

GAO

Report to the Chairman, Committee on  
Governmental Affairs, U.S. Senate

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May 2001

# PRESIDENTIAL APPOINTMENTS

## Agencies' Compliance With Provisions of the Federal Vacancies Reform Act of 1998



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## Abbreviations

GAO	General Accounting Office
IMLS	Institute of Museum and Library Services
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OPP	Office of Presidential Personnel
PAS	Presidential Appointments and Senate Confirmation



United States General Accounting Office  
Washington, DC 20548

May 31, 2001

The Honorable Fred Thompson  
Chairman, Committee on  
Governmental Affairs  
United States Senate

Dear Mr. Chairman:

The Federal Vacancies Reform Act of 1998 (Vacancies Reform Act), which took effect on November 21, 1998, established new requirements for the temporary filling of vacant executive agency positions that require presidential appointment and Senate confirmation (PAS positions). The Vacancies Reform Act is intended to create a clear process and a time limit for the temporary filling of PAS positions. It requires agencies to inform the Congress and GAO whenever (1) a PAS position becomes vacant, (2) a vacant position is filled on a temporary basis, (3) a nomination is made to the Senate to fill a vacancy, or (4) a nomination for the position is rejected, withdrawn, or returned. The act also specifies limits on the time PAS positions can be filled on an acting basis. You asked us to assess the Vacancies Reform Act's implementation. Specifically, you asked us to determine whether agencies were (1) promptly notifying the Congress and GAO of all reportable vacancies and all temporary appointments, and (2) adhering to the time limits for temporary service. On September 29, 2000, we sent an interim response to you with information on 11 large agencies<sup>1</sup> that each had a substantial number of PAS positions. This report provides the results of all our work.

In August 2000, we sent a questionnaire to 62 agencies that might have PAS positions asking them to report on any of these positions they had. A total of 44 agencies responded that they had PAS positions subject to the act and the agencies are listed in appendix II. The questionnaire also asked agencies to report all vacancies and acting officials in PAS positions from the act's effective date in November 1998 through June 30, 2000. Our results rely on agency self reporting and it is possible that additional agencies with PAS positions beyond those identified in our work are covered by the act.

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<sup>1</sup> *Implementation of the Federal Vacancies Reform Act of 1998* (GAO /GGD-00-210R, Sept. 29, 2000).

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To determine if agencies had promptly notified us of all vacancies and acting officials, we compared the information agencies provided through the questionnaire with the notifications sent by agencies to our Executive Vacancies Act Tracking System which we had set up to receive the information agencies are required to report to the Congress and us under the Vacancies Reform Act. To determine whether the time limits on acting officials were exceeded, we used data agencies provided to our tracking system and information reported by the agencies during this review. We contacted agency officials to obtain their explanations in instances where our analysis indicated that agencies might not have complied with the Act's vacancy and acting official reporting requirements or the acting official time limit. Our work was performed from August 2000 through April 2001 in accordance with generally accepted government auditing standards. Details on our methodology are in appendix I.

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## Results in Brief

Federal Agencies did not promptly report as required all vacancies and acting officials to the Congress and GAO. By comparing the responses to our questionnaire with information reported by agencies to our Executive Vacancies Act Tracking System, we found that agencies had not reported 17 vacancies (19 percent) and 21 acting officials (24 percent). Moreover, for about half of the instances that were reported to our tracking system, notification was not received for over 4 weeks after the date of their occurrence. The act requires that this information be reported immediately. In March 2001, the Counsel to the President sent a memorandum to federal executive branch departments and agencies that provided guidance to assist agencies in understanding and meeting their responsibilities under the Vacancies Reform Act. The memorandum streamlined the notification process by requiring that agencies send notifications directly to the Congress and GAO. Under the previous administration, agencies' notifications were required to be sent through an indirect route which began with their submission to the Office of Presidential Personnel (OPP) which then forwarded copies of the submission to the Office of Management and Budget (OMB). OMB officials then forwarded this information to the Congress and GAO. The new process should reduce the time it takes agencies to notify the Congress and us.

We found four acting officials at four agencies who exceeded the act's 210-day time limit for temporary service. Generally, in such cases, actions taken by the acting official after the time limit that cannot be delegated have no force or effect under a provision of the Vacancies Reform Act. However, three acting officials served in the positions of Inspector

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General (two instances) or Chief Financial Officer (one instance) which are specifically exempted from that provision. At the Institute of Museum and Library Services (IMLS) we found that an individual served as the agency's Acting Director beyond the 210-day time limit by at least 5 months. We have reported these instances to the President and the appropriate Committees of the Congress as required by the Vacancies Reform Act. In the IMLS case, any nondelegable actions made by this official after the time limit would have no force or effect, but agency officials told us that no nondelegable actions had been taken by the individual between the expiration of the original time limit and January 20, 2001. Under the Vacancies Reform Act, at the start of a new administration the time limit for acting officials begins anew so as of January 20, 2001, it was permissible for the individual to resume being Acting Director.

The Counsel to the President and IMLS reviewed a draft of the report. The Counsel had no comments. IMLS essentially agreed with the facts we lay out but disagreed that it violated the 210-day time limit for its Acting Director. Because the Deputy Director for Museum Services used the title of Acting Director after 210 days, we conclude that a violation did in fact occur.

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## Background

Under the Federal Vacancies Reform Act, a vacancy occurs if a presidential appointee covered by the act resigns, dies, or is otherwise unable to perform the functions and duties of the office. For covered PAS vacancies, the act among other things,

- specifies who may serve as an acting officer;
- imposes time limits on how long vacancies can be filled by acting officers; and
- requires agencies to immediately report to the Senate, the House of Representatives, and the Comptroller General of the United States any vacancy and the date it occurs; the name of any person serving in an acting capacity and the date such service began; the name of any person nominated to fill a vacancy and the date such nomination is submitted to the Senate; and the date of any rejection, withdrawal, or return of a nomination.

The Vacancies Reform Act also requires us to inform specified congressional committees, the President, and the Office of Personnel Management (OPM) if an acting officer is serving longer than 210 days, a period which may be extended through various provisions of the Vacancies Reform Act.

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Generally, the Vacancies Reform Act applies to any office within an executive agency to which appointment is required to be made by the President, by and with the advice and consent of the Senate. The Vacancies Reform Act, however, excludes from its coverage certain officers. It does not apply, for example, to any PAS position on a multimember board or commission that governs an independent establishment or government corporation, such as the commissioners of the Federal Election Commission. The Vacancies Reform Act also recognizes that a number of PAS positions are covered by other statutes that specifically address how the office is to be filled on a temporary basis.

The Federal Vacancies Reform Act of 1998 replaced an earlier Vacancies Act, which the Justice Department and several other executive agencies had maintained was not the exclusive authority for the temporary filling of vacant PAS positions. These agencies said their enabling statute, which gave their agency heads general authority to assign functions and delegate authority within the agency, could override the earlier Vacancies Act. In other words, the heads of these agencies could assign individuals to temporarily fill vacant PAS positions without informing the Congress and for longer than the 120 days established by the earlier Vacancies Act. In a long line of cases concerning officials who were serving in acting capacities without Senate approval, we found that the earlier Vacancies Act was the exclusive authority for the temporary filling of vacant positions. The question of whether agencies needed to follow the Vacancies Act, according to the Chairman of the Senate Committee on Governmental Affairs in a 1998 hearing, went to the heart of one of the Senate's most important powers, the duty to advise and consent on presidential nominations.

As previously mentioned, the 1998 Vacancies Reform Act assigned GAO certain responsibilities. We, together with the executive branch, developed a form, Submission Under the Federal Vacancies Reform Act, which the White House instructed agencies to use beginning in July 1999 to notify the Congress and GAO of vacancies, acting officials, and nominations. We also developed a computerized Executive Vacancies Act Tracking System to collect and analyze data submitted by agencies. Information from this system is accessible to agencies and the public through our web page (<http://www.gao.gov>). In June 1999, concerned with having received only 23 vacancy reports, we sent a letter to the heads of executive departments and agencies describing the requirements that the Vacancies Reform Act imposes on agencies and providing additional guidance for reporting information to us.

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In general, the Vacancies Reform Act permits vacancies to be filled for up to 210 days by acting officials, beginning on the date the vacancy occurred. At the end of the time limit, the position can no longer be filled on an acting basis. The Vacancies Reform Act extends or resets the 210-day period under certain circumstances, such as when a nomination is pending before Congress and at the start of a new administration. Because of the latter provision, all time limits began anew for PAS positions that were vacant on January 20, 2001. The Vacancies Reform Act directs GAO to determine whether acting officers have served beyond the time limit and to report any violations to certain congressional committees, the President, and OPM.

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## Significant Percentage of Vacancies and Acting Officials Not Reported by Agencies

In response to our survey, 44 agencies provided information on PAS positions. Agencies must notify the Congress and us whenever a vacancy occurs in a position covered by the Vacancies Reform Act. Agencies also must report the name of any person carrying out the duties of the vacant position in an acting capacity as well as certain other specific items of information. While 21 agencies responded to our questionnaire that they had vacancies or acting officials between the act's November 21, 1998, effective date and June 30, 2000, we were not notified of 17 (or 19 percent) of those vacancies and 21 (or 24 percent) of the acting officials.

The 21 agencies told us that vacancies had occurred in a total of 90 positions and that 87 officials had served in an acting capacity in those positions. Although we should have been notified of all 90 vacancies, 10 agencies did not notify us about 17 vacancies. We should also have been notified of all 87 instances of the appointment of acting officials, but 12 agencies did not notify us about 21 of those instances.<sup>2</sup> Table 1 identifies agencies with vacancies and acting officials along with the number of times they did not report either event.

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<sup>2</sup> We used a July 13, 2000, cut off date for reporting vacancies and acting officials to our Executive Vacancies Act Tracking System, which allowed 2 weeks after the June 30, 2000, ending date in our questionnaire. As of April 6, 2001, an additional 10 of the vacancies and an additional 12 of the acting officials had been reported to us.

**Table 1: Vacancies and Acting Officials For PAS Positions Between November 21, 1998, and June 30, 2000**

Agency	Vacancies			Acting		
	Total	Reported	Not Reported	Total	Reported	Not Reported
AID <sup>a</sup>	6	5	1	7	5	2
Agriculture <sup>a</sup>	1	1	0	2	2	0
Commerce	8	7	1	7	6	1
Defense	5	4	1	5	4	1
Education	5	5	0	5	4	1
Energy	4	2	2	4	2	2
EPA	3	3	0	3	2	1
HHS	2	2	0	2	2	0
HUD	1	1	0	0	0	0
Interior <sup>a</sup>	5	5	0	6	6	0
Justice	10	4	6	10	5	5
Labor	5	5	0	5	5	0
OMB <sup>a</sup>	3	3	0	4	4	0
IMLS	1	0	1	1	0	1
ONDCP	2	1	1	1	0	1
Peace Corp	1	0	1	1	0	1
OSTP	1	0	1	0	0	0
State	6	4	2	6	4	2
Transportation	6	6	0	6	6	0
Treasury	13	13	0	9	6	3
Veterans Affairs	2	2	0	3	3	0
<b>Total</b>	<b>90</b>	<b>73</b>	<b>17</b>	<b>87</b>	<b>66</b>	<b>21</b>

<sup>a</sup>Because more than one acting official was appointed to the same position at these agencies, the sum of acting officials reported and not reported is greater than the number of vacancies existing.

AID is Agency for International Development

EPA is Environmental Protection Agency

HHS is Department of Health and Human Services

HUD is Department of Housing and Urban Development

ONDCP is Office of National Drug Control Policy

OSTP is Office of Science and Technology Policy

The Vacancies Reform Act was signed into law on October 21, 1998, and generally became effective 30 days later, and it is possible that some



affected agencies were not aware of their responsibilities under the Vacancies Reform Act shortly after it was passed. However, the instances of nonreporting of vacancies and acting officials cannot all be attributed to the newness of the Vacancies Reform Act. As shown in table 2, 11 of 17 instances of nonreporting of vacancies occurred in 2000, and 13 of 21 instances of nonreporting of acting officials occurred in that year.

**Table 2: Vacancies and Acting Officials in PAS Positions Subject to the Vacancies Reform Act but Not Reported to GAO as of July 13, 2000**

Not notified of vacancy			Not notified of acting official	
Agency	PAS position	Date Position became vacant	PAS position	Date official began acting service
AID	Assistant Administrator, Management	03/17/2000	Assistant Administrator, Management	03/17/2000
			Inspector General	06/30/2000
Commerce	Assistant Secretary and Director General, U.S. and Foreign Commercial Service	01/10/2000	Assistant Secretary and Director General, U.S. and Foreign Commercial Service	01/10/2000
Defense	Under Secretary for Personnel and Readiness	03/31/2000	Under Secretary for Personnel and Readiness	04/01/2000
Education			Under Secretary	03/13/2000
EPA			Assistant Administrator, Environmental Information	12/02/1999
IMLS	Director	04/01/1999	Director	04/01/1999
Justice	Administrator, Juvenile Justice and Delinquency Prevention	02/28/2000	Administrator, Juvenile Justice and Delinquency Prevention	03/01/2000
	Associate Attorney General	10/28/1999	Associate Attorney General	10/29/1999
	Director, National Institute of Justice	04/21/2000	Director, National Institute of Justice	04/21/2000
	Deputy Administrator, Drug Enforcement Administration	06/02/2000		
	Assistant Attorney General, Office of Justice Programs	02/25/2000	Assistant Attorney General, Office of Justice Programs	02/26/2000
	Inspector General	08/15/1999	Inspector General	08/16/1999
Office of National Drug Control Policy	Deputy Director, Supply Reduction	02/03/2000	Deputy Director, Supply Reduction	02/03/2000
Office of Science and Technology Policy	Associate Director, National Security and International Affairs	01/31/1999		
Peace Corps	Director	08/12/1999	Director	08/12/1999
Energy	Director, Energy Information Administration	06/02/2000	Director, Energy Information Administration	06/03/2000
	Director, Office of Science	01/02/2000	Director, Office of Science	01/02/2000
State	Assistant Secretary, Bureau of Arms Control	11/23/1999		
	Director General of Foreign Affairs	06/09/2000	Director General of Foreign Affairs	06/09/2000

Not notified of vacancy			Not notified of acting official	
Agency	PAS position	Date Position became vacant	PAS position	Date official began acting service
Treasury			Assistant Secretary of Public Affairs	06/15/2000
			Assistant Secretary, Financial Institutions	07/16/1999
			Assistant Secretary, Public Affairs	08/11/1999
			Director of the Mint	03/27/2000

For each vacancy and acting official identified through our questionnaire that had not been reported to us by July 13, 2000, we contacted the applicable agency to verify that notification should have occurred. Most agencies offered no explanation for why vacancies and acting officials were not reported. Officials at the Departments of Commerce and Defense said they had reported one of the events in table 2, and an official at IMLS and an Agency for International Development official each said two events had been reported to OPP at the time of the events, but we found no evidence that the reports had been forwarded to us.

## Recent Guidance Should Reduce Reporting Time Lag

For about half of the vacancies and acting officials of which we were notified, the agencies took longer than 4 weeks to deliver reports to us, even though the act requires that these reports be submitted immediately. Between November 21, 1998, and July 13, 2000, a total of 21 agencies notified us of 73 vacancies and 66 acting officials. The mean time between the 73 vacancies occurring and the event being reported was 55 days and the median time was 32 days. The mean time for the 66 acting official events was 51 days and the median was 28 days.

On March 21, 2001, the Counsel to the President sent a memorandum to the heads of federal executive departments and agencies and units of the Executive Office of the President providing guidance on reporting requirements under the Vacancies Reform Act. The memorandum also streamlined the process for how reports are to be sent to the Congress and us, and specified that it is each agency's responsibility to determine whether the act covers any of its officials. Agencies were told to report directly to the Congress and GAO rather than through OPP and OMB, as was the case in the Clinton Administration. This more streamlined process should lead to more current reporting of events and the memorandum itself should raise awareness in agencies of their responsibility and hopefully increase timely compliance with the reporting requirements.

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## Four Acting Officials Served Beyond the Time Limit

Four acting officials served beyond the time limits specified by the Vacancies Reform Act. Three of these cases were discussed in our September 2000 interim response to you: the Acting Inspector Generals of the Departments of Defense and Justice and the Chief Financial Officer at the Environmental Protection Agency. We indicated that, while these officials had exceeded the time limit, the act provides an exception to the provision invalidating nondelegable actions for those persons serving in Inspector General or Chief Financial Officer positions. We reported these instances to President Clinton and the appropriate congressional committees on September 15, 2000.<sup>3</sup>

We found one additional instance of an acting official exceeding the time limit for temporary service. The Deputy Director for Museum Services of IMLS served as Acting Director for substantially longer than the 210-day time limit allows. We have also reported this situation to the President and the appropriate congressional Committees as required by the Vacancies Reform Act.<sup>4</sup> The position of Director became vacant on April 1, 1999, and the Deputy Director for Museum Services became the Acting Director on this date. According to IMLS officials, the Acting Director remained in this position only until the 210th day at which time the individual ceased acting as Director. At the end of the 210-day period, the Acting Director delegated all delegable functions to the Deputy Director for Museum Services. However, we found an instance where the individual used the Acting Director title at the House Appropriations hearing for IMLS on April 4, 2000, 5 months after the end of the 210 day time limit. The Vacancies Reform Act provides that actions taken by acting officials after expiration of the time limit have no force or effect if the functions and duties of the position necessary to take those actions could not by law be delegated by a person confirmed by the Senate to serve in the position. Any nondelegable decisions by the Acting Director of the IMLS after 210 days in the acting capacity would have no force or effect. IMLS officials told us that the individual had not taken any nondelegable actions after 210 days had passed. Because the Vacancies Reform Act restarts the clock on time limits for acting officials when a new administration takes office, the individual could resume serving as Acting Director on January 20, 2001.

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<sup>3</sup> *Violations of the 210-Day Limit Imposed by the Vacancies Reform Act*, B-286265, Sept. 15, 2000.

<sup>4</sup> *Violation of the 210-Day Limit Imposed by the Vacancies Reform Act*, B-287720, May 18, 2001.

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## Agency Comments And Our Evaluation

We sent copies of a draft of the report for review and comment to the Counsel to the President and to IMLS. The Counsel said that because the matters discussed in the report dealt with compliance by the previous administration, he and his staff did not have any knowledge about compliance at that time with the Vacancy Reform Act and had no comments (see Appendix III).

IMLS said that it had taken numerous steps to ensure that the agency was in compliance with the Vacancies Reform Act (see Appendix IV). IMLS essentially agreed with the facts presented in the report about the sequence of events related to the Acting Director. However, IMLS commented that while there may have been confusion about use of the Acting Director title after the 210-day time limit expired, the Deputy Director for Museum Services acted solely under delegated authority and took no unauthorized actions. However, as discussed in the report, the Deputy Director for Museum Services continued to use the title of Acting Director after expiration of the 210-day time limit and we conclude that this action of holding herself out to be the Acting Director constitutes a violation of the Vacancies Reform Act.

Even though we have been informed that no non-delegable functions and duties were performed by the Acting Director and thus the Act's provision invalidating improperly performed functions and duties would not apply in IMLS's situation, we still had a duty to report the 210-day violation to the President, the Congress, and OPM. The statute makes clear that the Congress is interested not only in prohibiting improperly exercised functions, but also in identifying situations where an office is vacant for an extended period of time and an acting official is serving in violation of the time limit. When an acting official serves past the allowed time period, such action raises issues of executive accountability and the performance of the leadership function. The Congress needs to be made aware of vacant positions for which the Senate has a role in consenting to their being filled. Because, as noted earlier, a report of the vacancy never reached the Congress or GAO, we believe it is important that we alert the Congress about the 210-day violation and the extended lapse in properly filling this leadership position.

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As agreed with your office, we will make no further distribution of this report for 14 days. After that time, we will send copies of this letter to Senator Joseph I. Lieberman, Ranking Member, Senate Committee on Governmental Affairs; Senators Thad Cochran, Chairman, and Daniel K.

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Akaka, Ranking Member, Subcommittee on International Security, Proliferation, and Federal Services, Senate Committee on Governmental Affairs; Senators George V. Voinovich, Chairman, and Richard J. Durbin, Ranking Member, Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, Senate Committee on Governmental Affairs; Representatives Dan Burton, Chairman, and Henry A. Waxman, Ranking Minority Member, House Committee on Government Reform; Representatives Joe Scarborough, Chairman, and Danny Davis, Ranking Minority Member, Subcommittee on Civil Service and Agency Organization, House Committee on Government Reform; Mr. Clay S. Johnson, Assistant to the President for Presidential Personnel; Mr. Alberto R. Gonzales, Counsel to the President; Mr. Steven R. Cohen, Acting Director, Office of Personnel Management; and, the Honorable Mitchell E. Daniels, Jr., Director, Office of Management and Budget. In addition, copies will be sent to other congressional committees, the heads of the agencies discussed in this report, and other interested parties. We will also make copies available to others on request.

Please contact me or Mr. Thomas Dowdal, Assistant Director, on (202) 512-6806 if you have any questions.

In addition, Jeffrey Dawson, Terry Draver, Clifton Douglas, Jr., V. Bruce Goddard, and Michael Volpe made key contributions to this report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Victor S. Rezendes". The signature is fluid and cursive, with the first name "Victor" and last name "Rezendes" clearly distinguishable.

Victor S. Rezendes  
Managing Director, Strategic Issues

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# Appendix I: Scope and Methodology

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To determine whether the Congress and GAO had been notified of all vacant PAS positions between November 21, 1998, and June 30, 2000,<sup>1</sup> and any acting officials serving in those positions, we obtained from the White House Office of Presidential Personnel a list of PAS positions that was the best available approximation of those subject to the Vacancies Reform Act. The then Associate Counsel to the President said that the list of 62 agencies with 484 PAS positions was a working list based primarily on Vacancies Reform Act submissions prepared by agency officials and was not intended to represent a final legal determination on the coverage of the Vacancies Reform Act.

We sent each agency on the White House list the names of its PAS positions and asked the agencies to complete a questionnaire for (1) each position identified and (2) any PAS position they considered subject to the Vacancies Reform Act that was not on the list we sent. The questionnaire also requested the name of any individual who filled a vacant position on an acting (temporary) basis and the dates of that service. Based on the responses, 44 agencies indicated they had positions covered by the Vacancies Reform Act.

We compared the vacancy and acting service information submitted by 44 agencies with the notifications GAO had received from them, as accumulated in our Executive Vacancies Reform Act Tracking System. The tracking system information was used for various analyses. When information we received through the questionnaire was not in the tracking system, we rechecked the source information for our tracking data and contacted the responsible agency to verify the information.

To determine whether vacancies were filled by acting officials for longer than the time limits under the act, we used data from our Executive Vacancies Act Tracking System and information that agencies submitted for this review. Our Executive Vacancies Act Tracking System is programmed to count 210 days from the dates vacancies occur, as reported by the respective agencies. The tracking system also is programmed to make adjustments provided for by the Vacancies Reform Act, such as temporarily suspending the 210-day count if a vacancy occurs during the adjournment of Congress or if a nomination has been sent to the Senate. We obtained tracking system information on how long acting

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<sup>1</sup> June 30, 2000, was the end date because we asked the agencies for information at the beginning of August 2000.

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officials filled PAS positions that had become vacant before as well as since November 21, 1998. The 210-day limit is the only provision of the Vacancies Reform Act that also applied to vacancies that existed on November 20, 1998. We tracked how long an acting official occupied a vacant position through August 2000. We stopped tracking at that point so we could include the analysis in our September 2000 interim report to you.

We compared the information agencies submitted in the questionnaire with information from GAO's tracking system. In a significant percentage of cases, GAO was not previously notified of a vacancy or acting official. As a result, the tracking system could not monitor those vacancies to determine whether acting officials served longer than 210 days. In other instances, the tracking system contained information about the vacancies and acting officials, but the dates recorded did not match the dates the agencies provided for this review. For differences greater than 1 day, we first tried to resolve the difference by using data that we had available. Where differences still remained, we asked the affected agencies to explain why there were differences, to tell us which dates were correct, and to explain why those dates were correct. With this corrected information, we determined, as appropriate, whether the 210 days had elapsed.

# Appendix II: Federal Agencies That Reported Having PAS Positions Subject to the Vacancies Reform Act

Agency for International Development
Archives and Records Administration
Central Intelligence Agency
Corporation for National and Community Service
Council of Environmental Quality
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Treasury
Department of Veterans Affairs
District of Columbia Offender Supervision, Defender, and Courts Services Agency
Environmental Protection Agency
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Labor Relations Authority
Federal Mediation and Conciliation Service
General Services Administration
Institute of Museum and Library Services
International Joint Commission on U.S. and Canada
National Aeronautics and Space Administration
Navaho and Hopi Indian Relocation Commission
Nuclear Regulatory Commission
Office of Government Ethics
Office of Management and Budget
Office of National Drug Control Policy
Office of Personnel Management
Office of Science and Technology Policy
Office of Special Counsel
Office of the U.S. Trade Representative
Peace Corps
Railroad Retirement Board
Selective Service System
Small Business Administration



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**Appendix II: Federal Agencies  
That Reported Having PAS  
Positions Subject to the  
Vacancies Reform Act**

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Social Security Administration

Trade and Development Agency

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Note: Listing may not be all inclusive. Additional agencies may have PAS positions that fall under the Federal Vacancies Reform Act of 1998

# Appendix III: Comments From the Counsel to the President

THE WHITE HOUSE  
WASHINGTON

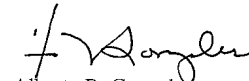
May 14, 2001

Dear Mr. Rezendes:

This is in response to your letter of May 9, 2001, requesting written comments on the GAO's draft report to Chairman Thompson regarding federal agencies' compliance with the Vacancies Reform Act.

As you know, the draft report covers compliance and violations occurring between November 21, 1998 and June 30, 2000. Neither I nor my staff have any knowledge of whether or to what extent federal agencies complied with the Act during that time period. Therefore, I have no substantive comment on the contents of the report.

Sincerely,



Alberto R. Gonzales  
Counsel to the President

Mr. Victor S. Rezendes  
Managing Director, Strategic Issues  
United States General Accounting Office  
Washington, D.C. 20548

# Appendix IV: Comments From the Institute of Museum and Library Services



INSTITUTE  
of MUSEUM  
and LIBRARY  
SERVICES

May 14, 2001

Victor S. Rezendes  
Managing Director, Strategic Issues  
United States General Accounting Office  
Washington, DC 20548

Re: GAO Review of the Vacancies Act

Dear Mr. Rezendes:

Thank you for providing the Institute of Museum and Library Services with an opportunity to review and comment upon your draft report, Agencies' Compliance with Provisions of the Federal Vacancies Reform Act of 1998. As you have requested, we have carefully considered the draft and have a couple of factual corrections, a clarification, and a brief agency statement that we would appreciate included in the report.

With regard to the proposed language, we request that you make the following minor, but crucial, modifications (underlined) to the draft:

**Page 13:** According to IMLS, the Acting Director remained in this position only until the 210th day at which time the individual ceased acting as director under the Vacancies Act.

Prior to the expiration of the 210-day period, the IMLS, after meeting with the Department of Justice, delegated all delegable functions to the Deputy Director for Museum Services. There is no indication [or It does not appear] that the Deputy Director performed any non-delegable actions after 210 days had passed.

However . . .

**Page 14:** As it appears that the individual did not take any nondelegable actions after 210 days had passed, we have not found a violation of the exclusivity provision of the Vacancies Act.

**Page 4:** Any nondelegable actions made by this official after the time limit would have no force or effect, but we are not aware of any nondelegable actions taken by the individual between the expiration of the original time limit and January 20, 2001. Or, add to existing sentence, "and there is no indication that any nondelegable actions were taken."

*A Federal agency serving the public by strengthening museums & libraries  
1100 Pennsylvania Avenue, NW • Washington, DC 20506 • Phone: 202-606-8536 • Fax: 202-606-8591*

I have attached a copy of the draft report indicating where we recommend these changes.

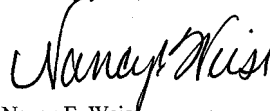
We would also appreciate it if you would add the following agency comment:

During the past two years, IMLS has taken numerous steps to ensure that the agency has been in compliance with the Vacancies Act, while performing its statutory duties in an appropriate manner. Under the prior administration, agencies were required to report information on vacancies through the White House rather than directly to Congress and to GAO. Accordingly, when she decided to leave the agency, the former Director notified the White House Office of Personnel of her resignation and worked closely with the White House to meet the other Vacancies Act requirements. For example, on February 4, 1999, the White House was notified of the resignation, and, on March 17, 1999, the former Director faxed a memorandum to the Director of White House Personnel attached to the agency's designation of First Assistant.

When the White House had not formally nominated a new Director and it appeared that the Acting Director's tenure could exceed 210 days, IMLS contacted the Office of Legal Counsel at the Department of Justice to ensure that the agency took appropriate action. After meeting with OLC, IMLS prepared a delegation of the Director's duties that would provide the Deputy Director of Museum Services with authority to carry out those functions of the Office of the Director that could be delegated. This action was necessary to ensure that the agency could continue to perform the tasks assigned to it. While there may have been confusion about title, upon the expiration of the 210 days, the Deputy acted solely under delegated authority, and took no unauthorized actions. The agency has taken steps to clarify the confusion with regard to title and has controls in place to govern future matters arising under the Vacancies Act.

Please let me know if you have any questions or require any additional information. I can be reached at (202) 606-5414. Again, thank you for providing us with a copy of the draft.

Sincerely yours,



Nancy E. Weiss  
General Counsel

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**Appendix IV: Comments From the Institute of Museum and  
Library Services**

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