

October 2004

# U.S. COMMISSION ON CIVIL RIGHTS

## Management Could Benefit from Improved Strategic Planning and Increased Oversight





Highlights of [GAO-05-77](#), a report to congressional committees

## U.S. COMMISSION ON CIVIL RIGHTS

# Management Could Benefit from Improved Strategic Planning and Increased Oversight

### Why GAO Did This Study

The Chairmen of the Senate and House Committees on the Judiciary asked GAO to determine (1) the extent of the U.S. Commission on Civil Rights' compliance with the requirements of the Government Performance and Results Act (GPRA) of 1993, (2) what federal oversight is provided to the Commission, and (3) the status of the implementation of recommendations from GAO's past reviews of the Commission.

### What GAO Recommends

To enhance oversight of the Commission, the Congress should consider legislation directing the Commission to obtain the services of an existing Inspector General.

To strengthen the Commission's management practices, GAO recommends that the Commission (1) update its strategic plan and ensure that its performance plans and reports include all elements required under GPRA; (2) implement OPM's and GAO's recommendations; and (3) seek the services of an existing Inspector General to conduct necessary audits and investigations.

In responding to our draft report, the Commission did not comment on our recommendations and disagreed with most of our findings and conclusions. We continue to believe that our findings, conclusions, and recommendations are sound and necessary for strengthening the Commission's management practices.

[www.gao.gov/cgi-bin/getrpt?GAO-05-77](http://www.gao.gov/cgi-bin/getrpt?GAO-05-77).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Bob Robertson at (202) 512-9889 or [robertsonr@gao.gov](mailto:robertsonr@gao.gov).

### What GAO Found

The U.S. Commission on Civil Rights—an independent federal agency that monitors and reports on the status of civil rights in the United States—has not fully complied with the requirements of GPRA. Under this act, agencies are required to submit strategic plans and annual performance plans that detail their long-term and annual goals as well as information on how they plan to meet these goals. GPRA also requires agencies to submit annual performance reports that provide information on their progress in meeting the goals. However, the Commission has not updated or revised its strategic plan since 1997. Without revisiting its strategic goals, the Commission lacks a firm basis on which to develop its annual goals and evaluate its performance. In addition, its most recent annual performance plan and annual performance report contain weaknesses that limit the agency's ability to effectively manage its operations and communicate its performance. For example, the performance plan does not discuss the Commission's strategies or resources for achieving its goals, does not provide budgetary information for its programs, and does not provide performance indicators for some annual goals. Similarly, the performance report does not account for the Commission's performance for many of the annual goals set forth in its performance plan and does not provide plans, schedules, or recommendations for addressing each of the Commission's unmet goals.

The Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) have provided oversight for the Commission's budgetary and human capital operations in recent years. OMB's oversight has focused on the Commission's budget requests and GPRA plans and reports. OPM conducted two reviews of the Commission's human capital management systems in the 1990s and made recommendations for improvement, including improvements to its grievance and performance appraisal systems. Although the Commission has implemented some of OPM's earlier recommendations, it has not implemented five of six broader, systemic recommendations made in 1999 for improvement to its human capital management systems. Unlike many other executive agencies, the Commission does not have an Inspector General to provide oversight of its operations beyond OMB and OPM.

GAO has conducted several reviews of the Commission's management operations in recent years. The Commission took some actions in response to the recommendations in GAO's 1994 and 1997 reports. However, the Commission has not implemented three of the four recommendations in GAO's October 2003 report for improving the agency's management and procurement practices.

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## **Abbreviations**

GPRA	Government Performance and Results Act of 1993
HRM	human resource management
OMB	Office of Management and Budget
OPM	Office of Personnel Management

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United States Government Accountability Office  
Washington, DC 20548

October 8, 2004

The Honorable Orrin G. Hatch  
Chairman, Committee on the Judiciary  
United States Senate

The Honorable F. James Sensenbrenner, Jr.  
Chairman, Committee on the Judiciary  
House of Representatives

The U.S. Commission on Civil Rights was established as an independent, bipartisan, fact-finding federal agency to monitor and report on the status of civil rights in the United States. Since its inception in 1957, the Commission has worked on critical civil rights issues, including racial segregation, impediments to voting rights, and the debate on federal affirmative action programs. In recent years, the Congress has requested that we assess the adequacy of the Commission's management practices and procedures. In 1994, we reported problems identified in the Commission's handling of travel activities and made recommendations for specific actions.<sup>1</sup> In a 1997 study of the Commission, we found numerous management and operational issues<sup>2</sup> and, in October 2003, we found that the Commission lacked good project management and that its contracting procedures were inadequate.<sup>3</sup>

Organizations with management weaknesses can learn from the practices of high-performing organizations, which strengthen their management practices and focus on achieving results by setting clear goals, aligning their management systems with these goals, and regularly evaluating their performance. For federal agencies, the Government Performance and Results Act of 1993 (GPRA) incorporated these practices, requiring federal agencies to set goals and use performance measures for management and budgetary purposes. To comply with GPRA, federal agencies—including

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<sup>1</sup>See GAO, *Commission on Civil Rights: Commissioners' Travel Activities*, [GAO/GGD-94-130](#) (Washington, D.C.: Aug. 8, 1994).

<sup>2</sup>See GAO, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, [GAO/HEHS-97-125](#) (Washington, D.C.: July 8, 1997).

<sup>3</sup>See GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#) (Washington D.C.: Oct. 31, 2003).

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independent commissions—must periodically submit long-term strategic plans, annual performance plans, and annual performance reports. The Chairmen of both the Senate and House Committees on the Judiciary asked us to determine (1) the extent of the Commission’s compliance with the planning and reporting requirements of GPRA, (2) federal oversight that is provided to the Commission, and (3) the status of the Commission’s implementation of recommendations from GAO’s reviews in the past decade.

To address these objectives, we reviewed documents such as relevant statutes and regulations; the Commission’s most recent GPRA plans and reports; guidance from the Office of Management and Budget (OMB) on the implementation of GPRA; and guidance and reports from the Office of Personnel Management (OPM) on human resources management (HRM) and the Commission’s HRM practices. We also reviewed GAO reports on the Commission’s management practices and our guidance on the implementation of GPRA. In determining the federal oversight provided to the Commission, we focused on executive branch oversight provided by OMB and OPM. We also reviewed the Commission’s June 2004 response to the recommendations we made in our October 2003 report on the Commission. Finally, we conducted interviews with the Commission’s Staff Director, Special Assistant to the Staff Director, Human Resources Director, and Budget Chief, as well as with officials from OPM and OMB. We conducted our work from April to August 2004 in accordance with generally accepted government auditing standards.

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## Results in Brief

The Commission has not updated or revised its strategic plan since 1997, and its most recent annual performance plan and report contain weaknesses that limit the Commission’s ability to effectively manage its operations and communicate its performance. Because it has not updated its strategic plan, the Commission has not reexamined its strategic goals since 1997 to affirm their ongoing significance to the agency’s overall mission. Without revisiting its strategic goals, the Commission lacks a firm basis on which to develop its annual goals and evaluate its performance. Although the Commission’s most recent annual performance plan contains annual performance goals, these goals are often not distinguished from program activities. The plan also does not provide information on the resources and strategies required to meet the Commission’s annual goals, nor does it provide performance measures for evaluating the achievement of these goals. Although OMB guidance now directs agencies to include budget information in its annual performance plans, the Commission’s plan for fiscal year 2005 does not align the cost of its programs with

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specific annual goals. In addition, the Commission's most recent performance report does not, in many cases, clearly indicate whether the goals were achieved and does not include 3 years of performance data for all of its annual goals as required. In addition, the report does not provide the Commission's plans or timeframes for accomplishing its unmet goals.

In recent years, OMB and OPM have provided budgetary and human capital oversight of the Commission, and, overall, the agency has made a limited number of changes in response to OPM's report recommendations to the Commission. OMB reviewed the Commission's budget request and GPRA plans and reports in preparing the President's annual budget, but has not focused on Commission management issues. According to OMB officials, OMB does not provide the same level of oversight for organizations with small budgets and staff, such as the Commission, as that provided for larger organizations, such as the Securities and Exchange Commission. In the 1990s, OPM conducted two evaluations of the Commission's human capital management systems. In 1996, OPM found that the Commission was "badly in need of managerial attention," citing, for example, a lack of credible grievance and performance appraisal systems. In its 1999 evaluation, OPM noted that several problems identified in the previous evaluation had not been addressed and made further recommendations to improve the Commission's human capital management practices. To date, the Commission has not adopted five of six broader, systemic human capital recommendations from OPM's 1999 review. For example, the Staff Director continues to retain final authority for approving all performance appraisal ratings and promotions instead of delegating that authority to managers, as recommended. The Commission also does not have an Inspector General, who can provide an additional means of oversight for federal agencies and commissions, nor is it required to have one.

While the Commission took some actions to address the recommendations in our earlier reports, our more recent reviews indicate that financial and management problems persist. In 1994, we made recommendations to improve the Commission's handling of travel activities for specific individuals, and the agency indicated in 1995 that it had acted on these recommendations. In 1997, we made recommendations to improve the agency's project management and accountability for daily operations. Although the Commission made changes in response to these 1997 recommendations, in 2003 we found problems with the agency's project management similar to those found in 1997. In our October 2003 report, we made four additional recommendations for improving the Commission's management and procurement practices. Although the Commission has

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made a few changes, such as contracting with a contract and procurement specialist, the Staff Director disagrees with the need for most of the recommendations, and the agency has not adopted them.

We are including a matter for congressional consideration to strengthen the Commission's accountability. We are also making six recommendations intended to strengthen the Commission's compliance with GPRA requirements, management practices, and oversight.

In commenting on our draft report, the Commission did not comment on our recommendations, but disagreed with most of the findings and conclusions upon which our recommendations are based. For example, the Commission disagreed with our findings on its GPRA products and human capital practices, asserting that these products and processes were appropriate and sound for an agency with a small budget and staff. Overall, we did not agree with the Commission's comments on our draft report. We continue to believe that our findings, conclusions, and recommendations are sound and that the implementation of our recommendations is needed to strengthen the Commission's management practices. The Commission's detailed comments and our responses to them are reproduced in appendix I. We incorporated clarifications in the report as appropriate.

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## Background

Established by the Civil Rights Act of 1957, the Commission is a fact-finding agency required to report on civil rights issues. It is required to study the impact of federal civil rights laws and policies with regard to illegal discrimination or denial of equal protection of the laws. It must also submit at least one report annually to the President and the Congress that monitors federal civil rights enforcement efforts. Other reports may be required or issued as considered appropriate by the Commission, the President, or the Congress. The Commission serves as a national clearinghouse for information related to its mission. In addition, it investigates charges by individual citizens who claim to be deprived of their voting rights. The Commission may hold hearings and, within specific guidelines, issue subpoenas to obtain certain records and have witnesses appear at hearings. However, because it lacks enforcement powers that would enable it to apply remedies in individual cases, the Commission

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refers specific complaints to the appropriate federal, state, or local government agency for action.<sup>4</sup>

The Commission's annual appropriation has averaged about \$9 million since fiscal year 1995. It is currently directed by eight part-time Commissioners who serve 6-year terms on a staggered basis. Four Commissioners are appointed by the President, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. No more than four Commissioners can be of the same political party. With the concurrence of a majority of the Commission's members, the President may also designate a Chairperson or Vice Chairperson from among the Commissioners.

A Staff Director, who is appointed by the President with the concurrence of a majority of the Commissioners, oversees the daily operations of the Commission and manages the staff in six regional offices and the Washington, D.C., headquarters office. The Commission operates four units in its headquarters whose directors and managers report directly to the Staff Director: the Office of Civil Rights Evaluation, Office of General Counsel, Office of Management, and a Regional Programs Coordination Unit. As of June 2004, the Commission employed approximately 70 staff members, including the eight Commissioners and their eight assistants.

The Commission also has 51 State Advisory Committees—the minimum required by statute—one for each state and the District of Columbia. The State Advisory Committees are composed of citizens familiar with local and state civil rights issues. Their members serve without compensation and assist the Commission with its fact-finding, investigative, and information dissemination functions.

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## Planning and Reporting Requirements under GPRA

To encourage greater efficiency, effectiveness, and accountability in federal programs, the Congress passed the Government Performance and Results Act of 1993, which requires agencies to develop and issue certain documents to be made available to the public and used by congressional decision-makers.<sup>5</sup> OMB provides guidance to federal agencies on

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<sup>4</sup>Several agencies have enforcement authority for civil rights issues. For example, the Equal Employment Opportunity Commission is charged with enforcing specific federal employment antidiscrimination statutes. Also, the Civil Rights Division of the Department of Justice enforces federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin.

<sup>5</sup>Pub. L. No. 103-62, 107 Stat. 285(1993).

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complying with GPRA requirements through its Circular A-11, which is updated annually. In addition, we have published guidance and reports to federal agencies on best practices for complying with GPRA.<sup>6</sup>

Under GPRA or OMB guidance, agencies must submit the following three documents to the President, Congress, and OMB:<sup>7</sup>

- **Strategic plan.** This document, which must cover a period of no less than 5 years from the fiscal year in which it is submitted, should be updated every 3 years and include the agency's mission statement and long-term strategic goals. Under GPRA, strategic plans are the starting point and basic underpinning for results-oriented management. Strategic goals are long-term, outcome-oriented goals aimed at accomplishing the agency's mission. In developing goals for their strategic plans, agencies are required to consult with the Congress and other stakeholders.
- **Annual performance plan.** This document sets forth the agency's annual performance goals, which should be linked to its strategic goals. An agency's annual goals provide the intermediary steps needed to reach its long-term strategic goals. Annual goals should be objective, quantifiable, and measurable. OMB guidance now directs agencies to include budget information in their performance plans and encourages agencies to align resources with annual goals.<sup>8</sup> Prior to their submissions for fiscal year 2005, agencies were not directed to associate program costs in this way.
- **Annual performance report.** This document provides information on an agency's actual performance for the previous fiscal year. This report should provide information on the results of its progress in meeting

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<sup>6</sup>See GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996); *Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review*, [GAO/GGD-10.1.16](#) (Washington, D.C.: May 1997); *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, [GAO/GGD-10.1.20](#) (Washington, D.C.: Apr. 1998); and *Results-Oriented Government: GPRA Has Established a Solid Foundation for Achieving Greater Results*, [GAO-04-38](#) (Washington, D.C.: Mar. 10, 2004).

<sup>7</sup>Although, under the statute, OMB can exempt organizations with annual outlays of \$20 million or less from the requirements to produce a strategic plan, annual performance plan, and annual performance report, OMB has not exempted the Commission from these requirements.

<sup>8</sup>OMB Circular A-11 pt 6, § 220 (July 2003).

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annual goals. If agencies have not met their goals, they are required to explain what issues are keeping them from meeting the goals and describe their plans for addressing these issues.

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## Executive Branch Oversight Responsibilities

Several federal agencies have oversight responsibilities in relation to the Commission, including OMB for financial management and OPM for personnel management. OMB, located within the Executive Office of the President, is responsible for preparing and implementing the President's annual budget and for providing guidance to agencies on how to comply with GPRA.<sup>9</sup> OPM is the central personnel management agency of the federal government charged with administering and enforcing federal civil service laws, regulations, and rules. OPM is also required to establish and maintain an oversight program to ensure that agencies comply with pertinent laws, regulations, and policies.<sup>10</sup>

Oversight can also be provided by an Inspector General. The Inspector General Act of 1978 provides for Offices of Inspector General to serve as independent, objective offices within certain federal departments or agencies to promote economy, efficiency, and effectiveness as well as prevent and detect fraud and abuse.<sup>11</sup> Agencies that do not have their own Office of Inspector General can obtain Inspector General services from other federal agencies.<sup>12</sup>

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## The Commission Has Not Fully Complied with Key GPRA Requirements

The Commission has not updated or revised its strategic plan since 1997, as required under GPRA, and its most recent annual performance plan and report contain weaknesses that limit the Commission's ability to effectively manage its operations and communicate its performance.

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<sup>9</sup>See 31 U.S.C. §§ 501, 503(2000).

<sup>10</sup>5 U.S.C. § 1104(b)(2).

<sup>11</sup>Pub. L. No. 95-452, 92 Stat. 1101(1978); 5 U.S.C. app. 3.

<sup>12</sup>Agencies can obtain the services of an Inspector General from other agencies using their authority under the Economy Act of 1932 (31 U.S.C. § 1535) or by procuring such services directly.

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## The Commission Has Not Updated Its Strategic Plan Since 1997

The Commission has not updated or revised its strategic plan since fiscal year 1997 and has missed two scheduled submissions required under GPRA. According to GPRA and OMB guidance, the Commission should have submitted, updated, and revised its strategic plan in fiscal years 2000 and 2003. The 2003 revision should have covered the period through at least fiscal year 2008. Commission officials told us that the agency is working on developing an updated strategic plan and intends to submit it to OMB by Fall 2004. However, while they were in the process of revising their strategic plan as of June 2004, critical actions, such as consulting with the Congress as required by the act, have not yet occurred, according to Commission officials.

Because it has not updated or revised its strategic plan, the Commission has not reexamined its strategic goals since 1997 to affirm their ongoing significance to the agency's overall mission. The Commission has not determined if changes to its strategic goals are warranted due to factors such as external circumstances or not meeting its annual goals. In addition, because the Commission has not updated its strategic plan, its strategic goals also are not informed by a current analysis of the Commission's purpose and work. Without revisiting its strategic goals, the Commission does not have a firm basis on which to develop its annual goals. The Commission continues to rely on strategic goals from 1997 to formulate its current annual goals.

Without a current strategic plan the Commission also lacks a key tool for communicating with the Congress, the public, and its own staff, including informing them of the significance of its work. In addition to serving as a document for external use, the strategic plan can be used as a management tool and, according to OMB guidance, should outline the process for communicating goals and strategies throughout the agency and for assigning accountability to managers and staff for achievement of the agency's goals.

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## The Commission's Annual Performance Plan Falls Short of Meeting GPRA Requirements and OMB Guidance

The Commission's most recent performance plan, for fiscal year 2005, includes several program activities that are referred to as goals; however, it is unclear how these activities will help the agency achieve its strategic goals or accomplish its mission. For example, the plan lists 14 fact-finding projects, each of which has as many as 5 annual goals.<sup>13</sup> Many of these goals, however, are activities, such as holding a public hearing or publishing a report. Similarly, one of the goals in the plan is for each of the Commission's State Advisory Committees to focus on regular meetings in fiscal year 2005 and on completing their projects. However, this goal is not linked to achieving the agency's strategic goal to enhance the Committees' ability to monitor civil rights in the United States.

In addition, the annual performance plan does not contain all elements required under GPRA. The plan does not provide information on how the Commission will pursue and accomplish the annual performance goals laid out in its plan. Performance plans must include descriptions of how an agency's annual goals are to be achieved, including the resources and strategies required to meet the goals. However, the Commission's fiscal year 2005 plan does not discuss the strategies or resources needed to achieve its goals. For example, according to the performance plan, the Commission will update its Civil Rights Directory, but the plan does not indicate which offices will be responsible or describe the strategies and resources needed to carry out this task.

The Commission's performance plan for fiscal year 2005 also does not include budgetary information in accordance with OMB guidance. Instead of associating the cost of its programs with specific annual goals, the plan includes a single amount for its total operations. The potential problems stemming from the Commission's failure to associate costs with specific annual goals or break down its budget request by goal may be exacerbated by the large gap between the Commission's budget requests and its actual appropriations. Since 1999, the Commission's appropriations have averaged approximately 26 percent less than the amount requested. For fiscal year 2004, the Commission based its annual performance plan on a

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<sup>13</sup>In conducting fact-finding projects, the Commission gathers and analyzes information from a wide range of sources, including research, statistical analysis, and hearings. According to the Commission's performance report, fact-finding projects can involve five performance goals, including report publication, public event, report dissemination, consideration of recommendations by agencies, and action initiated by agencies in response to findings.

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budget request of \$15.2 million, but its appropriation for that year totaled only \$9.1 million.

In addition, the Commission has consistently not revised its annual performance plans to reflect its actual appropriations and illustrate the impact on its annual goals. Although agencies are not required to revise their plans to reflect actual appropriations under GPRA, the fact that the Commission's plans are based upon a budget that is so much larger than its actual appropriations limits the plans' usefulness in detailing how the agency will achieve its annual goals and in assessing the impact of appropriations decisions on its planned performance.

Furthermore, the Commission's annual performance plan for fiscal year 2005 does not provide the performance indicators to be used in measuring achievement of each annual goal. According to GPRA, an agency's performance plan shall include performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity, and provide a basis for comparing actual program results with annual goals. For some annual goals—particularly those related to promoting greater public awareness, assisting individuals in protecting their civil rights, and enhancing the capacity of the State Advisory Committees—the performance plan does not have any performance indicators. For example, the performance plan states that, in fiscal year 2005, the Commission will develop and implement a coordinated multimedia public service announcement campaign designed to educate the public about important civil rights matters and discourage discrimination while promoting tolerance. However, the plan does not describe measures that can be used to evaluate the attainment of this goal in terms of outputs, such as the number of public service announcements, or outcomes, such as increased awareness of civil rights matters.

In the annual performance plan, the Commission does not adequately describe how it will verify and validate the performance measures used to assess the accomplishment of its annual goals. GPRA requires agencies to submit information on how they plan to verify and validate the performance measures used to assess the accomplishment of their annual goals. This requirement helps to ensure that their assessments are valid, reliable, and credible. The Commission's fiscal year 2005 plan includes a general description of its verification and validation processes, but it does not specify the evaluation methods to be used or identify the limitations or constraints of these methods. For example, the plan states that, in assessing the outcomes achieved through issuance of its reports, the Commission may conduct follow-up meetings with affected agencies,

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congressional committees, and other interested organizations. However, the plan does not describe how these groups will be selected, the data to be collected, how the data will be assessed, or who will be responsible for conducting these meetings or collecting and assessing the data.

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### The Commission's Annual Performance Report for Fiscal Year 2003 Does Not Fulfill Several GPRA Requirements and Overall Does Not Communicate the Commission's Performance

Although the Commission's most recent annual performance report, for fiscal year 2003, describes the agency's achievements as well as reasons for not meeting certain goals, the report does not include several elements required under GPRA and provides little evidence and context for evaluating the agency's performance. Furthermore, many of the results are descriptive narratives that do not characterize the Commission's performance. Overall, these problems diminish the report's usefulness as a tool for managing the Commission's operations and holding the agency accountable for achieving its goals.

The performance report for fiscal year 2003 is incomplete because it does not account for all of the annual goals in the Commission's fiscal year 2003 performance plan—a fundamental GPRA requirement.<sup>14</sup> The report provides no account of the Commission's performance for many of the annual goals set forth in its fiscal year 2003 performance plan. In particular, the report does not account for the Commission's performance for 6 fact-finding projects—a core activity of the agency. For example, the fiscal year 2003 plan stated that the Commission's fact-finding project, "Media Role in Civil Rights," would accomplish four goals, including having a public event, yet the performance report provides no account of this project or any description of the agency's progress in meeting these goals.

Furthermore, while the report includes results for other annual goals, the information provided for many of these goals is incomplete or ambiguous. For example, the Commission's environmental justice project has three goals: publication of a report, report dissemination, and formal consideration of the recommendations of the report by affected agencies. However, although the performance report describes the purpose of the environmental justice report as well as its publication and dissemination, the performance report does not indicate whether the Commission

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<sup>14</sup>For this analysis, we compared the results reported in the Commission's fiscal year 2003 performance report with the goals described in the agency's performance plan for fiscal year 2003.

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obtained any formal response to its recommendations from affected agencies. Similarly, the performance plan stated that each State Advisory Committee Chairperson or Representative would participate in at least one civil rights activity per year. Although the performance report includes extensive narrative describing the work of the State Advisory Committees, it does not indicate whether this goal had been achieved.

The Commission's performance report also does not provide the relevant data needed to assess the achievement of its annual goals. Under GPRA, performance reports must include 3 years of actual performance data in describing the agency's progress in achieving its goals. While the performance report includes 3 years of performance data for one goal from its fiscal year 2003 performance plan, for the remaining goals, the report does not include 3 years of data, or the data are not relevant for assessment. For example, the performance report includes data describing the type and number of complaints received in fiscal year 2003 and for the 3 prior years. However, the report does not include data—such as the amount of time it took to respond to complaints—that could be used to assess whether the Commission met its goal of responding in a timely manner.

Moreover, the fiscal year 2003 performance report provides no plans, schedules, or recommendations for addressing each of the Commission's unmet goals. GPRA states that, when an annual goal is not achieved, the agency must describe why, outline plans or schedules for achieving the goal, and if the goal was determined to be impractical, describe why that was the case and what action is recommended. While the report explains why some goals were not met, it does not provide plans, schedules, or recommendations for addressing these unmet goals. For example, the performance report states that, due to limited resources, the Commission was unable to track its referrals to federal enforcement agencies to ensure that civil rights complaints were received and appropriately processed. However, the report does not provide any detail on whether it would continue to pursue this goal, how the Commission plans to meet this goal in the future, or what actions could be taken to help the Commission meet this goal, such as obtaining assistance from other federal agencies in maintaining accessible and relevant records.

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## OMB and OPM Have Provided Oversight, and the Commission Has Made Limited Changes in Response to OPM's Recommendations

In recent years, OMB and OPM have provided budgetary and human capital management oversight for the Commission. OMB's oversight of the Commission focuses primarily on the budgetary process. In providing oversight of its human capital management, OPM conducted reviews and made recommendations to the Commission in the 1990s to improve the Commission's human capital management and overall management. In response, although the Commission implemented some of the recommended changes, many issues that OPM raised in 1996 continued to be of concern in 1999. Although an Inspector General can provide an additional means of oversight for agencies and independent commissions, the Commission does not have an Inspector General and is not required to have one.

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## OMB Provides Oversight for the Commission's Budgetary Process, but Has Not Focused on Management Issues

OMB's oversight of the Commission is primarily budgetary, according to OMB officials. In the fall of each fiscal year, OMB is responsible for reviewing the Commission's annual performance plan, budget request, apportionment request, and annual performance report.<sup>15</sup> Before the Commission's budget request is due, OMB provides the Commission with guidance and updated information on the submission of GPRA documents. With regard to the annual performance plan, OMB generally reviews the long-term goals and performance measures used to determine the Commission's performance in meeting its goals. OMB also reviews the Commission's budget request as part of its role in developing the President's budget. While OMB reviews the Commission's annual performance plans and budget requests, according to OMB officials, it does not approve or reject these documents, but acknowledges their receipt and sends comments back to the agency as appropriate. However, Commission officials said that OMB has not provided feedback on its annual performance plans in recent years. Each fall, OMB also receives the Commission's apportionment request, which describes how the Commission would like its appropriations distributed. According to OMB officials, once an apportionment agreement has been reached between the Commission and OMB, the Commission sends this agreement to the Treasury, which issues a warrant to release funds to the agency. Finally, OMB reviews the Commission's annual performance report to ensure that

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<sup>15</sup>Apportionment refers to the action by which OMB distributes amounts available for obligation in an appropriation or fund account. An apportionment divides amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination.

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its funds are spent according to its performance plans and that its goals were met.

In addition to reviewing the Commission's annual budget submissions, OMB reviewed and approved the Commission's February 2004 request to reduce its personnel costs by offering voluntary separation incentive payments, or "buyouts," to encourage staff in certain job classifications to voluntarily leave their jobs. The Commission requested authority to offer buyouts to six employees. OMB officials discussed this request with Commission officials and approved the request in April. The Commission offered buyouts to all employees who had 3 or more years of government service in several job classifications. The Commission granted buyouts to three staff members, who accepted.

OMB also is responsible for providing oversight of agencies' management, including the Commission, but this oversight has been limited because of the small size of the agency and its budget, according to OMB officials. OMB officials told us that the agency does not provide the same level of oversight for organizations with small budgets and staff, such as the Commission, as that provided for larger organizations, such as the Securities and Exchange Commission. For example, even though the Commission does not have a current strategic plan, OMB has not requested an updated plan from the Commission, according to Commission officials. In addition, OMB officials told us that they have taken no actions in response to our October 2003 findings that the Commission violated federal procurement regulations and lacked key management practices because the volume of purchasing by the Commission is far below the levels that concern OMB. For example, the Commission's largest contract is for less than \$160,000.

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## OPM Provides Oversight for the Commission's Human Capital Management Systems, and the Commission Has Made Limited Improvements in Response to OPM's Recommendations

According to OPM officials, OPM provides the Commission with human capital oversight through its audits of agencies' human capital management systems, which can be conducted on a cyclical basis every 4 to 5 years or on request, as needed.<sup>16</sup> In 1996 and 1999, OPM conducted two reviews of the Commission's human capital management systems and made recommendations in each report for improvements.

In analyzing the Commission's response to OPM reviews, we focused on six recommendations from OPM's 1999 report that involved systemic changes to the Commission's human capital management systems.<sup>17</sup> As of August 2004, the Commission had not implemented five of these six recommendations. Findings from these reviews included the following:

- In its November 1996 report, OPM's main finding was that the Commission was an agency "badly in need of managerial attention," citing the Commission's poor documentation practices, lack of credible grievance and performance management systems, and employees' highly negative perceptions of the Commission's organizational climate.
- In its October 1999 report, OPM found that, although the Commission's human capital management systems complied with Merit System Principles, its human resource practices continued to have weaknesses associated with accountability, delegation, recruitment, performance appraisals, and incentive awards. The report noted that these concerns were similar to the concerns OPM had identified in the earlier report. For example, as of 1999, the Commission had not established an internal self-assessment program as OPM recommended in 1996. OPM made 16 recommendations in 1999 to help the Commission improve its management of human resources. As of August 2004, we found that the Commission had not implemented five of six broader, systemic

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<sup>16</sup>These reviews are conducted to determine how well an agency's human resources programs, operations, and use of personnel authorities contribute to mission accomplishment and whether the actions taken comply with Merit Systems Principles, laws, and regulations. Merit Systems Principles constitute the framework for federal human resources management. See 5 U.S.C. § 2301.

<sup>17</sup>Of the 16 recommendations made by OPM in 1999, we judgmentally selected 6 recommendations that had broader, more systemic implications for the Commission. We did not analyze the Commission's responses to the 10 remaining recommendations. (For descriptions of these six OPM recommendations and the Commission's responses, see appendix II.)

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recommendations made by OPM. (See appendix II for descriptions of these six OPM recommendations and the Commission's responses.)

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### The Commission Lacks the Oversight of an Inspector General

Although in the course of their reviews OMB, OPM, and GAO have identified continuing management and accountability problems at the Commission, it may not be sufficient to resolve such longstanding concerns through annual budgetary reviews and management reviews based on congressional requests or periodic audit cycles. An Inspector General can provide an additional means of oversight for federal agencies, including independent commissions and boards, but the Commission currently has no such oversight. Several small agencies have obtained such services for audits and investigations through memorandums of understanding with the General Services Administration. However, the Commission does not have an Inspector General of its own, nor does it obtain these services from another agency. The Staff Director told us that, although he has thought about the possibility of obtaining these services, he does not believe the Commission has the funds needed to obtain the services of an Inspector General.

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### Although the Commission Has Taken Some Actions in Response to Recommendations in GAO Reports, Problems Persist

Over the past decade, we reviewed the Commission's travel, management, and financial practices and made recommendations for improvement. The Commission took some actions in response to the recommendations in our 1994 and 1997 reports. In addition, the Commission has not implemented three of the four recommendations in our October 2003 report. This most recent report included several recommendations to improve the Commission's management and procurement practices. The Staff Director issued a letter in June 2004 in response to this report disagreeing with most of the recommendations and describing the actions taken by the agency. We also interviewed Commission officials to clarify their responses to the recommendations in our October 2003 report.

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### The Commission Took Actions in Response to the Recommendations in Our 1994 and 1997 Reports, but Related Problems Continue

Although the Commission took various actions to address the recommendations in our 1994 and 1997 reports, many similar problems persist. In 1994, we reported on problems identified in the Commission's handling of travel activities for specific individuals and made recommendations for improvement. For example, in response to our finding that Commissioners had not submitted travel vouchers in a timely manner, we recommended that the Commission direct the Commissioners to do so, as required by federal travel regulations. In 1995, the Commission issued revised travel procedures that incorporated our recommendation for timely filing of travel vouchers by the Commissioners. (As part of a

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separate assignment, we are currently reviewing the Commission's fiscal year 2003 financial transactions that include a review of travel-related transactions.) In 1997, we found numerous operational issues, reporting that the management of the Commission's operations lacked control and coordination; its projects lacked sufficient documentation; senior officials were unaware of how Commission funds were used and lacked control over key management functions; and records had been lost, misplaced, or were nonexistent.<sup>18</sup> In the report, we made recommendations for specific changes to the Commission's administrative procedures and project management systems, and the agency took some actions in response. However, in 2003, we found that the actions taken did not fully address the problems identified in our 1997 report.

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## The Commission Has Not Implemented Most Recommendations from Our 2003 Report

In October 2003, we reported that, although the Commission had made some improvements in its project management procedures for Commissioners and staff, the procedures lacked certain key elements of good project management, such as providing Commissioners with project cost information and opportunities to contribute to Commission reports before they are issued. We also reported that the Commission lacked sufficient management control over its contracting procedures and that little, if any, external oversight of the Commission's financial activities had taken place, since no independent accounting firm had audited the Commission's financial statements in at least 12 years.<sup>19</sup> To address these issues, we recommended that the Commission

1. monitor the adequacy and timeliness of project cost information provided to Commissioners,
2. adopt procedures that provide for increased Commissioner involvement in project implementation and report preparation,

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<sup>18</sup>See GAO, *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, [GAO/HEHS-97-125](#) (Washington, D.C.: July 8, 1997) and *U.S. Commission on Civil Rights: Agency Lacks Basic Management Controls*, [GAO/T-HEHS-97-177](#) (Washington, D.C.: July 17, 1997). In 1998, we reported on the status of the Commission's progress in addressing our recommendations. See GAO, *U.S. Commission on Civil Rights: Update on Its Response to GAO Recommendations*, [GAO/HEHS-98-86R](#) (Washington D.C.: Feb. 3, 1998).

<sup>19</sup>See GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#), (Washington, D.C.: Oct. 31, 2003).

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3. establish greater controls over its contracting activities in order to be in compliance with the Federal Acquisition Regulation, and
  4. take immediate steps to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act of 2002 for fiscal year 2004.

The Staff Director generally disagreed with these recommendations, and the Commission has not adopted three of them. In their June 2004 letter responding to our report recommendations, Commission officials asserted that the first two recommendations were a matter of internal policy to be decided by the Commissioners.<sup>20</sup> In addition, they disagreed with the need for the third recommendation and asserted that they were taking steps to address the last recommendation. Although they disagreed with the third recommendation, the Commission hired a contracting and procurement specialist starting in December 2003 to provide supplemental services, and the Staff Director acknowledged that the Commission could improve in this area. As of September 16, 2004, the Commission had yet to contract with an independent auditor to prepare for meeting the requirements of the Accountability of Tax Dollars Act of 2002.<sup>21</sup> (See appendix III for further details on the Commission's responses to these recommendations.)

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## Conclusion

With its history of management problems, the Commission faces significant challenges. Strategic planning is not a static or occasional event. Instead, it is a dynamic and inclusive process that, if done well, is integral to an organization's entire operations. By not devoting the time and resources required to update its strategic plan, the Commission has no assurance that it is pursuing long-term goals that reflect the needs of its key stakeholders and that address the many management challenges presented by the shifting external and internal environments in which it operates. Furthermore, the Commission lacks a foundation to use in

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<sup>20</sup>Under 31 U.S.C. 720, when the Comptroller General issues a report that includes a recommendation to the head of an agency, the head of the agency is required to submit a written statement on the actions taken. This statement must be submitted to the Senate Committee on Governmental Affairs and the House Committee on Government Reform not later than 60 days from the date of the report. However, the Commission did not provide a statement to the committees in response to our October 2003 report recommendations until June 1, 2004, after we had asked for the status of their statements in our entrance conference on May 20, 2004. These statements were due to the committees in December 2003.

<sup>21</sup>Pub. L. No. 107-289, 116 Stat. 2049(2002).

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aligning its daily activities, operations, and resources to support its mission and achieve its goals. Without using the GPRA planning process to periodically reexamine its long-term goals and set its course, the Commission is not in a strong position to set relevant annual goals or develop measures for assessing whether it has achieved them. Given the consistent shortfall between the Commission's annual budget requests and its appropriations over the past decade, it is even more important for the Commission to chart a strategic course that is realistic.

Although the Commission has improved some policies and practices in response to recommendations from OPM and GAO, the problems that remain are still cause for concern, particularly given the lingering nature of the Commission's management difficulties. Unless the Commission systematically monitors its implementation of OPM's and GAO's recommendations, it is not likely that it will significantly improve its management and human capital management systems. Finally, annual budgetary and other reviews based on periodic cycles or specific requests may not be sufficient to address longstanding concerns about the Commission's management and accountability. Because the Commission does not have an Inspector General, it does not appear likely that it will have the additional independent oversight needed to address management problems that others have identified and to hold itself accountable for resolving them.

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## Matter for Congressional Consideration

To strengthen the Commission's accountability, the Congress should consider legislation directing the Commission to obtain the services of an existing Inspector General at another agency.

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## Recommendations for Executive Action

To strengthen the Commission's management practices, we recommend that the Commission

- update its 5-year strategic plan according to GPRA's required schedule and include all elements required under GPRA and OMB guidance;
- ensure that future annual performance plans include all elements required under GPRA and OMB guidance, reflect funding levels requested in the President's Budget, and are revised if necessary to reflect actual appropriations;

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- ensure that annual performance reports include all elements required under GPRA;
  - implement all of the recommendations in OPM’s and GAO’s previous reports;
  - include the status of the Commission’s efforts to implement OPM’s and GAO’s recommendations in its GPRA plans and reports; and
  - seek the services of an existing Inspector General from another agency to help keep the Commission and the Congress informed of problems and deficiencies and to conduct and supervise necessary audits and investigations.

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## Agency Comments

We provided a draft of this report to the Commission for comment. The Commission’s formal comments and our responses are contained in appendix I.

In responding to our draft report, the Commission did not comment on our recommendations and disagreed with most of our findings and conclusions. We have carefully reviewed the Commission’s concerns and overall do not agree with its comments on our findings and conclusions. For example, the Commission disagreed with our GPRA findings, asserting that its GPRA processes were appropriate and sound for an agency of its size. The Commission also asserted that, as a small agency, it was not cost-effective or efficient for it to institute its own accountability system for managing its human resources, as OPM had recommended. The Commission similarly cited its small size in asserting that it would be an “extreme” challenge to institute our October 2003 report recommendations. We disagree with these assertions. The Commission’s size is not relevant here: Size does not mitigate the need for the Commission to address longstanding management and human capital problems identified in previous OPM and GAO reports. Furthermore, instead of implying that it is acceptable for the Commission as a small agency to operate under diminished expectations for GPRA compliance, the Commission could make use of GPRA’s planning and reporting framework to strengthen itself as an agency. For example, the Commission could use GPRA’s planning framework to update and sharpen its goals, clearly identify the strategies and resources needed to achieve those goals, and improve its management and human capital practices. The Commission could then also use GPRA’s reporting framework to demonstrate the progress it has made towards achieving those goals.

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In addition to providing these comments, the Commission criticized our approach to our work, asserting that the draft report contained inaccurate and incomplete analyses and that we rushed to complete the report within an artificially constrained timeline. We strongly disagree. At all times, we scoped, designed, and conducted this engagement in accordance with applicable professional standards and our quality assurance requirements. Furthermore, many of the Commission's comments about how we conducted our work were themselves misleading and inaccurate. For example, we did not suddenly and drastically change our focus, as the Commission asserted. In our May 2004 entrance conference with the agency, we noted our specific focus on certain areas, including the Commission's GPRA products and the agency's actions in response to OPM and GAO recommendations. Our focus on oversight of the Commission and GPRA requirements remained consistent throughout the assignment. As we designed our work, we formulated our objectives and methodologies more specifically, and we shared our refocused objectives with the Commission when we completed the design phase of our work in July. We therefore continue to believe that our findings, conclusions, and recommendations are sound. The Commission's detailed comments and our responses to them are reproduced in appendix I. We incorporated clarifications in the report as appropriate.

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Unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this letter. At that time, we will send copies of this report to the U.S. Commission on Civil Rights and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

Please contact me or Revae Moran on (202) 512-7215 if you or your staffs have any questions about this report. Other contacts and staff acknowledgments are listed in appendix III.



Robert E. Robertson  
Director, Education, Workforce,  
and Income Security Issues

# Appendix I: Comments from the U. S. Commission on Civil Rights

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



OFFICE OF STAFF DIRECTOR

UNITED STATES COMMISSION ON CIVIL RIGHTS  
WASHINGTON, D.C. 20425

September 16, 2004

VIA COURIER AND FACSIMILE

Mr. Robert Robertson  
Director  
Education, Workforce, and Income Security Division  
U.S. General Accounting Office  
441 G Street, N.W., Room 5A14  
Washington, D.C. 20548

Dear Mr. Robertson:

This letter is in response to the draft report prepared by GAO. We appreciate the opportunity to respond to the report and found some of its suggestions helpful, which we will study more carefully in our ongoing efforts to ensure that Commission operations run smoothly and efficiently. We also appreciate the professional attitude that you and your team staff displayed in interacting with Commission staff.

We disagree, however, with much of the draft report. Significant parts are inaccurate and contain incomplete analyses. This appears to be the result of a lack of thoroughness in GAO's examination of the Commission's oversight and strategic planning. This may be the result of GAO rushing to complete a report—any report—by a certain date in September, rather than being free to take whatever time was needed to design and engage in thorough fact finding to ensure a quality report.

We note that at the initial entrance interview in May, your team had indicated it would be examining three major areas: 1) organizational structure and mission of the Commission; 2) management matters, including strategic planning approaches, criteria for setting priorities in research projects, means of assuring quality during research design, and quality assurance methods for published reports; and 3) oversight of the Commission, including interactions with OMB and OPM, as well as steps the agency has taken in response to prior GAO and OPM recommendations. Toward that goal, GAO identified people that it wanted to interview, and GAO interviewed some staff, including me several times. GAO also asked for various documents, which we provided expeditiously. At all times, we cooperated with GAO fully. After examining documents and information in all three areas, however, on July 22 GAO suddenly notified us that its scope of examination had been drastically reduced and split into two phases. GAO's immediate examination was reduced to covering only the third area and part of the second, regarding strategic planning. Examination of the remaining areas would resume in October. The one thing that did not change was that the report was due to the Congressional requestors by late September. Based on GAO's comments on July 22, it is

See response to broad assertions.

See response to broad assertions.

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apparent that the decision to split the current report into two phases was driven by a need to finish a report by a certain date in September, rather than by a sound business decision. The separation of issues is artificial, and neither did GAO's comments on July 22 or anything in the draft report provide any reference or explanation of this matter to indicate otherwise.

See response to broad assertions.

Nor does the report explain why it was imperative to conclude the examination and produce a report in only five months,<sup>1</sup> which caused GAO to rush through its examination and prevented it from being able to engage our staff more thoroughly and obtain follow-up answers to whatever questions GAO may have had. Based on the entrance interview, we expected GAO to talk to many additional people on the staff, as well as the Commissioners to ensure a thorough examination of the issues. However, GAO spoke to only a small number of Commission personnel. While, on one hand, the Commission is grateful that the disruption to Commission work was thus more limited than we had anticipated, this is small consolation when the result is a less thorough and accurate report.

Below are the Commission's substantive responses.

**Response to Prior GAO Recommendations**

See response 1.

Contrary to the assertions in the draft report, the Commission has implemented or engaged in implementing all of the four recommendations contained in the 2003 report. There is no disagreement about the first recommendation regarding strengthening the Commission's contracts and procurement activities. The draft report acknowledges that the Commission has addressed that recommendation and that the Commission establish greater controls over its contracting activities.

See response 2.

Regarding the second recommendation that the Commission take steps in order to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act, the draft report is incorrect in stating that the Commission has not taken any action. On the contrary, the Commission has taken various steps to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act of 2002 for fiscal year 2004. As explained to GAO, the Commission had requested several months ago that its accounting firm and procurement specialist contractor develop a scope of work and auditing schedule. As the Commission is relatively quite small, the agency's accounting firm has advised that the Commission is still well within the timeframe to meet the November 15, 2004 deadline requirement under the Accountability of Tax Dollars Act. The Commission is on the verge of contracting an auditor to perform the audit. Both our accounting firm and we remain confident that the auditing report will be completed on schedule as required by the Act.

See response to broad assertions.

<sup>1</sup> In the past year and a half, GAO has conducted 3 examinations of the Commission. In 2003, GAO took ten months to complete just one investigation. This year GAO is spending only five months to conduct two separate but concurrent examinations of the agency.

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**Appendix I: Comments from the U. S.  
Commission on Civil Rights**

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See response 3.

Regarding the third recommendation that the Commission adopt procedures that provide for increased commissioner involvement in project implementation and report preparation, the draft report states that I have not implemented this recommendation. This is not true. I explained in one of my interviews the steps the Commission had taken to implement this recommendation. When GAO staff opined at the exit interview that the Commission had not implemented this recommendation, I reiterated my explanation. At that time, GAO requested supporting documentation, and we responded expeditiously by providing copies of relevant Commission meeting transcripts and memoranda. The documents showed that subsequent to GAO's 2003 report, the Commissioners requested that I provide them with suggested changes regarding the role and relationship between Commissioners and staff on reports. I did so in a written memorandum detailing the reasoning behind my suggestions and brought this matter up for discussion at the February 20, 2004 Commission meeting. However, the Commissioner who appeared to be most engaged in this issue, opined without objection from the other Commissioners, that that meeting was not the appropriate forum to discuss this issue. Because the Commissioners decided not to take any action, at least for the time being, we have continued to follow longstanding Commission policy on Commissioner-staff interaction, as memorialized in memoranda dating back to the mid 1980s, which were previously produced to GAO.

See response 4.

As explained to GAO previously, under the Commission's authorizing statute, the eight Commissioners have the authority to set Commission policy, such as that on Commissioner and staff interaction. While GAO may make recommendations regarding Commission policies, policy decision responsibility and power rests legally and logically with the Commissioners, who have the experience and expertise in matters concerning the Commission. There is absolutely no requirement that the judgment of the Commissioners, as reflected in longstanding Commission policy, must be wholly substituted with the subjective judgment of GAO on policy decision matters. At most, the recommendation can only properly be viewed as one asking that the Commissioners consider implementing GAO's policy suggestions, which the Commissioners have done.

See response 5.

Regarding the fourth recommendation that the Commission monitor the adequacy and timeliness of project cost information provided to the commissioners, the draft report claims the Commission has not adopted this recommendation. Again, this is not true. We have given the Commissioners the project cost information that they, as a body, have asked for and have made efforts to monitor the adequacy and timeliness of the information given. As the draft report states, since the last quarter of fiscal year 2003, staff has been providing the Commissioners with project and cost center cost reports every quarter in accordance with procedures agreed to by the Commissioners. Since staff is occupied with many other duties and cost information for a quarter cannot be compiled immediately, the Commissioners agreed that cost information for one quarter would be due at the end of the following quarter. Yet the draft report somehow alleges as a deficiency the fact that the cost report for the second quarter ending March 31, 2004 of fiscal year 2004 was not sent to the Commissioners until June 30, 2004. In accordance with agreed upon procedures, the second quarter cost reports were due on June 30, 2004. The implication that they were late and provided only

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See response 7.

upon Commissioner request is, therefore, false. In addition, the draft report cites that cost reports were provided for only eight of 12 projects outlined in the Commission's fiscal year 2004 performance plan. However, that is because the four other projects were either already completed or work had not yet begun at the time of the cost report, which tracks only costs of ongoing projects. If GAO had been able to take the time to talk to or follow-up with us on these issues, rather than rushing to issue a draft report, these types of errors would have easily been avoided.

**Response to Prior OPM Recommendations**

See response 8.

The conclusions in the draft report regarding the Commission's response to OPM's 1999 recommendations are inaccurate and incomplete. We disagree with the conclusions in part because the process of examining the Commission's responses to prior OPM recommendations was flawed. GAO engaged in only limited conversations with the Director of Human Resources and in only limited examination of documents. GAO did not engage in any follow-up with the Director of Human Resources to express concerns and also did not speak to anyone else other than her, although a number of the recommendations related to other employees. Until we saw the draft report, GAO had not indicated to the Director of Human Resources or to anyone else on the Commission that it had concerns in this area.

See response 9.

We disagree with the draft report's findings that the Commission has "made limited improvements" in response to previous OPM recommendations. As the draft report notes, OPM made 16 recommendations in its 1999 report to help the Commission improve its management resources. The draft report does not dispute that the Commission complied with 11 of those recommendations. For some inexplicable reason, however, GAO has arbitrarily decided that only six of those 16 recommendations were "major" ones that the report should focus on. GAO did not ask the agency Director of Human Resources her evaluation of the recommendations. GAO also never raised to her its decision to elevate six recommendations over the others. We learned of this decision for the first time only when we saw the draft report.

See response 10.

There is no rational basis for GAO's distinction. For example, there is no logical basis as to why the following OPM recommendations, to name a few, are less "systemic" and "less important" than the six discussed by GAO:

See response 11.

Assess whether current awards practices are helping the Commission to improve individual and organizational effectiveness.

Provide employees with qualitative and quantitative analyses that will illustrate for them how awards are linked to performance.

Conduct a new assessment of employee and organizational needs for training and develop a strategy for planning and funding critical needs training.

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Give careful consideration to upgrading Commission technologies. Not only will this create a better work environment and enable staff to perform the work of the agency more efficiently, effectively, and timely, but in the long run it will lead to improved productivity and morale.

By focusing on only certain judgmentally chosen recommendations, the overall accomplishments of the Commission are ignored and minimized. There is no apparent rationale for doing so other than as an attempt to cast the agency in a bad light.

Regardless, even among the five remaining recommendations, the Commission has implemented most of those where appropriate for an agency of the Commission's nature. In arriving at its conclusions that the Commission has not implemented recommendations, the draft report fails to take into account the unique nature of the Commission's small size, and misapprehends the significance of actions taken by the Commission. Thus, for example OPM recommended:

**Delegate human resources management authorities to managers in all program areas. Hold managers accountable for exercising the delegations through the Human Resources Management Accountability System.**

GAO states that the Commission has not implemented this recommendation. This is inaccurate. Personnel action decisions in larger agencies are rarely delegated to simply one person, even when authority is delegated to different offices or departments. This is because delegating such decisions to simply one person is often bad practices. Thus, there is often a system of second-line review or consultation put in place. Since the Commission is so small, with fewer than 70 persons, there are no intermediate levels of management to provide such a review within the Commission's various offices. As a result, the Staff Director serves as the second line supervisor. While the Staff Director may review decisions made by the managers, great deference is given to managers in making final human resource decisions, except when decision affects the balance or equities among offices.

Thus, contrary to the implication in the draft report, human resources management authorities have indeed been delegated to managers in most program areas. Managers are allowed to recruit and select candidates. This is the case with most human resources decisions, including within-job classification promotions and performance ratings. Managers and supervisors are given OPM's HRM Accountability System Development Guide as a framework for personnel decisionmaking, and an internal Operating Manual has been issued to all them giving guidance in all areas of human resources, which include: recruiting, training, processing SF-52's, creating crediting plans and job analysis, writing position descriptions, and many other areas. Again, had GAO not been required to rush to issue its report, it could have followed up with either myself or the Director of Human Resources to get a complete and accurate picture of our processes.

Another example of GAO misunderstanding the significance of OPM's recommendations and the Commission's responses is reflected in the draft report's discussion of the following OPM recommendation:

See response 12.

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**Use OPM's Human Resource Management Accountability System Development Guide as a framework for creating an accountability system that will ensure that the Commission's employees are used efficiently and effectively and that personnel actions are taken in accordance with Merit System Principles in support of agency mission accomplishment.**

The draft report states that it found little evidence of the development and implementation of an accountability system. That is not true. As a preliminary matter, the draft report neglects to note that in its 1999 oversight report of the Commission, OPM they stated that

See response 13.

delegated examining is conducted infrequently, but is done so in accordance with the merit system principles, the Veterans' Preference Act, and OPM's delegated examining requirements. Merit Promotion and internal placements are processed in accordance with Merit System Principles. Competition is fair and open.

See response 14.

Thus, the Commission was already taking actions in accordance with Merit System Principles. While OPM may have made a recommendation for additional improvement of the Commission's personnel processes, those basic processes were already sound. As a consequence, in terms of allocating the Commission's limited resources and attention to addressing any actual operational problems, there was no real need to implement this recommendation, since Commission operations were good. In addition, it is entirely appropriate to rely primarily on OPM's Human Resource Management Accountability System, as redesigning and instituting its own system is not cost-effective or efficient for such a small agency as the Commission. Again, had GAO not been in a rush, it could have gained a more accurate understanding of this issue.

See response 15.

As stated to GAO, Commission managers are using OPM's Guide as a framework for accountability. Moreover, as noted in the draft report, several key sections of the agency's Administrative Instructions have been updated since OPM's 1999 review, implementing key elements from the Guide. In choosing to nonetheless take steps towards building upon already sound processes, the Commission's response to those recommendations was not only entirely appropriate but should be commended, rather than dismissed.

The same type of misunderstanding is evidenced in the draft report's discussion of the following OPM recommendation:

**Include human resources goals, measures, and indicators in the Commission Strategic Plan and involve Commission staff in the human resource planning and measurement process.**

See response 16.

The draft report claims that the Commission has not addressed this recommendation as a result of not updating its strategic plan under GPRA. As stated in our 1999 response to OPM, the Commission incorporated appropriate human resources goals, measures, and indicators in the Commission's Strategic Plan under goal six "Improve the Management Accountability, and

See response 17.

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Productivity of the Commission.” Objective 2 under that goal states “Provide a model work environment for a diverse staff that encourages productivity, equal opportunity and high morale.” As the criticism of the Commission’s implementation of this recommendation is based on a critique of the agency’s GPRA processes made elsewhere in the draft report, it is redundant and particularly unfair. We address that critique more in-depth below, explaining that the Commission’s GPRA plans and goals were designed and implemented only after consultation with OMB, Congress, stakeholders, and other agencies and are not deficient. As a very small agency with a budget of approximately only \$9 million, the Commission’s strategic plan is appropriate for the agency’s size. Thus, given that human resources goals are indeed incorporated into the Commission’s current strategic plan, it is inaccurate to say that the Commission has not addressed this recommendation.

Finally, regarding OPM recommendations:

**Develop a system for periodically collecting employee feedback regarding human resources services and policies. Incorporate that feedback in the Human Resources Management Accountability System,**

**and**

**With employee involvement, consider developing a new performance management system linked to organizational and agency goals established under the Commission’s Strategic Plan,**

the Commission is engaged in continuing efforts to address these recommendations. However, we do believe these recommendations are valid and will initiate further efforts to institutionalize a system of collecting employee feedback. Since OPM will be conducting its own survey of the Commission this fall, we have decided to continue developing and refining our own survey system for later implementation. This will include holding discussions with the local employee union to gain its input in developing an appropriate system.

Also, as a small agency with limited resources, the Commission must prioritize improvement efforts. Because of budgetary constraints, the agency has not yet been able to make as much progress on these recommendations as it would have liked. Thus, the Commission has not been able to begin implementing a new performance management system. However, with the issuance of the new OPM standards for senior executive service performance, our Human Resources Division now has some additional guidance on linking performance to organizational goals. If resources are increased in the new fiscal year, this will aid the Commission in its intent to initiate this project.

**Commission GPRA Processes**

The Commission is a firm believer in the value of GPRA and adheres to its spirit, as well as to its substantive requirements. However, because of the reduced staffing levels of such a small

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agency as the Commission, we are unable to dedicate full-time personnel and/or entire offices towards implementing and administering GPRA as is done in larger agencies. Rather, implementation and administration of GPRA within the Commission is the result of part-time efforts of various individuals who have other core responsibilities. Thus, evaluations of the Commission's GPRA processes must take into consideration the surrounding context and be appropriate to an agency of its size.

With respect to the draft report's examination of the Commission's GPRA processes, we believe the analysis lacks balance and context. The draft report cites the Commission's GPRA strategic plan, performance plan, and performance reports for a number of alleged deficiencies. However, the Commission's strategic and initial performance plans were prepared in accordance with consultations with the Office of Management and Budget (OMB) and Congress. At the time the GPRA requirements were first implemented, the Commission's Director of Congressional Affairs and Director of Budget and Finance had several meetings with OMB oversight personnel and the Commission's Congressional oversight committee to ensure a proper and adequate design of the agency's strategic and performance plans. In the process of developing its GPRA processes, the Commission also reviewed GPRA plans for the Department of Justice and the Agency for International Development. In addition, the Commission's GPRA plan was presented to and discussed with stakeholders, including the agency union—AFSME Local 2478—and executive staff and regional directors.

The Commission's GPRA processes as they currently exist, were coordinated with OMB. In meetings with OMB representatives at the time GPRA was first enacted, they provided the Commission with specific guidance on the agency's GPRA initiative. These included but were not limited to: (a) defining the mission of the Commission, (b) mating the Commission's mission statement with an impact statement, (c) eliminating non-essential items from the Commission's GPRA processes, (d) relating Commission mission statements to goals, (e) developing how goals and objectives would be achieved, and (f) using follow-up as a measure of output. These guidances were eventually incorporated into the Commission's strategic and performance plans and reports.

Thus, while the draft report cites the Commission for not fully including, for example, performance indicators in the agency's plans and reports, some of the Commission's goals are so basic, such as "studying allegations of denials of civil rights and equal protection of the laws," the main evaluation of the goal is quite straightforward, i.e., whether or not the studies were performed. The Commission's GPRA reports clearly list what studies have been accomplished and provide a detailed description of each. Although the responses may not be under a technical heading of "performance indicators," they provide equivalent information.

As previously explained to GAO, the Commission, by statute, has no enforcement power, has no regulatory powers, and does not administer any programs distributing benefits to the public. The agency has only investigatory powers, and a large part of its work is devoted to producing reports resulting from its investigations, as well as producing and distributing other civil rights informational materials to the public. Thus, OMB provided guidance on eliminating nonessential

See response 18.

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See response 19.

items from the Commission's processes. During the discussion of the design of the Commission's performance plans and reports, OMB agreed with the Commission's assessment that it would be very difficult to design a plan and report that quantify the results and impact of the Commission's work. This is an issue that is mentioned in each of the Commission's annual reports. Thus, while it is true that the "outcome" of reports and projects are not quantifiable, OMB Circular A-11 clearly contemplates "non-quantified measures," which the Commission provides. The annual report describes examples of legislative, media, judicial, and other impacts that Commission reports and activities have made.

See response 20.

In addition, the Commission is a small agency with a budget of under \$20 million dollars and is thus eligible for a waiver of GPRA reporting requirements, which have been extended to many other federal agencies with budgets under \$20 million dollars. Given the nature of the Commission's work and its small size and budget, the Commission's GPRA processes do comply with the material requirements that OMB expects of such agencies. The Commission has faithfully compiled and filed its annual performance plans and reports every year under GPRA as required since its enactment. In reviewing the agency's GPRA plans and reports, OMB has never offered the Commission any criticism of its GPRA processes, and nor, for that matter, has Congress.

See response 21.

See response 22.

This lack of criticism extends to the Commission's strategic plan. As stated previously to GAO, the Commission's strategic plan is based on its authorizing statute, which specifically delineates the agency's purpose, duties, and goals. That authorizing statute has not changed during the entire period that GPRA has been in effect. As a result, the Commission has found its original GPRA strategic plan relevant and applicable through the current period. Despite the draft report's assertion that the Commission has not updated its strategic plan, there is no requirement under GPRA to change the agency's strategic plan if it continues to be appropriate. Neither OMB nor Congress has ever indicated to us that they consider the Commission's strategic plan as inappropriate or in need of change.

See response 23.

In fact, OMB agreed with our initial overall approach and provided comments and markup to our strategic plan in 1997, when GPRA was first implemented. More specifically, OMB provided the Commission with individual expertise on GPRA. The OMB expert provided a full day of review, discussion, and guidance on strategic and performance plans, the results of which are incorporated into the agency's existing plans

The draft report seems to imply that OMB has ignored the Commission due to its relatively very small size and budget and has thus been somewhat deficient or lacking in its oversight. We do not view OMB's role as such, however, but believe that OMB has taken an active role in helping guide and shape the Commission's GPRA processes so that they are appropriate for an agency of the Commission's nature and size. In fact, the Commission has been in recent contact with OMB to discuss further streamlining and modification of GPRA requirements imposed upon the Commission in order to eliminate further nonessential requirements, so as to ease reporting burdens on the agency due to the ever decreasing real budget and size of the Commission since GPRA was first enacted.

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**Conclusion**

Contrary to the assertions in the draft report, the Commission has adequately responded to previous recommendations made by OPM and GAO. The Commission's personnel and GPRA processes are also appropriate and sound for an agency the size of the Commission. The draft report contains many inaccuracies and incomplete analyses, partly as a result of the rushed nature of GAO's investigation. The artificially constrained timeline imposed upon GAO and the Commission prevented a thorough and complete investigation of the Commission's processes, thus compromising its accuracy and limiting its usefulness.

While there is always room for improvement of operations at any agency, and we welcome some of the suggestions provided in the draft report, they would require the Commission to spend monies already marked for other important and core priorities in its current \$9 million budget. As noted in our response to GAO's 2003 report on the Commission, Commission funding over the past years has greatly constrained the agency's ability to incur any additional, new expenses. Funding levels from 1995 to 2003 represent a loss of at least \$1.3 million per year after adjusting for inflation using a national inflation index with a 1995 baseline. In reality, the loss of spending power during this period is considerably larger, as annual cost of living adjustments for staff located exclusively in large urban centers is much greater than the national inflation average. As GAO's 2003 report recognized, the Commission's financial status has left it unable to reduce its high staff vacancy rate, which has resulted in a reduction of the workforce from about 90 staff members in 1997 to approximately 65 now. Under these circumstances, it would be an extreme, if not impossible, challenge to institute all of GAO's recommendations contained in its 2003 report, this draft report, as well as the concurrent draft report on the Commission to be issued by GAO's financial management team, much less to do so and continue to produce the current quality and volume of products. Nevertheless, we continue to look for ways to improve every aspect of our operations and will consider GAO's input accordingly.

Sincerely,



LES JIN  
Staff Director

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## GAO's Response to Comments

In general, the U. S. Commission on Civil Rights' comments on our findings make four broad assertions in addition to having numerous specific points of disagreement with our findings. We address both in the following sections.

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### Response to Broad Assertions in Commission's Comments

The four broad assertions in the Commission's comments on our draft report, as well as our responses to these assertions, are summarized below.

- The Commission asserted that we rushed to complete the report within an artificially constrained timeline and did not take the time to conduct thorough fact-finding or analyses to ensure a quality report. We disagree strongly with this assertion. To the contrary, we scoped, designed, and conducted this engagement in accordance with applicable professional standards and our quality assurance requirements. To further ensure the quality of our work, we included an initial design period, in which we built upon our considerable knowledge of the Commission from previous GAO reports and obtained further information as needed. In designing and conducting our work, we also consulted with our internal experts on GPRA and other issues. Far from rushing through the engagement, we in fact extended our design period so that we could perform high-quality work within a timeframe useful to our congressional requesters. At the end of this design period in July, we narrowed our scope, deferring a potential objective on the organizational structure of the Commission. Refining the scope of an engagement following a design phase is not an unusual audit practice. By agreement with our requesters, we did not include work on the Commission's organizational structure not because of any arbitrary decision, as the Commission alleges, but rather to enable us to complete our work on time and in accordance with our quality standards. Our focus on GPRA, oversight, and the Commission's response to our October 2003 report recommendations remained consistent throughout the assignment, from initial notification to report drafting. Furthermore, in our May 2004 entrance conference with the agency, we noted our focus on these areas, and in July 2004, at the end of our design phase, we shared these objectives and our approach with Commission staff in an interview.
- The Commission asserted that we did not follow up with its staff as needed to obtain answers to questions and that they expected us to interview more people, both staff and Commissioners, in the course of our work. We disagree. Our methodology called for analyzing Commission documents, pertinent legislation and guidance, and

various reports by OPM and GAO. Although at the beginning of our project, we envisioned interviewing key managers and all of the Commissioners as part of possible work on the Commission's organizational structure, these interviews became unnecessary when we decided to focus on the Commission's GPRA plans and reports, oversight of the Commission, and the agency's response to our previous report recommendations. As noted in our report, to obtain information for these objectives, we conducted interviews with the Staff Director, Special Assistant to the Staff Director, Human Resources Director, and Budget Chief. We also followed up with e-mails and telephone calls as needed. Finally, in our exit conference, we presented all of our findings and provided an opportunity for Commission staff to comment on our findings and provide technical corrections. At that meeting, Commission officials provided a few comments, but no technical corrections; with few exceptions, they did not disagree with the facts or conclusions we presented.<sup>1</sup>

- The Commission asserted that it cooperated with us fully, at all times. However, while our working relationships were professional and Commission officials were usually responsive in providing documents as requested, we do not agree that Commission staff cooperated fully with us throughout our work. Obtaining interviews with the Commission and key staff was frequently difficult, with each one requiring a minimum of 3 weeks to schedule. For example, although we notified the Commission on April 19, 2004, about our planned work and called shortly thereafter to schedule an initial meeting, it took numerous calls to set up our entrance conference on May 20, 2004. This delay in scheduling the initial meeting occurred despite our reference to the need for a rapid response. In addition, since it was difficult for Commission officials to find the time to meet with us, we combined our entrance conference with that of another GAO team that was examining the Commission's financial transactions so that they would not also experience a delay in starting their work. We had similar difficulties scheduling other meetings as well.
- The Commission has repeatedly asserted that it is a small agency, with a budget of approximately \$9 million and fewer than 70 staff—information that we noted in the draft report. In commenting on the

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<sup>1</sup>About 10 days after our exit conference, we received a faxed letter from the Special Assistant to the Staff Director in which he disagreed with our findings on GPRA. However, the letter did not provide any new information on the Commission's compliance with GPRA requirements.

draft report, the Commission asserted that its GPRA and personnel processes were appropriate and sound for an agency of its size. The Commission also cited its size in asserting that it would be an “extreme” challenge to institute our October 2003 recommendations. We disagree with these assertions. The Commission’s size is not relevant here: Size does not mitigate the need for the Commission to address longstanding management and human capital problems identified in previous OPM and GAO reports. Furthermore, the Commission could make use of GPRA’s planning and reporting framework to strengthen itself as an agency. For example, the Commission could use GPRA’s planning framework to update and sharpen its goals, clearly identify the strategies and resources needed to achieve those goals, and improve its management and human capital practices, as recommended. The Commission could then also use GPRA’s reporting framework to demonstrate the progress it has made towards achieving those goals.

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## Response to Specific Comments from the Commission

In addition to making these broad comments, the Commission disagreed with our findings more specifically. Our detailed responses to the Commission’s comments follow.

1. We disagree that the Commission has implemented or was “engaged in implementing” all of the recommendations in our October 2003 report. See responses 2 through 6.
2. Although the Commission reported that it has taken various steps to meet the financial statement preparation and audit requirements of the act, we disagree that it is in a position to meet the act’s requirements for financial statement preparation and audit this year. As of September 16, 2004, the Commission had not hired an independent auditor to conduct this work. The agency’s ability to meet the act’s requirements in the less than 2 remaining months is highly doubtful, since the agency has not had its fiscal activities independently audited in more than 12 years, and no audit work has begun.
3. The Commission’s assertion is not accurate: The Commission has not implemented our recommendation to provide for increased commissioner involvement in project implementation and report preparation. In fact, as the Commission noted in its comments, the Commission has “continued to follow longstanding Commission policy on Commissioner-staff interaction.” As we reported in

October 2003, this policy does not provide for systematic Commissioner input throughout projects. Nothing precludes the Staff Director from providing additional information about projects and report status to Commissioners as a matter of good project management and quality assurance. Furthermore, the Staff Director could respond in various ways to Commissioners' concerns for increased input without obtaining a formal vote to change the Commission's procedures. For example, Commissioners could receive a summary of preliminary facts and findings or an outline of a planned report.

4. The Commission asserted that there is no requirement that the Commissioners' judgment must be substituted with our judgment on policy decision matters. While our recommendations are not requirements, we provide recommendations in our reports in accordance with our statutory responsibilities to investigate the use of public money, analyze agency expenditures, and evaluate the results of federal programs and activities. Our reports and recommendations provide agencies with the information necessary to improve their mission performance and Congress with the information necessary for oversight, including the development of legislation that will help agencies in their efforts. As the administrative head of the Commission, the Staff Director is authorized to make administrative changes that are consistent with the law and Commission policies. While it may be difficult at times to distinguish between an administrative and policy matter, we are not aware of any Commission policies that would prevent the Staff Director from implementing our recommendations nor would it be contrary to the law.
5. The Commission asserted that it has provided the Commissioners with project cost information and made efforts to monitor the adequacy and timeliness of the information given, as recommended in our October 2003 report. According to Commission staff, the agency provides cost information on a quarterly basis to Commissioners and has done so since the last quarter of fiscal year 2003.<sup>2</sup> However, we continue to believe that having regular project cost reports, such as monthly reports, would enhance the

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<sup>2</sup>In April 2003, the Commissioners passed a motion to receive quarterly cost information on its projects, by project and by office.

Commissioners' ability to plan for and monitor projects during their monthly meetings. Monthly reports would allow greater accountability for the projects by integrating cost information in a timely manner into project management. Since the Commission's Budget Chief told us that he prepares monthly project cost reports for the Staff Director, preparing reports for the Commissioners' monthly meetings should not be unduly burdensome. To ensure that cost reports can be best used to strengthen project monitoring and management, these reports should also be provided to Commissioners shortly after the month ends.

6. We believe that it is a deficiency for the Commission to provide quarterly cost reports to Commissioners 3 months after a quarter has ended. Our October 2003 recommendation called for the Commission to monitor the adequacy and timeliness of project cost information provided to Commissioners. In our view, information provided in 3-month-old project cost reports cannot be considered timely.
7. We believe that it is a deficiency for project cost reports to omit mention of the status of planned projects. The Commission's second quarter 2004 cost report for the Commissioners did not indicate the status of 4 of the 12 projects. To be useful for decision making and monitoring, the project cost report should have noted that some planned projects had already been completed and that some work had not yet begun, so that the Commissioners monitoring the projects would have also been aware of the status of these projects.
8. We disagree that our conclusions on the Commission's response to OPM's 1999 recommendations are inaccurate and incomplete. See responses 9 through 16 as well as our response to broad assertions in the Commission's comments.
9. The Commission asserted that we did not indicate concerns about its implementation of OPM's 1999 recommendations until officials received the draft report. However, it is not clear to us why Commission officials should have been unaware of the direction of our findings. Four Commission officials, including the Human Resources Director, participated in two major meetings, one of which focused extensively on the Commission's actions in response to six of OPM's human resources recommendations. The Human Resources Director also participated in our exit conference

in which we summarized our findings, including our finding on the Commission's responses to oversight by OPM. We noted explicitly during this meeting that we had focused on certain recommendations and had found that the actions taken by the Commission were limited. The Human Resources Director did not provide any corrections or technical comments on the agency's human resources practices during this meeting, nor did any other Commission official. In addition to these meetings, we obtained additional documents, comments, and answers to questions by e-mail from the Commission during the course of our work and incorporated this information into our draft report as appropriate.

10. The Commission asserts that we did not dispute that it complied with 11 of OPM's 1999 recommendations. This statement is incorrect. We selected 6 of OPM's 16 recommendations for analysis; we did not analyze the Commission's response to the remaining recommendations. We noted in our report that the Commission had implemented 1 of the 6 recommendations that we analyzed. We have clarified our methodology in the final report. See comment 11 for more information on our methodology.
11. The Commission asserted that we arbitrarily decided to focus on 6 of the 16 recommendations OPM made in 1999. We strongly disagree. To follow up on the Commission's response to OPM's recommendations, we judgmentally selected six recommendations that had broader, more systemic implications for the agency. At no point, however, did we pre-select these recommendations in order to emphasize a particular outcome or "cast the agency in a bad light." We have clarified the basis for our selection of these recommendations in the final report.
12. We do not agree that the Commission has implemented OPM's recommendation to delegate HRM authority to managers. OPM's report stated that "the Staff Director retains final approving authority for most [human resources] decisions, including appointments, promotions, and performance ratings." Policies described in OPM's 1999 report remain in place at the Commission today. For example, in our interviews this year, Commission officials told us that the Staff Director must approve all hiring and promotion decisions as well as managers' evaluations of employees. As of February 2004, according to the Commission's administrative manual, "the staff director retains approval authority" as well for quality step increases, accomplishment

awards, performance awards for its employees, and recommendations to OPM for other awards. While the Commission has taken certain actions to improve its human resources management practices, such as developing an employee handbook on human resources matters and providing managers with OPM's HRM Accountability System Development Guide, the Commission has not delegated human resource authorities to managers in all program areas, as OPM had recommended.

13. The Commission's assertion that it was acting in accordance with Merit System Principles is misleading and largely irrelevant for this discussion. OPM's recommendation for an accountability system stemmed from its analysis of the Commission's human resource accountability and internal self-assessment efforts (an area of weakness also identified in its 1996 review). In 1999, OPM found that the Commission had not "developed an effective system to hold managers accountable for HRM-related decisions." OPM further noted that the "Staff Director retains final approving authority for most [human resource] decisions... leaving managers uncertain about their own accountability when making these HRM decisions . . . Employees see this lack of accountability too, saying that the supervisory chain of command is unclear and that they are unsure of where work assignments and agency work priorities originate. Also, employees report that their jobs do not make good use of their skills and abilities; that they are not satisfied with their jobs; and that they do not feel free to disclose waste, fraud, and abuse without fear of reprisal." OPM noted that an internal self-assessment program was "urgently needed to assure accountability." References to the Commission's delegated examining authority and general compliance with OPM's Merit System Principles are not pertinent to the finding that led to this recommendation.
  
14. The Commission is inaccurate in asserting that OPM "may have made a recommendation for additional improvement of the Commission's personnel processes." As we noted in our report, OPM made 16 recommendations for improvement of the Commission's human resource management practices in its 1999 report. The Commission is also inaccurate in asserting that OPM found that "those basic [personnel] processes were already sound," and that "there was no real need to implement this recommendation [on using OPM's HRM Accountability System Guide], since Commission operations were good." This is an

inaccurate reading of OPM's 1999 findings and recommendations. While OPM found overall that the Commission's human resource program complied with the Merit System Principles, OPM also urged the Commission to consider its recommendations in five broad areas of human resource management. In the executive summary of the 1999 report, the first of 12 bullets highlighting OPM's findings summarizes concerns raised in its earlier 1996 report on the Commission; acknowledges that the Commission "has improved its administration of the HRM program, particularly in the recruitment and placement area"; and continues by saying, "*However, the other concerns we identified in 1996 continue to require attention.*" [Italics ours.] Of the 11 remaining bulleted findings in OPM's summary, 7 describe problem areas, 3 are positive, and 1 is mixed.

15. The Commission asserts that using OPM's guide instead of designing its own system is appropriate because it is a small agency. However, the Commission's assertions reflect a misunderstanding of OPM's guidance to agencies and of what constitutes an accountability system for human resources. According to OPM, an HRM accountability system is a *process* and should be seen as a continuous cycle. This systemic, continuous process "enables an agency to identify, collect, and use the information or data on which accountability is ultimately based." It includes identifying the agency's strategic goals, including human resource goals; developing performance measures and a baseline to assess whether human resource goals are being met; and using this information to make improvements. The accountability process also requires cyclical, periodic reassessment. The Commission has taken various actions to improve its human resources management, including updating several administrative instructions, conducting an employee survey in fiscal year 2000, and developing an employee handbook. However, the Commission has not developed an accountability system—an ongoing process involving goal setting, evaluation, improvements, and reassessment—to address the concerns raised in OPM's report.
16. We cannot agree that goals established in 1997 address and implement OPM's 1999 recommendation, nor do we agree that our referring to the Commission's strategic plan in this discussion is unfair. The Commission's strategic plan was developed in 1997 and remains the Commission's only strategic plan. In 1999, OPM recommended that the Commission's strategic plan include human

resources elements that OPM did not find in the Commission's 1997 plan. In examining goal six in the Commission's 1997 strategic plan, OPM "did not find that a link between HRM and agency mission accomplishment has been made apparent in the Strategic Plan. Further, the Strategic Plan does not list specific HRM goals and measures that could be used to assess the HRM function's ability to effectively and efficiently support agency mission accomplishment. We found no evidence that key measures and/or outcome indicators are used by [the Commission] to track its efforts to achieve HRM goals." The Commission's assertion that the 1997 strategic plan contains human resources goals, measures, and indicators is therefore neither accurate nor relevant: The 1997 plan does not include human resources measures and indicators and it was not part of the Commission's response to OPM's recommendation because it was developed 2 years before OPM made this recommendation.

17. The Commission's statement that we examined its GPRA processes is incorrect, and its description of the processes it used in 1997 to develop its strategic plan and first performance plan and report are irrelevant. Our objective was to assess the Commission's compliance with GPRA's requirements for agency strategic plans, annual performance plans, and annual performance reports. We did not focus on the agency's process for developing these GPRA plans and reports, nor did we analyze the Commission's initial performance plan for fiscal year 1999 or its initial performance report for fiscal year 1999. As noted in our report, we analyzed the Commission's most recent performance plan (for fiscal year 2005) and the most recent performance report (for fiscal year 2003). We also compared the Commission's plan for fiscal year 2003 to its performance report for the same year.
18. The Commission is incorrect in asserting that its descriptions of completed studies in its performance report provide information equivalent to performance indicators and that its plans and reports, by implication, comply with GPRA standards. Under GPRA, a performance indicator means a particular value or characteristic used to measure output or outcome. A narrative description of a report's findings cannot be used for measurement purposes. See comment 19 as well.
19. The assertion that the Commission can use non-quantifiable measures in its reports is misleading. GPRA allows the Director of

OMB to authorize the use of alternative, nonquantifiable performance goals for annual performance plans if necessary. However, Commission officials explicitly told us that the agency did not apply for or receive authorization from OMB to submit goals in their annual performance plan in an alternative, nonquantifiable format. Agencies that are authorized to use alternative formats must comply with certain other requirements, which the Commission has not done.

20. The Commission has not received an exemption from GPRA reporting requirements. Although agencies with annual outlays of \$20 million or less are eligible to apply to OMB for an exemption, as the Commission notes, Commission officials told us that the agency has not applied for nor received such an exemption.
21. Although the Commission has filed annual performance plans and annual reports each year, as required under GPRA, it has not revised and updated its strategic plan, which is also required under GPRA. Furthermore, we cannot agree that the Commission's plans and reports comply with "material requirements" of GPRA because of the numerous shortcomings in these products, as described in our report.
22. As noted in our report, according to OMB officials, OMB conducts primarily budgetary reviews and does not provide agencies that have small budgets and staff, such as the Commission, with the same level of scrutiny that it provides to larger agencies. OMB officials further told us that OMB does not approve or reject agencies' GPRA plans and reports, but provides comments as appropriate. Because of OMB's focus on budgetary reviews and on larger agencies, the absence of criticism from OMB does not necessarily constitute approval of an agency's GPRA plans and reports.
23. Contrary to the Commission's assertion, GPRA does require agencies to update and revise its strategic plan *at least every 3 years*. [Italics ours.] The Commission has not updated and revised its strategic plan since 1997 when it should have done so in fiscal year 2000 and again in fiscal year 2003. The Commission further asserts that its 1997 plan does not need updating or revision because its authorizing statute has not changed in the interim. This assumption is incorrect and demonstrates a misunderstanding of GPRA's purposes and requirements. As noted in our report,

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strategic planning is not a static or occasional event. If done well, it is dynamic, continuous, and results-oriented, and it provides the foundation for everything the organization does.

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# Appendix II: Key Recommendations from OPM in 1999 and the Commission's Response

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Of the 16 recommendations that the Office of Personnel Management (OPM) made to the Commission in 1999, we judgmentally selected 6 recommendations that had broader, more systemic implications for the agency. We did not analyze the Commission's response to the 10 remaining recommendations.

**OPM Recommendation: Include human resources goals, measures, and indicators in the Commission's Strategic Plan and involve Commission staff in the human resource planning and measurement process.**

The Commission has not addressed this recommendation. Because the Commission has not updated its strategic plan, it has not included additional human capital goals and assessment measures. In addition, although the Commission issued a Human Resources Plan in fiscal year 2000 that contains five human capital performance goals, the plan does not link these goals to its overall strategic goals, set forth a timeframe for achieving them, or describe how it will assess its progress.<sup>1</sup> The plan also does not describe how Commission staff will participate in human resource planning and evaluation, as OPM recommended.

**OPM Recommendation: Use OPM's Human Resource Management Accountability System Development Guide as a framework for creating an accountability system that will ensure that the Commission's employees are used efficiently and effectively and that personnel actions are taken in accordance with Merit Systems Principles in support of agency mission accomplishment.**

Although Commission officials reported that they have developed and implemented an accountability system, we found little evidence to support this claim. OPM recommended that the Commission use its *Human Resource Management Accountability System Development Guide* as a

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<sup>1</sup>The performance goals in the Commission's fiscal year 2000 Human Resources Plan were (1) refine performance measurement systems to establish usable measures, (2) provide all employees with training opportunities to improve their job skills, (3) ensure that the Commission workforce reflects the diversity of their clientele, (4) make family-friendly programs that can complement the Commission, and (5) provide all Commission employees access to the Internet.

framework for creating an accountability system.<sup>2</sup> The Commission's fiscal year 2000 annual performance report noted that their managers were provided copies of the *Accountability Guide* for review and that the Commission planned to adopt or modify some of its procedures and recommendations. According to Commission officials, they used the *Accountability Guide* to develop a system similar to the one OPM outlines in its guide. They also told us that Commission managers were presented with a copy of the *Accountability Guide* and that their employees are aware of the system. According to the Commission's Human Resources Manager, the accountability system the agency developed in response to OPM's recommendation is in the Commission's Administrative Instructions Manual and its fiscal year 2000 Human Resources Plan. The Commission has taken various actions to improve its human resources management since OPM's 1999 review, such as conducting an employee survey in fiscal year 2000 and developing an employee handbook. Although the Commission has also updated several key sections of its administrative manual, most of the manual was published in April 1999, before OPM issued its report. Furthermore, the Commission's most recent annual performance plan does not refer to a human capital accountability system, nor does it detail human capital goals or baselines to use in evaluating such goals.

**OPM Recommendation: Delegate human resources management authorities to managers in all program areas. Hold managers accountable for exercising the delegations through the Human Resources Management Accountability System.**

The Commission has not implemented this recommendation. Overall, the Staff Director's authority for most human resources decisions remains

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<sup>2</sup>OPM's *Accountability Guide*, issued in 1998, describes a model for establishing and maintaining an HRM accountability system within an organization, with particular emphasis of human resource goals and measures in support of an agency's mission. According to the *Accountability Guide*, human resources management accountability starts with identifying the agency's strategic goals. The agency should then develop human resources goals in support of these goals. From there, performance measures should be developed and a baseline established to permit assessment of whether the goals are being met. According to OPM, an HRM accountability system should be seen as a continuous, systemic, process that "enables an agency to identify, collect, and use the information or data on which accountability is ultimately based."

essentially the same as in OPM's 1999 report findings.<sup>3</sup> According to Commission officials, managers can recommend employees for hire, promotion, and awards and conduct annual and mid-year reviews of their staff. However, the Staff Director must approve all hiring and promotion decisions as well as managers' evaluations of employees before appraisals are given to employees.

**OPM Recommendation: Develop a system for periodically collecting employee feedback regarding human resources services and policies. Incorporate that feedback in the Human Resources Management Accountability System.**

The Commission has not implemented this recommendation. To date, the Commission has not developed a formal system to regularly collect employee feedback about its human capital services and policies, even though a similar recommendation to obtain customer feedback and track customer views was also made in OPM's earlier 1996 review.<sup>4</sup> In fiscal year 2000, the Commission administered a staff survey on human resources and other Commission issues. According to officials, the Commission plans to administer another staff survey in the fall of 2004. However, the Commission has not developed plans to survey staff on a regular basis. In addition, since the Commission was unable to locate the results of its 2000 survey, its managers cannot use earlier human capital findings to systematically set goals and make improvements. According to OPM officials, OPM will conduct a Web-based Human Capital Survey of Commission staff beginning in September or October of 2004.

**OPM Recommendation: Require that all managers make progress reviews and performance appraisals in a timely manner when the Human Resources Division notifies them they are due, and require that the Staff Director review appraisals when they are made without delay.**

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<sup>3</sup>In 1999, OPM found that the Commission had not yet developed an effective system for holding managers accountable for HRM decisions. OPM's report stated that "the Staff Director retains final approval authority for most human resources decisions, including appointments, promotions, and performance ratings, leaving managers uncertain about their own accountability when making human resources management decisions."

<sup>4</sup>In 1996, OPM's review called for the Commission to "establish a self-assessment program to include a review of program compliance and customer feedback on the quality of services provided. In particular, the personnel office should track customer views on the timeliness and accuracy of services provided."

The Commission has implemented this recommendation, which was also made in OPM's 1996 review.<sup>5</sup> According to the Commission's Human Resources Director, the agency is on schedule for its fiscal year 2004 performance appraisals. Commission guidance on the 2004 performance appraisal cycle requires Commission supervisors and managers to conduct annual and mid-year performance reviews of their staff. For non-Senior Executive Service employees, the process is outlined in a memorandum that the Human Resources Director sends annually to Commission supervisors and managers.

**OPM Recommendation: With employee involvement, consider developing a new performance management system linked to organizational and agency goals established under the Commission's Strategic Plan.**

The Commission has not implemented this recommendation. The Commission's performance management system is described in its Administrative Instructions Manual, most of which was issued in April 1999—6 months before OPM issued the recommendations in its October 1999 report. The Administrative Instructions do not clearly require that employees' performance plans link individual staff goals to broader strategic goals. The parts of the manual that set forth the Commission's policies and procedures on appraisals make no reference to the Commission's strategic plan, nor does it specify how to link individual staff goals to the Commission's strategic goals or how to involve employees in this process.

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<sup>5</sup>In 1996, OPM made several recommendations on the Commission's performance management, noting in particular that the Commission should "monitor whether managers are conducting progress reviews," and "create a more timely process for handling performance appraisal ratings."

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# Appendix III: GAO's October 2003 Recommendations and the Commission's Response

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**GAO Recommendation: Monitor the adequacy and timeliness of project cost information that the Staff Director provides to Commissioners and make the necessary adjustments, which could include providing information on a monthly, rather than a quarterly, basis and as necessary.**

The Commission has not implemented this recommendation. In our 2003 review, we found that the Commission's procedures did not provide for the Commissioners to systematically receive project cost information—a key element of good project management. As a result, the Commissioners approved the majority of projects and products each year without having any specific information on how much the project would cost, or how much similar projects have cost in past years.

In the Commission's June 2004 letter responding to our 2003 recommendations, the Staff Director stated that this recommendation spoke to "Commission policy on the proper level and mode of interaction between the Commissioners and staff ... [and that] the Commissioners have reaffirmed on numerous occasions the current policy regarding interaction with staff." He added that the Commission "is continuing to monitor the adequacy and timeliness of project cost information provided to Commissioners."

According to the Staff Director, his office provides the Commissioners with cost information for each project and office on a quarterly basis, and they began doing so during the last quarter of 2003. However, the cost report for the second quarter of fiscal year 2004, ending March 31, was not sent to the Commissioners until June 30, 2004, and was sent in response to requests from the Commissioners for this information. It is also not clear that the Commission is monitoring the adequacy and timeliness of project cost information, as recommended. For example, the quarterly report for the second quarter of 2004 cites costs for only 8 of the 12 projects outlined in the Commission's fiscal year 2004 performance plan.

**GAO Recommendation: Adopt procedures that provide for increased Commissioner involvement in project implementation and report preparation.**

The Staff Director does not agree with this recommendation and has not implemented it. In our 2003 review, we found that Commissioners have limited involvement in the management of projects once they have been approved. As a result, we recommended that the Commission adopt procedures for increasing Commissioner involvement after project

implementation by providing them with project updates and allowing them to review the product at various stages in the drafting process, so that they participate more actively in shaping products released to the public.

The Staff Director did not agree with this recommendation and told us that he believes that the current procedures that govern Commissioner involvement in the development of products are appropriate and efficient. In his June 2004 letter responding to our recommendations, the Staff Director wrote that the responsibility for determining policy on Commissioners' interaction with the staff is "delegated by statute to the Commissioners." According to the Staff Director, the Commissioners requested that he assess the situation and issue recommendations on their involvement in report preparation. The Staff Director said that involving the Commissioners in the writing stage would "bog down" the process and that it would be difficult to incorporate the viewpoints of the eight Commissioners. To date, the Commission has not adopted any procedures to increase Commissioner involvement in the report preparation stage.

**GAO Recommendation: Establish greater controls over contracting activities in order to comply with the Federal Acquisition Regulation.**

Although the Staff Director disagreed with this recommendation, the Commission took one step towards establishing greater controls by contracting with a contracts and procurement specialist to supplement its operations. In 2003, we reported that the Commission lacked sufficient management controls over its contracting procedures. We found that, in fiscal year 2002, the Commission had not followed proper federal procedures in awarding most of its 11 contracts. Moreover, we found that the Commission failed to follow procedures that would allow it to track vendors' performance against objective measures and ensure that public funds are being used effectively.

While the Staff Director disagreed in his June 2004 response letter with the need for the actions associated with this recommendation, he later told us that the Commission "could be stronger" in the area of procurement. Since our 2003 report was issued, the Commission has supplemented its contracts and procurements operations by contracting with a contracts and procurements specialist with over 30 years of experience in government contracting. According to Commission officials, this specialist began providing services to the Commission in December 2003 and generally addresses complex procurement issues.

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**GAO Recommendation: Take steps immediately in order to meet the financial statement preparation and audit requirements of the Accountability of Tax Dollars Act of 2002 for fiscal year 2004.**

The Commission has not implemented this recommendation. In 2003, we found that the Commission's fiscal activities had not been independently audited in at least 12 years. We concluded that the Commission's limited financial management controls and lack of external oversight makes the Commission vulnerable to resource losses due to waste, mismanagement, or abuse.

Although in the June 2004 response, the Commission reported working with its accounting vendor to ensure that it would meet these requirements, as of August 2004, the Commission had not taken the necessary steps, such as hiring an independent auditor, to ensure that it will meet the requirements of the Accountability of Tax Dollars Act this year.

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# Appendix IV: GAO Contacts and Staff Acknowledgments

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## GAO Contacts

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## Staff Acknowledgments

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