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United States Government Accountability Office
Washington, DC 20548

B-305675

December 22, 2005

The President
The White House

Subject: Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998

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 1998¹ at the Department of the Army. 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 the Army reported to us that a vacancy in the position of Assistant Secretary of the Army for Civil Works began on March 6, 2002, when Assistant Secretary Michael Parker left office. This position requires Presidential appointment and Senate confirmation,³ and thus is subject to the Vacancies Reform Act. The Department also reported to us that two officials, Dominic Izzo and R.L. Brownlee, served in an acting capacity from March 7, 2002, until August 22, 2003, when the President gave a recess appointment to John Paul Woodley.⁴

¹ 5 U.S.C. §§ 3345-3349d.

² 5 U.S.C. § 3346.

³ 10 U.S.C. § 3016.

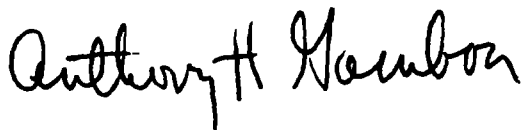
⁴ Dominic Izzo served as Acting Assistant Secretary from March 7, 2002, until March 22, 2002. R.L. Brownlee served as Acting Assistant Secretary from March 22, 2002, until August 22, 2003.

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 October 2, 2002. 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, Mr. Brownlee could resume his service as acting Assistant Secretary on January 22, 2003, when the nomination of John Paul Woodley was submitted to the Senate.⁶ However, Mr. Brownlee's service as acting Assistant Secretary from October 2, 2002, until January 22, 2003, 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.⁶ However, the Department of the Army reported to us that Mr. Brownlee 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 October 2, 2002, and January 22, 2003.

In accordance with the requirements of the Vacancies Reform Act, we are sending identical letters to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, the House and Senate Appropriations Committees, the House and Senate Armed Services Committees, the Senate Committee on Environment and Public Works, the House Committee on Transportation and Infrastructure, and the Director of the Office of Personnel Management. If you should have any questions regarding this matter, please call me on 202-512-5400, or Associate General Counsel Robert J. Cramer on 202-512-7227.

Sincerely yours,



Anthony H. Gamboa
General Counsel

⁶ 5 U.S.C. § 3346(a)(2).

⁶ 5 U.S.C. § 3348(d).