GAO
Accountability • Integrity • Reliability
United States General Accounting Office
Washington, DC 20548

April 28, 2004

The Honorable Ann M. Veneman
Secretary of Agriculture

Dear Madam Secretary:

The purpose of this letter is to remind you of the requirements of the Federal Vacancies Reform Act of 1998,[1] and in particular, of provisions that require executive departments and agencies to report information about vacant positions to the Congress and the Comptroller General. This letter is being sent to the heads of all executive departments and agencies in recognition of the fact that many vacancies occur in the final year of a presidential term.

The Vacancies Reform Act, enacted on October 21, 1998, replaces the prior Vacancies Act and provides new rules for the temporary filling of certain vacant positions that require Presidential appointment and Senate confirmation. Under the Act, an acting officer in a position covered by the Act[2] may serve in a vacant position for a period no longer than 210 days from the date of the vacancy. Adjustments are made in the 210-day time limitation if the President submits a nomination to fill the position.[3]

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if, based on the information submitted by an agency, the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions) established by the Act.

---

[1] 5 U.S.C. §§ 3345-3349d.

[2] The Vacancies Reform Act applies to all Presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a Government corporation. 5 U.S.C. § 3349c.

[3] The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Reform Act to specific vacancies. Some general guidance is available at: http://www.usdoj.gov/olc/finalqa.htm.

As noted above, the Vacancies Reform Act requires the head of each agency to report to the Comptroller General and Congress immediately upon the occurrence of each of the specified events. Because each event must be reported immediately after it occurs, an agency may need to file a series of reports on any given vacancy.

In addition to the specific items of information required to be reported by the Act, GAO would appreciate your providing certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

- the authority under which an acting officer was designated, if the designation was made under an authority other than the Vacancies Reform Act;[4]

- any changes in the status of the vacant position (such as a change in title or elimination of the position);

- the discontinuation of service in an acting role;

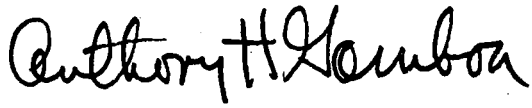
- the name, mailing address, and telephone number of the reporting agency's designated contact person; and

- the agency or sub-agency where the position is located.

For your convenience, GAO has created a form that can be used to report this information. It is available on GAO's internet site at: http://www.gao.gov/decisions/submitvc.htm.

Should you have any questions about the reporting of vacancies to GAO, please contact Kathleen E. Wannisky, Managing Associate General Counsel, on 202-512-5207, or Jeffrey McDermott, on 202-512-2584.

Sincerely yours,



Anthony H. Gamboa
General Counsel

cc: Nancy Southard Bryson
General Counsel

[4] For most vacancies, the Vacancies Reform Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.