

May 1, 2020

The Honorable Katie Porter  
United States House of Representatives  
1117 Longworth House Office Building  
Washington, DC 20515

Dear Congresswoman Porter:

As nonpartisan organizations with an interest in good governance, we write to offer our strong support for the Accountability for Acting Officials Act, which would help to ensure the timely nomination and confirmation of qualified leadership across the Executive Branch by closing increasingly problematic loopholes in the Federal Vacancies Reform Act of 1998 (FVRA).

While our organizations represent broad-based communities with diverse priorities, we are united in our belief that an overreliance on acting leadership under any administration is damaging to the interests of taxpayers and all who rely on effective government.

We have seen an increasing and excessive use of temporary leadership in positions that require Senate confirmation. While it is critical to have a structure set up to temporarily fill the leadership vacuum upon a vacancy, that structure should only be used as a stopgap measure while awaiting a qualified nominee to be confirmed.

Excessive use of acting or non-confirmed leadership unconstitutionally circumvents the Senate's Advice and Consent mandate, leaving these officials less accountable to both Congress and the American people. This may incentivize a president to rely more heavily on the use of acting leadership, as it permits a president to appoint someone based on their loyalty to the president, rather than based on his or her qualifications and ability to do the job. Further, acting officials may not feel empowered to make big but necessary decisions, potentially crippling agency operations.

We are particularly concerned that the leadership vacuum in key positions has stymied the government's ability to effectively address the crisis caused by COVID-19. Currently, approximately 30 percent of high-level positions at the Department of Homeland Security and Department of Defense lack the Senate-confirmed leadership they are supposed to have.<sup>1</sup> This leaves these critical agencies lacking effective leadership during a time of national crisis.

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<sup>1</sup> Letter from nonpartisan organizations to congressional committee leadership regarding the effect of federal vacancies on the COVID-19 response. April 14, 2020. [https://www.peer.org/wp-content/uploads/2020/04/4\\_14\\_20\\_-Vacancies\\_Senate\\_letter.pdf](https://www.peer.org/wp-content/uploads/2020/04/4_14_20_-Vacancies_Senate_letter.pdf)

The Accountability for Acting Officials Act would take major strides in solving long-standing problems with the Federal Vacancies Reform Act of 1998 by closing problematic loopholes. For example, your legislation would require a “first assistant” to have served in that position prior to a vacancy to be eligible to serve as the acting official and would clarify that the FVRA is superseded by agency-specific statutes that prescribe different procedures in the event of a vacancy.

Many of the reforms you include would further the original intent of the FVRA by encouraging timely nomination of qualified individuals from the White House and ensuring that a plan is in place to appoint permanent leadership. Importantly, your bill would address the unique circumstances facing vacant inspectors general offices to ensure that these critical watchdogs can operate effectively and ethically while waiting for a permanent inspector general to be confirmed.

Thank you for your leadership in introducing the Accountability for Acting Officials Act. We urge bipartisan, bicameral support for these critical reforms in this unprecedented time of crisis to ensure that our executive branch agencies are led by qualified, vetted leadership.

Sincerely,

American Oversight  
Brennan Center for Justice  
Citizens for Responsibility and Ethics in Washington (CREW)  
Demand Progress  
Democracy Fund Voice  
National Federation of Federal Employees (NFFE)  
Niskanen Center  
Open The Government  
Project On Government Oversight  
Protect Democracy  
Public Citizen  
Public Employees for Environmental Responsibility (PEER)  
Union of Concerned Scientists