



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

B-331027

August 6, 2019

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998:
Inspector General, Tennessee Valley Authority*

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 Tennessee Valley Authority (TVA) with respect to the Inspector General position. Specifically, we are reporting that the service of Jill Matthews as Acting Inspector General from April 25, 2018, until on or about May 24, 2019, was in violation of the Act. Because Ms. Matthews is not using the acting title any longer, there is not a continuing violation.

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 beginning on the date the vacancy occurs. 5 U.S.C. § 3346(a)(1). Under the provisions of section 3349(b), the Comptroller General is required, upon a determination that an acting official has served longer than the allowable period of service, to report this finding to Congress, the President, and the Office of Personnel Management.

In response to our April 2019 request that TVA submit required information on vacant positions under the Vacancies Reform Act,² TVA reported that the position of Inspector General became vacant on September 22, 2017, and that Ms. Matthews became Acting Inspector General on that date.³ After we inquired about a potential violation of the permissible period of acting

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 Letter from General Counsel, GAO, to President and Chief Executive Officer, TVA, Subject: Violation of Federal Vacancies Reform Act Reporting Obligation, April 22, 2019. We sent similar letters to federal departments and agencies for which potential reporting failures had been identified. Under the Act, agencies are required to immediately report to GAO when a covered position becomes vacant and an acting official is named, among other things. 5 U.S.C. § 3349(a).

³ TVA responded by letter dated May 3, 2019. Letter from Vice President, Government Relations, TVA, to Comptroller General, May 3, 2019.

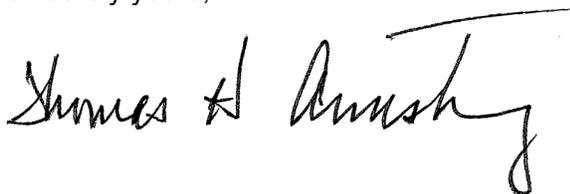
service based on the information reported, TVA informed us on May 24, 2019, that Ms. Matthews had stopped using the acting title.⁴

In accordance with the Vacancies Reform Act, the 210-day period began on September 22, 2017, when the vacancy occurred, and ended on April 24, 2018.⁵ Thus, the position of Inspector General should have been vacant beginning April 25, 2018, and the duties carried out by the Deputy Inspector General. However, as TVA confirmed, Ms. Matthews was still using the acting title until on or about May 24, 2019.⁶ 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.⁷ Therefore, Ms. Matthews was not authorized to continue serving using the title of Acting Inspector General after April 24, 2018.⁸

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 Reform, the Senate and House Committees on Appropriations, the Senate Committee on Environment and Public Works, the House Committee on Transportation and Infrastructure, and the Acting Director of the Office of Personnel Management.

If you have any questions regarding this matter, please contact Shirley Jones, Managing Associate General Counsel, at 202-512-8156 or Janet Temko-Blinder, Assistant General Counsel for Strategic Issues, at 202-512-7104.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is fluid and cursive, with a long horizontal line extending from the top of the "A".

Thomas H. Armstrong
General Counsel

⁴ Letter from Assistant General Counsel, GAO, to General Counsel, TVA, May 13, 2019. Letter from General Counsel, TVA, to Assistant General Counsel, GAO, May 24, 2019.

⁵ The 210-day period ended on April 20, 2018, but since the Senate was not in session on that day, the Act extends the permissible period to the day after the Senate next reconvened, which was April 24, 2018. 5 U.S.C. § 3348(c).

⁶ Letter from General Counsel, TVA, to Assistant General Counsel, GAO, May 24, 2019.

⁷ See, e.g., B-318244, June 18, 2014, at 5-6; B-287720, May 18, 2011, at 3.

⁸ In the event a nomination is submitted to the Senate, the Vacancy Reform Act would allow service as Acting Inspector General for the period that such nomination is pending. 5 U.S.C. § 3346(a)(2).