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United States Government Accountability Office
Washington, DC 20548

B-305188

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 Veterans Affairs. 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 Veterans Affairs reported to us that a vacancy in the position of Under Secretary for Health began on April 7, 2004, when Under Secretary Robert Roswell resigned. The position of Under Secretary for Health requires Presidential appointment and Senate confirmation, and thus is subject to the Vacancies Reform Act.³ The Department also reported to us that Dr. Jonathan Perlin, served in an acting capacity from April 8, 2004, until April 28, 2005, when he was confirmed by the Senate as Under Secretary for Health.

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

¹ 5 U.S.C. §§ 3345-3349d.

² 5 U.S.C. § 3346.

³ 38 U.S.C. § 305(a)(1).

November 17, 2004. 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, Dr. Perlin could resume his service as acting Under Secretary on February 18, 2005, when his nomination was submitted to the Senate.⁴ However, Dr. Perlin's service as acting Under Secretary for Health from November 17, 2004, until February 18, 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.⁵ However, the Department of Veterans Affairs reported to us that Dr. Perlin 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 November 17, 2004, and February 18, 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 House and Senate Veterans' Affairs Committees, 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 5 U.S.C. § 3346(a)(2).

⁵ 5 U.S.C. § 3348(d).