



B-332619

December 15, 2020

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998: Chief Financial Officer, U.S. Environmental Protection Agency*

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) at the U.S. Environmental Protection Agency (EPA) with respect to the Chief Financial Officer position. Pub. L. No. 105-277, div. C, title I, 112 Stat. 2681-611 (Oct. 21, 1998), as amended, 5 U.S.C. §§ 3345–3349d. Specifically, we are reporting that the service of David Bloom as Acting Chief Financial Officer from April 3, 2020, until on or about October 19, 2020, was in violation of the Vacancies Act. Because no one is currently using the acting title for this position, there is no continuing violation.

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. Generally, the Vacancies Act limits the service of an acting official to 210 days beginning on the date the vacancy occurs. 5 U.S.C. § 3346(a). Under the provisions of section 3349(b), the Comptroller General is required, upon a determination that an acting official has served longer than the allowable period of service, to report such findings to Congress, the President, and the Office of Personnel Management.

EPA reported to us that a vacancy in the position of Chief Financial Officer began on September 5, 2019,¹ and that David Bloom was designated as the Acting Chief Financial Officer at that time. GAO's Executive Vacancy System. The 210-day period of permissible acting service ended on April 2, 2020, but the EPA website continued to list Mr. Bloom as the Acting Chief Financial Officer until on or about October 19, 2020. When we inquired about a potential violation of the permissible period of acting service, EPA acknowledged that the website mistakenly listed Mr. Bloom as Acting Chief Financial Officer after April 2, 2020, but explained that,

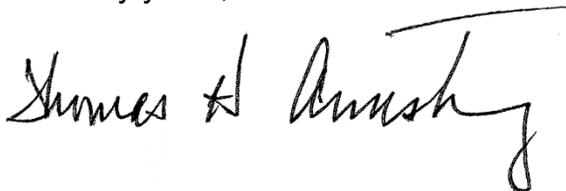
¹ The vacancy began due to the resignation of Holly W. Greaves.

after receipt of our inquiry, the website was corrected. Letter from Assistant General Counsel, GAO, to Acting General Counsel, EPA (Oct. 27, 2020); Letter from Acting General Counsel, EPA, to Assistant General Counsel, GAO (Oct. 30, 2020). We have previously determined that an agency violates the time limitations in the Vacancies Act if it identifies an official as an acting official on the agency's website when the position should be vacant. B-331539, Sept. 18, 2020. Here, we find that EPA held Mr. Bloom out to the public as Acting Chief Financial Officer by identifying him as serving in such role on EPA's website after the end of the period of permissible acting service. Further, by holding Mr. Bloom out to the public as Acting Chief Financial Officer when the position should have been vacant, the agency violated the time limitations in the Vacancies Act.

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 Reform, the Senate and House Committees on Appropriations, the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the House Committee on Transportation and Infrastructure, and the Acting 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 Aimee Aceto, Acting Assistant General Counsel, at 202-512-6534.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line above the "y" in "Armstrong".

Thomas H. Armstrong
General Counsel