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United States General Accounting Office
Washington, DC 20548

November 8, 2001

The Honorable Alberto R. Gonzales
Counsel to the President
The White House

Dear Mr. Gonzales:

This letter serves as a reminder that under the Federal Vacancies Reform Act of 1998¹ (Vacancies Reform Act), an acting official to a Presidentially appointed Senate-confirmed (PAS) position generally may serve in a vacant position no longer than 210 days beginning on the date the vacancy occurs.² According to information provided to us by executive departments and agencies, it appears that at least 19 acting officials must discontinue their service as acting officers on November 16, 2001.

The Presidential inaugural transition provision³ of the Vacancies Reform Act provides that the 210-day period for any vacancy that exists during the 60-day period beginning on the transitional inauguration day, January 20, 2001, is deemed to begin 90 days after such inauguration day or 90 days after the date on which the vacancy occurs, whichever is later. Thus, for those vacancies that existed on January 20, 2001, the 210-day period begins 90 days after January 20.⁴ In view of the recent change in administration and the many vacancies existing on January 20, this means that the period for acting service in many positions that are still vacant will expire on November 15, 2001.⁵

¹ 5 U.S.C. §§ 3345-49d.

² 5 U.S.C. § 3346(a)(1).

³ 5 U.S.C. § 3349a.

⁴ 5 U.S.C. § 3349a(b)(1).

⁵ For those PAS positions which became vacant from January 21, 2001, until March 20, 2001, the 210-day period begins 90 days after the date on which the vacancy occurred. 5 U.S.C. § 3349a(b)(2). Therefore, although we are not aware of any such situations, there also may be some officials who must discontinue their acting service shortly after November 15 if the vacancy occurred in the Presidential inaugural transition period subsequent to January 20.

The Vacancies Reform Act provides for certain circumstances under which the time limit for acting service is tolled, such as if a first or second nomination is pending for the office to which an acting official is serving.⁶ Barring application of a tolling provision to the 210-day time limit, however, acting officials must discontinue their service upon the expiration of the 210-day time limit, as extended by the Presidential inauguration transition provision.

The Vacancies Reform Act also provides that if the last day of any 210-day period is a day that the Senate is not in session, the second day that the Senate is next in session and receiving nominations shall be deemed the last day of such period.⁷ At this time it is uncertain whether the Senate will end their session prior to November 15. If the Senate is not in session on November 15, acting officials may continue serving in their acting capacity until the second day the Senate is next in session and receiving nominations.

Enclosed is a list of positions that executive departments and agencies have reported to us which have acting officials and which we believe do not have nominations pending before the Senate. There may be more positions with acting officials and no pending nominations, but GAO has not received such information.

We request that either your office or the affected departments and agencies notify us if acting service has been or will be discontinued or if nominations have been submitted to the Senate for these positions, since this assists us in fulfilling our statutory responsibilities under the Vacancies Reform Act. Agencies may do so by sending a fax to Janet Dolen at 202-512-7703 or an email to her at dolenj@gao.gov.

Should you have any questions about this letter, you may contact Kathleen E. Wannisky, Managing Associate General Counsel, on 202-512-5207.

Sincerely yours,



Anthony H. Gamboa
General Counsel

Enclosure

cc: Ms. Rachel Brand
Associate Counsel to the President

⁶ 5 U.S.C. § 3346(a)(2).

⁷ 5 U.S.C. § 3348(c).

List of Acting Positions Expiring Nov. 15, 2001

Vacancy Title	Agency	Acting Start Date	Vacancy Date Began
Director, Bureau of the Census	Dept. of Commerce	01/21/01	01/20/01
Chief Financial Officer	Dept. of the Treasury	01/20/01	1/20/01
Assistant Secretary (Management)	Dept. of the Treasury	01/20/01	1/20/01
Assistant Secretary, Employment Standards Administration	Dept. of Labor	01/20/01	1/20/01
Assistant Secretary for Public Affairs	Dept. of Labor	05/14/01	07/31/99
Director, Bureau of Justice Statistics	Dept. of Justice	02/09/01	01/20/01
Director, Office of Science	Dept. of Energy	01/20/01	01/20/01
Director, Civilian Radioactive Waste Management	Dept. of Energy	01/20/01	01/20/01
Administrator, Energy Information Administration	Dept. of Energy	07/5/01	06/02/00
Assistant Secretary for Environment, Safety, & Health	Dept. of Energy	01/20/01	01/20/01
Chief Financial Officer	National Aeronautics & Space Administration	01/22/01	01/19/01
Inspector General	Central Intelligence Agency	01/20/01	01/19/01
Deputy Director	Federal Emergency Management Agency	02/26/01	09/15/00
Associate Director, Preparedness Training & Exercises Director	Federal Emergency Management Agency	01/20/01	01/20/01
Associate Director, Mitigation Directorate	Federal Emergency Management Agency	01/20/01	01/20/01
Administrator, Federal Insurance Administration	Federal Emergency Management Agency	01/20/01	01/20/01
Assistant Administrator for Administration & Resources Management	Environmental Protection Agency	01/20/01	01/20/01
Assistant Administrator for Research & Development	Environmental Protection Agency	01/20/01	01/20/01
Chief Financial Officer	Corp. For National & Community Services	01/21/01	01/20/01