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**United States Government Accountability Office
Washington, DC 20548**

B-308956

April 17, 2007

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Minority Member
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

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 at the Department of Education. 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. 5 U.S.C. § 3346. Section 3349(b) 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.

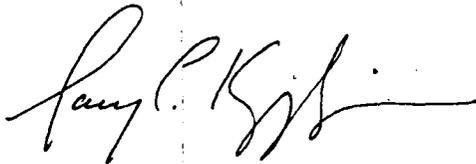
As required by the Vacancies Reform Act, the Department of Education reported to us that a vacancy in the position of the Assistant Secretary for Vocational and Adult Education began on September 7, 2005, when Assistant Secretary Susan Sclafani resigned. This position requires Presidential appointment and Senate confirmation under the provisions of 20 U.S.C. § 3412(b)(1)(C), and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). The Department also reported to us that Heriberto Gonzalez served as Acting Assistant Secretary between the dates of September 7, 2005, and July 3, 2006.

The Vacancies Reform Act generally limits the service of acting officials to 210 days from the date of the vacancy. 5 U.S.C. § 3346. In this instance, the 210-day period ended on April 5, 2006. 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. 5 U.S.C. § 3346(a)(2). Thus, Mr. Gonzalez could resume his service as Acting

Assistant Secretary on May 8, 2006, when the nomination of Troy Justesen for this position was submitted to the Senate. However, the service of Mr. Gonzalez as Acting Assistant Secretary between the dates of April 5, 2006, and May 8, 2006, was in violation of the time limitation in the Vacancies Reform Act.

The Vacancies Reform Act contains an enforcement provision, 5 U.S.C. § 3348(d), which nullifies certain actions taken by an acting official who is serving in violation of the Act. However, the Department of Education reported to us that there are no exclusive functions or duties, as defined by 5 U.S.C. § 3348, associated with the Assistant Secretary position, and thus Mr. Gonzalez did not undertake any such actions during the period between April 5, 2006, and May 8, 2006.

In accordance with the requirements of the Vacancies Reform Act, we are sending identical letters to the House Committee on Oversight and Government Reform, the House and Senate Appropriations Committees, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Education and Labor, 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 Associate General Counsel Robert J. Cramer on 202-512-7227.



Gary L. Kepplinger
General Counsel