

GAO

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

July 2003

FEDERAL VACANCIES REFORM ACT

Key Elements for Agency Procedures for Complying with the Act





Highlights of [GAO-03-806](#), a report to the Chairman, Committee on Governmental Affairs, U. S. Senate

Why GAO Did This Study

The Federal Vacancies Reform Act of 1998 sets requirements for reporting to Congress and the Comptroller General actions related to Presidential Appointment with Senate Confirmation (PAS) positions as well as the qualifications for and term limits on acting PAS officers. GAO had reviewed agencies' performance in implementing the Vacancies Reform Act and found substantial problems with their reporting timeliness and compliance with term limits for acting officials. In this current effort, GAO looked at agencies' procedures to identify approaches that could be applied across the government to help assure effective implementation of the act.

What GAO Recommends

GAO recommends that the Office of Presidential Personnel encourage federal agencies to implement the five key elements for Vacancies Reform Act compliance that GAO identified.

The Office of Counsel to the President commented on the report and said he would prefer that GAO make the recommendation to all agencies with PAS positions covered by the Vacancies Reform Act rather than to the Office of Presidential Personnel.

www.gao.gov/cgi-bin/getrpt?GAO-03-806.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Victor Rezendes at (202) 512-6806 or rezendesv@gao.gov.

FEDERAL VACANCIES REFORM ACT

Key Elements for Agency Procedures for Complying with the Act

What GAO Found

The six departments GAO reviewed had Vacancies Reform Act compliance systems that varied. Regardless of how the agencies had assigned responsibilities, GAO identified five key elements essential to Vacancies Reform Act compliance.

One critical element is that agencies identify the specific components or branches that will be responsible for Vacancies Reform Act requirements. Agencies should also specify the functions that these key units perform and how they interact with other key components to achieve the overall Vacancies Reform Act compliance objective.

A second critical element is that staff in the various components that play a role in Vacancies Reform Act compliance must frequently communicate with each other. There may be several agency components involved in the compliance process and one component may have critical information, such as the occurrence of a vacancy, that the component responsible for reporting this event to Congress needs to know. Frequent communication helps ensure that information is shared and acted on in a timely manner.

A third critical element is that the agency maintains an up-to-date list of the first assistants for each of its PAS positions. When a vacancy occurs the Vacancies Reform Act provides that the first assistant will serve as the acting official in the absence of a designation by the President. Having an up-to-date list helps ensure timely placement, continuity of operations, and compliance with qualifications criteria for acting PAS officials prescribed by the Vacancies Reform Act.

A fourth critical element is that agencies document their Vacancies Reform Act procedures. Documenting compliance procedures provides agencies a means of ensuring that new staff assigned to compliance tasks will have guidance on how to perform these tasks. This will also help ensure a consistent application of the process, reduce the learning period required, and provide for a better continuity of effort.

Finally, agencies should assign Vacancies Reform Act responsibilities to career employees. This would also help to provide continuity to the agencies' compliance activities, because, typically, political employees, who may be assigned this function, would not be very familiar with the act's requirements when they report for duty. This can lead to delays or errors in Vacancies Reform Act compliance. Agency officials cited a number of examples where it took replacement staff a while to get up to speed which resulted in long delays in reporting vacancy events.



United States General Accounting Office
Washington, D.C. 20548

July 15, 2003

The Honorable Susan M. Collins
Chairman
Committee on Governmental Affairs
United States Senate

Dear Chairman Collins:

The Federal Vacancies Reform Act of 1998¹ sets requirements for reporting to Congress and the Comptroller General actions related to vacancies in Presidential Appointment with Senate Confirmation (PAS) positions as well as standards for who can be named to act in these positions when they are vacant and how long acting officers can serve. In response to an August 1999 request from Senator Fred Thompson, then Chairman of the Committee on Governmental Affairs, we issued a series of reports that examined agencies' performance in implementing the Vacancies Reform Act. We found substantial lags between the times a reportable event, such as the naming of an acting officer, occurred and the time it was reported, as well as events that were not reported at all. We also identified instances where acting officers exceeded the legally allowed maximum period for serving in that capacity.² In this effort, we agreed with Senator Thompson's office to look at agencies' procedures for implementing the act's requirements and identify any approaches that facilitate prompt and accurate compliance with the act's provisions that could be applied across the government.

The key requirements the act placed on agencies are to (1) report immediately to Congress and the Comptroller General any vacancy in a PAS position, the name of an individual serving in an acting capacity in a PAS position, the date the vacancy occurred, and the name and date of a nomination for a PAS position and the date of rejection, withdrawal, or return of any nomination, (2) ensure that persons named to serve in acting

¹5 U.S.C. 3345-3349d.

²For example, see U.S. General Accounting Office, *Violations of the 210-Day Limit Imposed by the Vacancies Reform Act*, B-286265, Sept. 15, 2000; *Implementation of the Federal Vacancies Reform Act of 1998*, GAO/GGD-00-210R (Washington, D.C.: Sept. 29, 2000); *Eligibility Criteria for Individuals to Temporarily Fill Vacant Positions Under the Federal Vacancies Reform Act of 1998*, GAO-01-468R (Washington, D.C.: Feb. 23, 2001); and *Presidential Appointments: Agencies' Compliance With Provisions of the Federal Vacancies Reform Act of 1998*, GAO-01-701 (Washington, D.C.: May 31, 2001).

capacities in PAS positions meet the eligibility requirements enumerated in the act, and (3) ensure that acting PAS officers do not exceed the limits imposed on the time they can serve. Our objective was to identify key elements of effective implementation of the Vacancies Reform Act.

To select agencies to review, we used data on how long it took to report PAS-related events to us. We selected six agencies that had numerous reportable events and relatively short periods, in at least some cases, between events occurring and reporting on the events. We selected the Departments of Commerce, Education, Energy, Health and Human Services, Transportation, and the Treasury. We visited each agency and met with the officials involved in implementing the act and discussed their procedures. We obtained, where available, documentation about the steps the agencies used. We combined the information obtained at the agencies to look for common elements that seem to be critical to effective implementation of the Vacancies Reform Act. Our work was performed from January 2002 through May 2003 in accordance with generally accepted government auditing standards.

Results in Brief

The reviewed agencies' Vacancies Reform Act compliance systems varied. We found variation in the components within each agency assigned primary responsibility for Vacancies Reform Act functions and variation in the specific tasks performed by the responsible components to meet the requirements of the act. Regardless of how the agencies had assigned responsibilities, we identified five critical elements that are essential to Vacancies Reform Act compliance.

The first critical element is for agencies to clearly identify the component responsible for each requirement under the act and the other components that assist by providing information. All the agencies that we visited agreed that this was important. Unless everyone is aware of who does what, it is easy to assume that another component or staff person will handle a requirement resulting in tasks being delayed or going undone.

A second critical element, which is a corollary to the first one, is that staff in the various components that play a role in Vacancies Reform Act compliance frequently communicate with each other. Agencies cited a number of examples where the first component or person to learn about a reportable event was not the one responsible for reporting the event. Thus, it is essential to timely reporting that information is shared in a timely manner. Agencies cited mechanisms like frequent telephone contacts or

weekly meetings of involved staff as ways to ensure that the right people are informed about events.

A third critical element, which is related to ensuring that only qualified people are made acting officers, is that agencies have up-to-date lists of the first assistants to each PAS position. The Vacancies Reform Act specifies that the first assistant becomes the acting officer unless the President directs someone else who meets one of the listed qualifications to serve in that role. Normally, first assistants become the acting officer, and without an up-to-date list, delays in naming an acting officer can occur and the possibility exists that an ineligible person could be designated.

A fourth critical element is that agencies document their Vacancies Reform Act procedures. Although none of the six agencies had done so when we first visited them, all agreed that documenting procedures would help agencies ensure compliance during periods of transition. For example, when staff responsible for Vacancies Reform Act functions leave or are reassigned, written procedures will let replacement staff know it is their responsibility to perform the functions and will represent guidelines on how to meet the responsibility. The officials at all the agencies we visited agreed on the importance of documenting their procedures and cited cases where a lack of such documentation had adversely affected compliance performance. By the end of our fieldwork, all six agencies had begun efforts and made progress in documenting their procedures.

Finally, agencies should assign Vacancies Reform Act responsibilities to career employees. This would help provide continuity to the agencies' compliance activities. Typically, political employees would not be very familiar with the act's requirements when they report for duty and they have a number of other duties that constitute their primary focus and interest. This can lead to delays or errors in Vacancies Reform Act compliance. Moreover, political employees tend to turn over more rapidly than career employees, thus resulting in less continuity. The agencies we visited had a number of examples in which political employees, such as White House liaisons, responsible for certain Vacancies Reform Act requirements, left and it took their replacements a while to get up to speed because of the press of other matters with, for example, long delays in reporting vacancy events resulting. This was especially true at the change of administration when many vacancy events occur and those without Vacancies Reform Act experience took over responsibility for compliance. Problems were compounded by the lack of written procedures, as

discussed above, which meant new arrivals had little or no information from which to start.

We recommend that the Office of Presidential Personnel, which has responsibilities related to PAS positions governmentwide, encourage all federal agencies to ensure that their Vacancies Reform Act compliance standard operating procedures include the key elements identified in this report. The Office of Counsel to the President commented on the report and said that the five key elements for effective implementation of the Vacancies Reform Act were reasonable efforts for agencies to undertake but that it would prefer that we address the recommendation to all the agencies with PAS positions covered by the act. We continue to believe that it is appropriate for the Office of Presidential Personnel to encourage agencies to implement the key elements.

Background

Under the Vacancies Reform Act, if a presidential appointee covered by the act dies, resigns, or is otherwise unable to perform the functions and duties of the office, the requirements of the act must be followed. For covered PAS vacancies,³ the act, among other things,

- requires agencies to immediately report to the Senate, the House of Representatives, and the Comptroller General changes in PAS positions, including a 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 any rejection, withdrawal, or return of a nomination and the related date;
- specifies who may serve as acting officer; and
- imposes a time limit on how long vacancies can be filled by acting officers.

The act specifies four classes of individuals who may serve in an acting capacity.

³Some PAS positions are not covered by the act. For example, the act does not apply to U.S. attorneys and ambassadors or to members of independent commissions, such as the Securities and Exchange Commission.

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- The first assistant to the office of the officer who has left the position vacant temporarily performs the functions and duties of the PAS position in an acting capacity subject to the act's time limitations unless the President directs someone else to do so under one of the authorities discussed below.
 - A PAS official may serve as an acting official in another PAS position at the direction of the President.
 - The President may designate a senior agency official to serve as the acting official for a vacant PAS position. The senior agency official must be from the same agency in which the vacancy occurs and the official's rate of pay must have been equal to or greater than the minimum level of GS-15 for at least 90 days during the year preceding the vacancy.
 - For PAS positions that have limited terms of service (such as those at independent commissions), officers who are nominated by the President for additional terms to the same offices without breaks in service may continue to serve temporarily in those positions in acting capacities.

In addition, the Vacancies Reform Act limits the service of acting officials to 210 days beginning on the date the vacancy occurred. At the end of the time limit, no one may serve in the position on an acting basis. The Vacancies Reform Act extends or resets the 210-day period under certain circumstances, such as suspending the time limit when a nomination is pending before the Senate and extending the limit by 90 days with respect to any vacancy existing during the 60-day period beginning at the start of a new administration. The Vacancies Reform Act also requires us to inform specified congressional committees, the President, and the Office of Personnel Management if an acting officer has served longer than 210 days.

In fulfilling Vacancies Reform Act responsibilities, agencies should make managers aware of these statutory requirements and assign staff to ensure that the requirements are followed and reporting is completed in a timely manner. Hence, along with their responsibility to timely report changes in PAS positions to Congress and the Comptroller General, it is incumbent upon agencies to establish effective processes that ensure that persons serving temporarily in PAS positions meet the statutory qualifications prescribed by the act and that they do not exceed the act's time limit for the service of acting PAS officials.

The Vacancies Reform Act was passed to ensure a clear understanding of what is to be done when PAS positions become vacant. These positions constitute the highest level of staff in the federal executive branch, including the secretaries for cabinet-level departments and their deputy and assistant secretaries. Because most of these executives typically have relatively short tenures, positions often are vacated during a Presidential term of office. At a change of administration, virtually all PAS positions are vacated.

After the passage of the Vacancies Reform Act, 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 Congress and GAO of the reportable events under the Vacancies Reform Act. We also developed a computerized tracking system to collect and analyze data submitted by agencies. We receive agencies' reports and enter the data in our tracking system.

The White House's Office of Presidential Personnel (OPP) has traditionally assumed the role of recruiting candidates to fill executive appointments. OPP collaborates with the Counsel to the President to issue policy memorandums to guide agencies in fulfilling Vacancies Reform Act requirements. For instance, in March 2001, the Counsel to the President sent a memorandum to federal executive branch departments and agencies that provided guidance that streamlined the notification process by requiring that agencies send notifications directly to Congress and GAO. Previously, agencies were required to send notifications through an indirect route that began with submission to OPP, which then forwarded copies of the submission to the Office of Management and Budget. This streamlined process was expected to be more efficient.

Our May 2001 report found that agencies had not promptly reported vacancies and acting officials to Congress and us. In fact, of 90 reportable events among 21 agencies during a nearly 2-year period, 19 percent of vacancies and 24 percent of acting officials had not been reported at all. Moreover, for about half the instances that were reported to GAO and entered into our tracking system, notification was not received until over 4 weeks after the date of occurrence. Thus, it was apparent that agencies had lax compliance with the reporting requirements of the act.

In addition, we identified five instances where officials exceeded the act's time limit. In May 2001, we reported that acting officials at four agencies had exceeded the act's 210-day time limit. We also reported in March 2002

that an acting general counsel at a federal department had exceeded the time limit. Also, in a November 2001 letter from our General Counsel to the Counsel to the President, we alerted the White House that our records indicated the time limits for some 19 acting PAS officials would expire within 1 week and appropriate action should be taken by affected agencies to ensure that the time limit was not violated. Subsequent actions were taken to ensure no violations occurred.

Because our reports concerning the timeliness of agency reporting and our finding that a number of acting officials had exceeded the time limit suggest that there were problems with the adequacy of the procedures that agencies use to comply with the act, Senator Thompson, then Chairman of the Senate Committee on Governmental Affairs, asked us to look for ways to facilitate agency compliance. We looked for effective ways that agencies could implement the act's requirements by both identifying agency procedures already in use and additional procedures that could address problems agencies were having.

Critical Elements for an Effective Vacancies Reform Act Compliance System

The structure and particulars of Vacancies Reform Act compliance processes varied among the agencies that we visited, as did specific steps taken to ensure that the agencies adhered to the basic requirements of the act. However, we identified certain critical elements essential to Vacancies Reform Act compliance that all agencies should find useful. These elements are that, in developing and implementing procedures, agencies should (1) identify and designate the agency components that should take the lead responsibility for performing each Vacancies Reform Act requirement, (2) have frequent communication among key role players, (3) maintain up-to-date lists of first assistants, (4) document agency procedures, and (5) assign responsibility for Vacancies Reform Act compliance to senior career officials to help ensure continuity.

Identify Agency Components with Vacancies Reform Act Implementation Roles

To establish roles and responsibilities among the various people involved with Vacancies Reform Act compliance functions, agencies should clearly identify the components that are responsible for compliance with each requirement of the act and the other components that assist by providing information. The individual positions in each of the components whose incumbents are responsible for Vacancies Reform Act functions should also be identified. If an agency does not identify specific components that are responsible for specific compliance efforts, it risks that tasks will not

be completed. For example, one component of an agency could, erroneously, assume that another component is responsible for fulfilling a Vacancies Reform Act requirement while that component assumes that the other is responsible. As a result, neither component performs the function so it does not get done or is not timely completed.

The six agencies in our survey all provided evidence that they appreciated the importance of designating lead components for each function because each agency had in effect done so. Agencies described how assigning responsibility for Vacancies Reform Act compliance to specific components helped prevent problems from arising. For example, at the Department of Transportation, an official in its Office of General Counsel had responsibility for ensuring compliance with all requirements under the act. This official developed and transmitted reports of changes in PAS positions to Congress and us and was responsible for ensuring that the qualifications and time limit requirements for acting PAS officials were met. Other staff, such as those in the agency's Personnel and Legislative Affairs offices, assisted this individual by sharing information, as it became available, on PAS position changes.

Another example was found at the Department of Energy where specified staff in the Executive Resources Office were responsible for reporting changes in PAS positions, and a designated attorney in Energy's Office of General Counsel advised them about the acting officers' qualifications and kept a log of when time limits would expire.

Role Players Should Regularly Communicate with Each Other

Another critical element is that staff in the various components that play a role in Vacancies Reform Act compliance communicate frequently with each other. For example, because the individual who is responsible for reporting the event (or tracking acting officers' time limits) may not be the first to learn about a reportable event (or one that affects the time limit on an acting officer), communication is essential to ensure compliance.

We learned that there were often variations in which an agency official is the first to become aware of a reportable event. This information must be quickly communicated to the responsible component and to the specific staff member who is to report the event for timely reporting. Officials at agencies described how constant communication had been an effective tool in achieving compliance objectives. For example, at Energy, to ensure that acting PAS officers do not exceed the time limit, an Office of General Counsel official said that she establishes the time limit for each acting PAS

officer when he or she is initially designated. The staff involved in Vacancies Reform Act functions meet weekly. During the meetings, events that affect the time limit come up and the Office of General Counsel official adjusts the limit accordingly. Also, reportable events are discussed at the meeting, which helps ensure that they get reported quickly.

At Transportation, the key official responsible for Vacancies Reform Act compliance relies on different sources to inform her of events that would trigger the need to report. She said she is sometimes informed of nominations by staff in the Office of the Secretary or by contacts within the White House. She said a Human Resources Specialist who works with the agency's PAS staff first informs her of PAS vacancies. She said that these people routinely call her about reportable events. Otherwise, timely reporting would not be possible.

Agency Officials Should Prepare First Assistant Lists

A third critical element is that the agency prepare and maintain a list of the first assistants for each of its PAS positions. Under the Vacancies Reform Act, the first assistant is automatically eligible to serve in a vacant PAS position in an acting capacity. The first assistant is usually a deputy who can fill in when a confirmed official vacates a PAS position. However, the first assistant to a PAS official must be clearly established for this provision to be properly implemented. When a position has been designated as a first assistant, this can ensure the timely securing of a qualified person as an acting official to a PAS position and helps provide for the agency's continuity of operations.

For example, at Transportation the key Vacancies Reform Act compliance official said ensuring that only qualified persons are appointed to serve as acting PAS officers is not a big concern because the department has made a conscious effort to ensure that a first assistant has been designated for each PAS position. The Department of the Treasury codified its first assistant designation procedures in the Code of Federal Regulations. In 31 C.F.R. 18.1, Treasury's regulation states that the deputy to the PAS officer, or the principle deputy when there is more than one, shall be the first assistant.

Without a list of first assistants, it might not be clear who is the first assistant to a PAS position. For example, at the Department of Commerce, an official said he strongly believes that a first assistant list is essential to filling vacancies expediently. This official said he remembered Commerce was in a quandary when there were three deputies for a particular vacant

PAS position, and the agency was unsure which should serve as the acting official. He said that had there been a first assistant list, there would have been no doubt or confusion because one of these individuals would have been predesignated as the first assistant.

Following our discussion about written procedures, on July 9, 2002, Commerce's Office of General Counsel sent a policy memorandum to the Assistant Secretary for Legislative and International Affairs, who had overall oversight of Vacancies Reform Act compliance, for distribution to other key compliance role players in the agency. The memorandum listed procedures for complying with the act's requirements, including instructions on selecting persons to serve in acting PAS positions and the related reporting requirement for this event. This guidance provides for selecting the designated first assistant automatically and immediately for a vacant position without the need for further action by the department. This guidance lists all of Commerce's 26 PAS positions and 20 accompanying first assistant positions. It adds that in instances when there are no first assistants (6 positions), the President will need to designate acting officers. The guidance also says that Commerce's Office of White House Liaison is to report to Congress and us the designation of an acting officer immediately. Such guidance provides clear instructions on how staff are to use the first assistant register to designate acting officers and provides a mechanism for immediate reporting of events.

Agencies Should Document Implementation Procedures

A fourth critical element we identified is the need for agencies to document their Vacancies Reform Act procedures. By documenting procedures, agencies can ensure that when staff responsible for Vacancies Reform Act functions leave or are reassigned, replacement staff will know their responsibilities and have guidelines on how to meet their responsibilities. When we began our work, none of the agencies we visited had documented procedures but all agreed that doing so would be a good idea, and agencies had either completed or begun to do so when we finished our work.

An official at the Department of Health and Human Services (HHS) said the person responsible for Vacancies Reform Act compliance under the previous administration had produced detailed procedures that he followed to ensure that his work complied with the Vacancies Reform Act. She said that this person's documented procedures were not a part of the agency's formal operating procedures. Instead they were this individual's personal notes. She also said that she was not aware of the specific steps outlined in the procedures. The agency had been considerably more timely

in reporting events before the person left. After he left, the average time to report events increased by more than 2 weeks. She said that she had been briefed on compliance functions by an agency official but had not been provided any written guidance and believed that she could have learned required tasks more quickly had she had documented procedures to follow. This case demonstrates how a period of learning might result in delays in reporting events and reinforces the importance of having formal documented procedures.

As previously mentioned, Commerce officials issued a policy memorandum to provide guidance to staff who have key roles in Vacancies Reform Act compliance. This guidance identifies the specific Commerce components that play roles in compliance and outlines for staff in these components how to perform required tasks. This guidance makes officials aware of how information is to be shared and transmitted to staff that are to act on completing Vacancies Reform Act requirements.

The guidance also provides background information and discussion that provides a sense of why tasks are to be performed. For instance, it states “The act requires that notification is to be provided immediately upon the occurrence of each of the triggering events.” It lists each triggering event, including vacancies, selections of acting officials, and nominations; provides detailed information on which agency component is likely to be first informed of a specific event; and asks that other components cooperate by sharing and transmitting this information to the Commerce unit responsible for reporting it. This guidance also provides helpful information on complying with the act’s qualifications criteria for acting officials and the time limit for service by acting officials. By documenting its Vacancies Reform Act compliance procedures, Commerce has provided a tool for use by new staff and has virtually eliminated the possibility of confusion by components about their responsibilities in this area.

Treasury officials have also made progress in developing comprehensive documented procedures that specifically describe the agency’s procedures for complying with each key requirement of the Vacancies Reform Act. Treasury has segmented its procedures into two sections — reporting and tracking. Under its reporting section, its procedures begin with background information that states the purpose and objectives of the Vacancies Reform Act, which provides a perspective to staff on why certain tasks are required. It goes on to list the specific Treasury offices and their roles in notifying each other and reporting to Congress and us information on PAS vacancies, selections of acting PAS officials, and nominations.

Reporting section procedures also require that, before Vacancies Reform Act reports are sent to Congress and us, the reports undergo a managerial review for compliance with the Vacancies Reform Act's requirements. The procedures also include a requirement that the agency's legal staff review selections of acting PAS officials to ensure that they meet the eligibility criteria contained in the Vacancies Reform Act.

In its tracking section, Treasury's procedures contain steps that staff should follow to ensure that acting PAS officials do not exceed the act's 210-day time limit. The procedures specify that a designated office will maintain a tickler system that will, essentially, establish dates when an acting officer will reach the time limit, establish a provision for adjusting the time limit when events occur that require adjustment, and allow for adequate prenotification that a time limit threshold is nearing.

Agencies Should Assign the Act's Implementation Responsibilities to Senior Career Employees

A final critical element provides for continuity for Vacancies Reform Act compliance functions by placing the responsibility for them with career employees. As currently practiced, newly appointed political employees sometimes assume the responsibility for Vacancies Reform Act compliance at the change of administrations and periodically during an administration. Because they are new to this function and not experienced with its requirements, they may spend a substantial period learning what must be done. Moreover, they have other responsibilities that constitute their primary focus. This can contribute, for example, to untimely reporting of events as incoming staff learn their responsibilities and how to fulfill them. Assigning senior career employees the responsibility for Vacancies Reform Act compliance could help ensure continuity because turnover is typically much lower with career employees. This should in turn facilitate the agencies' efforts to better achieve timely Vacancies Reform Act reporting as well as provide greater assurance that agencies comply with requirements for acting officials, which are especially important at the change of administrations.

The need to assign career staff to certain tasks that require institutional knowledge and continuity of effort was included in governmentwide management reforms proposed to address long-standing management problems in the federal government.⁴ In September 2002 we convened a panel of current and recent executive branch executives and combined their ideas on alternative executive branch management methods that might address the loss of institutional knowledge required to perform certain agency tasks. We issued a report on the principle conclusions reached by the panel, and the need to institutionalize accountability for addressing management issues and leading transformational change was one of the panel's chief observations. The panel asserted that in the federal government, the frequent turnover of the political leadership has often made it difficult to obtain the sustained and inspired attention required to make needed changes. This concern also applies to Vacancies Reform Act compliance, and designating a senior career employee as responsible would lessen concern.

The Department of Education has given Vacancies Reform Act compliance responsibility to political employees responsible for other duties associated with White House liaison offices, such as serving as the person who interfaces with the White House. Reporting had not been timely. For instance, the average time to report vacancies for Education was over 150 days because the vacancies that occurred at the change of administration in January 2001 were not reported until June of that year.

Commerce officials offer an example of how an experienced career staff person can effectively implement Vacancies Reform Act compliance duties and reduce the chance of disruptions attributable to changes in administrations. The Commerce career official who has key Vacancies Reform Act compliance responsibilities reports to a political employee who has overall responsibility for this function but who, because of her need to focus on other matters, relies on the career employee to perform Vacancies Reform Act compliance duties. The career employee said she has been at the agency for an extended period and has been responsible for reporting Vacancies Reform Act events since the act's effective date in 1998.

⁴See U.S. General Accounting Office, Highlights of a GAO Roundtable: *The Chief Operating Officer Concept: A Potential Strategy to Address Federal Governance Challenges*, [GAO-03-192SP](#) (Washington, D.C.: Oct. 4, 2002).

Conclusions

Our past reviews of agencies' performance in implementing the Vacancies Reform Act disclosed that agencies, generally, had not been promptly meeting the act's reporting requirements. We also found instances in which agencies had violated the act's time limit requirements. As a result, we undertook this review to identify how agencies could better ensure compliance. We found five critical elements that we believe would help agencies effectively implement the Vacancies Reform Act. We believe that by incorporating these measures in their compliance programs, agencies' overall performance should improve. We are suggesting that agencies

- identify the agency components and the specific roles they play in fulfilling Vacancies Reform Act functions,
- engage in frequent communication among key staff so that information that might be needed for prompt reporting is shared,
- maintain up-to-date first assistant lists to help ensure that qualified individuals are selected as acting officials and that the selections are reported expeditiously,
- document their compliance procedures so that newly assigned staff are aware of required tasks and a measure of continuity of effort is achieved, and
- assign senior career officials responsibility for Vacancies Reform Act compliance to provide for more continuity of effort and sustain a level of needed institutional knowledge.

Recommendation for Executive Action

We recommend that the Director, Office of Presidential Personnel (OPP), encourage all agencies in the executive branch to ensure that their Vacancies Reform Act procedures include the critical elements identified in this report.

Agency Comments and Our Evaluation

On June 20, 2003, the Associate Counsel to the President commented on a draft of this report. He said that it would be preferable for us to address our recommendation to each federal agency that has PAS positions covered by the Vacancies Reform Act because the Bush administration has determined that each covered agency should assume responsibility for compliance with the act. The Associate Counsel cited as the source for this

determination the March 20, 2001, memorandum from the Counsel to the President to all executive departments and agencies, which among other things, removed OPP from the Vacancies Reform Act reporting process.

We discussed the March 20, 2001 memorandum in this report and cited it in our earlier work as a good step toward improving the timeliness of reporting events covered by the Vacancies Reform Act. Our recommendation is not intended to bring OPP directly into the compliance process for the Vacancies Reform Act. Rather it is intended to use the office and its role as a focus point for presidential appointments to emphasize the importance of agencies' compliance. That is why we used the phrase "encourage all agencies" in the recommendation rather than a phrase such as "require all agencies."

HHS said that it agreed with the report's findings and that it believes the five key elements will enable executive agencies to maintain accurate information and provide timely notification of events covered by the Vacancies Reform Act. HHS listed actions taken or under way to ensure that its procedures encompass all five key elements.

The Director, Office of White House Liaison at the Department of Education commented the Department concurred with four of the five elements but disagreed with the element about assigning Vacancies Reform Act compliance responsibilities to a senior career employee. Education said that it believes that the White House liaison, who currently has overall responsibility, is in the best position to meet these responsibilities in a timely manner. The department also said that it believes that implementing the fourth key element—having written compliance procedures—would meet the intent of the career employee element by providing for continuity. As we pointed out, political appointees have other duties that constitute their primary focus, and this is another reason it is important to have career employees responsible for Vacancies Reform Act functions. However, it is possible to have an effective compliance effort with a political appointee with overall responsibility and a career employee with day-to-day and operational responsibility. As discussed above, this is how compliance is handled at the Department of Commerce.

The Office of the Counsel to the President and the Departments of Education, Transportation, and the Treasury provided technical comments, which we incorporated in the report where appropriate. The Departments of Commerce and Energy did not comment within the time provided.

We are sending copies of this report to the Counsel to the President; the Director, Office of Presidential Personnel; and the heads of all executive departments and agencies and their General Counsels. We are also sending copies to other interested committees and parties and will make copies available to others on request. In addition, the report will be available at no charge on our Web site at <http://www.gao.gov>.

If you have any questions about this report, please call me at (202) 512-6806. Key contributors to this report were Tom Dowdal, Jeff Dawson, and Bruce Goddard.

Sincerely yours,

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

Victor S. Rezendes
Managing Director, Strategic Issues

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