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United States Government Accountability Office
Washington, DC 20548

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July 20, 2005

The Honorable Susan M. Collins
Chairman, Committee on Homeland
Security and Governmental Affairs
United States Senate

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

Dear Chairman Collins:

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 at the Department of Transportation. As you know, the Vacancies Reform Act established new 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.² Section 3349(b) of the Act 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 finding to Congress, the President, and the Office of Personnel Management.

As required by the Vacancies Reform Act, the Department of Transportation reported to us that a vacancy in the position of Federal Railroad Administrator began on June 19, 2004, when Administrator Allan Rutter resigned. The position of Federal Railroad Administrator requires Presidential appointment and Senate confirmation, and thus is subject to the Vacancies Reform Act.³ The Department also reported to us that two officials, Betty Monro and Robert D. Jamison, served in an acting capacity

¹ 5 U.S.C. §§ 3345-3349d.

² 5 U.S.C. § 3346.

³ 49 U.S.C. § 103(b).

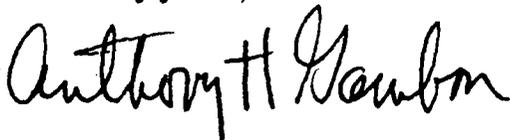
from June 19, 2004, until June 1, 2005, when Joseph H. Boardman commenced service as the Federal Railroad Administrator.⁴

The Vacancies Reform Act generally limits the service of acting officials to 210 days from the date of the vacancy. In this instance, the 210-day period ended on January 24, 2005, taking the Senate recess into consideration. The 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. Thus, Mr. Jamison could resume his service as acting Administrator on March 17, 2005, when the nomination of Joseph H. Boardman was submitted to the Senate.⁵ However, Mr. Jamison's service as acting Administrator from January 24, 2005, until March 17, 2005, was in violation of the time limitation in the Vacancies Reform Act.

The Vacancies Reform Act contains an enforcement provision, which nullifies certain actions taken by an acting official who is serving in violation of the Act.⁶ However, the Department of Transportation reported to us that Mr. Jamison did not undertake any agency actions relating to an exclusive function or duty, as defined by 5 U.S.C. § 3348, during the period between January 24, 2005, and March 17, 2005.

In accordance with the requirements of the Vacancies Reform Act, we are sending identical letters to the House Committee on Government Reform, the House and Senate Appropriations Committees, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, the Director of the Office of Personnel Management, and the President. If you should have any questions regarding this matter, please call me on 202-512-5400, or Assistant General Counsel Michael R. Volpe on 202-512-8236.

Sincerely yours,



Anthony H. Gamboa
General Counsel

⁴ Betty Monro served as Acting Administrator from June 19, 2004, until January 1, 2005. Robert D. Jamison served as Acting Administrator from January 4, 2005, until June 1, 2005. Mr. Boardman was confirmed by the Senate on April 28, 2005.

⁵ 5 U.S.C. § 3346(a)(2).

⁶ 5 U.S.C. § 3348(d).