

Congress of the United States

Washington, DC 20515

September 23, 2013

The Honorable Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Ms. Burwell:

The Senate Subcommittee on Financial and Contracting Oversight and the House Committee on Oversight and Government Reform have learned that the Denali Commission plans to apply a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to the Denali Commission, which, at a minimum, has the appearance of impairing the independence of the Denali Commission's Office of Inspector General.¹

In a letter sent to you dated June 5, 2013, the Commission announced that—pursuant to Dodd-Frank—it intended to change the “entity head of the Denali Commission from the Federal Co-Chair to the Commissioners for general supervision of the agency’s Inspector General.”² The Commission’s decision to apply section 989B of Dodd-Frank results in the Inspector General reporting directly to the Commission instead of the Federal Co-Chair.

The change in reporting policy violates the spirit of the Dodd-Frank provision. According to the Government Accountability Office, section 989B of Dodd-Frank intended to amend the Inspector General Act to enhance the independence of Inspectors General in designated federal entities (DFEs) with governing boards or commissions. It sought to protect the Inspector General by placing it under the supervision of the entire board and requiring a two-thirds vote to remove the Inspector General. Prior to this protection, most DFE Inspectors General reported to, and could be removed by, the individual serving as head of the DFE.³ In this case, however, subjecting the Denali Commission Inspector General to control by the board actually undermines the Inspector General’s independence. The Denali Commission is best described as a commission of beneficiaries, not a governing board or commission as intended by the law. The majority of the commissioners either directly receive funding from the Denali Commission, or represent those who do. Therefore, if the Commission’s decision is allowed to stand, Mr. Marsh will be forced to report to and audit his supervisors.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, Sec. 989B(1)(A).

² Letter from Susan Bell, Commissioner, Alaska Dep’t of Commerce, et al. to Sylvia Matthews Burwell, Director, OMB (June 5, 2013).

³ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-770, INSPECTORS GENERAL: REPORTING ON INDEPENDENCE, EFFECTIVENESS, AND EXPERTISE (2011).

Due to the unique structure of the Denali Commission, the power to oversee the Commission's Inspector General should remain solely with the Federal Co-Chair. OMB could resolve this issue by publishing the DFE list, which the agency is statutorily required to produce annually, and thus clarify the reporting structure for the Denali Commission's Inspector General. OMB, however, has not published the DFE list since before the passage of Dodd-Frank.

We are concerned that the Denali Commission Office of Inspector General is in danger of losing its independence, which is vital to effective oversight. The change in the reporting structure restricts the Denali Commission Inspector General's ability to prepare and submit a mandatory annual independent financial audit required by the Office of Management and Budget.⁴ As Mr. Marsh has written to OMB, "a transfer of the inspector general's reporting, budget, and tenure to a board of grantees would seem to convert the function into an internal auditor—versus the independent one envisioned by the Inspector General Act."⁵

We are also concerned that the Commission may have taken this action to weaken the Office of the Inspector General. The Commission made its decision to change the reporting structure shortly after Inspector General Marsh submitted a highly-critical draft Semi-Annual Report to the Federal Co-Chair for comment in May 2013.

OMB has a responsibility to resolve this confusion and to ensure that the Inspector General can carry out his oversight responsibilities without any impediments to his independence. We request that OMB provide formal guidance by responding in writing to both the Inspector General and the Denali Commission. We also request that OMB publish, without any additional undue delay, the List of Designated Federal Entities in the Federal Register, reflecting the appropriate amendments from the Dodd-Frank Act. We also request that you provide a joint briefing on these issues to Committee and Subcommittee staff by October 1, 2013.

The jurisdiction of the Senate Subcommittee on Financial and Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 64 (113th Congress). The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The Committee also has jurisdiction over the community of federal inspectors general.

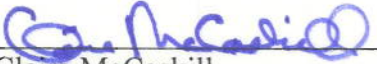
⁴ See OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*.

⁵ Letter from Mike Marsh, Inspector Gen., Denali Comm'n, to Michael Wetklow, Branch Chief, OMB (June 26, 2013).

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If you have any questions about this request, please contact Jessica Donlon or Jennifer Barblan of Chairman Issa's Staff at (202) 225-5074 or Sarah Garcia or Charlie Moskowitz of Chairman McCaskill's staff at (202) 224-2627. Thank you for your attention to this matter.

Sincerely,



Claire McCaskill
Chairman
Subcommittee on Financial
and Contracting Oversight
U.S. Senate

Darrell Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

cc: The Honorable Ron Johnson, Ranking Member
Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
U.S. Senate

The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives

Mr. Mike Marsh, Inspector General
Denali Commission