



B-338097

September 17, 2026

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998: Inspector General, Department of Commerce*

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 (Vacancies Act)¹ at the U.S. Department of Commerce (Commerce) with respect to the position of Inspector General (IG). Specifically, we are reporting that Duane Townsend's use of the Acting IG title in the transmittal memorandum for the Office of Inspector General's (OIG) Top Management Challenges Report issued on December 1, 2025,² was in violation of the Vacancies Act.³ Because no one is currently using the acting title for this position, there is no continuing violation.

¹ 5 U.S.C. §§ 3345–3349d.

² See Commerce, *Top Management and Performance Challenges Facing the Department of Commerce in Fiscal Year 2026*, Report No. OIG-26-003, available at https://web.archive.org/web/20260420113849/https://www.oig.doc.gov/wp-content/OIGPublications/OIG-26-003_TMC_FY_2026_SECURED-1.pdf (archived on Apr. 13, 2026) (OIG Top Management Challenges report) (listing Mr. Townsend as Acting Inspector General).

³ We contacted Commerce to seek facts and its legal views on the matter. Email from Assistant General Counsel for Appropriations Law, GAO, to Deputy White House Liaison, Office of the Secretary, Commerce (Dec. 22, 2025). Commerce responded with its explanation of pertinent facts. Email from Deputy White House Liaison, Office of the Secretary, Commerce, to Assistant General Counsel for Appropriations Law, GAO (Jan. 6, 2026) (Commerce Email). Subsequently, we requested additional information and legal views from the Commerce OIG. Letter from Assistant General Counsel for Appropriations Law, GAO, to Counsel to the IG, OIG, Commerce (Apr. 27, 2026). OIG provided a response. Letter from Office of
(continued...)

Requirements of the Vacancies Act

The Vacancies Act establishes requirements for temporarily authorizing an acting official in certain vacant positions that require presidential appointment and Senate confirmation.⁴ With respect to IGs, however, the Inspector General Act (IG Act) provides that section 3345(a) of title 5, United States Code—the subsection of the Vacancies Act that prescribes who is eligible to fill covered vacancies—does not apply to IG vacancies.⁵ Instead, the IG Act prescribes the class and qualifications of officials who are eligible to be appointed as an acting IG.⁶ It provides that only either the IG’s first assistant or an eligible IG official designated by the President may serve as acting IG.⁷ The IG Act does not affect the application of the Vacancies Act’s time limits on acting service; indeed, it specifies that those time limits continue to apply to IG vacancies.⁸

The Vacancies Act generally limits the period of acting service to 210 days beginning on the date the vacancy occurs. 5 U.S.C. § 3346(a)(1). If a nomination has been submitted, then acting service is permitted during the pendency of a first or second nomination and, if the nominee is not confirmed, for up to 210 days after the date the first or second nomination is rejected, withdrawn, or returned. 5 U.S.C. § 3346(a)(2), (b). When no nomination is pending and a vacancy exists during the 60-day period beginning on the date of a presidential transitional inauguration, the 210-day period is extended by 90 days, allowing for 300 days of acting service

Counsel to the IG, OIG, Commerce, to Assistant General Counsel for Appropriations Law, GAO (May 27, 2026) (OIG Response).

⁴ Additional rules govern who may perform in an acting capacity when a vacancy occurs in an IG position. Securing Inspector General Independence Act of 2022, Pub. L. No. 117-263, div. E, title LII, § 5203, 136 Stat. 2395, 3221, 3227–33 (Dec. 23, 2022).

⁵ Pub. L. No. 117-263, div. E, title LII, § 5203, 136 Stat. 2395, 3227–33 (Dec. 23, 2022) (amending the IG Act, the amendment of which is not classified and is set out as a note to 5 U.S.C. § 403).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (providing that the first assistant or presidential designate may serve “temporarily in an acting capacity subject to the time limitations of section 3346 of title 5, United States Code” and that “[n]othing in the amendment . . . may be construed to limit the applicability of sections 3345 through 3349d of title 5, United States Code (commonly known as the “Federal Vacancies Reform Act of 1998”), other than with respect to section 3345(a) of that title.”).

beginning on the transitional inauguration day or the date the vacancy occurs, whichever is later. 5 U.S.C. §§ 3346(a)-(b), 3349a(b). The Comptroller General is required, upon a determination that an acting official has served longer than the allowable period, to report such findings to Congress, the President, and the Office of Personnel Management. *Id.* § 3349(b).

BACKGROUND

The Commerce IG resigned on January 5, 2024, and the position became vacant.⁹ The position remained vacant on January 20, 2025, the transitional inauguration date,¹⁰ which started the clock on a 300-day period of permissible acting service for the IG position. 5 U.S.C. § 3349a(b)(1). In accordance with the Vacancies Act, the period of permissible acting service ended on November 18, 2025.¹¹ 5 U.S.C. § 3348(c).

⁹ OIG Response at 1. The Deputy IG, Roderick Anderson, began serving as Acting IG when the position became vacant in January 2024. *Id.* On May 1, 2024, President Biden notified Congress that he was designating Jill Baisinger as Acting IG, effective 30 days from the notice date. *Id.* Lisa Re was nominated for the position on July 31, 2024. *Id.* Re's nomination was withdrawn on January 3, 2025. *Id.* President Trump removed Ms. Baisinger from the Acting IG role On January 24, 2025. *Id.* The Deputy IG, Mr. Anderson, began serving as Acting IG after Ms. Baisinger's removal. *Id.* On June 5, 2025, President Trump notified Congress of his intent to designate Duane Townsend as Acting IG, effective 30 days from the notice date. *Id.* Mr. Townsend began serving as Acting IG on July 7, 2025. Email from Senior Political Program and Operations (Census) Manager, Commerce, to FederalVacancies@gao.gov, GAO (Jul. 15, 2025).

¹⁰ U.S. Const. amend. XX, § 1.

¹¹ The Vacancies Act provides "if the last day of any [acting service period] is a day on which the Senate is not in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period." 5 U.S.C. § 3348(c). The Senate was not in session on November 15, 2025, which would have been the last day of the permissible acting service period. The Senate was in session on November 13, 2025, and adjourned until November 17, 2025. 171 Cong. Rec. S8185 (daily ed. Nov. 13, 2025). The Senate reconvened for a pro forma session on November 17, 2025. 171 Cong. Rec. S8187 (daily ed. Nov. 17, 2025). We have previously concluded that the Senate is "in session" under section 3348(c) when it holds a pro forma session. See B-335587, Jan. 25, 2024. The senate was in session again on November 18, 2025, making November 18, 2025, the second day the Senate was in session for purposes of calculating the last day of the permissible period of acting service under the Vacancies Act. 171 Cong. Rec. S8189 (daily ed. Nov. 18, 2025); 5 U.S.C. § 3348(c).

On July 15, 2025, Commerce reported that Duane Townsend began serving as Acting IG on July 7, 2025.¹² Commerce informed our office that Mr. Townsend's acting service ended on November 16, 2025.¹³ However, Mr. Townsend was identified as the Acting IG in the transmittal memorandum for the OIG's Top Management Challenges report issued on December 1, 2025.¹⁴ In its response, OIG acknowledged that "[t]he use of the Acting IG title in the December 1, 2025 [Top Management Challenges] report. . . was a clerical error, attributed in part to the lapse in appropriations beginning on October 1, 2025, which caused the publication of the report to be late and hastily issued."¹⁵ OIG also noted that the report has been corrected on the website and explained that the office has "taken steps to prevent potential future occurrences."¹⁶

DISCUSSION

We have previously determined that an agency violates the Vacancies Act time limitations if the agency identifies an individual as an acting officer on official agency documents and/or on the agency's website after the end of the period of permissible acting service. See, e.g., B-336092, Jan. 16, 2025. It is immaterial whether the identification was due to a mistake made by the agency. See *id.*; B-335739, Feb. 8, 2024. For example, in B-336092, an individual used the title of Acting Assistant Attorney General, Office of Legal Policy, Department of Justice (DOJ), in a *Federal Register* notice after the permissible period of acting service ended for that position. See B-336092, Jan. 16, 2025. DOJ explained that the official ceased serving in the acting role at the proper time and characterized the use of the acting title in the *Federal Register* notice as a mistake. *Id.* Nonetheless, GAO determined that the use of the acting title after the end of the period of permissible acting service violated

¹² Email from Senior Political Program and Operations (Census) Manager, Commerce, to FederalVacancies@gao.gov, GAO (Jul. 15, 2025).

¹³ Commerce Email.

¹⁴ *Id.* See OIG Top Management Challenges report (listing Mr. Townsend as Acting Inspector General). The current version of the report can be viewed at this link: <https://www.oig.doc.gov/top-management-challenges/?entry=54825> (last visited July 20, 2026) (listing Mr. Townsend as Performing the Duties of Inspector General). The version displayed on OIG's current website has been corrected to describe Mr. Townsend as "Performing the Duties of Inspector General." It also includes a footnote explaining that the title was updated on May 1, 2026, from "Acting Inspector General" to "Performing the Duties of Inspector General."

¹⁵ OIG Response, at 2.

¹⁶ *Id.* at 1–2.

the Vacancies Act time limitations. *Id.* As we explained, it is vital for officials to discontinue use of the acting title when the permissible period of acting service ends in order to convey to Congress, the public, and other government agencies that an official is no longer authorized to perform the functions and duties of the vacant position. *Id.* at 3; see 5 U.S.C. § 3348(b), (d).

Here, Mr. Townsend was identified with the Acting IG title in his signature in the OIG Top Management Challenges report after the period of permissible acting service ended. It is immaterial that the use of the Acting IG title here was a clerical error. While the nullification provisions of the Vacancies Act under 5 U.S.C. § 3348 do not apply to Inspectors General, other provisions of the Act, including the Act's time limitations, are applicable to Inspectors General.¹⁷ B-333853, Jun. 28, 2022. Mr. Townsend's use of the Acting IG title was not authorized by the Vacancies Act and violated the Act's time limitations.

CONCLUSION

An agency's identification of an individual as an acting officer on official agency documents after the end of the period of permissible acting service constitutes a violation of the Vacancies Act time limitations. Because the permissible period of acting service here ended on November 18, 2025, and Mr. Townsend was identified as Acting IG in a report issued December 1, 2025, Mr. Townsend's use of the acting title was not authorized by the Vacancies Act and violated the Act's time limitations.

In accordance with the requirements of the Vacancies Act, we are also 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 Government Reform, the Senate and House Committees on Appropriations, the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce, and the Director of the Office of Personnel Management.

¹⁷ The Vacancies Act contains an 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. This provision, however, does not apply to IGs, and we need not consider it here. 5 U.S.C. § 3348(e)(3).

If you have any questions regarding this matter, please contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Kristine Hassinger, Assistant General Counsel, at (202) 512-8152.

Sincerely,

A handwritten signature in cursive script that reads "Edda Emmanuelli Perez".

Edda Emmanuelli Perez
General Counsel