



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

B-331539

September 18, 2020

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998:
President of the Government National Mortgage Association*

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 (herein “the Vacancies Reform Act” or “Act”) at the Department of Housing and Urban Development (HUD), Government National Mortgage Association (GNMA) with respect to the GNMA President position. Pub. L. No. 105-277, div. C, title I, 112 Stat. 2681-611 (Oct. 21, 1998), as amended, 5 U.S.C. §§ 3345–3349d. Specifically, we are reporting that the service of Michael Bright as Acting President from November 17, 2017, until January 3, 2019, and the service of Maren Kasper as Acting President from August 2, 2019, until on or about October 15, 2019, were in violation of the Act. Because no one is currently using the acting title, there is no 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. Generally, the Vacancies Reform Act limits the service of an acting official to 210 days beginning on the date the vacancy occurs. 5 U.S.C. § 3346(a). In the year of a transitional presidential inauguration, such as 2017, the Act permits an acting official to serve for 300 days after the vacancy occurs with respect to any vacancy that exists during the 60-day period beginning on the transitional inauguration date. 5 U.S.C. § 3349a(b).

Additionally, acting service is also permissible while a first or second nomination for the office is pending in the Senate and for up to 210 days after the date that a first or second nomination is rejected, withdrawn, or returned by the Senate. 5 U.S.C. § 3346. However, the Vacancies Reform Act prohibits a nominee from serving as the acting official unless the nominee was the first assistant to the vacant position and served as such for at least 90 days out of the previous 365 days before the vacancy began. 5 U.S.C. § 3345(b).

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.

HUD reported to us that a vacancy in the position of GNMA President began on January 20, 2017,¹ and that Nancy Corsiglia was designated Acting President at that time.² GAO's Executive Vacancy System. HUD next reported Mr. Bright was designated Acting President on July 11, 2017, and served until January 16, 2019. *Id.* HUD also reported Mr. Bright was nominated to serve as President of GNMA on June 7, 2018, and that the nomination was returned by the Senate on January 3, 2019. *Id.* The agency also reported that Ms. Kasper was designated as the Acting President on January 17, 2019, and that her service ended on August 1, 2019. *Id.*

In accordance with the Vacancies Reform Act, the 300-day period of permissible acting service began on January 20, 2017, when the vacancy occurred, which was a transitional inauguration day, and ended on November 16, 2017. Thus, the position of President should have been vacant beginning on November 17, 2017. However, as HUD reported, Mr. Bright continued to serve as Acting President after this date. 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. See, e.g., B-318244, June 18, 2014; B-287720, May 18, 2001. Here, Mr. Bright was not authorized to continue serving using the title of Acting President from November 17, 2017, to June 6, 2018, the date prior to his nomination.

As previously mentioned, Mr. Bright was nominated to the position on June 7, 2018. While a first or second nomination generally permits an acting official to serve while the nomination is pending before the Senate, a nominee can only serve as the acting official if the person was the first assistant to the vacant position and served as such for at least 90 days out of the previous 365 days before the vacancy began. 5 U.S.C. § 3345(b). Mr. Bright did not become the Executive Vice President and Chief Operating Officer of GNMA until July 11, 2017, the same day he became the acting official. Because he became the first assistant after the vacancy began, he was ineligible to continue serving as the acting official after his nomination. This means his service as the acting official from June 7, 2018, to January 3, 2019, was also in violation of the Vacancies Reform Act.

When a first or second nomination is rejected, returned, or withdrawn, another 210-day period of permissible acting service begins anew. 5 U.S.C. § 3346. When Mr. Bright's nomination was returned on January 3, 2019, the new 210-day period began on January 3 and ended on August 1, 2019. While HUD reported Ms. Kasper ended her acting service on August 1, the GNMA website continued to list her as Acting President until on or about October 15, 2019. When we inquired about a potential violation of the permissible period of acting service, HUD acknowledged that the website mistakenly listed Ms. Kasper as Acting President after August 1, 2019, but that the website had been corrected. Letter from Deputy Assistant General Counsel, GAO, to General Counsel, HUD, Nov. 13, 2019; letter from General Counsel, HUD, to Deputy Assistant General Counsel, GAO, Dec. 19, 2019. However, we find that by holding Ms. Kasper out to the public as Acting President when the position should have been vacant, the agency violated the time limitations in the Vacancies Reform Act.

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

¹ The vacancy began due to the resignation of Theodore Tozer.

² The Vacancies Reform Act does not require agencies to report when an individual discontinues service as the acting official and HUD did not do so with regard to Ms. Corsiglia. It is clear, however, that her period of acting service did not violate the time period limitation.

Homeland Security and Governmental Affairs, the House Committee on Oversight and Reform, the Senate and House Committees on Appropriations, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Financial Services, and the Acting Director of the Office of Personnel Management.

If you have any questions regarding this matter, please contact Shirley A. Jones, Managing Associate General Counsel, at 202-512-8156 or Shari Brewster, Assistant General Counsel, at 202-512-6398.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the "y" in "Armstrong".

Thomas H. Armstrong
General Counsel