



B-338093

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 Education*

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 Department of Education's Office of the Inspector General (OIG) with respect to the Inspector General (IG) position. Specifically, we are reporting that the service of Mark E. Priebe as Acting IG from December 7, 2025, to April 7, 2026, was in violation of the Vacancies Act. On May 12, 2026, Mr. Priebe was again designated as Acting IG; however, because a nomination has been pending since that date, there is no continuing violation.²

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. 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.³ Instead, the IG Act prescribes the class and qualifications of

¹ 5 U.S.C. §§ 3345–3349d.

² We contacted OIG to seek factual information and its legal views on the matter. Email from Assistant General Counsel for Appropriations Law, GAO, to Counsel to the IG, OIG (Dec. 22, 2025). OIG responded with its explanation of pertinent facts and legal views. OIG, *Education OIG responses to GAO email dated 12/22/25* (Jan. 8, 2026) (OIG Response).

³ 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).

officials who are eligible to be appointed as an acting IG.⁴ It provides that only either the IG's first assistant or an eligible IG official designated by the President may serve as acting IG.⁵ 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.⁶

The Vacancies Act generally limits the period of acting service to 210 days beginning on the date the vacancy occurs.⁷ 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.⁸ 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 beginning on the transitional inauguration day or the date the vacancy occurs, whichever is later.⁹ 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.¹⁰

BACKGROUND

OIG reported that the position of IG became vacant on January 24, 2025.¹¹ Rene L. Roque, the Deputy IG, served as Acting IG from January 24, 2025, to July 7, 2025.¹²

⁴ *Id.*

⁵ *Id.*

⁶ *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”).

⁷ 5 U.S.C. § 3346(a)(1).

⁸ *Id.* § 3346(a)(2), (b).

⁹ *Id.* §§ 3346(a)-(b), 3349a(b).

¹⁰ *Id.* § 3349(b).

¹¹ GAO's Executive Vacancy System; OIG Response.

¹² GAO's Executive Vacancy System; OIG Response.

Heidi Semann, whom the President designated as Acting IG, served in that role from July 7, 2025, to November 20, 2025.¹³ Pursuant to a presidential designation, Mr. Priebe served as Acting IG from December 7, 2025, to April 7, 2026.¹⁴ On May 11, 2026, the President nominated Ms. Semann to be IG, the first nomination since the vacancy began.¹⁵ OIG reported that, on May 12, 2026, Mr. Priebe resumed service as Acting IG.¹⁶

DISCUSSION

The IG vacancy occurred on January 24, 2025, four days after a transitional presidential inauguration day, which means that the permissible period for acting

¹³ GAO's Executive Vacancy System; *Designation of Heidi Semann as Acting Inspector General of the Department of Education—Message from the President of the United States*, H. Doc. No. 119-58, 171 CONG. REC. H2482–83 (daily ed. June 5, 2025). Under the Vacancies Act, the period of permissible acting service ended on November 19, 2025. 5 U.S.C. § 3349a(b). OIG reported that Ms. Semann discontinued her service as Acting IG on November 20, 2025. GAO's Executive Vacancy System; OIG Response. We are aware that the Department of Justice, Office of Legal Counsel (OLC), calculates the time periods following a transitional inauguration differently than GAO. See *Federal Vacancies Reform Act's Application to a Vacancy for Which Prior Presidents Submitted Multiple Nominations*, 46 Op. O.L.C. ___, n.3 (Oct. 21, 2022) (slip op.); B-334562, Feb. 8, 2023, at n.26. OLC calculates the beginning of the 210-day period after the last day of the 90-day period, *i.e.*, on the 91st day following the inauguration or the date of the vacancy. *Id.* GAO begins calculating the 210-day period on the 90th day. *E.g.*, B-336149, July 15, 2024, at n.10; B-334565, Feb. 8, 2023, at n.22. Here, it appears that OIG calculated the permissible period of acting service in accordance with OLC.

¹⁴ GAO's Executive Vacancy System; 171 CONG. REC. H4589 (daily ed. Nov. 10, 2025) (acknowledging receipt of Executive Communication No. 2193, which notified the House of Representatives of the President's intention to designate Mr. Priebe as Acting IG). Mr. Priebe continued to lead OIG, albeit without using the Acting IG title, from April 8, 2026, to May 11, 2026. Email from Counsel to the IG, OIG, to Assistant General Counsel for Appropriations Law, GAO (Apr. 9, 2026).

¹⁵ Library of Congress, *PN962-2—Heidi Semann—Department of Education*, CONGRESS.GOV, <https://www.congress.gov/nomination/119th-congress/962/2?hl=semann&s=3&r=1> (last visited Sept. 15, 2026) (stating that the nomination was received on May 11, 2026). OIG reported that the nomination was submitted to the Senate on May 12, 2026. GAO's Executive Vacancy System. The discrepancy between OIG's report and Congress.gov is not germane to our analysis.

¹⁶ GAO's Executive Vacancy System.

service ended 300 days later, on November 19, 2025.¹⁷ The President designated Mr. Priebe as Acting IG after that date, on December 7, 2025.¹⁸ The President's designation cited section 403 note of title 5, United States Code, as authority, a reference to the IG Act's provisions governing the filling of IG vacancies.¹⁹ As discussed above, the IG Act does not affect the application of the Vacancies Act's time limits on acting service and, in fact, specifies that those time limits apply to IG vacancies.²⁰ Accordingly, Mr. Priebe's service as Acting IG was subject to the Vacancies Act's time limits. Because Mr. Priebe's entire service as Acting IG between December 7, 2025, and April 7, 2026, took place after the period of permissible acting service had already ended, his use of the acting title violated the Vacancies Act *ab initio*.²¹

In contrast, Mr. Priebe's use of the acting title since May 12, 2026, does not violate the Vacancies Act. The Vacancies Act permits acting service during a first or second nomination's pendency before the Senate and for 210 days after the nomination's rejection, withdrawal, or return.²² Therefore, when Ms. Semann was nominated to be IG, Mr. Priebe was permitted to resume using the Acting IG title.

¹⁷ In accordance with the Vacancies Act's provisions governing vacancies occurring on or within 60 days of a transitional inauguration day, the 210-day period did not begin until 90 days after January 24, 2025, *i.e.* April 24, 2025. See 5 U.S.C. § 3349a(b).

¹⁸ GAO's Executive Vacancy System; OIG Response.

¹⁹ 171 CONG. REC. H4589; see *supra* pp. 1–2. The designation also cites Article II, section 1, clause 1 (the Executive Vesting Clause), and section 3 (the Take Care Clause) of the U.S. Constitution as authority; however, as those provisions do not specifically pertain to filling vacancies, we do not address them here. *Designation of Mark Elmer Priebe as Acting Inspector General of the Department of Education—Communication from the President of the United States*, H. Doc. No. 119-110 (Nov. 10, 2025), available at <https://www.govinfo.gov/content/pkg/CDOC-119hdoc110/pdf/CDOC-119hdoc110.pdf> (last visited Sept. 15, 2026); see OIG Response.

²⁰ Pub. L. No. 117-263, § 5203; see *supra* n.6.

²¹ 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).

²² 5 U.S.C. § 3346(a)(2), (b).

CONCLUSION

An agency's identification of an individual as an acting officer after the end of the period of permissible acting service constitutes a violation of the Vacancies Act time limitations. Mr. Priebe's use of the acting title from December 7, 2025, to April 7, 2026, exceeded the time limitations of the Vacancies Act and constituted a violation of the Vacancies Act. Mr. Priebe's use of the acting title beginning on May 12, 2026, however, does not violate the Vacancies 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 Health, Education, Labor, and Pensions; and the House Committee on Education and Workforce; and the 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 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