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FINAL REPLY:

Gary L. Kepplinger, GAO

TO:

Chairman Klein

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 07-0002

Chairman Klein

DESC:

ROUTING:

Concerns the Requirements of the Federal Vacancies  
Reform Act of 1998

Reyes  
Virgilio  
Kane  
Silber  
Johnson  
Cyr/Burns  
Brenner, OPA  
Schmidt, OCA  
Landau, OEDO  
Malloy, OEDO  
GAO File

DATE: 01/03/07

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CONTACT:

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McDermott

SPECIAL INSTRUCTIONS OR REMARKS:

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OFFICE OF THE SECRETARY  
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**ACTION OFFICE:** EDO

**AUTHOR:** Gary Kepplinger  
**AFFILIATION:** GAO  
**ADDRESSEE:** CHRM Dale Klein  
**SUBJECT:** Concerns the requirements of the Federal Vacancies Reform Act of 1998

**ACTION:** Signature of Chairman  
**DISTRIBUTION:**

**LETTER DATE:** 12/20/2006  
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G A O

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

B-308669

December 20, 2006

The Honorable Dale E. Klein  
Chairman  
Nuclear Regulatory Commission  
11545 Rockville Pike  
Rockville, MD 20852

Dear Mr. Klein:

The purpose of this letter is to remind you of the requirements of the Federal Vacancies Reform Act of 1998,<sup>1</sup> and in particular, of provisions that require executive departments and agencies to report information about vacant positions to the Congress and the Comptroller General. This letter is being sent to the heads of all executive departments and agencies in recognition of the fact that many vacancies occur in the final two years of a presidential term.

The Vacancies Reform Act, enacted on October 21, 1998, provides rules for the temporary filling of certain vacant positions that require Presidential appointment and Senate confirmation.<sup>2</sup> Under the Act, an acting officer in a position covered by the Act may serve in a vacant position for a period no longer than 210 days from the date of the vacancy. Adjustments are made in the 210-day time limitation if the President submits a nomination to fill the position.<sup>3</sup>

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

<sup>1</sup> 5 U.S.C. §§ 3345-3349d.

<sup>2</sup> The Vacancies Reform 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.

<sup>3</sup> The Department of Justice's Office of Legal Counsel provides advice to agencies on the application of the Vacancies Reform Act to specific vacancies. Some general guidance is available at: <http://www.usdoj.gov/olc/finalqa.htm>.

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) established by the Act.

In addition to the specific items of information required to be reported by the Act, GAO would appreciate your providing certain supplementary information to meet its statutory reporting requirements. Specifically, GAO requests that each agency report:

- the authority under which an acting officer was designated, if the designation was made under an authority other than the Vacancies Reform Act;<sup>4</sup>
- any changes in the status of the vacant position (such as a change in title or elimination of the position);
- the discontinuation of service in an acting role;
- the name, mailing address, and telephone number of the reporting agency's designated contact person.

For your convenience, GAO has created a form that can be used to report this information. It is available on GAO's internet site at: <http://www.gao.gov/decisions/submitvc.htm>.

Should you have any questions about the reporting of vacancies to GAO, please contact Kathleen Wannisky, on 202-512-5207, or Jeffrey McDermott, on 202-512-2584.

Sincerely yours,



Gary L. Kepplinger  
General Counsel

cc: Karen D. Cyr  
General Counsel

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<sup>4</sup> For most vacancies, the Vacancies Reform Act provides the exclusive means for making temporary appointments. However, there are some specific exceptions, such as where another 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.