by nearly 50 percent from fiscal years 2008 to 2009, falling to \$10 million for fiscal year 2014.<sup>24</sup> Similarly, since fiscal year 2007, funds from other agencies and entities, which were made available to or designated for use by the Commission, generally decreased or ceased entirely. In fiscal years 2013 and 2014, the Commission received funds from only one source other than its direct appropriation—the Trans-Atlantic Pipeline Liability fund.<sup>25</sup>

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<sup>24</sup>The Commission funding was further reduced by rescissions and sequestration. For example, as a result of an across the board rescission in fiscal year 2005, the Commission received approximately \$536,000 less than was appropriated and as a result of sequestration in fiscal year 2013, received \$874,721 less than was appropriated.

<sup>25</sup>According to Commission management, the total Trans-Atlantic Pipeline Liability funding for the Commission in fiscal year 2014 was \$7 million. However, the Commission is only permitted to use \$4 million of this funding in fiscal year 2014 to pay the salaries and expenses of personnel to develop a plan to provide for the repair or replacement of bulk fuel storage tanks that are not in compliance with federal or state law.

**Figure 3: Annual Denali Commission Funding, by Source, for Fiscal Years 1999-2014 (Nominal Dollars)**



Source: GAO analysis of Denali Commission data. | GAO-15-72

Notes:

Other includes funding from various state and federal sources including the U.S. Department of Transportation.

Health Resources and Services Administration funding is from the U.S. Department of Health and Human Services, and Rural Utilities Service funding is from the U.S. Department of Agriculture.

Until fiscal year 2010, some of the Commission’s direct appropriations were identified for specific programs or projects. For example, in fiscal year 2004, the appropriations conference committee directed the Commission to spend \$10 million for teacher housing in remote villages where there is limited housing available for teachers. In 2012, the Commission received broad authority to accept transfers of funds from any federal agency authorized to carry out an activity within the Commission’s authority and conditional gifts for purposes of carrying out the Denali Commission Act. Commission funding also includes matching funds from the state of Alaska for certain projects.

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## Denali Commission's Annual Work Plan and Grants Program

The act requires (1) the commissioners to develop, annually, a proposed work plan for Alaska and submit that work plan for review and approval and (2) Commerce to review and approve the annual work plan after providing for public review and comment. Through the work plan—which authorizes the Federal Cochair to enter into grant agreements, award grants and contracts, and obligate federal funds—the Commission outlines its priorities and funding recommendations for each fiscal year. The process of developing and adopting the work plan generally occurs sequentially as follows:

1. Project proposals are solicited from local government and other entities;
2. Commission officials draft the work plan and provide to the commissioners for review;
3. Commissioners forward an approved draft version of the work plan to the Federal Cochair;
4. Upon preliminary approval by the Federal Cochair, the draft work plan is published in the *Federal Register* for a 30-day public comment period and disseminated to the Commission's program partners.<sup>26</sup> If no revisions are made, the Federal Cochair provides notice of preliminary approval of the work plan to the commissioners, and forwards it to the Secretary of Commerce for approval;<sup>27</sup>
5. The Secretary of Commerce, through the Economic Development Administration, reviews and then approves, partially approves, or disapproves the work plan (the work plan is revised as necessary to gain approval); and
6. The Federal Cochair awards grants and contracts based upon the approved work plan.

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<sup>26</sup>For example, see 77 Fed. Reg. 67635 (Nov. 13, 2012) for the notice of the fiscal year 2013 draft work plan.

<sup>27</sup>If Commerce disapproves or partially approves the work plan, the Federal Cochair provides the commissioners with Commerce's reasons for disapproval and recommendations for revision for the commissioners' review. Once the commissioners have reviewed and revised the work plan, the Federal Cochair forwards the revised work plan to the Secretary of Commerce for approval.

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Since its inception, the Commission has issued over \$1 billion in grants to help rural and remote communities in Alaska. Over 800 grants have funded more than 2,300 projects. The Commission has sometimes awarded large grants to “program partners” such as state agencies to fund multiple projects. For example, the Commission used a single grant to provide over \$100 million to the Alaska Energy Authority to, among other things, plan and construct energy generation facilities. The Alaska Energy Authority, a public corporation created by state law, used the grant to fund over 200 projects.<sup>28</sup> The Commission has also provided grants directly to small, village-level organizations. For example, the Commission provided about \$9,000 to the community of Quinhagak to fund the study of an extension of the airport’s runway, among other things.

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## The Commission Faces Two Key Challenges in Fulfilling Part of Its Statutory Purpose, but Several Options Exist to Address Them

The Commission faces two key challenges in fulfilling the statutory purpose to promote rural development and provide for infrastructure needs, but there are options to assist the Commission in addressing them.<sup>29</sup> These challenges are (1) the Commission’s reliance on grant making to achieve the rural development portion of its statutory purpose in light of significant funding decreases and (2) the application of the conflict-of-interest law which sometimes prevents commissioners—who hold key specialized knowledge—from being actively involved in developing the annual work plan.

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<sup>28</sup>The Alaska Energy Authority is in the Alaska Department of Commerce, Community, and Economic Development—the agency led by a commissioner who recently served as the State Cochair—but it has a separate and independent legal existence.

<sup>29</sup>The Denali Commission Act has three purposes: (1) to deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs; (2) to provide job training and other economic development services in rural communities particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent); and (3) to promote rural development, provide power generation and transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs. Pub. L. No. 105-277, § 302, 112 Stat. 2681–637 (1998).

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## The Commission's Reliance on Grant Making May Not Be Sustainable Given Significant Funding Decreases, but Options Exist to Address This Challenge

### The Commission Continues to Rely on Grant Making Even Though Its Funding Has Decreased by 90 Percent

Significant decreases in funding have raised questions about whether the Commission can sustain its current approach of grant making alone to fulfill its statutory purpose. Stakeholders have identified several key options the Commission could take to fulfill its statutory purpose. Amid questions about the future of the Commission, its management has begun efforts to reassess the Commission's approach in light of its funding challenge.

In the face of a 90 percent decrease in funding from its peak in fiscal year 2007, the Commission may no longer be able to rely largely on grant making to pursue its statutory purpose, according to Commission management and stakeholders. One purpose of the Denali Commission Act is to provide economic development services in rural communities, promoting rural development, and providing infrastructure needs. However, Commission management and several stakeholders have raised concerns that the Commission's current approach as primarily a grant-making agency cannot fulfill the statutory purpose in the current budget environment.<sup>30</sup> Specifically, funding levels cannot support grant making on the scale and pace the Commission has done in the past. In addition, the number of program areas that the Commission has been able to fund through grant making has also decreased. By 2013, nearly all Commission spending went to only two program areas—transportation and energy—and the Commission no longer funded new economic development or health care facilities projects, among others.<sup>31</sup>

As Commission funding has decreased, administrative expenses have consumed a larger percentage of its budget, creating a challenge since the Denali Commission Act, as amended, prohibits the Commission from using more than 5 percent of the funds appropriated under the act's authority for administrative expenses. Under this cap, the amount available to the Commission for administrative expenses, such as grants management and oversight, has declined from approximately \$7 million in

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<sup>30</sup>For purposes of this report, the term "Commission management" refers to one or all of the top Commission management officials and could include the Federal Cochair, the chief financial officer, or the director of programs.

<sup>31</sup>The number of program areas peaked at seven between fiscal years 2006 and 2008 and included: conference sponsorship, economic development, energy, health care, other infrastructure, training, and transportation.

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fiscal year 2007 to less than \$700,000 in fiscal year 2014. In practice, however, this cap has been waived each of the last 10 fiscal years in appropriations laws. According to Commission management, the waiver occurred because the Commission could not realistically safeguard the funds in its portfolio of grants under such budgetary constraints. The Commission's December 2013 independent public audit highlighted the need for the Commission to adopt practical internal controls to ensure proper accounting and safeguarding of its funds—a key administrative activity. In this context, the Commission obligated \$3.34 million for administrative expenses in fiscal year 2014—or 24 percent of its overall budget—according to Commission management.<sup>32</sup> We previously found that spending caps can only work if they are realistic and that such caps “are not likely to bind if they are seen as totally unreasonable given current conditions.”<sup>33</sup> Without a statutory change to the Denali Commission Act to permanently eliminate the 5-percent cap, it is unlikely that the Commission will have flexibility to plan and budget for essential administrative activities.

Funding decreases have also led to a decline in the number of Commission staff. The Commission has lost more than half of its staff since September 2008—dropping from 27 permanent staff, including the Federal Cochair, to 12.<sup>34</sup> According to Commission officials, many of the staff who left the Commission were experienced program area experts or managers whose positions have not been filled. The Federal Cochair said their duties have been distributed among remaining staff who have shifted and expanded their responsibilities to manage existing grants and remaining program areas, including those outside their areas of expertise. Commission management and staff told us they were concerned about the sufficiency of current staffing levels since the staff have important management and oversight responsibility for nearly 200 active grants and

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<sup>32</sup>Even though the percentage of the Commission's total appropriation obligated for administrative expenses increased from about 8 percent in fiscal year 2010 to about 24 percent in fiscal year 2014, the amount spent on administration actually decreased from about \$4.64 million in fiscal year 2010 while, at the same time the Commission's total funding decreased by over 75 percent.

<sup>33</sup>GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, [GAO-01-991T](#) (Washington, D.C.: July 19, 2001).

<sup>34</sup>According to the Federal Cochair, as of February 4, 2015, the Commission had on staff 11 permanent federal employees; six intermittent federal employees; and the Federal Cochair, who is a Commerce employee.

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Stakeholders Identified  
Several Options to Address  
This Challenge

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associated projects. Underscoring this concern, the Commission’s December 2013 independent public audit (1) cautioned that internal controls deficiencies would be created if the Commission was to lose any of the three members of its finance staff and (2) raised concerns that the Commission’s diminishing staff could impact all areas of the Commission, including origination and monitoring of grants.

Key stakeholders we interviewed—primarily commissioners and program partners—have identified a variety of options the Commission could take for how to approach fulfilling its statutory purpose in the future. These options are not mutually exclusive and could be combined in different variations, depending on strategic priority and funding.<sup>35</sup> All options involve the Commission being more strategic in how it expends its diminishing funds—whether by prioritizing which program areas to continue or by increasing its nongrant activities. The options stakeholders identified include, but are not limited to:<sup>36</sup>

- **Retain status quo of grant making.** The Commission could continue to focus primarily on grant making, which includes funding traditional, “shovel-ready” construction projects as well as some atypical projects needing further Commission discussion before approval.
- **Limit number of grants.** The Commission could limit the total number of grants it awards each year, particularly if it continues to primarily focus on grant making.
- **Limit scope of grants.** The Commission could continue to narrow the scope of the program areas (such as energy, transportation, and training) in which it awards grants each year, particularly if it continues to primarily focus on grant making.
- **Focus on facilitation.** The Commission could shift its approach to act more as a facilitator of grants. As a facilitator, the Commission could help bring together the relevant players—including rural Alaskan

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<sup>35</sup>To help address the Commission’s funding constraints, several stakeholders and Commission officials recommended it pursue additional funding sources, such as certain transfers from other federal agencies and conditional gifts, as a supplement to its appropriation.

<sup>36</sup>Options listed in this report are neither exhaustive nor mutually exclusive. This list of options is intended to foster discussion among interested parties and is not specifically recommended for implementation without consideration of input from affected stakeholders.

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communities and potential project funders—in a coordinated effort to help communities in need and agencies with funding capacity effectively collaborate on infrastructure and economic development projects, including projects that identify or address needs on a community-wide scale. As part of this approach, the Commission could also award small grants to use as leverage to help rural communities obtain additional funds from other entities. The Commission has, to a limited extent, served as a facilitator in the past. For example, in funding the construction of health clinics, the Commission initially brought together key players—funders, government regulators, service providers, and community members—to determine how to address community needs.

- **Focus on technical assistance.** The Commission could shift its approach to serve more as a provider of technical assistance to help better position rural Alaskan communities to compete for infrastructure and economic development funds from other entities. Such an approach may include a focus on predevelopment, such as helping communities design their projects in preparation for applying for construction and other infrastructure grants. The Commission provides such technical assistance to a limited extent as part of its existing predevelopment program—a collaborative effort that offers guidance and technical resources to communities for planning new facilities and renovating or expanding existing ones and for developing the documentation needed for competitive funding applications.
- **Maintain existing infrastructure.** The Commission could shift its focus from grants that fund new projects to grants that fund work to help sustain and maintain the infrastructure in which the Commission and its program partners have already invested.

None of these options would require statutory changes,<sup>37</sup> and each has potential advantages and disadvantages, according to stakeholders with whom we spoke. See figure 4 for a summary of some of the potential advantages and disadvantages of each option.

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<sup>37</sup>The Denali Commission Act does not limit the Commission to awarding grants as it also authorizes the Commission to enter into cooperative agreements. The Commission could facilitate or provide technical assistance through a grant or cooperative agreement.



**Figure 4: Options for the Commission to Continue Operating Amidst Decreased Funding, Including Potential Advantages and Disadvantages**

← Potential disadvantage(s) <sup>a</sup>	Option	Potential advantage(s) <sup>a</sup> →
<ul style="list-style-type: none"> <li>Unlikely to allow Denali Commission (Commission) to achieve its purpose given current funding levels.</li> </ul>	<b>Primarily grant making (status quo)</b>	<ul style="list-style-type: none"> <li>Continuity of programs;</li> <li>Flexibility to fill in gaps or complement other programs.</li> </ul>
<ul style="list-style-type: none"> <li>May not address concerns about "mission creep"—that the Commission is awarding grants in too many program areas or in program areas beyond its core mission.</li> </ul>	<b>Limit number of grants</b>	<ul style="list-style-type: none"> <li>Aligns better to lower funding levels;</li> <li>Quick expansion of grant making possible if funding levels increase.</li> </ul>
<ul style="list-style-type: none"> <li>May be difficult to get all commissioners to agree on which program areas the Commission should prioritize, or cease, awarding new grants.</li> </ul>	<b>Limit scope of grants</b>	<ul style="list-style-type: none"> <li>Aligns better to lower funding levels;</li> <li>Could allow for greater focus on core program areas, such as energy;</li> <li>Could allow for the addition of new or revitalized program areas—to reflect emerging needs such as alternative energy or development in the Arctic—as obsolete or formerly-funded program areas wane.</li> </ul>
<ul style="list-style-type: none"> <li>Likely to divert funding from grant making;</li> <li>Likely to increase percent of Commission's appropriation spent on administration (and further exceed the 5 percent cap);</li> <li>It is unclear how much of this work the Commission could perform given current staffing levels and composition.</li> </ul>	<b>Focus on facilitation</b>	<ul style="list-style-type: none"> <li>Brings together a wide array of federal entities already working in Alaska for the benefit of bringing needed infrastructure upgrades to rural communities;</li> <li>Helps communities compete for and obtain funds consistent with furthering the Commission's statutory purpose;</li> <li>Provides rural communities with tools to leverage funds from other sources for infrastructure projects.</li> </ul>
<ul style="list-style-type: none"> <li>Likely to divert funding from grant making;</li> <li>Could be duplicative with state or federal programs;</li> <li>It is unclear how much of this work the Commission could perform given current staffing levels and composition.</li> </ul>	<b>Focus on technical assistance</b>	<ul style="list-style-type: none"> <li>Helps rural communities do needed groundwork to write and successfully compete for infrastructure and economic development grants from other agencies and foundations;</li> <li>Provides rural communities with tools to leverage funds from other sources for infrastructure projects.</li> </ul>
<ul style="list-style-type: none"> <li>Likely to result in funding fewer new projects, thereby addressing fewer unmet or emerging needs.</li> </ul>	<b>Maintain existing infrastructure</b>	<ul style="list-style-type: none"> <li>Aligns better to lower funding levels;</li> <li>Safeguards investments already made by the Commission and others in rural Alaska;</li> <li>Addresses growing deferred maintenance needs.</li> </ul>

Sources: GAO analysis of information provided by stakeholders and Commission officials. | GAO-15-72

<sup>a</sup>Stakeholders and Commission staff identified potential advantages and disadvantages of these options for the purposes of this report.

### Amid Questions about Its Future, the Commission Has Begun Reassessing its Approach in Light of Decreased Funding

As the Commission's funding has decreased in recent years, some have recommended disbanding the Commission or eliminating its federal funding. Specifically, the Commission's former Inspector General recommended, prior to his resignation, that Congress terminate or not reauthorize the Commission as an independent federal agency, indicating that the Commission needed greater flexibility to pursue new funding, was

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too small and isolated, and was mismanaging oversight of certain bank accounts.<sup>38</sup> In addition, a bill was introduced in the House of Representatives in 2013 to terminate the Commission;<sup>39</sup> and some appropriations bills in prior years have not included funding for the Commission, but none were enacted.<sup>40</sup>

In contrast, all of the Commission's current commissioners and numerous stakeholders told us that critical infrastructure needs in rural Alaska—which is one of the Commission's statutory purposes—still exist and that the Commission is critical to help meet those needs, even with the progress made by the Commission over the last 15 years. According to an independent and comprehensive evaluation of the Commission, the Commission is credited with facilitating and funding many essential infrastructure projects in rural Alaska.<sup>41</sup> For example, the report credits Commission-funded projects with, among other things, bringing 61 bulk fuel facilities into compliance with Coast Guard and other regulations; building primary health care facilities in 84 rural communities that facilitated access to better emergency care and new services; and increasing the employability of more than 2,000 rural Alaskans through job training. However, some program partners have developed lists of critical infrastructure projects that still need to be funded. For example,

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<sup>38</sup>Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2009 (Second Half) and FY 2010 (First Half)*, (Anchorage, AK: May 2010); Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2011—First Half*, (Anchorage, AK: May 2011); Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2012—Second Half*, (Anchorage, AK: November 2012); Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2013—Second Half*, (Anchorage, AK: October 2013). We recently found several concerns regarding the work of the Denali Commission's Inspector General; see [GAO-14-320](#).

<sup>39</sup>H.R. 3589, 113th Cong. (2013).

<sup>40</sup>See H.R. 2641, 110th Cong. (2007); H.R. 4614, 108th Cong. (2004). In addition, during debate on the Energy and Water Appropriations Act for fiscal year 2014 in the U.S. House of Representatives, an amendment was offered, but not approved, to eliminate the Commission's fiscal year 2014 appropriation. See H. Amdt. 1008 to H.R. 4932, 113th Cong. (2014).

<sup>41</sup>McDowell Group, Inc., *Denali Commission Program and Policy Review* (Alaska: August 2007). This evaluation included, among other things, over 300 structured and semistructured interviews with a wide range of stakeholders—including residents of affected communities; program participants; and former and current commissioners, staff, and program partners—from over 50 communities across the state on issues such as the usefulness of Commission funding and challenges in working with the Commission.

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the Alaska Energy Authority estimated in April 2014 that, even though they had completed 75 bulk fuel upgrade projects to reduce or eliminate fuel loss from spills and leaks in rural Alaska with the help of Commission funding, 52 additional villages require such improvements. In addition, local officials we spoke with during our site visits identified a wide variety of outstanding critical infrastructure needs that the Commission could potentially help address such as housing for elders, medical staff, and teachers; safe drinking water; clean and accessible water for bathing; expanded health care facilities so pregnant women would no longer need to fly to Anchorage or Ketchikan to give birth; and less costly alternatives to fuel for heating and other energy needs. Many stakeholders and all current and former commissioners we interviewed also said that the Commission is still needed. Moreover, it is uniquely positioned to meet the outstanding infrastructure needs of rural Alaska, given its many years of working with these communities and insight on what remains to be done. According to several commissioners, Commission officials, and program partners with whom we spoke, the Commission serves as a bridge between rural communities and federal and state agencies overseeing infrastructure development and fills critical gaps in related services and funding, which is needed because many of these agencies do not understand the logistical and cultural challenges of working in rural Alaskan communities.

Given the Commission's decreased funding of 90 percent since 2007 and questions about its viability, the current Federal Cochair began efforts during his first term to reassess the Commission's approach and realign staff, but these efforts were not completed. Among other things, Commission management began to develop an updated strategic plan, revamp its work plan, and realign its staffing model to help the Commission prioritize the projects and program areas it would fund and how it would manage its projects with its limited resources. Commission management, however, did not finalize these efforts in an overall strategy for how the Commission will operate in the future with decreased funding.

- **Strategic plan.** Because the Commission's last approved strategic plan—covering fiscal years 2005 through 2009—was outdated and did not reflect current budget constraints, Commission management undertook efforts to develop a strategic plan covering fiscal years 2009 through 2015. According to Commission management, it stopped working on this multiyear strategic plan before it was finalized largely because Commission funding decreased significantly during the plan's development, making the plan obsolete. Subsequently, the Commission conducted listening sessions across the state in 2011 to

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identify what it should do to best assist rural Alaskans in the future, but this information was not incorporated into a strategic plan.<sup>42</sup> The Federal Cochair spoke with commissioners about strategic planning in light of the agency's funding uncertainties; however, he acknowledged that this effort is incomplete and information from such discussions has not been incorporated into a new or updated strategic plan. Moreover, the Federal Cochair has not obtained buy-in from commissioners on a multiyear strategic approach for the Commission, including determining the balance between traditional grant making and other approaches. Without a multiyear strategic plan to guide its operations, the Commission may not be prioritizing its operations—whether funding new projects or other activities—to achieve its statutory purpose in a manner that aligns with its current budget situation. By law, the Commission needs a multiyear strategic plan, and its efforts to realign its approach have been hampered without it.<sup>43</sup>

- **Annual work plan.** The Federal Cochair proposed revamping the format and timing of the annual work plan required by the Denali Commission Act in fiscal years 2013 and 2014, to better prioritize the Commission's year-to-year investments, especially given its scarce funding and outdated longer-term strategic plan. Without a current multiyear strategic plan, the required annual work plan is the primary means for the Commission to articulate how it will use its funds to achieve its statutory purpose. Under the Federal Cochair's proposal to revamp the work plan, the Commission would start the annual work plan process at the beginning of the fiscal year to allow time for discussion and approval of (1) a list of capital projects (traditional, "shovel-ready" construction projects) the Commission has prioritized and set aside money to fund and (2) a list of atypical, noncapital

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<sup>42</sup>Through these listening sessions, the Commission engaged program partners and community members from across the state to address fundamental questions about the Commission's role in its second decade. From these sessions, Commission management identified, among other issues, three major areas of priority for the Commission: (1) assistance with the high cost of energy, (2) technical assistance to compete for grants from other funding sources; and (3) help determining community priorities given reduced federal and state funding.

<sup>43</sup>Under the GPRA Modernization Act of 2010, the head of each agency is to submit every 4 years a strategic plan that covers a period of at least 4 years forward from the fiscal year in which they are submitted. Agency heads may make adjustments to its strategic plan, as needed, to reflect any significant changes in the environment in which the agency is operating, with appropriate notification of Congress. 5 U.S.C. § 306.

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projects the Commission would like to fund but needs more time for the Commission to research and for commissioners to discuss with stakeholders.<sup>44</sup> In 2013, the Federal Cochair obtained preliminary buy-in for this new format from commissioners and officials within Commerce's Economic Development Administration, but neither the 2013 nor the 2014 work plan reflected this new format. Because the submission of each work plan was delayed several months—by sequestration in 2013 and due to the vacancy of the Federal Cochair position in 2014—the Federal Cochair decided to expedite the work plan approval process by following the format used in previous years.<sup>45</sup>

- **Realign staff.** Recognizing that the composition and organization of the Commission's staff no longer aligned with its decreased funding level, the Federal Cochair began relying more heavily on nonpermanent staff for specific technical expertise in areas such as engineering as a supplement to the Commission's diminished group of generalist staff to manage new and existing projects.<sup>46</sup> However, the number and type of staff needed to manage the Commission's projects, including the mix of permanent grants management experts and nonpermanent technical experts, largely depends on which approach or combination of approaches the Commission opts to take. Until the Commission determines what its new approach will be, the Federal Cochair's efforts to realign and reorganize its staff resources will be limited.

In evaluating any federal program or agency for the 21st century, we found in 2005 that agencies should reexamine their relevance and mission, including how the agency should operate in the future.<sup>47</sup> This

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<sup>44</sup>The noncapital projects would not be seasonally-dependent and could then be funded any time during the fiscal year. All funds set aside but not used for noncapital projects would be available to fund capital projects that were not funded.

<sup>45</sup>On June 12, 2014, the Commission's draft fiscal year 2014 work plan (which the commissioners voted on in May 2014) was published in the *Federal Register* for public comment. 79 Fed. Reg. 33735 (June 12, 2014). Commerce's Economic Development Administration gave its final approval for the fiscal year 2014 work plan on September 3, 2014.

<sup>46</sup>For this shift in composition to be successful, according to Commission management, it is critical that any nonpermanent staff be the right person for the right position.

<sup>47</sup>GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, [GAO-05-325SP](#) (Washington, D.C.: February 2005).

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reexamination of how to operate includes whether the agency's current approach or function is consistent with the agency's statutory purpose and whether its programs are well-targeted. We also previously found that, to maximize the impact of their strategic planning, leading organizations should, among other things, (1) analyze the gap between where they are and where they need to be; and (2) align their activities, core processes, and resources to help achieve their goals, including fundamentally altering activities and programs or changing outmoded organizational structures as necessary.<sup>48</sup> As part of transforming an organization, we found that the mission and strategic goals must be made clear to employees, customers, and stakeholders.<sup>49</sup> Even though Commission management has taken some steps to reassess its long-term approach and realign its resources given its current budget environment, the Commission has not implemented a revamped annual work plan or new multiyear strategic plan that fully considers options for fulfilling its statutory purpose. Without finalizing and articulating in a strategic plan or other published document what its long-term approach will be for operating amid decreased funding, the Commission may not be able to meet its statutory purpose or the needs of rural Alaskans.

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### Options Exist to Better Leverage Commissioner Expertise in Developing the Work Plan

Since Justice's 2006 determination that commissioners were subject to the principal federal conflict-of-interest law, Commission management and commissioners have attempted to implement the Denali Commission Act—which requires the Commission to develop a work plan—while also taking steps to ensure that commissioners did not violate the conflict-of-interest law—which prohibits commissioner participation in matters that would have a direct and predictable effect on their or their employers' financial interests. Potential conflicts of interest are considered prior to each Commission meeting and commissioners recuse themselves accordingly. The Commission's ethics official and officials from Office of Government Ethics (OGE)—the agency responsible for developing regulations to implement the conflict-of-interest laws and issuing guidance on granting waivers—noted, however, that the Commission's structure

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<sup>48</sup>GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996); and GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, [GAO-03-669](#) (Washington, D.C.: July 2, 2003).

<sup>49</sup>[GAO-03-669](#).

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Application of the Principal Federal Conflict-of-Interest Law Prevents Commissioners from Contributing Their Expertise, at Times, to the Development of the Annual Work Plan

lends itself to concerns about conflict of interests for commissioners because the Denali Commission Act requires that officials and directors from organizations receiving grants serve as commissioners. In addition, the restrictions on commissioner participation resulting from the conflict-of-interest law and the act's silence on commissioner roles have led to a decade of frustration and concerns about the commissioners' inability to contribute their expertise. Based on our legal analysis and information provided by Commission management and the attorney assisting the Commission, we identified four options that would better leverage commissioner expertise in developing the annual work plan.

The 2006 Justice determination that the six commissioners are subject to the principal federal conflict-of-interest law significantly changed how commissioners participated in Commission decision making.<sup>50</sup> Prior to this determination, according to the ethics official and several commissioners and staff, commissioners considered each proposed project, discussed the merits of proposed projects without reservation, and voted on work plans. OGE concluded that, in light of the 2006 determination, commissioners needed to "significantly alter how they participated in the Commission's decision-making processes to avoid violating the criminal conflict-of-interest law."<sup>51</sup> Specifically, according to the ethics official, if commissioners' organizations had applied for funding, a commissioner's acceptance or rejection of a project would have "a direct and predictable effect" on his or her organization's financial interest in having its own project funded. The ethics official explained that this is a conflict of interest, because decisions to fund one program area, such as energy, would be at the expense of awarding grant funds to another program area, such as transportation.

In response to OGE's conclusion, the ethics official and the Federal Cochair said they must determine if commissioners have a conflict of

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<sup>50</sup>The principal federal conflict-of-interest law prohibits federal employees from participating personally and substantially in an official capacity in a "particular matter" that may have a direct and predictable effect on their financial interest. Under the law and implementing regulations, an employee's financial interest includes the financial interest of their employers. Therefore, employees are prohibited from participating in any particular matter that has a direct and predictable effect on the organization that employs them, unless granted a waiver.

<sup>51</sup>Letter from Marilyn Glynn, General Counsel, Office of Government Ethics to George Cannelos, Federal Cochair at 1 (December 28, 2006).

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interest on a case-by-case basis. Specifically, they have had to consider (1) whether commissioners have a conflict of interest (or the appearance of a conflict of interest) before discussions or votes, and, (2) if they do, whether they must recuse themselves or qualify for a waiver from the conflict-of-interest law.<sup>52</sup> The ethics official stated that he has tried to give the commissioners ethics advice so that they do not violate the criminal conflict-of-interest law.<sup>53</sup> In 2007, the Federal Cochair granted waivers for all six commissioners to participate in discussions of that year's work plan, funding allocations, and program priorities, after consulting with OGE.<sup>54</sup> These waivers recognized, among other things, that the act "envisions the commissioners as having a meaningful role in the direction of the Commission" and that the act directs individuals designated for their expertise to use this expertise to drive the Commission's work.<sup>55</sup> Subsequently, OGE officials advised the Federal Cochair that granting such waivers was not a viable option. Thereafter, waivers have been granted only for the State Cochair but not for other commissioners.<sup>56</sup>

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<sup>52</sup>In May 2007, Commerce delegated authority to the Federal Cochair to issue conflict-of-interest waivers for any commissioner.

<sup>53</sup>No commissioner has participated in a manner that conflicted with his advice, according to the ethics official.

<sup>54</sup>OGE regulations require agency ethics officials to consult with OGE when practicable before issuing waivers. 5 C.F.R. § 2640.303. The Federal Cochair issued waivers to the six commissioners in 2007 because he determined their financial interests were not so substantial as to be deemed likely to affect the integrity of his or her vote and guidance on the work plan but directed commissioners to recuse themselves from decisions in which their employer had a financial interest, including decisions and voting on the program area or allocation of funding to the program area that funds the employer's grants. In addition, the waivers for the commissioners whose employers are membership organizations, such as the Alaska Federation of Natives and the Alaska Municipal League, stated those commissioners would, out of abundance of caution, recuse themselves from decisions or votes if member organizations were likely to receive a pecuniary gain or loss, such as allocation of funding to program areas that would affect the member organizations.

<sup>55</sup>Letter from George Cannelos, Federal Cochair, to Sara Mikolop, FAA Designated Ethics Official, at 2 (April 9, 2007).

<sup>56</sup>Specifically, the Federal Cochair issued waivers to the State Cochair in 2009 and 2010 after consulting with OGE in part, because as an employee in the office of the Alaska Governor, the commissioner had to represent the needs of the entire state and the state as a whole was unlikely to experience any significant change in Commission funding because of her participation. In contrast, the Federal Cochair did not issue waivers for a more recent State Cochair because her participation could have resulted in a significant change in funding to the state agency she led.



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As a result, commissioners have had to recuse themselves periodically from discussions and votes, so the Commission often barely has had a quorum to conduct business, according to the ethics official. Given such restricted participation, commissioners no longer discuss or vote on the relative merits of individual projects, voting instead on broadly worded work plans, according to current and former commissioners and Commission management.<sup>57</sup> Some commissioners told us that they were unsure about the extent of allowable participation, given the conflict-of-interest law and have been advised not to participate in discussions and votes. Furthermore, several commissioners told us their fear of criminal prosecution—stemming in part from allegations by the former Inspector General, prior to his resignation, that they violated the conflict-of-interest law—has led them to substantially limit their participation and, in some instances, disengage from the Commission. One commissioner told us that meaningfully participating in the Commission under its current structure would mean doing so in possible violation of conflict-of-interest laws and is not worth the risk. Consequently, the development of the annual work plan is sometimes deprived of commissioner expertise on the sustainability or viability of proposed projects, according to the ethics official and several commissioners.

The ethics official and OGE officials noted that the Commission's structure lends itself to concerns about conflict of interests for commissioners because the Denali Commission Act requires that officials and directors from named organizations receiving grants serve as commissioners and the principal conflict-of-interest law prohibits commissioners from participating in matters that would have a direct and predictable effect on their employer's financial interests. In contrast, the Appalachian Regional Commission and the Delta Regional Authority are not subject to the same concerns because the laws establishing them exempt their commissioners and members, respectively, from the principal federal conflict-of-interest law and instead subject them to an alternative conflict-of-interest standard, which does not prohibit them from

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<sup>57</sup>To enable commissioners to contribute their expertise, the ethics official told us he began exploring whether commissioners could participate in project-level discussions without generally involving the financial interests of their organizations by having the Commission staff and/or the Federal Cochair first allocate funding to each program area, such as energy and transportation. However, he did not resolve whether this approach would work, and it is unclear if the new ethics official will explore it or continue with the current approach.

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participating personally and substantially in matters that the state—their employer—has a financial interest.

The restrictions on commissioner participation resulting from the conflict-of-interest law and the Denali Commission Act's silence on commissioner roles have led to nearly a decade of frustration and concerns about the commissioners' inability to contribute their expertise, according to several current and former commissioners and staff. All commissioners acknowledged that their role since the 2006 Justice determination has decreased, with some characterizing their role as being a "rubberstamp" for the work plan developed by Commission staff, and others characterizing it as being "neutered" or "muzzled" by the application of the conflict-of-interest law. According to the Federal Cochair, the Commission's success depends on the shared expertise of involved commissioners and precluding participation by experts in discussions about which projects to fund puts the Commission at risk for making faulty, but avoidable, funding decisions. For example, one commissioner told us of an instance where her knowledge could have prevented a poor Commission investment had she been able to see project-specific information prior to approval of the work plan since the grant involved an entity she knew to be delinquent in its taxes. Amendments to the Denali Commission Act could enhance the ability of the commissioners to provide their expertise with respect to the Commission's project funding decisions.

OGE officials told us that OGE has not been requested to issue a formal advisory opinion on the application of the conflict-of-interest law to the commissioners.<sup>58</sup> According to OGE officials, the commissioners' participation will be restricted unless Congress amends the Denali Commission Act to exempt commissioners from the principal conflict-of-interest law.

In addition, in its September 2014 inspection of the Commission, OGE noted as a deficiency the lack of written advice from the ethics official to commissioners.<sup>59</sup> As a result, OGE noted that it was unable to review the ethics official's advice for consistency with applicable laws and

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<sup>58</sup>5 C.F.R. § 2638.302.

<sup>59</sup>OGE officials also told us that they found people to be more receptive to the opinions of ethics officials when the advice is provided in writing.

regulations. Moreover, in 2005 guidance, OGE encourages but does not require written advice under specific circumstances, such as when the advice applies the criminal principal conflict-of-interest law to specific facts—a circumstance common to advice given to Commissioners about their participation in specific Commission matters. As of February 4, 2015, the Commission had not developed a course of action.

**Several Options Exist to Better Leverage the Commissioners' Expertise**

Based on our legal analysis and information provided by Commission management and the attorney assisting the Commission, we identified four options to restructure the Commission so that it could better leverage the commissioners' expertise in light of the 2006 Justice determination (see table 1). Each of these options would require amending the Denali Commission Act.

**Table 1: Options for Restructuring the Denali Commission to Better Leverage Commissioners' Expertise**

Options	Commissioner role	Necessary amendments to the Denali Commission Act
Representatives on an advisory committee subject to the Federal Advisory Committee Act (FACA)	Adviser	<ul style="list-style-type: none"> <li>Make commissioners representatives on an advisory committee for the Federal Cochair and other Commission officials.</li> <li>Subject the advisory committee to FACA.<sup>a</sup></li> <li>Designate that commissioners are to represent the particular viewpoint of their organizations.</li> <li>Eliminate federal compensation for commissioners.<sup>b</sup></li> </ul>
Members of a non-FACA Advisory Committee	Adviser	<ul style="list-style-type: none"> <li>Make commissioners members of an advisory committee to the Federal Cochair and other Commission officials.</li> <li>Subject commissioners to an alternative conflict-of-interest standard.</li> <li>Exempt the advisory committee from FACA.</li> </ul>
Commissioners subject to alternative conflict-of-interest standard	Decision maker	<ul style="list-style-type: none"> <li>Subject commissioners to an alternative conflict-of-interest standard.</li> </ul>
Board of directors with a fiduciary duty	Decision maker	<ul style="list-style-type: none"> <li>Create a Board charged with developing the proposed work plan, with each Commissioner serving as a Board Member with attendant fiduciary duties.</li> <li>Exempt commissioners from the principal federal conflict-of-interest law.</li> </ul>

Source: GAO. | GAO-15-72

Note: These options were identified by GAO based, in part, on information provided by Commission management and the attorney assisting the Commission.

<sup>a</sup>Pub. L. No. 92-463, 86 Stat. 770 (1972), *classified as amended at* 5 U.S.C. App. 2. Representatives on FACA committees provide stakeholder advice—advice reflecting the views of the entity or interest group they are representing, such as Alaska Natives, municipalities, or the state—whereas special government employees on FACA committees, like regular federal employees, are expected to provide their own best judgment in a manner that is free from conflicts of interest and without acting as a stakeholder representing any particular point of view.

<sup>b</sup>OGE and the Department of Justice's Office of Legal Counsel have repeatedly found that only individuals who serve without federal compensation qualify for the representative exception to the principal federal conflict-of-interest law.

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Additional information about the four options for restructuring the Commission follows:

- **Make commissioners representatives on a FACA Advisory Committee.** Under this option, the commissioners would be representatives on an advisory committee subject to FACA rather than special government employees.<sup>60</sup> Representatives on FACA committees provide stakeholder advice—advice reflecting the views of the entity or interest group they are representing, such as Alaska Natives, municipalities, or the state—whereas special government employees on FACA committees, like all federal employees, are expected to provide their own best judgment in a manner free from conflicts of interest and without acting as a stakeholder representing any particular point of view. As representatives on a FACA committee, commissioners would be expected to represent a particular and known bias of the particular group that they are designated and appointed to represent. Under this option, the commissioners' open and avowed interests, biases, and commitments are intended to check and balance each other, resulting in a balanced and objective recommendation. However, commissioners would not be subject to the principal federal conflict-of-interest law.
- **Make commissioners members on Non-FACA Advisory Committee.** Under this option, the commissioners would be members of an advisory committee that is exempt from FACA and subject to an alternative conflict-of-interest standard rather than the principal federal conflict-of-interest law, as in the case of the fishery management

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<sup>60</sup>If the commissioners were reorganized as a FACA committee but remained special government employees, the commissioners would still be subject to the principal federal conflict-of-interest law unless the Federal Cochair and agency ethics officer found them eligible for the special government employees on advisory committees exemption. 18 U.S.C. § 208(b)(2); 5 C.F.R. § 2640.203(g). This exemption allows the participation of special government employees on FACA committees in matters of general applicability where the disqualifying interest arises from the employee's nonfederal employment if the matter will not have a special or distinct effect on the employee or employer other than as part of a class; however, a grant application submitted by the employer would not be a matter of general applicability. In addition, special government employees on FACA committees are eligible for special waivers if the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest. 18 U.S.C. § 208(b)(3). However, it is not clear whether the Federal Cochair would be able to grant such a waiver because OGE guidance says that generally it would be hard to justify a waiver for a special government employee to participate in a matter specifically involving his or her nonfederal employer, such as consideration of a grant application submitted by the employer.

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councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to advise the Secretary of Commerce in developing fishery management plans, among other things.<sup>61</sup> To allow certain members of fishery management councils with financial interests in fisheries or fishery-related activities—including the financial interests of their employers—to participate in the councils, these members are exempt from the principal federal conflict-of-interest law when they comply with the financial disclosure and recusal requirements in the Magnuson-Stevens Act and its implementing regulations.<sup>62</sup>

- **Subject commissioners to alternative conflict-of-interest standard but retain decision-making role.** Under this option, the commissioners would retain the ability to make decisions on which projects to fund and would be subject to an alternative conflict-of-interest standard rather than the principal federal conflict-of-interest law, which is how the Appalachian Regional Commission and Delta Regional Authority operate. Specifically, the statutes authorizing these other regional entities prohibit their nonfederal members from participating personally and substantially in matters in which they or their immediate family members—but not the state, which is their employer—have a financial interest.<sup>63</sup> Being subject to this alternative conflict-of-interest standard has allowed their nonfederal members to vote on specific project funding with only a few conflicts of interest arising, according to officials from the Appalachian Regional Commission and Delta Regional Authority. For example, Appalachian Regional Commission officials told us that commissioners do not have to recuse themselves from discussing or voting on grants their state agency applied for unless they are personally involved in the project, and Delta Regional Authority officials told us that there is generally not a conflict of interest that would prevent a member from discussing or

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<sup>61</sup>Pub. L. No. 94-265, 90 Stat. 347 (1976), *codified as amended at* 16 U.S.C. §§ 1801-1884.

<sup>62</sup>Specifically, these members who meet the statutory and regulatory disclosure requirements are allowed to vote on any matter that will not have an expected and substantially disproportionate benefit to their financial interests and is not primarily a matter of individual concern. If the decision could have such an effect, the council member may not vote but may participate in discussions and deliberations after recusing himself or herself and identifying the financial interest that would be affected.

<sup>63</sup>The nonfederal members of the Appalachian Regional Commission and Delta Regional Authority are state governors or state officials designated to serve by the Governor.

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voting on projects involving their state agency. However, under this option, the principal conflict-of-interest law and its implementing regulations would not apply because the nonfederal members are not subject to the principal federal conflict-of-interest law.<sup>64</sup>

- **Make commissioners a Board of Directors with fiduciary duty and retain decision-making role.** Under this option, the nonfederal commissioners would become members of a Board of Directors with a fiduciary duty—a duty imposed by law on a person in a position of trust to act for someone else’s benefit and not to further one’s personal interests—and not be subject to the principal federal conflict-of-interest law. For example, the Board of Directors of the Legal Services Corporation—a federally funded, private nonprofit corporation that makes grants to legal service providers who provide free legal assistance to those who otherwise cannot afford it—has a fiduciary duty to use a high level of care to manage the corporation to best promote the corporation’s interest. Boards of Directors are generally associated with corporations, but some governmental entities also have Boards of Directors. The Farm Credit Administration, an independent agency in the executive branch that, among other things, regulates entities involved in the Farm Credit System, and the National Credit Union Administration, also an independent agency in the executive branch that regulates, charters, and supervises credit unions, both have Boards of Directors. In addition, the Smithsonian’s National Museum of the American Indian is governed by a Board of Directors with a fiduciary duty. Under this option, OGE would not have a role since the commissioners would not be subject to the principal federal conflict-of-interest law. However, the scope and nature of the commissioners’ fiduciary duty, such as whether the commissioners owed a fiduciary duty to American taxpayers generally or to Alaskans in particular and, in either case, what actions would best promote each group’s interests—would need to be determined.

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<sup>64</sup>OGE officials told us that they preferred application of the federal conflict-of-interest laws rather than exceptions and unique alternative standards.

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## Several Challenges Have Hindered the Denali Commission's Daily Operations

The Commission has faced several challenges that have adversely impacted its daily operations. These include periodic vacancies in the Federal Cochair position; issues related to the implementation of Dodd-Frank; and not having a Commission attorney. In addition, the Commission has received limited support from Commerce in trying to resolve its operational challenges.

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## Vacancy in Federal Cochair Position Has Stymied the Commission

The Federal Cochair position has been vacant on two separate occasions, which has stymied the Commission from fulfilling its statutory responsibilities even though the Denali Commission Act states that any vacancy in the Commission shall not affect its powers. The most recent vacancy of a Federal Cochair occurred during the second quarter of the fiscal year when the Commission typically awards new grants.<sup>65</sup> Because only the Federal Cochair is authorized to take critical actions, such as approving new grants, no one was authorized to sign \$7 million in new grant awards or obligate these funds in time for grantees to reserve space on barges bringing building materials to rural Alaska for the brief 2014 construction season, according to Commission management and staff. Commission management told us that this vacancy was a key factor in preventing the Federal Cochair from forwarding for approval a timely fiscal year 2014 work plan, leading to its delayed publication for public comment and subsequent approval.<sup>66</sup>

In contrast to appointed officials of many other federal agencies and commissions, the Federal Cochair is not authorized to delegate his or her statutory responsibilities, such as publishing the draft work plan for public comment or to remain in office beyond the expiration of his or her term for

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<sup>65</sup>This vacancy occurred after the first term of the third Federal Cochair expired on January 3, 2014. At that time, the Secretary of Commerce did not reappoint the Cochair or appoint a new Cochair because the Secretary had not received nominations from the Senate President pro tempore and the Speaker of the House of Representatives, as required by the act. Consequently, in fiscal year 2014, the Commission was without a Federal Cochair during the first 4 months of 2014, from January 4, 2014 until April 21, 2014.

<sup>66</sup>Commerce approved the Commission's fiscal year 2014 work plan on September 3, 2014, shortly before the end of fiscal year 2014.

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several reasons.<sup>67</sup> First, the Federal Cochair is not subject to the Federal Vacancies Reform Act of 1998 (Federal Vacancies Act)<sup>68</sup>—an act that identifies who may temporarily perform the functions and duties in the absence of an officer who is appointed by the President of the United States and confirmed by the Senate—because the Federal Cochair is appointed by the Secretary of Commerce rather than the President. Second, the Denali Commission Act—unlike the statutes that established the Appalachian Regional Commission and the Delta Regional Authority—does not provide for an alternate or acting Federal Cochair. Third, the Denali Commission Act does not contain a “holdover” provision, which would allow the Federal Cochair to continue serving in office beyond the expiration of his or her term. Other federal agencies—such as the Federal Election Commission, Federal Energy Regulatory Commission, and the Federal Communications Commission—have holdover provisions that allow appointed members whose terms have expired to continue to serve in office for a specified period of time or until a successor is appointed or takes office.<sup>69</sup> Furthermore, unlike enabling legislation for other federal agencies, the act does not contain a “delegation of authority” provision that would allow the Federal Cochair to authorize another person to perform the Federal Cochair’s statutory responsibilities during a vacancy that occurs at any point in the Federal Cochair’s term.<sup>70</sup> In contrast to a holdover provision, a Federal Cochair could use a delegation of authority provision while he was in office or if he left before the end of his term. Without amending the act to include either

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<sup>67</sup>Absences of the Federal Cochair are not limited to vacancies occurring at the term’s end. In October 2013, Commerce’s appropriation lapsed and the Federal Cochair, who is a Commerce employee, was furloughed. Denali Commission staff were not furloughed because they are funded through the Commission’s direct appropriation, which is no-year money that can be spent in any fiscal year. However, the Federal Cochair was not able to delegate his authority to, for example, execute grants or move the annual work plan forward while he was furloughed. Consequently, the Commission was able to continue some operations, largely limited to managing its existing portfolio of grants, but not others.

<sup>68</sup>Pub. L. No. 105-277, div. C, tit. I, § 151, 112 Stat. 2681, 2681-611 (1998), *codified as amended at* 5 U.S.C. §§ 3345-3349d.

<sup>69</sup>For example, some holdover provisions allow appointed members of agencies whose terms have expired to remain in office for 1 year or for the remainder of the congressional session, while awaiting a successor.

<sup>70</sup>Commission management told us that during the vacancy of the Federal Cochair in 2014, Commission management requested that Commerce send an employee to Alaska to temporarily fill in for the Federal Cochair, but Commerce declined, stating that it lacks the authority to unilaterally fill that position even on a temporary basis.



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a holdover or delegation of authority provision when the Federal Cochair position is vacant, Commission operations would be stymied the next time a vacancy occurs.

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### Implementation of Dodd-Frank Diverted Attention Away from Commission Operations and Resulted in Communications Breakdown with the Former Inspector General, Prior to his Resignation

Since the enactment of Dodd-Frank in 2010, the Federal Cochair and the attorney assisting the Commission said they spent substantial time discussing and seeking guidance from other agencies on whether and how to implement Dodd-Frank,<sup>71</sup> which diverted attention from day-to-day Commission management and ethics issues. Once the Commission implemented Dodd-Frank in May 2013—thereby making the seven commissioners responsible for the general supervision of the Commission’s Inspector General—concerns arose about its application. For example, commissioners who previously advocated for the removal of the former Inspector General were now vested with the authority under Dodd-Frank to remove an Inspector General by a two-thirds majority vote even if the Federal Cochair is against removal. At the same time, the Federal Cochair could no longer take actions to appoint, supervise, or remove an Inspector General without explicit and prior approval of the other commissioners. The Federal Cochair and attorney assisting the Commission raised concerns about the potential for, or appearance of, commissioners abusing this new power to fire a Commission’s Inspector General, while the former Inspector General, prior to his resignation, raised concerns about his ability to carry out his duties with this supervisory change. As a result, Commission management and the attorney assisting the Commission said they repeatedly met with commissioners to discuss their new role and acknowledged that the commissioners need additional guidance and training on this topic.

This change in the commissioners’ role also exacerbated the already contentious relationship between the Commission and the Inspector General, according to Commission management. As a result, they told us, the Inspector General ceased to communicate with both the Federal Cochair and the commissioners for several months leading up to his resignation in December 2013.<sup>72</sup> In addition, the former Inspector

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<sup>71</sup>They told us they met with or sought guidance from OMB, Commerce, and the Council of Inspectors General on Integrity and Efficiency on the role of commissioners as it related to the Inspector General.

<sup>72</sup>According to Commission officials, in the months leading up to his resignation, the Inspector General communicated only with the Commission’s Chief Financial Officer and her finance staff.

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General, prior to his resignation, did not comply with requests from the Federal Cochair to attend meetings of the commissioners, including those discussing the implementation of the Dodd-Frank changes. According to Commission management, the decision by the former Inspector General, prior to his resignation, to cease communications stemmed from his concern that the Commission's interpretation of Dodd-Frank and the subsequent supervisory change impaired the independence of his office.<sup>73</sup>

In light of the former Inspector General's resignation in December 2013, it is unclear what challenges, if any, will continue to exist for the Commission related to this issue.<sup>74</sup>

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### The Commission Has Had Limited Legal Support, Even with Facing Complex Legal Questions

The Denali Commission has had access to limited legal assistance while facing numerous complex legal questions regarding the Commission, the role of its commissioners, and certain agency agreements. Federal agencies generally rely on legal counsel to safeguard their interests and minimize the agency's risks, such as by reviewing grant and other agreements prior to approval, according to the attorney assisting the Commission. Further, under *Standards for Internal Control in the Federal Government*, management should identify and manage an agency's risks,<sup>75</sup> including those stemming from changes to the legal environment. Specifically, management should

- comprehensively identify risks at the agency and activity level;
- analyze the possible effect of identified risks and decide how to manage those risks; and

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<sup>73</sup>The former Inspector General, prior to his resignation, also cited these independence concerns with respect to completing the 2013 annual financial statement audit of the Commission. However, OMB subsequently informed the former Inspector General that specific safeguards exist that protect against threats to the independence of an Inspector General. The 2013 annual financial statement audit was completed after the resignation of the former Inspector General.

<sup>74</sup>Commerce's Office of Inspector General has been providing oversight services to the Commission since the two agencies signed a new memorandum of understanding in May 2014.

<sup>75</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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- provide mechanisms to identify and deal with any special risks resulting from, for example, continual changes in governmental, operating, and regulatory conditions.

However, the Commission has never had a full-time attorney providing it with legal advice and support on a routine and consistent basis, leaving the Commission vulnerable. As primarily a grant-making agency, the Commission has awarded over 800 grants since its inception, many of which Commission officials acknowledged to be complex, that did not receive prior legal review by an attorney on behalf of the Commission. Current and former Commission officials told us that staff drafting grant agreements in the Commission's early years—grants that generally served as templates for later grants, including recently awarded grants—relied on a combination of their own experience and grant language taken from other agencies.

The Commission has relied on other federal agencies for limited legal support. In its early years, the Commission had a memorandum of understanding with Commerce to provide the Commission with limited legal services. This agreement ended in 2006, after the Commission and Commerce were unable to reach an agreement on renewing it. Subsequently, the Federal Cochair entered into an agreement with the Federal Aviation Administration (FAA) for an attorney in the FAA's Anchorage office to provide occasional and intermittent legal services after commissioners were determined to be special government employees in 2006.<sup>76</sup> To supplement the limited legal assistance provided by FAA, according to Commission management, the Commission sometimes relied on others such as OMB. The FAA attorney did not review the legal agreements the Commission entered into but rather served as the Commission's designated agency ethics officer and

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<sup>76</sup>This agreement between FAA and the Commission was signed in 2007, but FAA started providing limited legal services as early as 2005. Under this agreement, FAA agreed to provide an estimated 40 hours per fiscal year of consultations and written advice on specific legal questions and an estimated 20 hours per fiscal year of trainings, including briefings for commissioners on ethical standards and restrictions for federal employees, in exchange for monetary compensation. After the agreement expired, in 2012 through fiscal year 2014, the FAA continued to provide the Commission occasional and intermittent legal and ethics services pursuant to section 305(a) of the Denali Commission Act, as amended, which authorizes federal agencies to make services and personnel available to the Commission upon the Commission's request.

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handled the legal questions raised by the Federal Cochair and other Commission officials.<sup>77</sup>

As previously discussed, the Commission has recently faced complex legal issues such as the applicability of the principal federal conflict-of-interest law to the commissioners and the implementation of Dodd-Frank. In addition, over its 15-year existence, the Commission has encountered numerous other complex legal matters, such as the following:

- **Legislative proposals.** The Federal Cochair, commissioners, and attorney assisting the Commission identified key operational and statutory challenges hindering the Commission—such as the role of the commissioners and the vacancy of the Federal Cochair—and considered proposals to amend the Denali Commission Act to address some of these challenges. As a result, the Federal Cochair and the attorney assisting the Commission had numerous discussions with OMB and others about amending the act and developed draft language for bills reauthorizing the Commission in 2012.<sup>78</sup> The attorney assisting the Commission characterized its demand for legal services during this time as intensive.
- **Validity of, and the Commission’s liability under, certain complicated agreements.** Prior to his resignation, the former Inspector General, in a 2012 report to Congress, raised concerns about the validity of the Commission’s “secondary operator agreements”—agreements that allow the Commission, under certain circumstances, to replace the original operator of a Commission-funded project—and whether the agreements impose liability on the Commission after a project’s completion.<sup>79</sup> Similarly, the attorney

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<sup>77</sup>In this report, we refer to this attorney as “the attorney assisting the Commission” when discussing matters not related to ethics; otherwise, we refer to him as the designated agency ethics officer.

<sup>78</sup>S. 3590, 112th Cong. (2012); H.R. 6478, 112th Cong. (2012).

<sup>79</sup>Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2012—Second Half*, (Anchorage, Alaska: November 2012). The secondary operator agreements require the operator to, among other things, comply with a business plan the program partner developed and allow the Commission to name a secondary operator, if the operator does not operate the facility in accordance with the secondary operator agreement and the business plan, and this failure significantly threatens the long-term economic sustainability of the facility. These secondary operator agreements were signed by the Commission, the operators of facilities built or upgraded with Commission funding, and the facility owner if the owner was not the operator.

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assisting the Commission raised concerns about whether these agreements and other related agreements are valid contracts and make the Commission an owner or operator of the facility and thus liable if, for example, there is an oil spill.<sup>80</sup> Commission officials and the attorney assisting the Commission told us that no attorney helped draft or review these agreements on behalf of the Commission prior to their approval.<sup>81</sup>

- **Appropriateness of providing services to other federal agencies.** In 2013, after the Commission entered into Economy Act agreements with three federal agencies to provide them with an electronic database and other grants administration support,<sup>82</sup> some commissioners raised questions about whether the Commission had authority to enter into such agreements and whether providing such services was within the Commission's statutory purpose to serve rural Alaska. According to Commission management, however, these agreements help to further the Commission's statutory purpose to deliver services of the federal government in the most cost-effective manner practicable by reducing administrative and overhead costs, since this purpose is not expressly limited to Alaska.<sup>83</sup> No attorney helped draft or review these agreements on behalf of the Commission.

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<sup>80</sup>The secondary operator agreements are one of several interrelated agreements for energy infrastructure construction or upgrade projects funded by the Commission: (1) financial assistance awards from the Commission to program partners, to which the facility's owner or operator are not a party; (2) grant agreements between the program partner and the owners of the facilities or the land on which the facility was built, some of which include the Commission as a third-party beneficiary; and (3) leases between the facility owner and its operator, when the owner was not the operator, to which neither the program partner nor the Commission is a party.

<sup>81</sup>After the Inspector General report, the Federal Cochair asked the attorney assisting the Commission to research whether the agreements could impose liability on the Commission. In addition, the Commission also asked the state Attorney General's office whether the Commission would be liable for oil spills as an owner or operator under state law.

<sup>82</sup>The Economy Act provides general authority for an agency to obtain goods and services from another agency.

<sup>83</sup>In addition, Commission management said these agreements resulted from the agency obtaining authority in the Moving Ahead for Progress in the 21st Century Act to accept conditional gifts from federal and nonfederal sources for the purpose of carrying out the Denali Commission Act.

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As a result of these complex matters, the Federal Cochair said that he increasingly had to focus on legal issues at the expense of other duties, such as strategic planning. Similarly, the attorney assisting the Commission characterized his work on such legal matters as increasingly time-consuming and going beyond what either agency had anticipated. For example, he initially spent about 5 hours per week on Commission work, which increased to at least 10 hours per week as issues arose related to the special government employee determination. Important legal matters demanding his attention increased substantially since 2010, according to this attorney. He spent more than half of his time addressing and advising the Commission on such issues as the Inspector General and Dodd-Frank, leaving no time for additional legal matters beyond the scope of the agreement, such as reviewing the Commission's grants and other agreements. FAA ceased providing legal services to the Commission at the end of fiscal year 2014 because, according to the attorney assisting the Commission, his legal support for the Commission had become so time-consuming.

Without an attorney to help the Commission identify and navigate risks consistent with federal standards for internal control, the Commission is at increased risk for making legal mistakes. For example, the attorney assisting the Commission told us he would not have approved the Commission's secondary operator agreements as written because such agreements put the federal interest at too much risk. In this context, he recommended that the Commission obtain a full-time, in-house attorney to help the Commission operate in what he termed a "legally murky" environment and to help it avoid legal mistakes in grants management. Similarly, prior to his resignation, the Commission's former Inspector General recommended in 2010 that the Commission acquire in-house legal counsel.<sup>84</sup> Both the Appalachian Regional Commission and the Delta Regional Authority have full-time legal counsel from either an in-house counsel or through contract with a law firm for the equivalent of a full-time attorney. Commission management has acknowledged that the Commission needs legal support on a more continuous and consistent basis, especially since the ethics officer and primary legal support is departing.

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<sup>84</sup>Denali Commission Office of Inspector General, *Semiannual Report to the Congress: FY 2009 (Second Half) and FY 2010 (First Half)* (Anchorage, AK: May 2010).

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## Commerce Has Provided Limited Support to the Commission

Apart from carrying out its own limited responsibilities under the Denali Commission Act,<sup>85</sup> Commerce has consistently treated the Commission as an independent agency. According to the Commerce officials we interviewed, Commerce does not provide legal advice or guidance to the Commission because the Commission is an independent agency, even though its Federal Cochair is a Commerce employee. Similarly, until recently, the Commerce Inspector General did not provide Inspector General services to the Commission. When Commerce provided administrative and legal services for the Commission in the past, it was pursuant to a memorandum of understanding with the Commission. Commerce officials told us that they served as a sounding board for the Federal Cochair on a variety of legal matters after the memorandum of understanding's expiration in 2006, but they did not provide legal guidance or advice. Commerce officials told us that they communicated this position with Commission management as recently as 2013.

However, the Commission and commissioners have not had a clear or consistent understanding of Commerce's role with respect to the Commission. The Denali Commission Act—in addition to specifying certain responsibilities for Commerce and making the Federal Cochair a Commerce employee—authorizes, but does not require, federal agencies (such as Commerce) to make personnel and services available upon the Commission's request. Commission management told us that they do not always know what support activities Commerce is responsible for providing, or allowed to provide, to the Commission. Consequently, Commission officials told us that the Commission has repeatedly, and unsuccessfully, sought legal advice and other assistance from Commerce.<sup>86</sup>

In addition, at least one commissioner called for increased levels of support from Commerce, specifically calling for Commerce to immediately provide Inspector General staff to the Commission to help address challenges stemming from the recent resignation of the Commission's former Inspector General. The Commerce Office of Inspector General began providing some oversight services to the Commission pursuant to

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<sup>85</sup>Under the Denali Commission Act, Commerce is responsible for appointing the Federal Cochair and reviewing and approving the Commission's annual work plan.

<sup>86</sup>Commission management told us that its spring 2014 efforts to secure an agreement with Commerce for legal services failed.

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a new interim agreement reached in May 2014 between the two agencies for the remainder of fiscal year 2014.<sup>87</sup> This agreement was recently extended through the end of fiscal year 2015.

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## The Commission Has Some Administrative Grant Management Procedures, but Has Several Shortcomings in How It Has Managed Its Grants

The Commission has some key procedures in place for administering its grants, but we found several shortcomings in how the Commission has managed its grants. The rapid increase in funding during the Commission's early years led staff to spend their time issuing grants rather than developing policies for how to do so. The Commission later developed some administrative procedures for administering its grants and has recognized the importance of developing policies to help manage its grants. In our review of a sample of projects funded by Commission grants, we found several shortcomings in how the Commission has managed its grants, including not having documented policies for awarding and managing grants; inconsistent monitoring of grant and project recipients; and lengthy delays in closing projects, among other things.

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## The Commission Has Some Administrative Grant Management Procedures

As it has evolved, the Commission has developed administrative practices to help manage grants in a consistent and transparent manner. For example, the Commission utilizes standard checklists to help ensure that its staff take the necessary administrative steps at key points in the grant-making process. These practices meet established criteria in the Domestic Working Group's 2005 *Guide to Opportunities for Improving Grant Accountability* for good grant management and oversight,<sup>88</sup> including having internal operating procedures in place before awarding grants. Before the Commission awards a grant, its program staff complete a pre-award checklist based on a conference with the grant recipient.

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<sup>87</sup>On May 28, 2014, the Commission entered into a new memorandum of understanding with the Commerce Office of Inspector General for oversight. Under this memorandum of understanding, the Commerce Office of Inspector General agreed to provide oversight services to the Commission for the remainder of fiscal year 2014, subject to the availability of Commerce resources.

<sup>88</sup>Domestic Working Group, *Guide to Opportunities for Improving Grant Accountability* (Washington, D.C.: October 2005). Established by GAO in 2001, the Domestic Working Group comprises six Inspectors General, seven state auditors, and six local auditors. The group meets annually to discuss mutual challenges and identify opportunities for collaboration with each other, among other things.



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The checklist includes items such as discussing

- the project overview and expectations;
- the proposed budget and funding availability for cost overruns; and
- programmatic and business management requirements.

Similarly, when Commission staff close out a grant, they follow a closeout checklist, which includes verification that

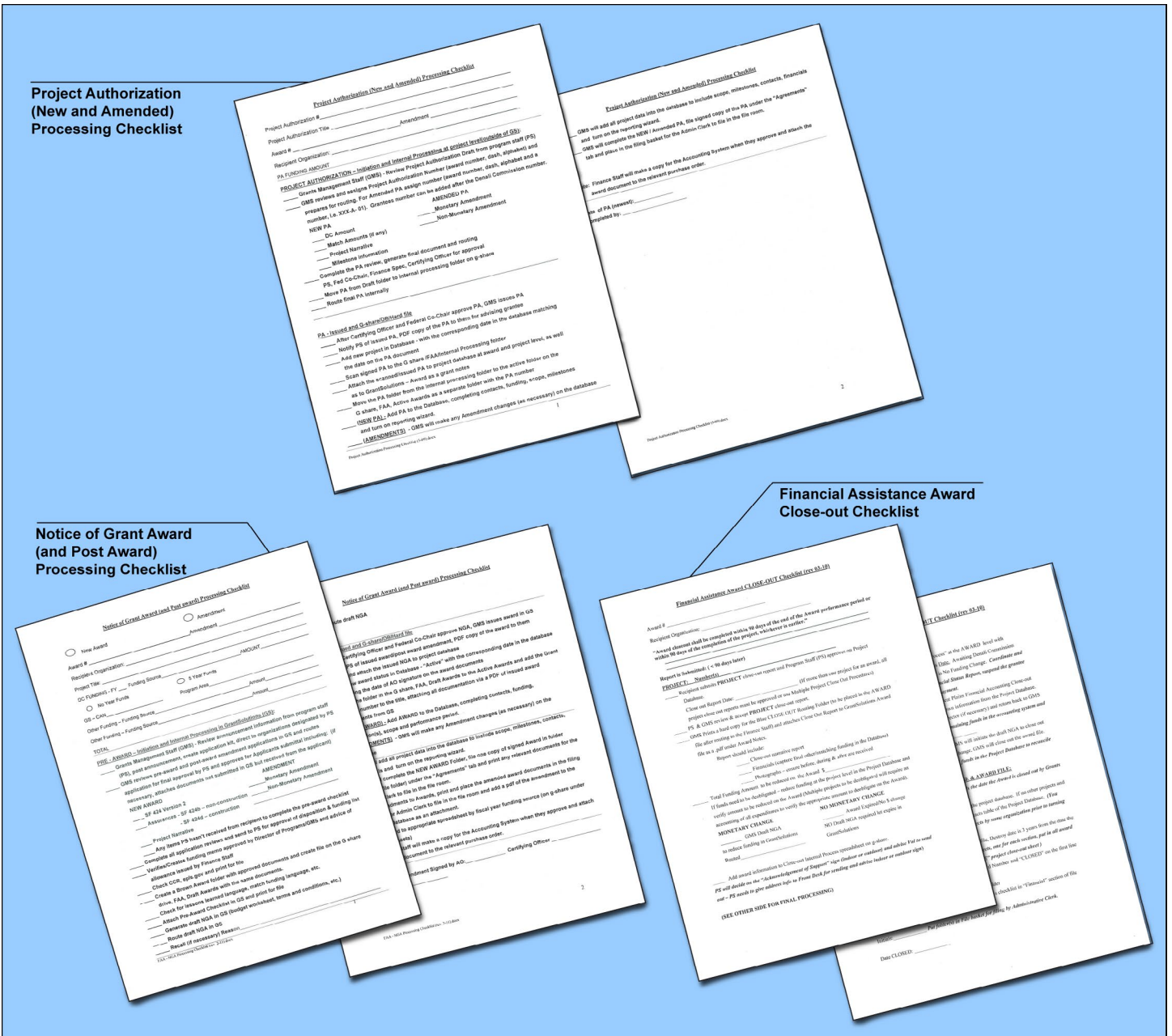
- the award recipient submits a project closeout report;
- program staff and grants management staff review and accept the project closeout report; and
- a closeout folder is routed to appropriate personnel so that any remaining funds can be deobligated.

Figure 5, an interactive graphic, displays examples of checklists used by the Commission. (For full-sized, printable images of these processing checklists, see app. II.)

Interactive Graphic

Figure 5: Examples of Commission Grant Management Checklists

**Instructions:** Roll your mouse over each page to see an example of a processing checklist. For printable version, see appendix II, page 66.



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In addition, the Commission has maintained information about its grants and projects in an online database—the Project Database System—that is accessible to the public through the Commission’s website. Starting in October 2003, the Commission required grant and project recipients to submit certain types of reports through the Project Database System, including quarterly reports updating the status of the project and closeout reports at the projects’ conclusion. This database serves as a place for grantees and project recipients to report their progress, and as a source for the public to learn more about specific grants or projects. Such information includes documentation regarding the following:

- **The intended use of grant funds:** the database includes links to financial assistance awards, which lay out the specific tasks to be accomplished under each grant and the associated reporting requirements; and
- **Status reports from grant recipients:** the database includes sections on grant and project reporting; the project reporting section includes quarterly reports with such information as (1) how much money was allocated to the project, (2) how much money has been spent, (3) the projected timeline of the project, and (4) notes about the status of the project.

These practices meet established criteria for good grant management and oversight, including providing evidence of program success.<sup>89</sup> Project managers and staff also use the Project Database System to help manage grants and reporting timelines. For example, the online database includes built-in reminders to project managers to follow up on missing or late progress reports.

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## Several Shortcomings Exist in How the Commission Has Managed Its Grants

Even with these administrative practices, we found several shortcomings in how the agency managed grants awarded in fiscal years 1999 through 2013. Most significantly, the agency does not have documented policies for awarding and managing its grants, leading to inconsistencies in the awarding and monitoring of grants. In addition, the agency does not have a process to address the findings of single audits; project closeouts have sometimes encountered lengthy delays, and the agency does not have a record retention policy in place, as required by federal regulations.

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<sup>89</sup>Domestic Working Group, *Guide to Opportunities for Improving Grant Accountability*.

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Not Having Documented Policies Has Led to Inconsistencies in Awarding and Monitoring Grants

The Commission does not have documented policies for how it awards and manages its grants, although it has developed guidelines for the administrative steps involved. In awarding federal grants, effective oversight and internal control—in the form of management directives, administrative policies, or operating manuals—is important in assuring the proper and effective use of federal funds to achieve program goals, according to the Domestic Working Group’s 2005 *Guide to Opportunities for Improving Grant Accountability*. The guide states that effective internal control systems provide reasonable assurance that grants are awarded properly, recipients are eligible, and federal funds are used as intended and in accordance with applicable laws and regulations. The Commission’s *Grants Management Guidelines*, most recently updated in January 2014, provide detailed information on the administrative steps involved in awarding and managing grants, such as creating an announcement for the award and issuing the award to officially obligate the funds for the grant. However, the guidelines do not describe the policies for how the Commission should award and manage its grants. For example, the guidelines do not address issues that could be addressed if the Commission documented its grant-making policies, such as the number of projects acceptable under each grant, when it is appropriate to use a competitive award process, and criteria for identifying the appropriate requirements to include in the Commission’s grant agreements.

Not having documented policies in place has hindered the Commission from having a consistent approach to awarding grants. For example, according to the Federal Cochair, the Commission used “monster awards”—a single grant that funded dozens or even hundreds of projects—during its early years, which led to an “accounting nightmare” because of the difficulty of tracking funds associated with such grants and projects. The Federal Cochair explained that such problematic practices arose because, in the absence of documented policies on the number of projects acceptable under each grant, program managers have had discretion in managing their program areas. In addition, the Commission has not consistently used a competitive selection process to award grants. For example, in awarding energy projects during the early years of the Commission, the Federal Cochair told us that Commission officials chose certain program partners based on previous professional contact rather than through an open and competitive selection process. In contrast, the Commission used a competitive process in selecting grantees for building health clinics in rural Alaska, according to Commission management. As the Domestic Working Group’s 2005 *Guide to Opportunities for Improving Grant Accountability* states, through

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competition, agencies can increase assurance that grantees have the systems and resources to efficiently and effectively use funds to meet grant goals. A competitive process also promotes fairness and openness in the selection of grantees. However, because the Commission does not have documented policies regarding when a competitive award process may or may not be appropriate, it cannot be assured that it is making such decisions consistently and based upon the appropriate considerations.

The Commission does not have documented policies to specify what reporting requirements should be included in its grants and the frequency of reporting required. Rather than issuing its own policies, the Commission has often incorporated OMB guidance by reference in its grant agreements even though the OMB guidance is intended for agencies and not grant recipients.<sup>90</sup> For example, the OMB guidance indicates that agencies should require recipients to submit financial status reports no more often than quarterly but no less often than annually.<sup>91</sup> Based on our sample, an estimated 33 percent<sup>92</sup> of Commission-funded projects' grant agreements incorporated this OMB guidance by reference,

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<sup>90</sup>Until recently, OMB published guidance in various circulars, which provided a government-wide framework for grants management. Grant-making agencies would then adopt the OMB guidance into their own regulations that then became applicable to grantees. In December 2013, OMB consolidated its grants management circulars into a single document, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), to streamline its guidance, promote consistency among grantees, and reduce administrative burden on nonfederal entities. 78 Fed. Reg. 78590 (Dec. 26, 2013). In December 2014, OMB, along with grant-making agencies, issued a joint interim final rule implementing OMB's Uniform Guidance for new grant awards made on or after December 26, 2014. 79 Fed. Reg. 75871 (Dec. 19, 2014).

<sup>91</sup>Some grant agreements incorporated by reference Commerce's regulations implementing the OMB guidance instead of or in addition to the OMB circulars; however, while the Commerce regulation for grants to state and local governments (15 C.F.R. § 24.41) required recipients to submit annual financial status reports if the financial assistance award does not require more frequent submissions, the Commerce regulation for grants to institutions of higher education, hospitals, nonprofits and commercial organizations (15 C.F.R. § 14.52) did not specify the frequency with which grantees are required to submit financial reports. These regulations have been superseded, see 79 Fed. Reg. 75871 (Dec. 19, 2014).

<sup>92</sup>All estimates based on our sample of commission-funded projects' grant agreements are subject to sampling error. Unless otherwise noted, all percentage estimates in this report have 95 percent confidence intervals of within plus or minus 10 percentage points of the estimate. See appendix I for additional information on sampling error.

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and 22 of the 33 such projects in our sample did not specify how often grant recipients' financial status reports were due. As a result, it was unclear how often the grantee in these 22 cases was required to report to the Commission and difficult to determine whether these grantees met their reporting requirement. While Commission officials told us that program managers would have informally communicated to grant recipients how frequently such reports were expected, not specifying reporting requirements in written grant agreements could lead to confusion regarding what is required of the grantee. According to the Domestic Working Group's 2005 *Guide to Opportunities for Improving Grant Accountability*, the terms, conditions, and provisions in the award agreement, if well designed, can render all parties more accountable for the award. Without documented policies to specify such requirements, the Commission may not be setting clear expectations for grantees, making it difficult to hold them accountable for fulfilling the terms of the grant agreement.

In addition, as a result of not having clear, documented policies related to monitoring, the Commission has not been consistent in how it monitors the requirements it has included in its grants. We have previously found that once an agency has awarded grants, its monitoring of grantee performance is important to help ensure that grantees are meeting program and accountability requirements.<sup>93</sup> Moreover, monitoring grantee performance helps ensure that grant goals are reached, required deliverables are completed, and potential problems can be addressed early in the grant period.<sup>94</sup> The Commission's monitoring has been inconsistent in the following ways:

- The Commission allowed grant recipients to draw down funds without submitting quarterly progress reports as required in the grants. According to Commission officials, the Commission's policy is to not provide funds to grantees unless they submit required reports. However, in 19 of the 38 projects where this situation could be identified, the Commission allowed grantees to draw down about

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<sup>93</sup>GAO, *Federal Grants: Improvements Needed in Oversight and Accountability Processes*, [GAO-11-773T](#) (Washington, D.C.: June 23, 2011).

<sup>94</sup>Domestic Working Group, *Guide to Opportunities for Improving Grant Accountability*.

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\$5.6 million during periods of inadequate progress reporting.<sup>95</sup>

According to Commission program officials, they rarely have withheld payment in cases where required reporting is missing. One program official described withholding payments from grantees as the least viable option, since many project recipients would not have the funds to continue the project without the Commission's funding. The Commission's *Grants Management Guidelines* include a description of a process that eventually cuts off funding for awards when grantees are delinquent on their progress reports, but it does not describe criteria for a program official to apply in deciding whether to allow a grantee who is delinquent to continue to draw down funds. Without clear, documented policies that describe under what circumstances Commission officials should withhold funds, this method of enforcing grantee compliance is less likely to function.

- Not all required photographs were submitted in 51 of the 66 projects in our sample where the Commission's grant required photographs. For example, for one project to construct behavioral health space within a primary care clinic, the grant required a minimum of three dated photographs with each quarterly report to fully establish the before, during, and after of the project; Commission records showed that no photographs were submitted with the quarterly progress reports. Photographs of ongoing projects are important because of the inaccessibility of many rural Alaskan communities and the difficulty of having Commission officials conduct visits to observe progress of the project, particularly given decreased funding.<sup>96</sup>

While we found that the Commission specified requirements for submission of other documentation and reports, we also found that they did not ensure grant recipients submitted them. For example, the Commission required Labor, Wage, and Residency reports for an estimated 36 percent of its projects, but among the projects reviewed in our sample, these reports were submitted for only 13 of the 36 sample

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<sup>95</sup>Because many of the projects we examined were funded by grants that funded multiple projects, it was difficult to determine whether specific funding from the grant went to fund the project in question or other projects. As a result, we only examine the 38 cases here in which a grant funded only one project.

<sup>96</sup>Commission officials pointed out that, in addition to photographs, they relied on program partners and others to conduct site visits and ensure projects remained on track.

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projects for which they were required.<sup>97</sup> Among the documentation for these 13 projects, 4 contained only a letter that referred to past Labor, Wage, and Residency reports being submitted, while the content of such reports for an additional 3 projects did not meet the Commission's requirements. For example, a grant recipient provided information on the number of employees, place of primary residence, and total payroll earnings for those employed on the project but not on their position, first check date, last check date, and rate of pay per hour—as required by the grant agreement. Similarly, the Commission required periodic meetings, generally semiannually, to discuss lessons learned for an estimated 22 percent of its projects, but we did not find evidence of such meetings occurring in Commission records for any of the 22 such projects in our sample.<sup>98</sup> Having documented policies regarding what reporting requirements are appropriate to include in what types of grants would help ensure the Commission was only requiring those reports it actually needs to effectively monitor grantees.

In addition, prior to his resignation, the Commission's former Inspector General raised several concerns in December 2012 about the Commission's monitoring of certain accounts meant to fund the operation, as well as maintenance and renewal and replacement of projects, including whether the accounts had been created, funded, and used for their intended purpose; and whether any federal dollars were missing.<sup>99</sup> For more information about these accounts, see appendix III.

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<sup>97</sup>The Commission used such reports to require grantees to provide information about the workforce involved in Commission-funded projects, including such things as worker's wages and whether they were residents of Alaska or another state.

<sup>98</sup>A Commission official pointed out that, in the case of construction projects, these meetings may not have occurred semiannually because it may be premature to discuss lessons learned until the end of the project; however, we found no such distinction in the language of these requirements in the grants.

<sup>99</sup>We recently found several concerns regarding the work of the Denali Commission's Inspector General; see [GAO-14-320](#).



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The Commission Does Not Have a Process for Addressing the Findings of Federal Single Audits

The Commission does not have a process for obtaining, reviewing, or acting on the results of federal single audits of its grantees. The Single Audit Act,<sup>100</sup> as amended, was enacted to promote sound financial management, including effective internal control, with respect to federal grant awards administered by nonfederal entities. The act requires nonfederal entities that expend more than a certain amount in a year in federal awards to have a single or program-specific audit conducted by an independent auditor.<sup>101</sup> As the awarding agency, the Commission is responsible for ensuring that audits for the federal awards it makes are completed and reports are received in a timely manner and in accordance with OMB guidance. It is also responsible for issuing a management decision on audit findings within 6 months after receipt of the audit report and ensuring that the recipient takes appropriate and timely corrective action. Among the 113 single audit reports for fiscal years 2001 through 2012 for which the Commission was the oversight agency—generally, the agency providing the predominant amount of funding directly to the recipient—we found that 29 had evidence of a potential problem—in 22 cases with the Commission’s funding specifically, and in 7 cases with funding from other agencies.<sup>102</sup> Commission officials stated that, in some cases, when program staff was aware of one of these instances, they followed up with the grantee, but follow-up did not occur in a systematic manner. Unless the Commission takes steps to resolve the findings of these audits, or at least the ones that are relatively recent, the Commission risks continuing to award funds to grantees who may have inadequate controls over their grant funds.

Under the federal internal control standard for monitoring, managers are to (1) promptly evaluate findings from audits and other reviews, including those showing deficiencies and recommendations reported by auditors and others who evaluate agencies’ operations; (2) determine proper actions in response to findings and recommendations from audits and

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<sup>100</sup>31 U.S.C. §§ 7501-7507.

<sup>101</sup>From 1997 through fiscal years ending prior to January 1, 2004, the threshold for reporting was expending \$300,000 or more in federal awards in a year. In 2003, the threshold was raised to \$500,000 or more in expenditures for fiscal years ending after December 31, 2003. OMB raised the threshold to \$750,000 for single audits of nonfederal entity fiscal years that begin on or after December 26, 2014.

<sup>102</sup>Such potentially problematic findings include an adverse opinion, a qualified opinion, or a disclaimer of opinion on the audit as a whole, as well as specific findings regarding parts of the funding.

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Project and Grant Closeouts  
Have Encountered Sometimes  
Lengthy Delays

reviews; and (3) complete, within established time frames, all actions that correct or otherwise resolve the matters brought to management's attention.<sup>103</sup> Under this standard, monitoring of internal control should include policies and procedures for ensuring that the findings of audits and other reviews are promptly resolved, including the time frames in which the findings of audits and other reviews are to be resolved. However, officials acknowledged that the Commission does not have a policy or process in place for obtaining, reviewing, or acting upon the results of single audits. Without a documented process for ensuring that the findings of audits and other reviews are promptly resolved, the Commission is not likely to take action on the findings of such audits.

Commission officials often did not perform required project and grant closeout steps in a timely manner. As we have previously found, closeout processes can be used for detecting problems that have occurred in areas such as recipient financial management and program operations, accounting for any real and personal property acquired with federal funds, making upward or downward adjustments to the federal share of costs, and receiving refunds that the recipient is not authorized to retain.<sup>104</sup> Further, closeout procedures are intended to ensure that recipients have met all financial requirements, provided final reports, and returned any unused funds. When agencies do not conduct closeout procedures in a timely manner, this increases risk that records will be lost or the grantee's officials may leave or not remember sufficient details, making it more difficult for the agency to recoup unused funds.

Nevertheless, Commission officials closed out about 7 of every 10 projects late. In its grant agreements, the Commission generally requires grant recipients to submit closeout paperwork for a project within 90 days of either the end of the project or the end of the award period, whichever was earlier. However, based on our sample, the grant recipient submitted the closeout paperwork within the required time period for 29 percent of closed projects. Specifically, for the projects in our sample, the median amount of time from the end of the project to the grant recipient's submission of the closeout paperwork was 189 days. Completing project closeouts in a timely manner is important because any unused funds can often be used to fund other projects. In our sample, 24 of the 55 projects

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<sup>103</sup>GAO/AIMD-00-21.3.1.

<sup>104</sup>GAO-11-773T.

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with late closeout reports had unused funds of approximately \$750,000 that sat idle for periods ranging from about 3 weeks to over 5 years.

In addition, until the projects were closed out, the grants that funded them could not be closed out. As we previously found for federal agencies, OMB guidance and agency regulations generally require grantees to submit all financial and performance reports and liquidate all obligations incurred under the grant within 90 days after the completion of the grant.<sup>105</sup> Awarding agencies must then make prompt payments to grantees for allowable reimbursable costs for the grant being closed out. In 2013, Commission officials were actively engaged in closing out grants. From September 2012 to May 2013, Commission records indicate that grants totaling about \$8.7 million in unused funds were closed out, and the funds de-obligated. However, the Commission official leading this effort left the agency in August 2013, and Commission officials indicated that no one took over this effort, although program managers, to the extent they are available, have continued this work. Incomplete and late grant closeouts have led to a substantial amount of unused Commission funds—\$6.5 million as of June 2014—not being put to other uses.<sup>106</sup> About half of these funds were from grants with award periods that ended in 2012 or earlier. Unless the Commission enhances its efforts to close out projects and grants and de-obligates unused but available funds in a timelier manner, taxpayer dollars provided to the Commission may continue to sit idle for excessively long periods of time.

### The Commission Has Not Had a Record Retention Policy in Place

Finally, the Commission has not established a record retention policy as required by federal regulations.<sup>107</sup> This regulation requires agencies to develop record retention policies and obtain approval from the National Archives and Records Administration before implementing the policies, but the Commission did not submit such a draft policy for review until April 2013. As of June 2014, the Commission had not received a decision on the policy; Commission management expected a decision by December 2014.

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<sup>105</sup>GAO, *Grants Management: Action Needed to Improve the Timeliness of Grant Closeouts by Federal Agencies*, [GAO-12-360](#) (Washington, D.C.: Apr. 16, 2012).

<sup>106</sup>Commission officials indicated in September 2014 that they had since expended or de-obligated about \$2 million of these unused funds since June 2014.

<sup>107</sup>36 C.F.R. § 1220.34(g).

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Operating without a record retention policy has led to inconsistencies in how the Commission's records have been treated. Specifically, some records for grants that have been completed and closed out for many years have been retained. For example, among the projects we reviewed, the Commission maintained records for an award with a performance period that began in December 2000 and ended in September 2004, and which was closed out in December 2004.<sup>108</sup> At the same time, according to Commission staff, the Commission does not generally retain documentation related to unsuccessful applications for grants and projects. Moreover, some Commission officials told us that they were directed to dispose of certain records in the past. For example, Commission officials told us that, at the direction of Commission management, they disposed of bank records from project operators—information that was subsequently needed for an Inspector General inspection. According to Commission management, having a record retention policy in place would not have led to retaining these records because, at the time, neither Commission management nor staff understood what the documents were or that they were associated with Commission-funded grants and projects. Once the Commission's former Inspector General, prior to his resignation, identified the bank records as relevant documentation, the Commission began retaining such records. Unless the Commission implements its record retention policy, once it is approved, inconsistent record management is likely to continue in the future.

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## Conclusions

Since its inception in 1998, the Denali Commission has funded numerous energy, health, and infrastructure projects that have improved the lives of many rural Alaskans. The principal conflict-of-interest law prevents commissioners from providing their expert advice and opinions on particular matters that would directly affect the financial interest of their employers. Different structures for the Commission, such as the four options identified, could better leverage commissioners' expertise in the development of the annual work plan.

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<sup>108</sup>In July 2013, we asked Commission officials to refrain from disposing any of their current records for the duration of our review.

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Because the Denali Commission Act does not include holdover or delegation of authority provisions, the Commission has been stymied for significant periods of time after the expiration of a Federal Cochair's term, affecting the Commission's day-to-day operations and the Federal Cochair's statutory responsibilities. Most recently, the Commission was unable to award new grants or submit its annual work plan during a nearly 4-month vacancy in 2014. Without such provisions being enacted into law, the risk remains that the next vacancy in the Federal Cochair position may again bring the Commission to a standstill. Moreover, as the Commission's funding has decreased, administrative expenses have consumed a more significant part of its overall budget—up to 24 percent in fiscal year 2014. Under the existing 5 percent cap on administrative expenditures, it is unlikely that the Commission will be able to conduct essential administrative activities, such as oversight of its existing and new grants portfolio. While this cap was waived in each of the last 10 fiscal years in appropriation laws, unless Congress amends the act to modify or end it, the Commission will lack flexibility to plan and budget for essential administrative activities.

Given the Commission's 90-percent decrease in funding since 2007, it may not be feasible to continue relying on grant making as its primary approach to achieve its statutory purpose. Unless the Commission reexamines how it operates and realigns its approach to better match its limited budget—and clearly articulates this new approach in a strategic plan, as it is required to do every 4 years—the Commission risks falling into obsolescence. Without issuing a new strategic plan that clearly articulates its approach for fulfilling its statutory purpose amidst decreased funding, the Commission may not be prioritizing its operations in a manner that aligns with its current budget situation. In addition, while the Commission has faced numerous and complex legal questions, it has never had a full-time attorney providing it legal advice and support on a routine and consistent basis, which has led to avoidable legal mistakes. Unless the Commission obtains a full-time attorney to provide legal advice and serve as the Commission's designated ethics officer, it may find it difficult to address current and future legal matters and will remain at risk of making costly legal mistakes.

While the Commission has awarded over \$1 billion in grants to help develop the infrastructure and economy of rural communities in Alaska, it has done so without documented policies for how it awards and manages its grants, resulting in inconsistencies in how the Commission awards and monitors grants. Unless the Commission issues such policies, it risks compromising its ability to ensure that grants are awarded properly, clear

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expectations are set and all parties are accountable, and that federal funds are used as intended and in accordance with applicable laws and regulations. In addition, while the federal internal control standard for monitoring requires, among other things, that the findings of audits and other reviews are promptly resolved, the Commission does not have a process for obtaining, reviewing, or acting on the results of federal single audits of its grantees. Without a documented process for ensuring that the findings of federal single audits and other reviews are promptly resolved, the Commission is not likely to take action on the findings of such audits. Moreover, single audits that raised potential problems could inform the Commission's future decisions about awarding grants. Unless the Commission takes action to resolve the findings of these audits, at least the recent ones, it risks continuing to award grants to grantees who may have inadequate controls over grant funds.

Moreover, the Commission made significant progress in 2013 in closing out expired grants with unused funds, but more work remains to be done in this area, with over \$4 million as of September 2014 not being put to other uses. The Commission's closeout procedures are intended to ensure that recipients have met all financial requirements, provided final reports, and returned any unused funds. Failing to close out grants and de-obligate unspent funds in a timely manner means that taxpayer dollars may sit idle, and the Commission has fewer resources to meet its statutory purpose. Finally, although the Commission has submitted a draft record retention policy to the National Archives and Records Administration as required by federal regulation, it must follow through to implement the policy once it is approved. Unless it does so, the Commission may continue to experience problems with inconsistent record management and retention.

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## Matters for Congressional Consideration

To better leverage the commissioners' expertise in the development of the annual work plan, Congress should consider amending the Denali Commission Act, potentially with one of the identified options.

To address barriers to the operation of the Commission, Congress should consider amending the Denali Commission Act to include either a holdover or delegation of authority provision when the Federal Cochair position is vacant.

To allow for greater flexibility in the Commission's operations, Congress should consider amending the Denali Commission Act to modify or end the 5 percent cap on administrative expenditures.

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## Recommendations for Executive Action

To enhance the Commission's operations, we recommend that the Commission's Federal Cochair direct the Commission to consider options for fulfilling the Commission's statutory purpose and finalize that new approach in a new strategic plan.

To address the Commission's legal challenges, we recommend that the Commission's Federal Cochair direct the Commission to obtain a full-time attorney who would provide legal advice, including reviewing contracts and agreements, and serve as the Commission's designated ethics officer.

To improve the Commission's grants management, we recommend that the Commission's Federal Cochair direct the Commission to take the following four actions:

- issue Commission-specific policies for awarding and managing grants;
- establish a documented process for ensuring that the findings of single audits of grantees are promptly resolved and take action to resolve any recent single audits that showed evidence of a potential problem;
- continue efforts to close out grants and projects, including de-obligating unspent grant funds in a timely manner; and
- take steps to consistently manage and retain Commission records, including implementing its record retention policy once it is approved.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Denali Commission and the Department of Commerce for review and comment. Written comments from the Federal Cochair; the State Cochair, representing the views of the other six commissioners; and the Department of Commerce; are reproduced in appendixes IV, V, and VI, respectively. The Federal Cochair concurred with our conclusions and recommendations, and he summarized the Commission's ongoing efforts to address our recommendations. The Federal Cochair also provided technical comments that we incorporated, as appropriate. The other six commissioners of the Denali Commission also concurred with our conclusions and recommendations. The Department of Commerce did not comment on our conclusions and recommendations. The letter from the Deputy Secretary of Commerce reiterated that the Denali Commission is an independent agency.

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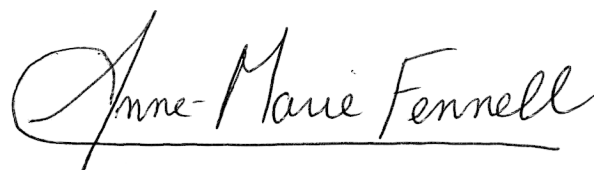
After the draft report was provided for review and comment, we received new and updated information on the ethics issues discussed in the draft report from Commerce, the Denali Commission, and OGE. We updated the ethics section of the report accordingly to reflect this new information. We also updated the draft Matter for Congressional Consideration on the ethics issue to focus it on the question of what is the best statutory framework to better leverage the commissioners' expertise and we deleted the draft Matter for Congressional Consideration on the commissioners' roles and responsibilities.

We discussed these subsequent changes with the Federal Cochair on February 4, 2015. The Federal Cochair concurred with our conclusions and revised recommendations, and he summarized the Commission's ongoing efforts to address our recommendations. The Federal Cochair reiterated the need to obtain clarity on Commerce's responsibilities vis-à-vis the Commission. In addition, we have learned that, consistent with the recommendations in our draft report, the Commission started a new strategic planning effort in January 2015 and has hired a full-time attorney, who began work on January 12, 2015.

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We are sending copies of this report to the appropriate congressional committees, the Denali Commission's Federal Cochair and other commissioners, the Secretary of Commerce, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.



Anne-Marie Fennell  
Director, Natural Resources and Environment



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# Appendix I: Objectives, Scope, and Methodology

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This report examines (1) the challenges, if any, the Denali Commission (Commission) and commissioners face in fulfilling the Commission's statutory purpose and options to address them; (2) the challenges, if any, that have hindered the daily operations of the Commission; and (3) the Commission's policies and procedures for awarding and managing grants and the extent to which grantees and commission officials complied with these policies and procedures. We reported separately on the Denali Commission's Office of Inspector General in September 2014.<sup>1</sup>

To inform our review of all three objectives, we analyzed the Denali Commission Act of 1998, as amended; relevant federal laws; regulations; legislative history; agency guidance; and other documents and information related to the commission's structure and operations. To obtain their views on our objectives, we interviewed Commission officials and staff, including the current federal cochairperson (Federal Cochair) and other Commission officials, as well as a former Federal Cochair and selected former Commission staff; all current commissioners and selected former commissioners; and the attorney assisting the Commission on ethics and certain other legal matters. We also interviewed several stakeholders—parties affected by the Commission and its decisions—including commissioners and the organizations they work for; program partners (generally, state agencies or other entities that receive grants from the Commission and oversee projects funded by those grants); other grant recipients; and residents of rural Alaskan communities. We also analyzed the structure and function of other similar agencies and bodies that provide advice or direction to federal agencies, including the Appalachian Regional Commission, Delta Regional Authority, and fishery management councils, focusing on their organic legislation and conflict-of-interest provisions. To inform our analysis, we also conducted site visits to Anchorage and five selected remote communities in Alaska: Nome, Savoonga, Unalakleet, Ketchikan, and Metlakatla. We selected these communities based on selection criteria that included the number and variety of Commission-funded projects, geographic location, accessibility, and their relative proximity to each other. We visited Nome, Savoonga, and Unalakleet in one trip and Ketchikan and Metlakatla in a second trip. In these communities, we spoke with local officials representing municipal government, tribal entities, and grant recipients, among others, to discuss their experiences working with the Commission.

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<sup>1</sup>[GAO-14-320](#).

To identify and assess specific challenges faced by the Commission and its commissioners in fulfilling the Commission's statutory purpose, we also analyzed appropriation and spending data to determine how the commission's funding and activities have changed over time. We collected and reviewed documents, guidance, and our prior reports related to strategic planning and organizational change. We also analyzed legal opinions; correspondence; and other documents and information related to the role of the commissioners, including the applicability of the principal conflict-of-interest law. To identify possible options for how the Commission can operate in the future, we synthesized information collected from semistructured interviews and e-mails; assessed options presented by similar agencies or commissions; and analyzed relevant evaluations of the Commission. To identify possible options to better leverage the commissioners' expertise, we analyzed laws, regulations, legislative history, legal opinions, correspondence, and other documents and information related to the role of the commissioners, including their status as special government employees and other more recent changes.<sup>2</sup> We also analyzed the structure and function of other similar agencies, such as the Appalachian Regional Commission<sup>3</sup> and the Delta Regional Authority,<sup>4</sup> and bodies that provide advice to federal agencies, such as regional fishery management

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<sup>2</sup>A special government employee is an officer or employee of the executive or legislative branch or an independent agency who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis or a part-time United States commissioner, with or without compensation, for not more than 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a).

<sup>3</sup>The Appalachian Regional Commission is an agency established by statute in 1965 to develop comprehensive and coordinated plans, among other things, to foster the Appalachian region's productivity and growth. The Commission is composed of the governors of the 13 Appalachian states and a federal co-chair, who is appointed by the president and confirmed by the Senate.

<sup>4</sup>In 2000, the Delta Regional Authority was established by statute to develop comprehensive and coordinated plans and programs and approve grants for the economic development of the Delta region, among other things. The Delta Regional Authority is composed of the federal co-chairman, appointed by the President and confirmed by the Senate, and the governors of the eight states in the region. The Delta Regional Authority fosters partnerships throughout the region as it works to improve the Delta economy.

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councils,<sup>5</sup> focusing on their applicable conflict-of-interest provisions to identify possible options for the commissioners. We also interviewed officials from the Office of Government Ethics.

To identify and assess specific challenges that hindered the Commission's daily operations, we also analyzed legal opinions; correspondence; and other documents and information related to, among other things, the position of the Federal Cochair, the role played by agency attorneys, and the supervision of the Inspector General. We also analyzed the authorizing laws for other similar commissions and bodies for when there is a vacancy of the top official, including the Appalachian Regional Commission and the Delta Regional Authority. We collected and analyzed documents related to internal controls, such as risk management, and agency operations. We also interviewed officials from the Department of Commerce (Commerce) and collected and analyzed documents and e-mails related to the relationship between the Commission and Commerce.

To evaluate the Commission's policies and procedures for awarding and managing grants and the extent to which grantees and commission officials complied with these policies and procedures, we selected a random sample of 100 of the approximately 2,349 Commission-funded projects from fiscal years 1999 through 2013. This sample allowed us to make estimates about all Commission-funded projects during this time period. With this probability sample, each member of the study population had a nonzero probability of being included, and that probability could be computed for any member. Each sample element was subsequently weighted in the analysis to account statistically for all members of the population, including those who were not selected. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval. This is the interval that would contain the

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<sup>5</sup>The Regional Fishery Management Councils were established in 1976 by the Magnuson-Stevens Fishery Conservation and Management Act. In addition to federal and state governmental officials, these councils include public members with expertise and experience in commercial and recreational fishing or conservation and management of fishery resources. The councils advise the Secretary of Commerce in developing fishery management plans, among other things.

actual population value for 95 percent of the samples we could have drawn. All percentage estimates from the file review have margins of error at the 95 percent confidence level of plus or minus 10 percentage points or less. We developed a data collection instrument to collect several pieces of data for each project selected. To ensure the reliability of the data we collected, multiple analysts were involved in gathering, entering, and verifying the data in the data collection instrument. First, we obtained documentation related to these projects from the Commission's Project Database System and from a review of the Commission's paper files conducted at the Commission's office in Anchorage in September 2013. We then analyzed these documents to determine the extent to which grantees complied with requirements in the relevant grant agreements and other similar documents. We evaluated this documentation to determine, among other things:

- what reporting was required for each project, including progress reports; Labor, Wage, and Residency reports; financial status reports; and closeout reports, among others;
- the extent to which grantees complied with these reporting requirements, including whether reports were submitted in a timely manner and whether their content adequately satisfied the requirement; and
- whether any delays or other shortcomings in reporting contributed to other problems, such as late closeout reports leading to unused funds sitting idle for a period of time or payments to grantees during periods of inadequate progress reporting.

We followed up with Commission officials to discuss particular aspects of grant requirements and reporting to ensure our understanding was accurate. To assess the reliability of the data in the Project Database System, we interviewed Commission officials and grant managers about the data system and elements, how the system is used, and the method of data input, among other areas. In some cases, a certain amount of judgment was required to ascertain certain aspects of projects, such as the exact start and end date of a project; to mitigate against any uncertainty created by these judgments, all data points that support the analysis presented in this report underwent a confirmation process by a second reviewer. We determined that the data we used were sufficiently reliable for our purposes.

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We conducted this performance audit from May 2013 to March 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Examples of Commission Grant Management Checklists (Corresponds to Fig. 5)

Following are the full-sized, printable versions of the Denali Commission (Commission) grant management checklists included in figure 5 of this report.

## Project Authorization (New and Amended) Processing Checklist

Project Authorization (New and Amended) Processing Checklist

Project Authorization # \_\_\_\_\_

Project Authorization Title \_\_\_\_\_

Award # \_\_\_\_\_ Amendment \_\_\_\_\_

Recipient Organization: \_\_\_\_\_

PA FUNDING AMOUNT \_\_\_\_\_

**PROJECT AUTHORIZATION – Initiation and Internal Processing at project level(outside of GS):**

\_\_\_\_ Grants Management Staff (GMS) - Review Project Authorization Draft from program staff (PS)

\_\_\_\_ GMS reviews and assigns Project Authorization Number (award number, dash, alphabet) and prepares for routing. For Amended PA assign number (award number, dash, alphabet and a number, i.e. XXX-A- 01). Grantees number can be added after the Denali Commission number.

NEW PA	AMENDED PA
____ DC Amount	____ Monetary Amendment
____ Match Amounts (if any)	____ Non-Monetary Amendment
____ Project Narrative	
____ Milestone information	

\_\_\_\_ Complete the PA review, generate final document and routing  
PS, Fed Co-Chair, Finance Spec, Certifying Officer for approval

\_\_\_\_ Move PA from Draft folder to internal processing folder on g-share

\_\_\_\_ Route final PA internally

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**PA - Issued and G-share/DB/Hard file**

\_\_\_\_ After Certifying Officer and Federal Co-Chair approve PA, GMS issues PA

\_\_\_\_ Notify PS of issued PA, PDF copy of the PA to them for advising grantee

\_\_\_\_ Add new project in Database - with the corresponding date in the database matching the date on the PA document

\_\_\_\_ Scan signed PA to the G share /FAA/Internal Processing folder

\_\_\_\_ Attach the scanned/issued PA to project database at award and project level, as well as to GrantSolutions – Award as a grant notes

\_\_\_\_ Move the PA folder from the internal processing folder to the active folder on the G share, FAA, Active Awards as a separate folder with the PA number

\_\_\_\_ **(NEW PA)** - Add PA to the Database, completing contacts, funding, scope, milestones and turn on reporting wizard.

\_\_\_\_ **(AMENDMENTS)** - GMS will make any Amendment changes (as necessary) on the database

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Project Authorization Processing Checklist (5-09).docx 1

**Appendix II: Examples of Commission Grant Management Checklists (Corresponds to Fig. 5)**

**Project Authorization (New and Amended) Processing Checklist**

\_\_\_\_\_ GMS will add all project data into the database to include scope, milestones, contacts, financials and turn on the reporting wizard.

\_\_\_\_\_ GMS will complete the NEW / Amended PA, file signed copy of the PA under the "Agreements" tab and place in the filing basket for the Admin Clerk to file in the file room.

**Note:** Finance Staff will make a copy for the Accounting System when they approve and attach the award document to the relevant purchase order.

Date of PA (newest): \_\_\_\_\_

Completed by: \_\_\_\_\_

Notice of Grant Award (and Post Award) Processing Checklist

Notice of Grant Award (and Post award) Processing Checklist

New Award  Amendment

Award # \_\_\_\_\_ Amendment \_\_\_\_\_

Recipient Organization: \_\_\_\_\_

Project Title: \_\_\_\_\_

DC FUNDING - FY \_\_\_\_ Funding Source \_\_\_\_\_ AMOUNT \_\_\_\_\_

No Year Funds  5 Year Funds

GS – CAN \_\_\_\_\_ Program Area \_\_\_\_\_

Other Funding – Funding Source \_\_\_\_\_ Amount \_\_\_\_\_

Other Funding – Funding Source \_\_\_\_\_ Amount \_\_\_\_\_

TOTAL \_\_\_\_\_

PRE - AWARD – Initiation and Internal Processing in GrantSolutions (GS):

\_\_\_\_ Grants Management Staff (GMS) - Review announcement information from program staff (PS), post announcement, create application kit, direct to organizations designated by PS

\_\_\_\_ GMS reviews pre-award and post-award amendment applications in GS and routes application for final approval by PS and approves for Applicants submittal including: (if necessary, attaches documents not submitted in GS but received from the applicant)

<u>NEW AWARD</u>	<u>AMENDMENT</u>
____ SF 424 Version 2	____ Monetary Amendment
____ Assurances - SF 424b – non-construction	____ Non-Monetary Amendment
____ - SF 424d – construction	_____

\_\_\_\_ Project Narrative

\_\_\_\_ Any items PS hasn't received from recipient to complete the pre-award checklist

\_\_\_\_ Complete all application reviews and send to PS for approval of disposition & funding list

\_\_\_\_ Verifies/Creates funding memo approved by Director of Programs/GMS and advice of allowance issued by Finance Staff

\_\_\_\_ Check CCR, epls.gov and print for file

\_\_\_\_ Create a Brown Award folder with approved documents and create file on the G share drive, FAA, Draft Awards with the same documents.

\_\_\_\_ Check for lessons learned language, match funding language, etc.

\_\_\_\_ Attach Pre-Award Checklist in GS and print for file

\_\_\_\_ Generate draft NGA in GS (budget worksheet, terms and conditions, etc.)

\_\_\_\_ Route draft NGA in GS

\_\_\_\_ Recall (if necessary) Reason \_\_\_\_\_

FAA - NGA Processing Checklist (rev. 2-11).docx



Appendix II: Examples of Commission Grant Management Checklists (Corresponds to Fig. 5)

Notice of Grant Award (and Post award) Processing Checklist

\_\_\_\_ Re-Route draft NGA

AWARD - Issued and G-share/DB/Hard file

- \_\_\_\_ After Certifying Officer and Federal Co-Chair approve NGA, GMS issues award in GS
- \_\_\_\_ Notify PS of issued award/post award amendment, PDF copy of the award to them
- \_\_\_\_ Scan and attach the issued NGA to project database
- \_\_\_\_ Add new award status in Database - "Active" with the corresponding date in the database matching the date of AO signature on the award documents
- \_\_\_\_ Move the folder in the G share, FAA, Draft Awards to the Active Awards and add the Grant Award number to the title, attaching all documentation via a PDF of issued award documents from GS
- \_\_\_\_ (NEW AWARD) - Add AWARD to the Database, completing contacts, funding, resolution(s), scope and performance period.
- \_\_\_\_ (AMENDMENTS) - GMS will make any Amendment changes (as necessary) on the database

- \_\_\_\_ GMS will add all project data into the database to include scope, milestones, contacts, financials and turn on the reporting wizard.
- \_\_\_\_ GMS will complete the NEW AWARD Folder, file one copy of signed Award in folder (brown file folder) under the "Agreements" tab and print any relevant documents for the Admin Clerk to file in the file room.
- \_\_\_\_ On Amendments to Awards, print and place the amended award documents in the filing basket for Admin Clerk to file in the file room and add a pdf of the amendment to the Project Database as an attachment.
- \_\_\_\_ Add award to appropriate spreadsheet by fiscal year funding source (on g-share under spreadsheets)

Note: Finance Staff will make a copy for the Accounting System when they approve and attach the award document to the relevant purchase order.

Date Award/Amendment Signed by AO: \_\_\_\_\_ Certifying Officer \_\_\_\_\_  
Completed by: \_\_\_\_\_

**Financial Assistance Award Close-out Checklist**

Financial Assistance Award CLOSE-OUT Checklist (rev 03-10)

Award # \_\_\_\_\_

Recipient Organization: \_\_\_\_\_

**“Award closeout shall be completed within 90 days of the end of the Award performance period or within 90 days of the completion of the project, whichever is earlier.”**

\_\_\_\_\_

**Report is Submitted: (< 90 days later)**

**PROJECT: Number(s)** \_\_\_\_\_

\_\_\_\_ Recipient submits PROJECT close-out report and Program Staff (PS) approves on Project Database.

Close out Report Date: \_\_\_\_\_ (If more than one project for an award, all project close out reports must be approved or use Multiple Project Close Out Procedures)

\_\_\_\_ PS & GMS review & accept PROJECT close-out report.

\_\_\_\_ GMS Prints a hard copy for the Blue CLOSE OUT Routing Folder (to be placed in the AWARD file after routing to the Finance Staff) and attaches Close Out Report to GrantSolutions Award file as a .pdf under Award Notes.

Report should include:

\_\_\_\_ Close-out narrative report

\_\_\_\_ Financials (capture final other/matching funding in the Database)

\_\_\_\_ Photographs – ensure before, during & after are received

\_\_\_\_ Total Funding Amount to be reduced on the Award \$ \_\_\_\_\_

If funds need to be deobligated – reduce funding at the project level in the Project Database and verify amount to be reduced on the Award (Multiple projects to be deobligated will require an accounting of all expenditures to verify the appropriate amount to deobligate on the Award).

<b>MONETARY CHANGE</b>	<b>NO MONETARY CHANGE</b>
____ GMS Draft NGA	____ Award Expired/No \$ change
to reduce funding in GrantSolutions	NO Draft NGA required let expire in
Routed _____	GrantSolutions

\_\_\_\_ Add award information to Close-out Internal Process spreadsheet on g-share.

*PS will decide on the “Acknowledgement of Support” sign (indoor or outdoor) and advise Val to send out – PS needs to give address info to Front Desk for sending and advise indoor or outdoor sign)*

**(SEE OTHER SIDE FOR FINAL PROCESSING)**

**Appendix II: Examples of Commission Grant Management Checklists (Corresponds to Fig. 5)**

**Financial Assistance Award CLOSE-OUT Checklist (rev 03-10)**

**AWARD:**

- \_\_\_\_\_ In "Status" tab of Project Database, use "Close Out Process" at the AWARD level with Comments stating "Programmatically closed Today's Date. Awaiting Denali Commission internal financial close out. Your name" when there is No Funding Change. *Coordinate and alert Finance Staff. Finance will verify final Financial Status Report, suspend the grantee drawdown account, reconcile, and agree on final payment.*
- \_\_\_\_\_ Close Out Folder (blue) routing: Complete ASAP/Great Plains Financial Accounting Close-out form, printed Close-out report(s) and printed drawdown information from the Project Database. Routing will go to Finance Staff, Administrative Director (if necessary) and return back to GMS for final closure. *(Finance will de-obligate any remaining funds in the accounting system and mark as closed)* Date routed to Finance: \_\_\_\_\_
- \_\_\_\_\_ Close out folder returned to GMS after routing and GMS will initiate the draft NGA to close out any remaining funding on an award. If no funding change, GMS will close out the award file. *(After Draft NGA is approved GMS will deobligate funds in the Project Database to reconcile with Finance's accounting record.)*

**GRANT ADMINISTRATION IN PROJECT DATABASE & AWARD FILE:**

- \_\_\_\_\_ Add award close-out status to project database *(date is the date the Award is closed out by Grants Staff)*
- \_\_\_\_\_ Verify user has no other "Active" projects/awards in the project database. If no other projects and awards, mark recipient user as "inactive" in the contacts table of the Project Database. *(You MUST search Project Database in award and projects by same organization prior to turning off their ability to log in to the Project Database.)*
- \_\_\_\_\_ Print and Add "RED" close out sheet to the physical file, Destroy date is 3 years from the date the award is closed out by Grants Staff. *(print 6 red sheets, one for each section, put in all award file, if multiple project files include the "ORANGE" project close-out sheet)*
- \_\_\_\_\_ **Print** new Dymo Label for Award file showing Award Number and "CLOSED" on the first line and the DESTROY DATE on the 2<sup>nd</sup> line.
- \_\_\_\_\_ **Move** Active award file in G: share to "CLOSED" folder
- \_\_\_\_\_ **Sign** close out documents & routing slip, **file** with this checklist in "Financial" section of file
- \_\_\_\_\_ **Add** award information to close-out spreadsheet
- Initials: \_\_\_\_\_ *Put folder(s) in File basket for filing by Administrative Clerk.*

Date CLOSED: \_\_\_\_\_

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# Appendix III: Denali Commission Oversight of Renewal and Replacement Accounts After Completion of Certain Projects

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In September 2001, the Denali Commission (Commission) passed a resolution outlining new sustainability guidelines for its infrastructure projects and requiring the completion of business plans before construction funding was awarded on most infrastructure projects.<sup>1</sup> To this end, the Commission used a number of different methods to promote sustainability, including the following:

- requiring that grantees develop a business operating plan for the facility’s operator, which outlines how they will successfully operate and manage the facility, prior to receiving construction funding;
- requiring the primary operator of each facility, and the owner if they were not the same entity, to sign a secondary operator agreement, which provides that if the facility is not operated sustainably and in accordance with the business operating plan, and such behavior significantly threatens the long-term economic sustainability of the facility, the Commission has the right to select a new, or secondary operator; and
- requiring that the operator commit to funding the facility through the creation of two enterprise bank accounts, an “operations and maintenance” account and a “renewal and replacement” account, which were to be funded from the revenue generated by selling fuel or electricity and not from the Commission’s grant or other federal agency money.

However, the Commission’s Inspector General, in his Fiscal Year 2012 Second Half report, raised several concerns related to both operation and maintenance and renewal and replacement accounts, including whether the accounts had been created, funded, and used for their intended purpose.<sup>2</sup> In this report, the Inspector General also raised concerns about funds missing from these accounts, which some interpreted as including federal dollars. However, these accounts were not intended to be funded with federal funds, but rather by the revenue generated by selling the electricity produced by the facility or fuel stored in the facility.

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<sup>1</sup>Based on a review of a limited number of projects, we found variation in the terms and conditions of the financial assistance awards, business plans, and secondary operator agreements.

<sup>2</sup>Denali Commission Office of the Inspector General, *Semiannual Report to the Congress, FY 2012—Second Half* (Anchorage, AK: Dec. 4, 2012).

According to the federal cochairperson (Federal Cochair), the Commission has not enforced the requirement for some operators to set aside funds to pay for project renewal and replacement costs and report to the Commission annually on the status of these funds. Likewise, the Commission has not followed up with operators who did not submit this information, and, until the Inspector General's December 2012 report, had not checked on these accounts.<sup>3</sup> After the Inspector General's report, the Commission hired an intermittent employee to review the status of project recipients' renewal and replacement accounts. The employee contacted dozens of operators of bulk fuel facilities and rural power systems funded by the Commission and asked about their accounts. Overall, about half of the operators reported creating such renewal and replacement accounts, although these operators were not required to provide documentation of these accounts. The employee also reviewed Commission records but found little documentation. According to at least one former Commission official, the records that staff had been instructed to dispose of (as discussed earlier) showed that such renewal and replacement accounts existed.

In addition, the Inspector General questioned whether the Commission inadvertently put itself in a position to potentially be held liable for the facilities in perpetuity through its secondary operator agreements. As discussed earlier, questions exist about the secondary operator agreements and other related agreements being valid contracts and, if valid, whether they impose liability on the Commission. At the Federal Cochair's request, the attorney assisting the Commission has researched whether the agreements impose liability on the Commission.<sup>4</sup> Based on the results of his research, commissioners may make a decision on whether to terminate, rewrite, or continue the agreements. According to the Federal Cochair, the Commission has not tried to invoke these secondary operator agreements.

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<sup>3</sup>According to the Federal Cochair, the Commission's former Inspector General, prior to his resignation, undertook this work looking into renewal and replacement accounts at the request of the Commission's Federal Cochair.

<sup>4</sup>The attorney was not asked to and did not research whether the secondary operator agreements and the other related agreements are valid contracts.

# Appendix IV: Comments from the Federal Cochair of the Denali Commission

The report number is now GAO-15-72.



**Denali Commission**  
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October 8, 2014

Anne-Marie Fennell  
Director, Natural Resources and Environment  
US Government Accountability Office  
441 G St, NW  
Washington, DC 20548

Dear Ms. Fennell:

RE: Management Response to GAO Report (14-662) – “*Denali Commission: Options Exist to Address Management Challenges*”

This letter is written to provide a response from Denali Commission (Commission) management to the above referenced Report (14-662). We concur with the referenced Report (14-662) conclusions and recommendations.

More specifically, additional thoughts regarding matters for Congressional consideration are provided below.

1. **Address Commissioner conflict of interest.** We support this consideration. We acknowledge the help and support from the Office of Governmental Ethics, the US Department of Justice, the Office of Management and Budget (OMB), and the US Department of Commerce in working with Commission management and general counsel on this question in 2012/13 and the specific suggestion by Commerce staff to consider the fishery management council ethics model. We note the Government Accountability Office (GAO) concern regarding reduced transparency with this model, however, the 2005 Energy Act (PL 109-58, see Section 356(c)) established a requirement for open Commission meetings. This and other safeguards should insure transparency to the public.
2. **Clarify Commissioners roles and responsibilities.** We support this consideration. We are torn about the current role of Commissioners approving an annual work plan – the Commission is the only one of the seven regional economic development agencies with this statutory requirement. Obtaining approval from the Secretary of Commerce has in the past proven problematic and has delayed the grant approval process (this is not meant to point a finger of blame at the Secretary’s office, but more as an observation that the process is inherently lengthy). On one hand, a principle foundation for the Federal government is the concept of checks and balances whether between the three branches of government or even within the Executive Branch. Secretary approval of the annual work plan is an appropriate check on the ultimate distribution of federal funds, and should partially address the transparency question raised with the fishery management council

This Matter for Congressional Consideration has been deleted.

**Management Response to GAO Report (14-662)  
October 8, 2014**

Page 2

ethics model. Yet scheduling the work plan process including Commissioner approval, then Federal Register publication, then Secretary approval can and has pushed the annual grant making process right to the end of the fiscal year. In FY2011 Congress rescinded prior year unobligated funding totaling \$15M from the Commission. We are fearful that extended Secretary approval may lead to a similar situation in which appropriated funds are not obligated and carried forward into the next fiscal year and that Congress would again rescind these funds.

3. **Federal Co-chair Holdover or delegation authority.** We support this consideration. Perhaps both should be considered. If only one option were to be selected we suggest that the delegation authority would address all Federal Co-chair vacancies, whereas the holdover option only addresses when a Federal Co-chair's term has expired.
4. **5-percent cap on administrative expenses.** We support this consideration. We note the GAO recommendation for a 5-year strategic plan, yet on page 15 of the subject report GAO notes that "it is unlikely that the Commission will be able to realistically budget for essential administrative activities as part of its strategic or work planning process" without eliminating the 5-percent cap.

Regarding matters for Executive action:

1. **Fulfill the Commission's statutory purpose and finalize that new approach in a new strategic plan.** We support this recommendation. The Commission this summer entered into a shared services agreement with the US Department of the Interior to access their General Services Administration contractor – The Performance Institute. The Institute provides technical assistance to federal agencies in the development of strategic planning processes. Prior to executing this agreement this matter was discussed with OMB and they stated their support of this action. It is anticipated that this work will begin in earnest in the first quarter of FY2015 with Commission staff and Commissioners.
2. **Obtain a full-time attorney.** We support this recommendation. An advertisement for a general counsel has closed and an overwhelming number of applications received. We expect that a general counsel will be hired in the first quarter of FY2015.
3. **Improve grants management.** We support the four separate recommendations.
  - a. **Issue Commission-specific policies for awarding and managing grants.** We have scheduled a senior OMB staffer who worked on the consolidation of grants circulars into the uniform guidance document to come to Anchorage (October 14, 2014) to work directly with Commission staff on developing an agency-wide policy as well as provide training to our program partners on the uniform guidance document.
  - b. **Establish a documented process for ensuring the findings of single audits are promptly resolved.** We support this recommendation.
  - c. **Continue efforts to close out grants and projects.** Staff is currently working on close-outs and we anticipate that in the first quarter of FY2015 many will be closed out – with a focus on projects with remaining positive balances. We will

**Management Response to GAO Report (14-662)**  
**October 8, 2014**

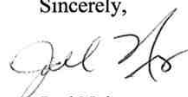
**Page 3**

note that the \$15M rescission in FY2011 included more than half of the funds from closed out projects. As a result of this experience, the Commission does not close out projects and grants in the fourth quarter of the fiscal year, but we strive to close out in the first two quarters so that the agency has sufficient time to obligate these funds to new projects.

- d. Record retention policy. As noted in the report, we have been actively working with the National Archives and Records Administration on a records retention policy and we will immediately implement the procedures once approved.

Lastly, we wish to acknowledge the hard work and professionalism exhibited by you and your staff in the course of researching and drafting the referenced Report (14-662). It has been our pleasure to work with you and your agency on this matter.

Sincerely,



Joel Neimeyer  
Federal Co-Chair  
Denali Commission



# Appendix V: Comments from the Other Denali Commission Commissioners, Consolidated by the State Cochair

The report number is now  
GAO-15-72.



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October 3, 2014

Anne-Marie Fennell  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Ms. Fennell:

This letter provides a response from commissioners to GAO Report (14-662); "Options Exist to Address Management Challenges." It is signed by the State Co-Chair on behalf of all commissioners. The make-up of the Commission includes both federal and state governments, the University of Alaska, Alaska General Contractors, the American Federation of Labor-Congress of Industrial Organizations, Alaska Municipal League and the Alaska Federation of Natives.

We concur with the report conclusions and recommendations. The report highlights the improvements in the lives of many rural Alaskans as a result of Denali Commission's investment in numerous energy, health, and infrastructure projects. However, the report also notes that the effectiveness of the agency is limited by a number of factors including: the conflict-of-interest law that applies to commissioners; the need to clarify commissioner's roles and responsibilities; a need for provisions to ensure work continues during Federal Co-chair transition periods; a need for a new strategic plan that articulates how the agency will fulfill its statutory purpose in light of reduced funding; a need for help with complex legal questions; the need to improve grant management processes.

While some of these items require congressional consideration, several can be addressed by the Federal Co-Chair and commissioners.

Commissioners concur with the following specific recommendations:

- Need to develop a new strategic plan that reflects the Commission's statutory responsibilities and current funding levels. Commissioners have begun to identify strategies that leverage additional funding and resources and address Alaska's unique needs.
- Obtain a full-time attorney to provide legal advice, contract review, and serve as the Commissioner's ethics officer. The Federal Co-Chair initiated this task upon his reappointment.
- Develop Commission-specific grant award and management policies; establish a process to resolve audit findings on grantees; close out grants and de-obligate funds in a timely manner; and develop and implement record management and retention policies.

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**Appendix V: Comments from the Other Denali  
Commission Commissioners, Consolidated by  
the State Cochair**

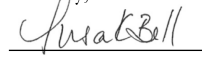
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**Commissioner Response to GAO Report (14-662)  
October 3, 2014**

**Page 2**

We appreciate the professionalism exhibited in the course of researching and drafting the report (14-662). It has been our pleasure to work with you and your agency on this matter.

Sincerely,



Susan Bell  
State Co-Chair  
Commissioner, Alaska Department of Commerce,  
Community and Economic Development

# Appendix VI: Comments from the Department of Commerce

The report number is now  
GAO-15-72.



**THE DEPUTY SECRETARY OF COMMERCE**  
Washington, D.C. 20230

September 24, 2014

Ms. Anne-Marie Fennell  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Ms. Fennell:

The Department appreciates the opportunity to comment on the U.S. Government Accountability Office (GAO) Draft Report entitled, "*Denali Commission: Options Exist to Address Management Challenges*" (GAO-14-662). Although the draft does not direct any of its recommendations to the Department itself, we would like to address several points:

- By way of update, on September 3, 2014, the Economic Development Administration (EDA), on behalf of the Department, approved the Denali Commission's fiscal year (FY)14 Annual Work Plan.
- The Denali Commission has informed EDA that it is in the process of hiring a General Counsel. The Department supports the Commission's efforts to obtain full-time legal services, essential for effective management and oversight of its grants and day-to-day ethics compliance.
- Commission management has told GAO that they "do not always know what support activities Commerce is responsible for providing, or allowed to provide, to the Commission." As we have expressed on a number of prior occasions, to Commission management as well as to GAO and Congress, the Denali Commission is an independent entity and as such, the Denali Commission Act of 1998 (Act) is quite clear on the narrow scope of the Department's role in Commission activities. Outside of our discrete, statutory responsibilities, and consistent with Section 305(a) of the Act authorizing but not requiring other Federal agencies to make personnel and services available to the Commission, the Department is always willing to consider requests from the Commission to provide needed resources and evaluate whether the arrangement would be feasible and cost-effective.

Thank you for GAO's work on this report. If you have any questions, please contact me or Margaret Cummisky, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

A handwritten signature in black ink, appearing to read "B. H. Andrews", with a long horizontal stroke extending to the right.

Bruce H. Andrews  
Deputy Secretary of Commerce

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anne-Marie Fennell, (202) 512-3841 or [fennella@gao.gov](mailto:fennella@gao.gov).

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## Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm (Assistant Director), Carolyn Blocker, Mark Braza, John Delicath, Justin Fisher, Stuart Kaufman, Armetha Liles, Josh Ormond, Christine San, Nico Sloss, Jeanette Soares, Kiki Theodoropoulos, and Tama Weinberg made key contributions to this report.

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