



441 G St. N.W.
Washington, DC 20548

B-326480

March 30, 2015

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 (herein “the Vacancies Reform Act” or “the Act”) at the Department of Veterans Affairs (VA) with respect to the Inspector General position. The Inspector General position is a Presidential appointment subject to Senate confirmation under the provisions of the Inspector General Act of 1978² and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). Specifically, we are reporting that the service of Richard J. Griffin as Acting Inspector General of VA, beginning July 30, 2014, until on or about January 5, 2015, was in violation of the Act. Although this position remains vacant, because Mr. Griffin is no longer Acting Inspector General, there is no current violation, and we believe no further action on this issue is necessary. Nonetheless, we will continue to monitor this vacancy until the position is filled.

The Vacancies Reform Act establishes requirements for temporarily authorizing an acting officer to perform the functions and duties of certain vacant positions that require Presidential appointment and Senate confirmation. It generally limits the period of time that such a position may be filled with an acting officer to 210 days. 5 U.S.C. § 3346(a)(1). Section 3349(b) requires the Comptroller General, upon a determination that an acting officer is serving longer than the 210-day period, to report such findings to Congress, the President, and the Office of Personnel Management.

Although the Vacancies Reform Act requires agencies to report vacancies to GAO, VA did not report to us that a vacancy in the position of Inspector General occurred. 5 U.S.C. § 3349(a). On December 11, 2014, we wrote to the VA to request information about this vacancy. In a January 5, 2015, response to our letter, the Deputy Inspector General, Richard J. Griffin, informed us that the vacancy began on December 31, 2013, when Inspector General George J. Opfer retired. The Deputy Inspector General also reported to us that he began serving as Acting Inspector General on January 1, 2014. Prior to that date, Mr. Griffin had been the Deputy Inspector General since 2008.³

¹ Pub. L. No. 105-277, Div. C, Title I (Oct. 21, 1998), as amended, 5 U.S.C. §§ 3345-3349d.

² Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), as amended, at 5 U.S.C. App. 3.

³ Although not specifically addressed by the Deputy Inspector General in his response, his serving as Acting Inspector General is in accordance with the Vacancies Reform Act, specifically 5 U.S.C. § 3345(a)(1), which permits the first assistant to the vacant position to serve as the acting officer.

While the nullification provisions⁴ of the Act do not apply to Inspectors General, the other provisions of the Act, including the 210-day limitation, are applicable. 5 U.S.C. § 3348(e)(3). In this instance, the 210-day limit imposed by the Vacancies Reform Act on the period of Mr. Griffin's service as Acting Inspector General ended on July 29, 2014. Consequently, the position should have been vacant beginning July 30, 2014. We have previously determined that using the acting title of a position during the period in which the position should be vacant violates the time limitation in the Vacancies Reform Act. B-323944, June 27, 2014; B-287720, May 18, 2001.

In his January 5, 2015, response, the Deputy Inspector General acknowledged that the expiration of the 210-day period went unnoticed and that he (and his staff) continued to use the title "Acting Inspector General" beyond the permissible period. He stated, however, that since being made aware of the Vacancies Reform Act requirements, he has refrained from using the acting title and has informed his staff to ensure it is no longer used. Thus, while Mr. Griffin's service as Acting Inspector General beginning July 30, 2014, was in violation of the time limitations on acting service in the Vacancies Reform Act, we consider the Department to be currently in compliance with the requirement that the office remain vacant during this period because Mr. Griffin has subsequently taken action to ensure the acting title is not used.⁵

In accordance with the requirements of the Vacancies Reform Act, we are 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 Appropriations Committees, the Senate and House Veterans' Affairs Committees, and the Director of the Office of Personnel Management.

If you have any questions regarding this matter, please call me on 202-512-5400, or Managing Associate General Counsel Robert J. Cramer on 202-512-7227.

Sincerely yours,



Susan A. Poling
General Counsel

⁴ Generally, when a position is vacant and the applicable periods for temporary service have expired, no one but the head of an agency may perform any of the non-delegable functions or duties of the vacant position. 5 U.S.C. § 3348(b)(2). If an official other than the head of the agency performs a non-delegable function or duty of the vacant position, the Vacancies Reform Act provides that those actions shall have no force or effect and may not be ratified. 5 U.S.C. § 3348(d).

⁵ In the event a nomination is submitted to the Senate, the spring-back provision of the Vacancy Reform Act would allow service as acting Inspector General for the period that such nomination is pending. 5 U.S.C. § 3346(a)(2).