

B-332616

March 4, 2021

The President
The White House

Subject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998: Deputy Administrator, Resilience, Directorate of Emergency Preparedness and Response, Federal Emergency Management 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 Federal Emergency Management Agency (FEMA), U.S. Department of Homeland Security (DHS) with respect to the Deputy Administrator, Resilience (Deputy Administrator for Resilience), Directorate of Emergency Preparedness and Response 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. As explained below, we are reporting that DHS violated the time limitations of the Vacancies Act when (1) the FEMA website listed Carlos Castillo as serving in the position of Acting Deputy Administrator for Resilience after the end of the 210-day period of permissible acting service, and (2) the DHS website listed Bridget Bean as serving in the position of Acting Deputy Administrator for Resilience after the end of such period. 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. In previous reports, we have determined that an agency violates the time limitations in the Vacancies Act if the agency holds an official out to the public as an acting official when the position should have been vacant. See, e.g., B-331539, Sept. 18, 2020. This includes a situation where the agency identifies an official as an acting official on the agency's website after the end of the 210-day period of permissible acting service. *Id.*

The Vacancies Act generally requires the head of each executive agency to report to us when certain positions become vacant and the name of any person serving in an acting capacity. 5 U.S.C. § 3349(a). Pursuant to such requirements, DHS reported to us that a vacancy in the position of Deputy Administrator for Resilience began on January 31, 2020,¹ and that Carlos Castillo was designated as the Acting Deputy Administrator for Resilience at that time. GAO's Executive Vacancy System.

Because the position of Deputy Administrator for Resilience became vacant on January 31, 2020, the 210-day period of permissible acting service ended on August 28, 2020. Nevertheless, the FEMA website listed Mr. Castillo as Acting Deputy Administrator for Resilience until on or about October 16, 2020—after the end of the 210-day period—and a separate section of the DHS website listed Bridget Bean as Acting Deputy Administrator for Resilience until on or about October 16, 2020, as well.

Because the DHS and FEMA websites listed these individuals as the Acting Deputy Administrator for Resilience after the end of the 210-day period of permissible acting service for such position, we contacted DHS to inquire about a potential violation of the time limitations of the Vacancies Act. Letter from Assistant General Counsel, GAO, to Senior Official Performing the Duties of General Counsel, DHS (Oct. 28, 2020). In its response to our request for additional information, DHS explained that Mr. Castillo left FEMA on July 24, 2020, and that DHS notified Congress and GAO of his departure. Letter from Associate General Counsel for General Law, DHS, to Assistant General Counsel, GAO (Nov. 16, 2020) (DHS Response Letter). DHS also stated that it notified FEMA employees of Mr. Castillo's departure and of Ms. Bean's detail as the Senior Official Performing the Duties of the Deputy Administrator for Resilience. *Id.*

In its response, DHS also acknowledged that the FEMA website mistakenly listed Mr. Castillo as Acting Deputy Administrator for Resilience after the end of the period of permissible acting service. *Id.* DHS further acknowledged that another section of the DHS website mistakenly listed Ms. Bean as Acting Deputy Administrator for Resilience after the end of such period. *Id.* DHS explained that, after receipt of our inquiry, the websites were corrected. *Id.*

Thus, from August 29, 2020, until on or about October 16, 2020, DHS held Mr. Castillo and Ms. Bean out to the public as Acting Deputy Administrator for Resilience by identifying them as serving in such role on the DHS and FEMA websites even though the period of permissible acting service had ended. The DHS notifications to Congress and GAO about Mr. Castillo's departure from FEMA do not excuse the fact that DHS continued to hold Mr. Castillo out to the public as serving in such position after the end of the period of permissible acting service. Similarly, the notification about Ms. Bean to FEMA employees did not permit DHS to hold Ms. Bean out to the public as the Acting Deputy Administrator for Resilience after

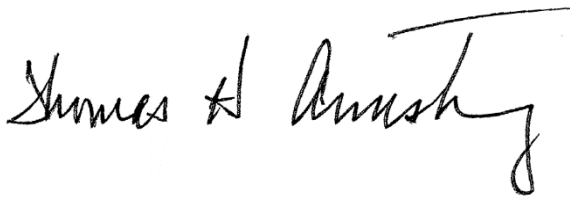
¹ The vacancy began due to the resignation of Daniel Kaniewski.

the end of the period of permissible acting service. Because DHS held Mr. Castillo and Ms. Bean out to the public as Acting Deputy Administrator for Resilience 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 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 and House Committees on the Judiciary, the House Committee on Homeland Security, 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 Charlotte McKiver, Assistant General Counsel, at 202-512-5992.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is fluid and cursive, with a long horizontal line extending from the top of the "A".

Thomas H. Armstrong
General Counsel