



441 G St. N.W.
Washington, DC 20548

B-328671

March 3, 2017

The President
The White House

Subject: *Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998—Chief Financial Officer, Department of State*

Dear Mr. President:

Pursuant to section 3349(b) of title 5 of the United States Code, we are reporting a violation of the Federal Vacancies Reform Act of 1998¹ (herein “the Vacancies Reform Act” or “Act”) at the Department of State (State) with respect to the Chief Financial Officer (CFO) position. The CFO at State may either be appointed by the President with Senate confirmation or designated by the President from among officials at State who have already been Senate confirmed,² and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). Specifically, we are reporting that the service of James Millette as Acting CFO at State after November 16, 2009, through on or about November 15, 2011, was in violation of the Act. Since the CFO position was subsequently filled, we believe no further action on this issue is necessary.

The Vacancies Reform Act establishes requirements for temporarily authorizing an acting official to perform the functions and duties of certain vacant positions that require Presidential appointment and Senate confirmation. The Act generally limits the period of time that such a position may be filled with an acting official to 210 days. 5 U.S.C. § 3346(a)(1). Section 3349(b) requires the Comptroller General, upon a determination that an acting official has served longer than the 210-day period (and any applicable extensions), to report such findings to Congress, the President, and the Office of Personnel Management.

As required by the Vacancies Reform Act, State reported to GAO that a vacancy occurred in the position of CFO on January 20, 2009. State further reported that James Millette began serving as Acting CFO the next day. In response to our inquiry, State noted that Mr. Millette ceased serving in November 2009, and no other person served as Acting CFO during the vacancy.³ The position was filled on June 12, 2012, when President Obama designated Patrick Kennedy, the Under Secretary for Management, to be the CFO.⁴

¹ Pub. L. No. 105-277, Div. C, Title I, 112 Stat. 2681-611 (Oct. 21, 1998), as amended, 5 U.S.C. §§ 3345-3349d.

² 31 U.S.C. § 901(a)(1). The President’s designation of an agency official who is already Senate confirmed must be done in consultation with the head of the agency.

³ State originally reported to GAO that Mr. Millette ceased acting on December 23, 2010.

⁴ The Under Secretary for Management is a presidentially appointed, Senate confirmed position. 22 U.S.C. § 2651a(b)(1).

While the nullification provisions of the Act do not apply to CFOs, the other provisions of the Act, including the 210-day limitation, are applicable. 5 U.S.C. § 3348(e)(3). If a vacancy exists during the 60-day period beginning on a transitional inauguration day, the 210-day period begins 90 days after such transitional inauguration day or the date the vacancy occurs, whichever is later. 5 U.S.C. § 3349a(b). The State CFO position became vacant on January 20, 2009, the transitional inauguration day. Accordingly, the 210-day period began to run 90 days after January 20, 2009—on April 20, 2009—and ended on November 16, 2009. Consequently, the position should have been vacant beginning November 17, 2009, until June 12, 2012, when the position was filled.

We have previously determined that using the acting title of a position during the period in which the position should be vacant violates the time limitations in the Vacancies Reform Act.⁵ Mr. Millette continued to hold himself out as Acting CFO past the permissible period. For example, Mr. Millette signed State's Agency Financial Reports on both November 15, 2010, and November 15, 2011, as the Department's Acting Chief Financial Officer.⁶ Consequently, Mr. Millette's use of the acting title after November 16, 2009, shows that he continued to hold himself out as Acting CFO and served as such in that position past allowable timeframes in violation of the Vacancies Reform Act.

In accordance with the requirements of the Vacancies Reform Act, we are sending letters reporting this violation to the chairs and ranking members of the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, the Senate and House Committees on Appropriations, the Senate Committee on Foreign Relations, the House Foreign Affairs Committee, and the Director of Office of Personnel Management.

If you have any questions regarding this matter, please call me at 202-512-5400, or Managing Associate General Counsel, Robert J. Cramer at 202-512-7227.

Sincerely yours,



Susan A. Poling
General Counsel

⁵ See, e.g., B-287720, *Violation of the 210-Day Limit Imposed by the Vacancies Reform Act of 1998—Director, Institute of Museum and Library Services*, May 18, 2001, at 3; B-318244, *Violations of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998—General Counsel, Department of Health and Human Services*, June 18, 2014, at 5-6.

⁶ See Message from the Chief Financial Officer, FY 2011 Department of State Agency Financial Report (Nov. 15, 2011) available at <http://www.state.gov/s/d/rm/rls/perfrpt/2011/html/178771.htm> (last visited Jan. 31, 2017); Message from the Chief Financial Officer, FY 2010 Department of State Agency Financial Report (Nov. 15, 2010) available at <http://www.state.gov/s/d/rm/rls/perfrpt/2010/html/153574.htm> (last visited Jan. 31, 2017).