

MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Chairwoman

JOE WILSON, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BANKS, INDIANA
JAMES COMER, KENTUCKY
LLOYD SMUCKER, PENNSYLVANIA
BURGESS OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. MCCLAIN, MICHIGAN
MARY E. MILLER, ILLINOIS
MICHELLE STEEL, CALIFORNIA
RON ESTES, KANSAS
JULIA LETLOW, LOUISIANA
KEVIN KILEY, CALIFORNIA
AARON BEAN, FLORIDA
ERIC BURLISON, MISSOURI
NATHANIEL MORAN, TEXAS
JOHN JAMES, MICHIGAN
LORI CHAVEZ-DEREMER, OREGON
BRANDON WILLIAMS, NEW YORK
ERIN HOUGHIN, INDIANA



COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORIO KILI LI CAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
SUSAN WILD, PENNSYLVANIA
LUCY MCBATH, GEORGIA
JAHANA HAYES, CONNECTICUT
ILHAN OMAR, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNÁNDEZ,
NEW MEXICO
KATHY E. MANNING, NORTH CAROLINA
FRANK J. MRVAN, INDIANA
JAMAAL BOWMAN, NEW YORK

July 6, 2023

The Honorable Gene L. Dodaro
U.S. Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

Deputy Assistant Secretary of Labor Julie A. Su is currently serving as Acting Secretary of Labor. However, as her nomination to become the next Secretary of Labor continues to languish in the Senate, questions regarding the length of time she can remain the head of the Department of Labor (DOL) need answers. Therefore, the Committee on Education and the Workforce (Committee) is examining the ability of an Acting Secretary of Labor to remain in office in accordance with the *Federal Vacancies Reform Act of 1998* (Vacancies Act). The Committee is aware of a potential conflict between two federal statutes regarding an Acting Secretary of Labor's tenure: 1) the statute that created the position of Deputy Secretary of Labor and 2) the *Vacancies Act*. The Committee requests that the Government Accountability Office issue an opinion about what legal authority determines an Acting Secretary of Labor's tenure in office and DOL's adherence to that statute.

On February 16, 2023, the National Hockey League Players' Association announced that Secretary of Labor Martin J. Walsh would become its executive director.¹ On February 28, the White House announced the President's nomination of Deputy Secretary Su for Secretary of Labor.² On March 11, 2023, Secretary Walsh resigned from his position in the federal government. On that same day, DOL reported that Deputy Secretary Su began her service as Acting Secretary under section 552 of title 29 of the U.S. Code.³ This section provides:

¹ Nick Niedzwiadek, *It's Official: Labor Chief Walsh Jumps Ship For Hockey Players' Union*, POLITICO, Feb. 16, 2023, <https://www.politico.com/news/2023/02/16/labor-secretary-walsh-hockey-step-down-00083299>.

² Press Release, The White House, President Biden Nominates Julie Su for Secretary of the Department of Labor (Feb. 28, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/28/president-biden-nominates-julie-su-for-secretary-of-the-department-of-labor/>.

³ Submission Under the *Federal Vacancies Reform Act* from the Dep't of Lab. to Comp. Gen. of the U.S., et al. (Mar. 21, 2023) (on file with the Committee).

The Honorable Gene L. Dodaro

July 6, 2023

Page 2

The Deputy Secretary shall (1) in case of the death, resignation, or removal from office of the Secretary, perform the duties of the Secretary until a successor is appointed, and (2) in case of the absence or sickness of the Secretary, perform the duties of the Secretary until such absence or sickness shall terminate.

The *Vacancies Act* establishes requirements for temporarily authorizing an acting official to perform the functions and duties of certain vacant positions that require a presidential appointment and Senate confirmation.⁴ The *Vacancies Act* is the exclusive means for an acting official to serve in a covered position unless

(1) a statutory provision expressly-

(A) authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(B) designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(2) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.⁵

On behalf of the Committee, I am writing to request an opinion addressing the following:

1. What legal authority governs Ms. Su's acting service? Does 29 U.S.C. § 552 or the *Vacancies Act* govern Ms. Su's acting service?
2. Does 29 U.S.C. § 552 provide authority, independent of the *Vacancies Act*, to designate an Acting Secretary of Labor? In other words, does this position qualify as a statutory provision that operates as an exception to the *Vacancies Act*'s exclusive authority, as described in 5 U.S.C. § 3347(a)(1)?
3. Is Ms. Su serving as Acting Secretary in compliance with the applicable governing legal authority?
4. Are there time limitations on Ms. Su's acting service, and if so, what are those limitations?

Thank you for your attention to this matter.

Sincerely,



Virginia Foxx
Chairwoman

⁴ 5 U.S.C. §§ 3345–3349d.

⁵ 5 U.S.C. § 3347(a).