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United States Government Accountability Office  
Washington, DC 20548

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B-307400

July 24, 2006

The President  
The White House

Subject: *Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998*

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 at the United States Agency for International Development (USAID). As you know, the Vacancies Reform Act established new requirements for the temporary filling of vacant executive agency positions that require Presidential appointment and Senate confirmation. The Act generally limits the period of time that such a position may be filled with an acting official to 210 days. 5 U.S.C. § 3346. Section 3349(b) requires the Comptroller General, upon a determination that an acting official is serving longer than the 210-day period and any applicable extensions, to report such finding to Congress, the President, and the Office of Personnel Management.

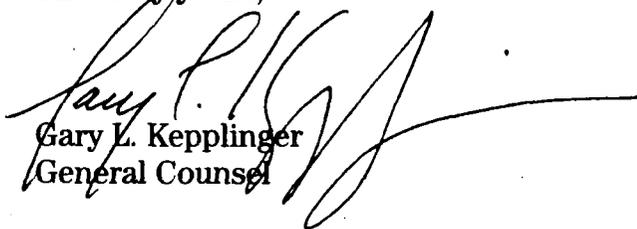
As required by the Vacancies Reform Act, USAID reported to us that a vacancy in the position of Inspector General began on September 3, 2004, when Inspector General Everett Mosley resigned. This position requires Presidential appointment and Senate confirmation under the provisions of the Inspector General Act, and thus is subject to the Vacancies Reform Act. 5 U.S.C. § 3345(a). The Department also reported to us that two individuals, James Ebbitt and Bruce Crandlemire, served as Acting Inspector General between September 3, 2004, and December 17, 2005. Mr. Ebbitt served as Acting Inspector General from September 3, 2004, until his retirement in March 2005. Mr. Crandlemire began serving as Acting Inspector General on May 4, 2005, following a designation by the President.

The Vacancies Reform Act generally limits the service of acting officials to 210 days from the date of the vacancy. 5 U.S.C. § 3346. In this instance, the 210-day period ended on April 1, 2005. The Act also contains a spring-back provision that allows an acting official to resume performing the duties of the office once a nomination is submitted to the Senate for the period that such nomination is pending in the Senate. 5 U.S.C. § 3346(a)(2). Thus, Mr. Crandlemire could resume his service as Acting Inspector General on September 13, 2005, when the President submitted the nomination of Donald Gambatesa for the position of Inspector General to the Senate.

However, Mr. Crandlemire's service as Acting Inspector General between the dates of May 4, 2005, and September 13, 2005, was in violation of the time limitation in the Vacancies Reform Act. While the nullification provisions of the Vacancies Reform Act do not apply to Inspectors General, the other provisions of the Act, including the 210-day limitation, are applicable. 5 U.S.C. § 3348(e)(3).

In accordance with the requirements of the Vacancies Reform Act, we are sending identical letters to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, the Senate and House Appropriations Committees, the Senate Committee on Foreign Relations, the House Committee on International Relations, and the Director of the Office of Personnel Management. If you should have any questions regarding this matter, please call me on 202-512-5400, or Associate General Counsel Robert J. Cramer on 202-512-7227.

Sincerely yours,



Gary L. Kepplinger  
General Counsel