



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

December 2, 2013

The Honorable Claire McCaskill
Chairman
Homeland Security and Government Affairs
Subcommittee on Financial and Contracting Oversight
United States Senate
Washington, D.C. 20510

Dear Chairman:

Thank you for your letter of September 23, 2013, to the Office of Management and Budget (OMB) Director Sylvia M. Burwell regarding the Denali Commission's implementation of amendments to the Inspector General Act (IG Act) made in Section 989B of the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). I am responding on her behalf.

On June 5, 2013, the Denali Commission sent a letter to OMB transmitting the 2013 (First Half) Semi-Annual report from its Inspector General. In the letter, signed by all seven members (including the Federal Co-Chair), the Denali Commission stated it was transmitting this report as the head of a designated Federal entity. The letter cited that the Dodd-Frank Act amended the Inspector General Act by changing the entity head of the Denali Commission from the Federal Co-Chair to the Commissioners for general supervision of the agency's Inspector General. Your letter requested that OMB provide clarification to the Inspector General and the Denali Commission regarding who is the designated Federal entity, and publish an updated List of Designated Federal Entities.

In response to your letter, and to the similar concerns that the Denali Commission's IG expressed, OMB reviewed the IG Act and, specifically, the amendments that Section 989B of the Dodd-Frank Act made to Section 8G(a)(4) of the IG Act. As part of our analysis, we also reviewed the legislative history of these amendments. In addition, we consulted with the Department of Justice (DoJ). For the reasons set forth below, based on this review and consultation, we determined that the seven members of the Denali Commission (which include the Federal Co-Chair) are the "head of the designated entity" rather than the Federal Co-Chair. DoJ concurs in this conclusion.

Section 989B of the Dodd-Frank Act amended the IG Act to state that "the term 'head of the designated Federal entity' *means the board or commission of the designated Federal entity.*" Under the Denali Commission Act of 1998, Congress stated that "[t]here is established a commission to be known as the Denali Commission (referred to in this title as the 'Commission')," and "[t]he Commission shall be composed of 7 members." The application of the IG Act (as amended by Section 989B), with reference to the statute that established and governs the Denali Commission, leads to the conclusion that the "head of the designated Federal entity" is the 7-member commission. Further, while Section 989B added six additional exceptions to the general rule regarding who is the "head of the designated Federal

agency” (in paragraphs (C) through (H) of Section 8G(a)(4)), no exception was added for the Denali Commission, and thus it remains subject to the general rule. We also note that for the three regional commissions that Congress designated as “establishments” under the IG Act (which are the Southeast Crescent Regional Commission, the Southwest Border Regional Commission, and the Northern Border Regional Commission), the IG Act specifies in Section 12(1) that it is the “the Federal Cochairpersons” who are the “head of the establishment.” The IG Act does not include such a provision for the Denali Commission.

Your letter also raised concerns about the continued independence of the IG for the Denali Commission. We agree with you on the importance of preserving the IG’s independent role under the IG Act. In this regard, while it is the case that – as a result of the Dodd-Frank amendments – the “head of the designated entity” is now the 7-member commission rather than the Federal Co-Chair, there is no change in the Denali IG’s independent role under Section 8G(d)(1) of the IG Act. It continues to be the case that the Denali IG “shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity.” Moreover, it continues to be the case that “the head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.” This includes “any audit or investigation” that the Denali IG conducts *with respect to the head of the designated Federal entity*. In addition, OMB consulted with the Government Accountability Office (GAO) with respect to the concerns expressed about the continued independence of the Denali IG. GAO advised OMB that its Government Auditing Standards, which are applicable to the Denali Commission, provide specific safeguards to help protect against threats to an IG’s independence.

OMB intends to publish the *List of Designated Federal Entities*, which was prepared in consultation with GAO (in accordance with section 8G of the IG Act), in December. This List will reflect the amendments to the IG Act that were made by the Dodd-Frank Act. OMB will transmit the List to the Federal Register for publication, and provide you with a copy of the list when it is transmitted.

Thank you again for bringing your concerns to our attention. If you or your staff has any questions, please do not hesitate to call me at (202) 395-4790.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Sarri', is written over a horizontal line.

Kristen J. Sarri
Associate Director for Legislative Affairs