



B-338094

October 1, 2026

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998: Director, Institute of Education Sciences, 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 Institute of Education Sciences (IES) with respect to the Director position. Specifically, we are reporting that the service of Matthew Soldner as Acting Director from November 19, 2025, to the date of this decision was in violation of the Vacancies Act and that Dr. Soldner's continued service as Acting Director constitutes a continuing violation.²

Requirements of the Vacancies Act

The Vacancies 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 (PAS positions). The Vacancies Act identifies three categories of persons who may temporarily perform the functions and duties of a vacant PAS position.³ The first assistant to the vacant position

¹ 5 U.S.C. §§ 3345–3349d.

² We contacted the Department of Education (ED) four times to seek factual information and its legal views on the matter. Email from Assistant General Counsel for Appropriations Law, GAO, to Deputy General Counsel, ED (Dec. 22, 2025); Email from Assistant General Counsel for Appropriations Law, GAO, to Deputy General Counsel, ED (June 15, 2026); Letter from Assistant General Counsel for Appropriations Law, GAO, to Deputy General Counsel, ED (June 15, 2026); Email from Senior Attorney, GAO, to Deputy General Counsel, ED (July 30, 2026). ED did not respond to any of the communications; however, we have sufficient information from publicly available sources for purposes of applying the Vacancies Act.

³ 5 U.S.C. § 3345.

automatically serves as acting officer unless the President designates an individual in one of the other categories.⁴ The President may designate as acting officer either: (1) an individual serving in another PAS position; or (2) a senior agency officer or employee who has served for a minimum period of time prior to the vacancy.⁵

If the President has not submitted a nomination for the vacant position, then the Vacancies Act generally limits the period of acting service to 210 days beginning on the date the vacancy occurs.⁶ But when 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.⁷ If the President has submitted a nomination, 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

After the expiration of the period of permissible acting service, the position must remain vacant, and only the head of the agency may perform the functions or duties of the position.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

The IES Director is a PAS position and, therefore, subject to the Vacancies Act.¹¹ ED is required to report a vacancy in the position to GAO and Congress but has not

⁴ *Id.* § 3345(a)(1).

⁵ *Id.* § 3345(a)(2)–(3).

⁶ *Id.* § 3346(a)(1).

⁷ *Id.* § 3349a(b).

⁸ *Id.* § 3346(a)(2), (b).

⁹ *Id.* § 3348(b).

¹⁰ *Id.* § 3349(b).

¹¹ 20 U.S.C. § 9514(a); see *id.* (not providing an exception to the Vacancies Act); 5 U.S.C. § 3347 (same). Although IES describes itself as “independent and non-partisan,” it is an establishment in ED and not an independent establishment for purposes of the Vacancies Act. 20 U.S.C. § 9511(a); IES, ABOUT IES,

(continued...)

done so since 2009.¹² Nonetheless, we are aware that a vacancy occurred on March 29, 2024.¹³ In April 2024, Dr. Soldner began serving as Acting Director.¹⁴ On September 9, 2024, President Biden nominated Adam Gamoran to be IES Director.¹⁵ The Senate returned the nomination on January 3, 2025.¹⁶ The permissible period of acting service ended on November 18, 2025, but, as of the date of this decision, IES's website continues to identify Dr. Soldner as Acting Director.¹⁷

<https://ies.ed.gov/about> (last visited Sept. 28, 2026); see 5 U.S.C. §§ 104(1), 3349c(1).

¹² 5 U.S.C. § 3349(a); GAO's Executive Vacancies System.

¹³ Mark Schneider, *Five Years Closer to CTE Success + A Farewell*, THOUGHT LEADERSHIP BLOG, ED (Mar. 26, 2024), <https://ies.ed.gov/learn/blog/five-years-closer-cte-success-farewell#> (announcing that Dr. Schneider's last day as IES Director would be March 28, 2024) (last visited Sept. 28, 2026).

¹⁴ ED, *Department of Education Announces Appointment of National Center for Education Statistics Acting Commissioner Dr. Matthew Soldner* (July 7, 2025), <https://www.ed.gov/about/news/press-release/departments-of-education-announces-appointment-of-national-center-education-statistics-acting-commissioner-dr-matthew-soldner> (stating that Dr. Soldner "has served as [IES Acting Director] since April 2024"); see American Educational Research Association, *Mark Schneider's Term Ends as Director of IES; NCEE Commissioner Matthew Soldner Named Acting Director* (Mar. 2024), <https://www.aera.net/Newsroom/AERA-Highlights-E-newsletter/AERA-Highlights-March-2024/Mark-Schneiders-Term-Ends-as-Director-of-IES-NCEE-Commissioner-Matthew-Soldner-Named-Acting-Director> (stating that, on March 29, 2024, Dr. Soldner "announced that he would be serving as IES acting director") (all references last visited Sept. 28, 2026). We do not know the date on which Dr. Soldner began serving as Acting Director, although it is not germane to our determination in this decision.

¹⁵ Library of Congress, *PN2037—Adam Gamoran—Department of Education*, CONGRESS.GOV, <https://www.congress.gov/nomination/118th-congress/2037?hl=education+schneider&s=1&r=1> (last visited Sept. 28, 2026).

¹⁶ *Id.*; see U.S. Senate, STANDING RULES OF THE SENATE, Rule XXXI ¶ 6, S. Doc. No. 113-18, at 44 (2013), <https://www.rules.senate.gov/imo/media/doc/CDOC-113sdoc18.pdf> (last visited Sept. 28, 2026).

¹⁷ IES, *Matthew Soldner*, IES STAFF, <https://ies.ed.gov/about/directory/matthew-soldner> (last visited Sept. 28, 2026).

DISCUSSION

The IES Director vacancy occurred on March 29, 2024, which started a 210-day period of permissible acting service.¹⁸ Dr. Gamoran's nomination was pending between September 9, 2024, and January 3, 2025, which permitted acting service to continue during the pendency of the nomination and for 210 days after Dr. Gamoran's nomination was returned on January 3, 2025.¹⁹ Then, because the vacancy still existed on a presidential inauguration day, President Trump's inauguration on January 20, 2025, started a 300-day period of permissible acting service.²⁰ Therefore, Dr. Soldner was authorized to serve as Acting Director until November 18, 2025.²¹ Here, we find that IES's website continued to identify Dr. Soldner as Acting Director after November 18, 2025, and continues to identify him as such to this day.²² Dr. Soldner's use of the Acting Director title after November 18, 2025, is not authorized by the Vacancies Act and violates the Act's time limitations.²³

¹⁸ See 5 U.S.C. § 3346(a)(1).

¹⁹ See *id.* § 3346(a)(2), (b).

²⁰ See *id.* § 3349a; B-287720, May 18, 2001.

²¹ 5 U.S.C. § 3349a(b). The 300th day fell on November 15, 2025, a Saturday on which the Senate was not in session. See U.S. Senate, *Calendar of Business*, 119th Congress, at 4, <https://www.govinfo.gov/content/pkg/CCAL-119scal-2026-08-10/pdf/CCAL-119scal-2026-08-10.pdf> (last visited Sept. 28, 2026). The Vacancies Act provides that, "[i]f the last day of any 210-day period under section 3346 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 next in session on November 17, 2025; thus, the acting service period ended on November 18, 2025. *Calendar of Business*, 119th Congress.

²² *Supra*, n.17.

²³ See B-336092, Jan. 16, 2025. 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. We are not aware of any actions taken by Dr. Soldner that would be subject to this enforcement mechanism.

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. Because IES continues to identify Dr. Soldner as Acting Director after the end of the period of permissible acting service, Dr. Soldner's use of the Acting Director title after November 18, 2025, is not authorized by the Vacancies Act and violates 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 Health, Education, Labor, and Pensions; 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 black ink that reads "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez
General Counsel