



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

February 1, 2016

The Honorable Walter M. Shaub, Jr.
Director
Office of Government Ethics

Dear Mr. Shaub:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

The Vacancies Act provides rules for the temporary filling of certain vacant positions that require presidential appointment and Senate confirmation.² Under the Act, a person may serve as an acting officer in a vacant position covered by the Act for no longer than 210 days from the date of the vacancy. The Act provides for adjustments to the 210-day time limitation when the President submits a nomination to fill the position.³

The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

GAO would also appreciate certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

¹ 5 U.S.C. §§ 3345-3349d.

² The Vacancies Act applies to all presidentially-appointed, Senate-confirmed nominees, except for Article I judges, members of the Federal Energy Regulatory Commission and the Surface Transportation Board, and any appointment to a multimember board or commission that governs an independent establishment or a government corporation. 5 U.S.C. § 3349c.

³ The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Act to specific vacancies as well as some general guidance. See Memorandum for Agency Counsels, *Guidance on Application of Federal Vacancies Reform Act of 1998*, OLC Opinion, Mar. 22, 1999, available at: http://www.justice.gov/sites/default/files/olc/opinions/1999/03/31/op-olc-v023-p0060_0.pdf (last visited Jan. 19, 2016).

⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/about>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
- any changes in the status of the vacant position and the effective date of the change (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, or (b) (6) or Shirley A. Jones, Assistant General Counsel, on (b) (6).

Sincerely yours,



Susan A. Poling
General Counsel

cc: David J. Apol
General Counsel

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.



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

D. Apol

B-328944

March 24, 2017

The Honorable Walter M. Shaub, Jr.
Director, U.S. Office of Government Ethics

Dear Director Shaub:

The purpose of this letter is to remind you of the Federal Vacancies Reform Act of 1998 (Vacancies Act)¹ and, in particular, of the provisions of the Vacancies Act that require executive departments and agencies to report information about vacant positions to the Congress and to the Comptroller General.

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The Act requires executive departments and agencies to immediately report to the Congress and to the Comptroller General when a vacancy occurs, the name of any person serving in an acting capacity, the name of any person nominated to fill the position, and the date of a rejection, withdrawal, or return of any nomination. The Act also requires the Comptroller General to report to Congress, the President, and the Office of Personnel Management if the Comptroller General determines that an acting official is serving longer than the 210-day period (including applicable extensions).⁴

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⁴ GAO's Vacancies Act webpage, at <http://www.gao.gov/legal/federal-vacancies-act/overview>, provides information on the Act and a searchable database containing all information reported to the Comptroller General pursuant to the Act.

- the authority under which an acting officer was designated, if not the Vacancies Act;⁵
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- the discontinuation of service in an acting role; and
- the name, mailing address, telephone number, and email address for your agency's designated contact person.

GAO has created a form that agencies may use to report this information. It is available at: http://www.gao.gov/pdfs/legal/fed_vac.pdf.

If you have any questions about the reporting of vacancies to GAO, please contact Robert Cramer, Managing Associate General Counsel, on (b) (6) or Shirley A. Jones, Assistant General Counsel, on (b) (6).

Sincerely yours,



Susan A. Poling
General Counsel

cc: David J. Apol
General Counsel

⁵ For most vacancies, the Vacancies Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where a statute expressly authorizes the President, a court, or an agency head to designate an officer or employee to temporarily perform the functions and duties of a specified office in an acting capacity. See 5 U.S.C. § 3347.

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



JUN 23 2016

Yvonne D. Jones
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Draft Report GAO-16-548, "FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees"

Dear Ms. Jones:

Thank you for the opportunity to comment on the U.S. Government Accountability Office's (GAO) draft report, "Federal Workforce: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees." The Office of Government Ethics (OGE) appreciates GAO's work in planning and conducting its review and issuing this report.

The draft report contains one recommendation for OGE, with which we partially concur. Specifically, GAO recommended that the Director of OGE take the following actions:

To help ensure that agencies report consistent and reliable data, the Director of OGE should determine (e.g., through a survey of Designated Agency Ethics Officials and/or by analyzing agency data) whether other executive branch agencies are experiencing data challenges similar to HHS, State, and NRC. If they are, the Director should take steps to help the agencies strengthen their data.

OGE concurs with the emphasis on ensuring that agencies report consistent and reliable data on special Government employees (SGEs) not serving on federal boards. Consistent and reliable data collection fosters the proper designation of SGEs for ethics purposes, such as providing SGEs with special training and counseling. Likewise, consistent and reliable data better enables OGE to monitor and oversee agency ethics programs. To help determine whether other executive branch agencies are experiencing data challenges that could potentially affect the administration of their ethics programs, OGE will survey ethics officials or otherwise analyze agency data as recommended.

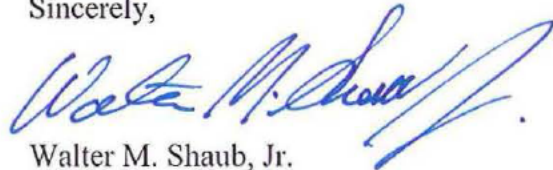
At the same time, information regarding the hiring of SGEs is within the control of human resources officials, over whom OGE has no authority. Although OGE can request that

agency ethics officials report difficulties in obtaining data from agency human resources officials on SGEs not serving on federal boards, the data challenges cannot be resolved without human resources officials collecting and sharing data in the first place.

OGE has taken steps to promote coordination between agency ethics officials and human resources officials to fulfill certain ethics program requirements. *See, e.g.*, Executive Branch Ethics Program Amendments, 81 Fed. Reg. 36193, 36195, 36198-99 (proposed June 6, 2016) (to be codified at 5 C.F.R. pt. 2638) (describing the Government ethics responsibilities of lead human resources officials). OGE will continue to encourage such coordination, which will help agencies strengthen their data. However, OGE has no authority to direct human resources offices to collect or share data or to otherwise coordinate with agency ethics offices. Ultimately, the development of mechanisms for tracking appointments, including the hiring of SGEs, is within the authority of agency human resources officials and the agency that oversees them, the Office of Personnel Management.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.
Director



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

October 24, 2016

The Honorable Walter M. Schaub, Jr.
Director
U. S. Office of Government Ethics

Dear Mr. Schaub:

This letter is to inform you of (b) (5)

[Redacted]

We would appreciate your notifying the appropriate officials of this work. (b) (5)

[Redacted]

Sincerely yours,

Yvonne D. Jones
Director, Strategic Issues

Enclosure

cc: Shelley K. Finlayson (skfinlay@oge.gov)
Doug Chapman (dlchapman@oge.gov)

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



OCT 11 2016

Yvonne D. Jones
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Ms. Jones:

Pursuant to the requirements of OMB Circular A-50, the U.S. Office of Government Ethics (OGE) is providing you with a copy of OGE's statements to Congressional Committees in response to the recommendation for OGE in the Government Accountability Office (GAO) report, *FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees* (GAO-16-548).

OGE appreciates the effort that went into GAO's report. If you have any questions regarding this correspondence, please feel free to contact Ms. Shelley K. Finlayson, OGE's Chief of Staff and Program Counsel, at (202) 482-9314.

Sincerely,

A handwritten signature in blue ink that reads "Walter M. Shaub, Jr." with a stylized flourish at the end.

Walter M. Shaub, Jr.
Director

Enclosures