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United States General Accounting Office
Washington, DC 20548

May 29, 2001

The Honorable Anthony J. Principi
The Secretary of Veterans Affairs

Dear Mr. Secretary:

The purpose of this letter is to remind you of the requirements of the Federal Vacancies Reform Act of 1998¹ (Vacancies Reform Act), 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.

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 executive agency positions that require Presidential appointment with Senate confirmation. Under the Act, an acting officer in a position covered by the Act may serve in a vacant position for no longer than 210 days. Adjustments are made in the 210-day time limitation if the President submits a nomination to fill the position and under other specified circumstances. Of general application at this time is the Presidential inaugural transition provision² of the Act. This provision provides that the 210-day period for any vacancy that exists during the 60-day period beginning on January 20, 2001, is deemed to begin 90 days after January 20 or 90 days after the date on which the vacancy occurs, whichever is later.

The Act requires executive departments and agencies to report to the Congress and to the Comptroller General certain items of information about a vacancy in a position covered by the Act, immediately upon the occurrence of events specified in the Act. The Act also provides that the Comptroller General is to report to specified congressional committees, the President, and the Office of Personnel Management if, based on the information submitted by an agency, the Comptroller General determines that an acting officer is serving longer than the 210-day period (including applicable exceptions) established by the Act.

The Honorable Alberto R. Gonzales, Counsel to the President, recently provided guidance to executive departments and agencies concerning the reporting

¹ 5 U.S.C. §§ 3345-49d.

² 5 U.S.C. § 3349a.

requirements imposed by the Vacancies Reform Act.³ That guidance noted that GAO had received very few vacancy reports subsequent to the recent change in administration. The guidance, therefore, instructed each agency head or general counsel to:

[D]etermine which covered positions within that agency are currently vacant, and for which of those positions acting officers have been designated or nominations have been submitted to the Senate. Reporting forms should be completed accordingly and submitted immediately.

For the period January 2, 2001, to May 25, 2001, however, GAO has received a total of 120 Vacancies Reform Act reports even though the recent Presidential transition has produced a large number of vacancies and has most likely also stimulated a significant number of acting officials and nominations. In view of the small number of reports received, and the fact that GAO must rely on agencies to provide us with the information we need to meet our statutory reporting responsibilities, we urge you to make every effort to file the required Vacancy Reform Act reports immediately.

The following describes the requirements that apply to executive departments and agencies and provides additional guidance on the reporting of information to GAO.

Requirements of the Vacancies Reform Act

Under the Vacancies Reform Act, a vacancy occurs if a Presidential appointee covered by the Act dies, resigns, or is otherwise unable to perform the functions and duties of the office. If the vacancy in a position covered by the Act is caused by a reason other than sickness, an acting officer who is temporarily filling the position may serve for no longer than 210 days from the date the vacancy occurs (including applicable exceptions), unless the President submits a first or second nomination for the office to the Senate. Once a nomination is submitted, the acting officer may serve (1) until the nomination is confirmed or (2) if the nomination is rejected by the Senate or is withdrawn or returned to the President, for no more than 210 days after the date of such action. Specific rules for computing the 210-day time period are set forth in the Vacancies Reform Act.

The Vacancies Reform Act⁴ requires that agency heads report to the Comptroller General and each House of Congress specific items of information about the

³ Memorandum for the Heads of Federal Executive Departments and Agencies and Units of the Executive Office of the President, re Agency Reporting Requirements Under the Vacancies Reform Act (March 21, 2001).

⁴ 5 U.S.C. § 3349(a).

occurrence and filling of a vacancy covered by the Act. Specifically, the law requires the reporting of:

- a vacancy in an office and the date such vacancy occurred immediately upon the occurrence of the vacancy;
- the name of any person serving in an acting capacity and the date such service began immediately upon the designation;
- the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and
- the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

If, based on this information, the Comptroller General determines that an acting officer is serving longer than the 210-day time limitation (including applicable exceptions), the Comptroller General is to report that determination to specified congressional committees, the President, and the Office of Personnel Management pursuant to 5 U.S.C. § 3349(b). The Act provides that, with certain limited exceptions, an action taken by an acting officer to perform the functions or duties of a vacant office after the time limitation has expired will have no force and effect and may not be ratified. The responsibility for ensuring that acting officers serve in accordance with the time limitation and that the required information is accurately and immediately reported to Congress and the Comptroller General, rests with the executive agencies. As indicated above, GAO's sole responsibility under the Act is to determine whether acting officers are serving beyond the statutory time limitation and, if so, to report that determination to the specified entities.

Guidance on Reporting to GAO

Reports on new administration vacancies. In view of the recent Presidential transition, agencies should ensure that a report is or has been submitted for any vacancy which has occurred. Similarly, the service of an acting officer; submission of a nomination; and the rejection, withdrawal, or return of a nomination should be reported.

Timing and contents of reports. 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 events specified in the Act (i.e., occurrence of vacancy; service of acting officer; submission of nomination; rejection, withdrawal, or return of nomination, along with dates therefor). Because each event must be reported immediately after it occurs, an agency may need to file a series of reports on any given vacancy.

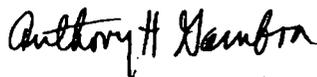
In addition to the specific items of information required to be reported by the Vacancies Reform Act, GAO would like certain supplementary information to meet its statutory reporting responsibilities. Specifically, GAO requests that each agency report:

- the authority under which the acting officer was designated, if the designation was made under an authority other than the Vacancies Reform Act;⁵
- any changes in the status of the vacant position (such as a change of 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.

A form that can be used to report the information required by 5 U.S.C. § 3349(a) and the supplementary information requested above appears at GAO's internet site, www.gao.gov under the heading "GAO Legal Products."

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

Sincerely yours,



Anthony H. Gamboa
General Counsel

cc: Mr. Tim S. McClain
General Counsel
Department of Veterans Affairs

⁵ For most vacancies, the Act provides the exclusive means for making temporary appointments. There are some specific exceptions, such as where a statute expressly authorizes the President, a court, or the head of an executive department to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity. See 5 U.S.C. § 3347(a)(1)(A).