



Decision

Matter of: Department of Homeland Security—Legality of Service of the Senior Official Performing the Duties of the Administrator of the Federal Emergency Management Agency

File: B-337082

Date: May 28, 2026

DIGEST

The position of Administrator of the Federal Emergency Management Agency (FEMA) is subject to the Federal Vacancies Reform Act of 1998 (Vacancies Act), 5 U.S.C. §§ 3345–3349d. The Vacancies Act is the exclusive means for an acting official to serve in a covered presidentially appointed, Senate-confirmed position unless another statute expressly provides an exception. If there is no official serving in accordance with the Vacancies Act, then the position must remain vacant, and no official may use the title of acting official. Cameron Hamilton and David Richardson were each appointed as the Senior Official Performing the Duties of the Administrator (SOPDA) of FEMA. Their appointments as SOPDA were made pursuant to a Department of Homeland Security succession order and, because neither was appointed as Acting Administrator, the Vacancies Act did not govern their appointments. Therefore, their appointments did not violate the Vacancies Act.

DECISION

This responds to congressional requests for a decision regarding the legal authority for Cameron Hamilton’s and David Richardson’s appointments as the Senior Official Performing the Duties of the Administrator (SOPDA) of the Federal Emergency Management Agency (FEMA), a component of the Department of Homeland Security (DHS).¹ As explained below, we conclude that Messrs. Hamilton’s and

¹ 6 U.S.C. § 313(a); Letter from Bennie G. Thompson, Shri Thanedar, and Timothy M. Kennedy, House Committee on Homeland Security, to the Comptroller General, GAO (May 20, 2025) (Richardson Request Letter); Letter from Bennie G. Thompson, Shri Thanedar, and Timothy M. Kennedy, House Committee on Homeland Security,

(continued...)

Richardson's appointments did not violate the Federal Vacancies Reform Act of 1998 (Vacancies Act), 5 U.S.C. §§ 3345–3349d.²

In accordance with our regular practice, we contacted FEMA and DHS to seek factual information and its legal views on this matter.³ DHS responded with its explanation of the pertinent facts and legal analysis as to Mr. Hamilton but did not respond as to Mr. Richardson.⁴ We determined that the DHS Response was sufficient to reach a decision on both Messrs. Richardson's and Hamilton's service.

BACKGROUND

The Vacancies Act permits specified individuals to temporarily serve as acting officials in certain vacant presidentially appointed, Senate-confirmed (PAS) positions.⁵ The Vacancies Act is the exclusive means for an acting official to serve in a covered PAS position unless another statute expressly provides an exception.⁶ For covered PAS positions, the first assistant to a PAS position will become the acting official unless the president directs certain other officials to serve as the acting official in conformity with Vacancies Act criteria.⁷ If there is no first assistant and the

to the Comptroller General, GAO (Jan. 28, 2025) (Hamilton Request Letter). While the first request, regarding Mr. Hamilton, was pending, Mr. Hamilton was replaced by Mr. Richardson, the subject of the second request. We review the appointments of both officials in this decision.

² This decision concerns the appointments of Messrs. Hamilton and Richardson as SOPDA under the Vacancies Act and, accordingly, does not examine the qualifications required of officials who are appointed as FEMA Administrators. See 6 U.S.C. § 313(c)(2).

³ GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>; Email from Assistant General Counsel for Appropriations Law, GAO, to Assistant General Counsel for Administrative Law, DHS, Deputy Associate General Counsel for General Law, DHS, and Associate General Counsel for General Law, DHS (Aug. 4, 2025) (Richardson Development Email); Letter from Assistant General Counsel for Appropriations Law, GAO, to Chief Counsel, FEMA, Acting General Counsel, DHS, and Associate General Counsel for General Law, DHS (Feb. 26, 2025).

⁴ Letter from Associate General Counsel for General Law, DHS, to Assistant General Counsel for Appropriations Law, GAO (Mar. 26, 2025) (DHS Response).

⁵ 5 U.S.C. §§ 3345–3349d.

⁶ *Id.* § 3347.

⁷ *Id.* § 3345(a).

president does not name an eligible acting official, then no one may serve as the acting official.⁸ Importantly, the Vacancies Act applies to service in an acting capacity or, in other words, when an official uses the acting title.⁹

As a component of DHS, FEMA is an agency in the executive branch.¹⁰ FEMA's mission is to lead and support a national emergency management system that "reduce[s] the loss of life and property and protect[s] the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters."¹¹ FEMA is led by an Administrator, a PAS position subject to the Vacancies Act.¹² The Administrator reports to the Secretary of Homeland Security and serves as the principal advisor to the President, the Secretary, and the Homeland Security Council "for all matters relating to emergency management in the United States."¹³

A DHS order governs succession and delegations of authority for certain PAS positions, including the FEMA Administrator position.¹⁴ Under the order, the Deputy Administrator, a PAS position, is designated as the Administrator's first assistant and serves as the Acting Administrator, subject to the time limits under the Vacancies Act, unless another eligible official is designated by the President.¹⁵ If the positions of Administrator and Deputy Administrator are both vacant, and the President has not designated an Acting Administrator, then the order provides that the following officials, in this order of succession, will be the Senior Official Performing the Duties of the Administrator (SOPDA): Deputy Administrator for Resilience; Associate Administrator, Office of Response and Recovery; Regional Administrator, FEMA Region 6; Regional Administrator, FEMA Region 9; and Chief Counsel, FEMA.¹⁶

⁸ *Id.* § 3348.

⁹ *Id.* §§ 3345, 3346; B-310780, June 13, 2008.

¹⁰ 6 U.S.C. §§ 111(a), 313(a).

¹¹ *Id.* § 313(b)(1).

¹² *Id.* §§ 113(a)(1)(D), 313(a), (c)(1); see 5 U.S.C. § 3347; 6 U.S.C. §§ 113, 313 (not providing an exception to the Vacancies Act).

¹³ 6 U.S.C. § 313(c)(3), (4)(A).

¹⁴ DHS Delegation No. 106, *DHS Orders of Succession and Delegations of Authorities for Names Offices and Positions* (rev. 9.2, Nov. 5, 2024), Annex K; DHS Response, at 2.

¹⁵ 6 U.S.C. § 321c(a); DHS Delegation No. 106, ¶ E, Annex K; DHS Response, at 2.

¹⁶ DHS Delegation No. 106, ¶ E, Annex K; DHS Response at 2–3.

From this list, only the Deputy Administrator for Resilience is a PAS position.¹⁷ The order also provides that the SOPDA may not use the acting title or perform any duties that are required by statute or regulation to be performed exclusively by the Administrator.¹⁸

The most recent Administrator, Deanne Bennett Criswell, resigned effective January 20, 2025, creating a vacancy in the Administrator position.¹⁹ The most recent Deputy Administrator resigned effective January 20, 2025, and the most recent Deputy Administrator for Resilience resigned effective January 31, 2020, creating vacancies in both positions.²⁰ According to DHS, Mr. Hamilton was appointed as the Associate Administrator for the Office of Response and Recovery on January 20, 2025, and began serving as SOPDA at that time.²¹ DHS informed us that Mr. Hamilton did not serve as Acting Administrator and, as SOPDA, only performed the Administrator's delegable duties.²² Mr. Hamilton served until on or

¹⁷ 6 U.S.C. § 321c(a); DHS Delegation No. 106, Annex K.

¹⁸ DHS Delegation No. 106, ¶ E.

¹⁹ DHS Response, at 2; GAO's Executive Vacancy System.

²⁰ DHS Response, at n.8.

²¹ DHS Response, at 4; see FEMA, *Offices & Leadership*, available at <https://web.archive.org/web/20250123155736/https://www.fema.gov/about/organization/offices-leadership> (archived on Jan. 23, 2025, 15:57:36 ET) (listing Mr. Hamilton as SOPDA as of a January 22, 2025, update to FEMA's leadership webpage). There are discrepancies as to when Mr. Hamilton began serving as SOPDA, though they do not affect our analysis of whether Mr. Hamilton was appointed in violation of the Vacancies Act. According to the Hamilton Request Letter, Mr. Hamilton was appointed as Associate Administrator on January 21, 2025, and as SOPDA on January 22, 2025. Hamilton Request Letter (citing Christopher Flavelle, *Former Navy SEAL Said to Be Interim Head of FEMA*, N.Y. TIMES, Jan. 22, 2025, available at <https://www.nytimes.com/2025/01/22/climate/fema-announcement-cameron-hamilton.html> (last visited May 26, 2026)). According to FEMA's leadership webpage, the Region 6 Regional Administrator was SOPDA on January 21, 2025. FEMA, *Offices & Leadership*, available at <https://web.archive.org/web/20250122174249/https://www.fema.gov/about/organization/offices-leadership> (archived on Jan. 22, 2025, 17:42:49 ET) (listing the Region 6 Regional Director as SOPDA as of a January 21, 2025, update to FEMA's leadership webpage). DHS did not mention this official's service as SOPDA.

²² DHS Response, at 5.

about May 8, 2025.²³ Mr. Richardson replaced Mr. Hamilton as SOPDA on or about May 8, 2025.²⁴ We do not know when Mr. Richardson ceased serving as SOPDA, although it seems to have been by early December 2025.²⁵ However, this

²³ Richardson Request Letter (citing The Associated Press, *FEMA's acting administrator is replaced a day after congressional testimony*, NPR, May 8, 2025, available at <https://www.npr.org/2025/05/08/g-s1-65223/cameron-hamilton-fema-acting-administrator-ousted> (last visited May 26, 2026)); see FEMA, *Offices & Leadership*, available at <https://web.archive.org/web/20250510104243/https://www.fema.gov/about/organization/offices-leadership> (archived on May 10, 2025, 10:42:43 ET) (listing Mr. Richardson as SOPDA as of a May 8, 2025, update to FEMA's leadership webpage). On May 11, 2026, the President nominated Mr. Hamilton to be the FEMA Administrator. Library of Congress, *PN961-2 — Cameron Hamilton — Department of Homeland Security*, CONGRESS.GOV, <https://www.congress.gov/nomination/119th-congress/961/2?hl=hamilton&s=1&r=1> (last visited May 26, 2026).

²⁴ See n.22, *supra*.

²⁵ DHS did not inform us when Mr. Richardson stopped serving as SOPDA, nor does FEMA's website indicate when he departed. FEMA's leadership webpage continued to list Mr. Richardson as SOPDA until on or about January 16, 2026. *Compare* FEMA, *Offices & Leadership*, available at <https://web.archive.org/web/20260110112214/https://www.fema.gov/about/organization/offices-leadership> (archived on Jan. 10, 2026, 11:22:14 ET) (listing Mr. Richardson as SOPDA as of a Dec. 2, 2025, update to the webpage) *with* FEMA, *Offices & Leadership*, available at <https://web.archive.org/web/20260125173402/https://www.fema.gov/about/organization/offices-leadership> (archived on Jan. 25, 2026, 17:34:02 ET) (listing no SOPDA as of a Jan. 16, 2026, update to the webpage). Meanwhile, DHS's leadership webpage listed Karen Evans as SOPDA as of a December 9, 2025, update. DHS, *Leadership*, available at <https://web.archive.org/web/20251215205842/https://www.dhs.gov/leadership> (archived on Dec. 15, 2025, 20:58:42 ET); see FEMA, *Notice of the Presidential Declaration of a Major Disaster for the State of Alaska, 4893-DR-AK Initial Notice* (Oct. 22, 2025), available at <https://www.fema.gov/disaster-federal-register-notice/4893-dr-ak-initial-notice> (as of a Dec. 6, 2025, webpage update, publishing notice under signature of Karen Evans as SOPDA); DHS, *Secretary Noem Announces \$1 Billion in FEMA Funding for Georgia* (Dec. 12, 2025), available at <https://www.dhs.gov/news/2025/12/12/secretary-noem-announces-1-billion-fema-funding-georgia> (in a December 12, 2025, press release, referring to Karen Evans as SOPDA). As of a May 12, 2026, update to its Offices & Leadership webpage, FEMA lists Robert Fenton as SOPDA. FEMA, *Offices & Leadership*, available at <https://www.fema.gov/about/organization/offices-leadership> (all references last visited May 26, 2026).

information is not necessary for our analysis of whether the appointments violated the Vacancies Act.

DISCUSSION

At issue here is whether Messrs. Hamilton's and Richardson's appointments as SOPDA violated the Vacancies Act. We conclude that their appointments did not. As applicable to FEMA, the Vacancies Act provides the exclusive means by which an Acting Administrator of FEMA may be designated.²⁶ The Acting Administrator may only be the first assistant—the Deputy Administrator—or an eligible official named by the President.²⁷ If there is no incumbent Deputy Administrator, and the President has not named an Acting Administrator, then no one may serve as Acting Administrator; the position must remain vacant.²⁸ Instead, DHS's order of succession prescribes that the seniormost incumbent listed in the order will serve as SOPDA.²⁹

Here, there was no incumbent Deputy Administrator to assume the position of Acting Administrator when the position became vacant on January 20, 2025, nor did the President name an acting official. Accordingly, Messrs. Hamilton and Richardson were each appointed as SOPDA pursuant to DHS's succession order—not the Vacancies Act.³⁰ In accordance with DHS's succession order, in which the SOPDA is only authorized to perform delegable functions, Messrs. Hamilton and Richardson

²⁶ See 5 U.S.C. § 3347; see also 6 U.S.C. §§ 113, 313 (not providing an exception to the Vacancies Act).

²⁷ See 5 U.S.C. § 3345(a); DHS Delegation No. 106, ¶ E.

²⁸ See DHS Delegation No. 106, ¶ E; DHS Response, at 2.

²⁹ *Id.*

³⁰ We note that FEMA issued a press release on February 25, 2025, in which it erroneously identified Mr. Hamilton as the Acting Administrator. FEMA, *That Phone Call You Blocked May be FEMA Calling* (Feb. 25, 2025) (GAO archived copy); DHS Response, at 5. The misidentification here did not violate the Vacancies Act's time limit because the misidentification of Mr. Hamilton as Acting Administrator did not occur after the permissible period of acting service. See B-333857, Apr. 18, 2022, at 5 (finding no violation of the Vacancies Act time limit where Sharon Block served as Acting Administrator of the Office of Information and Regulatory Affairs despite not being eligible to serve in an acting capacity because she did not use the title after the permissible period of acting service for the vacancy). The FEMA Administrator position became vacant on January 20, 2025, and the permissible period of acting service expired on November 18, 2025. 5 U.S.C. § 3349a(b).

performed the delegable functions and duties of the Administrator.³¹ Their appointments as SOPDA were not governed by the Vacancies Act because they did not purport to convey the authority and title of Acting Administrator. Therefore, we conclude that the appointments of Messrs. Hamilton and Richardson as SOPDA did not violate the Vacancies Act.³²

CONCLUSION

FEMA did not violate the Vacancies Act when the agency appointed Messrs. Hamilton and Richardson as SOPDA. Their respective appointments as SOPDA were made in accordance with DHS's succession order, which did not convey the authority and title of Acting Administrator, and, as such, the Vacancies Act did not govern their appointments. Therefore, we conclude that their appointments as SOPDA did not violate the Vacancies Act.



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³¹ See DHS Delegation No. 106, ¶ E. DHS informed us that Mr. Hamilton performed only the Administrator's delegable functions and duties. See n.22, *supra*. While DHS did not respond to us about Mr. Richardson, we recognize that his appointment under the DHS succession order only authorized him to perform delegable functions, and we are not aware of any instance in which he performed nondelegable functions or duties. Thus, we do not consider whether any of their actions are subject to the Vacancies Act's enforcement mechanism, under which any function or duty of a position that is required by statute or regulation to be performed only by an acting official serving in accordance with the Vacancies Act that is instead performed by another person who is not serving in accordance with the Vacancies Act "shall have no force or effect" and "may not be ratified." 5 U.S.C. § 3348(d); B-336092, Jan. 16, 2025.

³² Our decision is limited to compliance with the Vacancies Act. We do not address whether Mr. Richardson was properly appointed as SOPDA under DHS's succession order.