

B-332617

January 19, 2021

The President
The White HouseSubject: *Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1998: Administrator, Federal Transit Administration*

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 Transit Administration (FTA), Department of Transportation (DOT), with respect to the Administrator 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. Specifically, we are reporting that the service of K. Jane Williams as FTA Acting Administrator from August 1, 2020, until on or about October 19, 2020, was in violation of the Vacancies Act. 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). The Vacancies Act also permits acting service during the pendency of a nomination before the Senate. *Id.* § 3346(a)(2). If a nomination is rejected by the Senate, withdrawn, or returned to the President by the Senate, then the Act permits the official to continue to serve in the acting position for no more than 210 days after such rejection, withdrawal, or return. *Id.* § 3346(b). 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.

DOT previously reported to us that there was a vacancy in the position of FTA Administrator.¹ GAO's Executive Vacancy System. The President nominated Thelma Drake for the position on January 16, 2019, and we received a report from DOT providing that the Senate returned the nomination of Ms. Drake for such

¹ The vacancy began due to the resignation of Peter M. Rogoff.

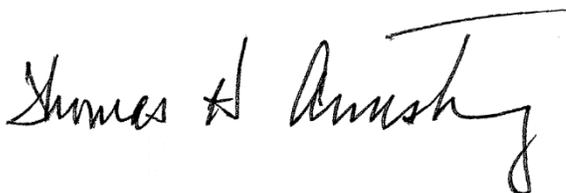
position on January 3, 2020. *Id.* K. Jane Williams was designated as the Acting Administrator at that time. *Id.* When Ms. Drake's nomination was returned on January 3, 2020, a new 210-day period of permissible acting service began. 5 U.S.C. § 3346(b). At that time, Ms. Williams was designated as the Acting Administrator. The period of permissible acting service ended on July 31, 2020, but the DOT and FTA websites continued to list Ms. Williams as the Acting Administrator until on or about October 19, 2020.

When we inquired about a potential violation of the permissible period of acting service, DOT acknowledged that the websites mistakenly listed Ms. Williams as Acting Administrator after July 31, 2020, but explained that, after our inquiry, the websites were corrected. Letter from Assistant General Counsel, GAO, to General Counsel, DOT (Oct. 27, 2020); Letter from Assistant General Counsel for General Law, DOT, to Assistant General Counsel, GAO (Nov. 5, 2020). We have previously determined that an agency violates the time limitations in the Vacancies Act if it identifies an official as an acting official on the agency's website when the position should be vacant. B-331539, Sept. 18, 2020. Here, we find that DOT held Ms. Williams out to the public as FTA Acting Administrator by identifying her as serving in such role on the DOT and FTA websites after the end of the period of permissible acting service. Further, by holding Ms. Williams out to the public as Acting Administrator 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 also 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 Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, 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 Aimee Aceto, Acting Assistant General Counsel, at 202-512-6534.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line above the name.

Thomas H. Armstrong
General Counsel