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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

## Decision

**Matter of:** Denali Commission—Fiscal Year 2011 Rescission

**File:** B-322162

**Date:** September 19, 2011

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### DIGEST

Section 1477 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, rescinds \$15 million of the unobligated balance of amounts appropriated to the Denali Commission in fiscal year 2010 or earlier. If the Commission is currently unable to satisfy the full amount of the rescission, the Commission must use deobligated balances as they become available until it has rescinded the full \$15 million specified by section 1477.

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### DECISION

The Inspector General of the Denali Commission requests a decision under 31 U.S.C. § 3529(a) regarding the application of section 1477 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and what actions the Commission might take in order to comply with the rescission enacted in section 1477. Pub. L. No. 112-10, Div. B, title IV, 125 Stat. 38, 131 (Apr. 15, 2011). Letter from Inspector General, Denali Commission, to Managing Associate General Counsel, GAO, June 17, 2011 (Request Letter). Section 1477 applies to the unobligated balance of amounts appropriated to the Commission in fiscal year 2010 or earlier. As explained below, section 1477 constitutes permanent law. If the Commission is currently unable to satisfy the full amount of the rescission, the Commission must use deobligated balances as they become available, even if in subsequent fiscal years, until it has rescinded the full \$15 million specified by section 1477.<sup>1</sup>

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<sup>1</sup> Our practice when issuing decisions is to obtain the views of the relevant agency in order to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). In addition to information the Inspector

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## BACKGROUND

Congress established the Denali Commission as a federal agency in the Denali Commission Act of 1998. Pub. L. No. 105-277, §§ 301–309, 112 Stat. 2681-637 to 2681-641 (Oct. 21, 1998), *as amended*.<sup>2</sup> The Commission operates exclusively in, and for the benefit of, the State of Alaska for the purposes of: (1) delivering the services of the federal government in the most cost-effective manner practicable by reducing administrative and overhead costs; (2) providing job training and other economic development services in rural communities; and (3) promoting rural development, providing power generation and transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs. *Id.* § 302. The Commission executes its mission in this regard by making grants of federal funds consistent with its statutorily required annual work plan, described below. *Id.* § 305(d); *see also* Request Letter.

The Commission has seven Commissioners. Six Commissioners are, by statute, officials of the State of Alaska or Alaska organizations. *Id.* § 303(b). The seventh Commissioner is a federal official who serves as the Federal Co-chair and is appointed by the Secretary of Commerce to a four-year term. *Id.* § 303(b)(2)(B); § 303(c).

The Commissioners' statutory role is to propose annually a work plan that addresses rural and infrastructure development and job training needs. *Id.* § 304(a). The Commission solicits project proposals from local governments and other entities for the Commissioners' consideration in developing the work plan. *Id.* The Commissioners submit to the Federal Co-chair a report outlining their proposed plan and suggesting funding priorities. *Id.* The Federal Co-chair publishes the proposed work plan in the Federal Register for public comment. *Id.* § 304(b). Not later than 30 days after the end of the public comment period, the Federal Co-chair approves, disapproves, or partially approves the work plan. *Id.* The Commissioners revise and resubmit the work plan as necessary. *Id.* Once the Federal Co-chair approves the work plan, the Commission, acting through the Federal Co-chair, may award grants and make payments necessary to carry out the plan. *Id.* § 305(d).

To finance the grants, the Commission generally receives no-year appropriations, with amounts remaining available until expended. *See, e.g.,* Energy and Water

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General provided in the request letter, the Commission provided us with a letter the Federal Co-chair sent to the Office of Management and Budget on June 17, 2011, requesting clarification regarding section 1477 and containing additional factual information. Federal Co-chair Letter to OMB.

<sup>2</sup> *See* 42 U.S.C. § 3121 note.

Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, title IV, 123 Stat. 2845, 2877 (Oct. 28, 2009) (“For expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses, \$11,965,000, to remain available until expended. . .”). Section 1477 of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, provides that “[o]f the unobligated balances from prior year appropriations available for ‘Independent Agencies, Denali Commission’, \$15,000,000 is rescinded.” Pub. L. No. 112-10, div. B, title IV, § 1477, 125 Stat. 38, 131 (Apr. 15, 2011). On April 15, 2011, the date section 1477 was enacted, the Commission’s unobligated balance of prior year appropriations was \$1,187,098. Federal Co-chair Letter to OMB. The Federal Co-chair directed Commission staff to return this amount to the Treasury in accordance with section 1477. *Id.*

## DISCUSSION

The Inspector General has asked for our views on the scope of section 1477 with respect to the Commission’s existing grant obligations and what actions the Commission might take in order to comply with the \$15 million rescission enacted in section 1477. When construing a statute, the starting point is the language of the statute, the words of which are the primary vehicle for Congress to express its intent. *See Aldridge v. Williams*, 44 U.S. (3 How.) 9, 24 (1845). It is the goal of statutory construction to determine and give effect to the intent of the enacting legislature. *See Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975); *United States v. American Trucking Ass’ns, Inc.*, 310 U.S. 534, 542 (1940). If the meaning of the statute is clear from its language, that meaning is applied without further inquiry; this is known as the plain meaning rule. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–341 (1997).

There are three elements to the rescission enacted by section 1477. First, section 1477 enacts a rescission of “prior year appropriations available for ‘Independent Agencies, Denali Commission.’” Clearly, with the phrase “prior year appropriations,” the rescission targets amounts enacted before fiscal year 2011; by its terms, section 1477 does not rescind amounts from appropriations enacted in fiscal year 2011 or subsequent fiscal years.

Second, section 1477 rescinds amounts from the Commission’s “unobligated balances.” The unobligated balance is that portion of the appropriation not yet obligated for an authorized purpose.<sup>3</sup> GAO, *A Glossary of Terms Used in the*

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<sup>3</sup> An agency incurs an obligation when it makes a definite commitment that creates a legal liability on the part of the government or takes an action that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. *See* B-300480, Apr. 9, 2003; GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 70. When the Federal Co-chair signs a grant award, the Commission incurs a legal

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*Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 72. In the case of no-year appropriations like those received by the Commission, unobligated balances are carried forward from one fiscal year to the next until obligated or specifically rescinded by law. *Id.* According to the Commission, as of the date of the rescission's enactment, the unobligated balance of prior year appropriations was \$1,187,098. Federal Co-chair Letter to OMB. The Commission properly returned this amount to the Treasury in accordance with section 1477.

Third, section 1477 enacted a rescission in the amount of \$15 million. To date, the Commission has returned only \$1,187,098, a difference of \$13,812,902. Agencies are expected to give maximum possible effect to congressional intent expressed in legislative language. See B-220682, Feb. 21, 1986; B-193282, Dec. 21, 1978. Accordingly, we look at actions that may be available to the Commission for the purpose of giving maximum effect to Congress's rescission of \$15 million. Possible actions include the deobligation of unneeded grant funds, adjusting recorded obligations by substituting fiscal year 2011 funds for prior-year appropriations to free up prior-year balances for rescission, and the cancellation of grants.

It is not unusual for an agency to deobligate unneeded grant funds in the regular grant close-out process. As part of its grant management responsibilities, the Commission closes out each grant at the end of the grant period. See OMB Circular No. A-102, *Grants and Cooperative Agreements with State and Local Governments*, § 3(a) (Aug. 29, 1997); OMB Circular No. A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*, subpart D, § 71 (Sept. 30, 1999). Generally, within 90 days after the end of the grant period, a grantee submits all financial, performance and other reports as required by the terms and conditions of the award. OMB Cir. No. A-110, at § 71(a). The grantee must refund any balances of unused award money, if any, that the grantee is not authorized to retain. *Id.*, at §§ 71(b), 71(d). In this regard, the Commission must apply to the rescission all amounts appropriated in fiscal year 2010 or earlier that it had obligated to grants but that it deobligates as a result of the regular close-out process of existing grants.<sup>4</sup>

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obligation. See B-316372, Oct. 21, 2008 (Denali Commission incurred a \$400,000 obligation when it transmitted a notice of grant award to the Alaska Department of Commerce).

<sup>4</sup> No-year moneys deobligated as a result of grant close-outs are treated as unobligated balances of the appropriation that had been obligated. See *generally*, B-211323, Jan. 3, 1984; B-200519, Nov. 28, 1980; 40 Comp. Gen. 694, 696 (June 14, 1961).

The Commission must apply deobligated grant balances from prior year appropriations to the \$15 million rescission, regardless of whether grant close-out occurs in fiscal year 2011 or beyond. Although section 1477 was enacted in an appropriations act, section 1477 is permanent. Typically, annual appropriations act provisions are presumed to be effective only for the fiscal year covered by the act because appropriations acts are, by their nature, nonpermanent legislation. B-319414, June 9, 2010; 31 U.S.C. § 1301(c). However, a provision in an appropriations act will be considered to be permanent if the statutory language or the nature of the provision makes clear that Congress intended the provision to be permanent. B-319414; B-309704, Aug. 28, 2007; B-288511, Aug. 22, 2001. Congress, of course, has the power to enact permanent legislation in an appropriations act. See *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 440 (1992).

While the clearest indication that Congress intended a provision to be permanent is the presence of “words of futurity,” that is not the only indication of permanence. B-309704. In B-319414, we concluded that an appropriations act provision requiring Amtrak to develop and implement certain guidance<sup>5</sup> was permanent even though it included no words of futurity. We held that the prospective character of the language indicated an intention of permanence, as well as the fact that the provision did not restrict the use of appropriations enacted in the act. We noted that to read the provision as expiring at the end of the fiscal year could create the absurd result of Amtrak never having to develop guidance if it failed or neglected to do so by the end of the fiscal year.

Similarly, we view the language of section 1477 as permanent in nature. It is not a restriction on the use of the appropriations enacted in the appropriations act; rather, it requires the Commission to take a specific substantive action, *i.e.*, rescind \$15 million of unobligated balances from prior year appropriations. Further, understanding that at present the Commission has been able to return only \$1,187,098 to the Treasury, we are unwilling to interpret section 1477 as expiring at the end of this fiscal year when there apparently are opportunities for ensuring the rescission of the entire \$15 million beyond the end of fiscal year 2011.

Another action that may be available to the Commission to satisfy the rescission is grant cancellation. The Commission may be able to recoup deobligated grant amounts if an award is terminated in whole or in part. See OMB Circular A-110, at § 61(a)(2). However, both parties must agree on the conditions of termination, including the effective date and how much of the award is to be terminated. *Id.* The Commission indicated that a subset of the \$15 million may be recoverable through cancellation of some existing grants. Request Letter. We defer to the Commission’s discretion regarding the appropriateness of canceling existing grants. We do not

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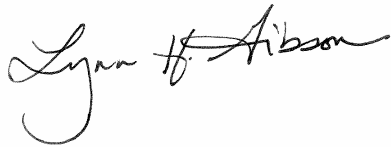
<sup>5</sup> Pub. L. No. 111-117, div. A, title I, § 159(b)(1), 123 Stat. 3034, 3061 (Dec. 16, 2009).

view the language of section 1477 as compelling the Commission to cancel grants and deobligate amounts from existing, properly incurred grant obligations. The Commission's work plan is, of course, a consideration in assessing the propriety of canceling any properly awarded grant. It is through the work plan process that the Commission identifies programmatic priorities.

The Commission also asked whether it could adjust its grant obligations by substituting funds appropriated in fiscal year 2011 for funds appropriated in prior fiscal years. The Commission advises us that by deobligating amounts of prior year appropriations awarded to grants in early fiscal year 2011, prior to the enactment of the rescission on April 15, 2011, it will free up prior year appropriations to help meet the \$15 million rescission. Telephone Conversation with Chief Financial Officer, Denali Commission (Sept. 7, 2011). Under these circumstances, we have no legal objection to adjusting those obligations by deobligating the prior year amounts and substituting appropriations enacted in fiscal year 2011. The Commission would then apply the amounts deobligated in this manner to the rescission.

#### CONCLUSION

Section 1477 imposes an affirmative requirement on the Commission to rescind \$15 million of unobligated balances from appropriations enacted in fiscal years 2010 or earlier. If the Commission is currently unable to satisfy the \$15 million rescission, it must rescind deobligated, prior year amounts as they become available, even if in a subsequent fiscal year.

A handwritten signature in cursive script that reads "Lynn H. Gibson". The signature is written in black ink and is positioned above the typed name and title.

Lynn H. Gibson  
General Counsel