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United States Government Accountability Office  
Washington, DC 20548

May 17, 2012

The President  
The White House

Subject: *Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998*

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 1998<sup>1</sup> (Vacancies Reform Act), at the Department of Housing and Urban Development (HUD). As you know, the Vacancies Reform Act establishes requirements for the temporary filling of vacant executive agency 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. Section 3349(b) requires the Comptroller General, upon a determination that an acting official is serving 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, HUD reported to us that a vacancy in the position of Inspector General began on October 12, 2010, when Inspector General Kenneth M. Donohue resigned. This position requires Presidential appointment and Senate confirmation under the provisions of the Inspector General Act of 1978<sup>2</sup> and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). The Department also reported to us that Mr. Michael P. Stephens served as Acting Inspector General between October 12, 2010, and September 9, 2011.

In this instance, the 210-day limit imposed by the Vacancies Reform Act on the period of Mr. Stephens' service as Acting Inspector General ended on May 10, 2011. The Vacancies Reform Act also contains a spring-back provision that allows an acting official to resume performing the duties of the office once a nomination is submitted to the Senate for the period that such nomination is pending in the Senate. 5 U.S.C. § 3346(a)(2). Thus, Mr. Stephens could resume his service as Acting Inspector General on July 18, 2011, when the nomination of David A. Montoya for the position of Inspector General was submitted to the Senate.

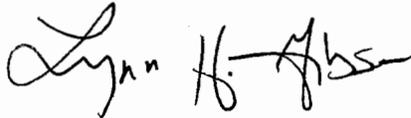
<sup>1</sup> Pub. L. No. 105-277, Div. C, Title I (Oct. 21, 1998), as amended, 5 U.S.C. §§ 3345-3349d.

<sup>2</sup> Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), as amended, at 5 U.S.C. App.

However, Mr. Stephens' service as Acting Inspector General between the dates of May 10, 2011, and July 18, 2011, was in violation of the time limitations in the Vacancies Reform Act. While the nullification provisions<sup>3</sup> of the Act do not apply to Inspectors General, the other provisions of the Act, including the 210-day limitation, are applicable. 5 U.S.C. § 3348(e)(3).

In accordance with the requirements of the Vacancies Reform Act, we are sending letters reporting this violation to the chairmen 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 Appropriations Committees, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Financial Services, and the Director of the Office of Personnel Management. If you have any questions regarding this matter, please call me on 202-512-5400, or Associate General Counsel Robert J. Cramer on 202-512-7227.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

Lynn H. Gibson  
General Counsel

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<sup>3</sup> Generally, when a position is vacant and the applicable periods for temporary service have expired, no one but the head of an agency may perform any of the non-delegable functions or duties of the vacant position. 5 U.S.C. § 3348(b)(2). If someone violates this provision, the Vacancies Reform Act provides that the offending agency actions shall have no force or effect and may not be ratified. 5 U.S.C. § 3348(d).